



COMMONS REGISTRATION ACT 1965

Reference Nos. 270/D/116 to 121
inclusive

In the Matter of Marsden Moor,
Marsden, Kirkstiles Metropolitan
Borough, West Yorkshire.

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section, at Entry Nos. 3, 5 to 10 inclusive, 12 to 27 inclusive, 31 to 36 inclusive, 37, 39, 41, 43, 44, 46, 48 and 50 in the Rights Section and at Entry No. 1 in the Ownership Section of Register Unit No. CL39 in the Register of Common Land maintained by the West Yorkshire (formerly West Riding) County Council and are occasioned by Objections Nos. 63 and 155 made by Mrs Evelyn Bray and noted in the Register on 3 August and 16 November 1970 and by Objections Nos. 450 and 454 made by Mrs Grace Flint and noted in the Register on 11 and 12 January 1971.

I held a hearing for the purpose of inquiring into the disputes at Huddersfield on 9 December 1981. At the hearing (1) Mrs Evelyn Bray who not only made the said Objections but also was the applicant for the registration at Rights Section Entry No. 19, was represented by Mr J A Lloyd, solicitor with Eaton Smith & Downey, Solicitors of Huddersfield; (2) Mr J T Flint and Mrs N E Crowther as executors of Mrs Grace Flint who not only made the said Objections but was also the applicant for the registrations at Right Section Entry Nos. 9, 10, 12, 13, 14, and 15 (with Mr John Robert Flint and Entry Nos. 48 and 50 (by herself) were represented by Mr D G Barry solicitor of Ramsdens, Solicitors of Huddersfield; (3) the said Mr John Robert Flint was also represented by Mr D G Berry; (4) Mr Harry Middleton and Mrs Mary Middleton on whose application the registrations at Rights Section Entry No. 8 was made, were represented by Mr J Broadbent solicitor of Mary Freeman & Co, Solicitors of Slaithwaite; (5) Mrs Mary Laycock and Mrs Kathleen Ingledew on whose application the registrations at Rights Section Entry Nos. 22 and 23 were made, were also represented by Mr J L Lloyd; (6) Mrs Jean Chaplan of White Lea Farm as successor (and daughter) of Mr Charles William Woodward and Mrs Doris Wrigley Woodward on whose application the registration at Rights Section Entry No. 20 was made, attended in person; (7) Mr Peter Sykes on whose application the registration at Rights Section Entry Nos. 31, 32, and 33 were made, attended in person; (8) Mr George Wood on whose application the registrations at Rights Section Entry Nos. 34 and 35 were made, was also represented by Mr J Broadbent. This hearing was originally listed for 8 December; on that day Mr Senior legal executive with Heap Marshall & Haeley Solicitors of Holmfirth left a message at Mr Hilton Whithead Sykes on whose application the registration at Rights Section Entry Nos. 16, 17 and 18 were made, conceded Objection Nos. 63 and 450, and that Mr Stanley Mosley on whose application the registration at Rights Section Entry No. 43 was made the same concession; on the same day Mr T R Lonsdale of High Fall Farm who succeeded Mrs Elma Dixon on whose application the registration at Rights Section Entry No. 26 was made, left me a similar message:

The land ("the Unit Land") in this Register Unit is a tract containing about 3,070 acres. The Land Section registration was made on the application of the National Trust for places of Historic Interest and Natural Beauty; an application by the Ramblers Association is noted in this Section. There are 36 effective registrations in the Rights Section: all of rights to graze vary in numbers of animals and some including rights of turbarry (or turves) and to take bedding (or take bracken and rushes). In



the Ownership Section Entry No. 1, the National Trust has been registered as owner of all the Unit Land. The grounds of Objection Nos. 63 and 155 (Mrs Bray) are to the effect against the intrusion of the land hatched red on the plan attached thereto being about 20 acres north of Wards End Farm. The grounds of Objections Nos. 450 and 454 (Mrs Flint) are in effect against the inclusion of the land edged blue on the plans attached thereto, being about 25 acres to the east and south-east of the said hatched red land.

Mr Lloyd produced a conveyance dated 9 November 1953 by which Messrs E T R Jameson and L A F Jagger as personal representatives of Mr John Jameson under letters of administration dated 4 December 1939 conveyed to Mrs Bray, Upper Green Owlers, otherwise Wards End containing about 27 a. 1 r. 31 p. expressly including the said hatched red land therein described as 544 Knowl and Raw Green 15 a. 1 r. 14 p. and 545 part of Raw Green Pasture 3 a 1 r 23 p. Mr Berry produced a conveyance dated 21 April 1950 by which National Provincial Bank conveyed to Mr S Garside, Piper Holes and Park Farm containing about 50.498 acres as delineated on the plan attached which plan shows as being expressly included the said hatched blue land thereon marked as 23 a. 2 r. 1 p.; and also a conveyance dated 29 July 1970 by which Messrs J Wood and P A Wood conveyed to Mrs Flint various land including Piper Holes and Park Farm wherein described by reference to the said 1950 conveyance.

I have letters (1) dated 17 November 1981 from Mr R S Latham and other solicitors for the National Trust saying that they concede the Objections of Mrs Bray and Mrs Flint; (2) dated 12 October 1981 from Mr E T G Barnes on whose application the registration at Rights Section Entry No. 3 was made saying he had no intention of challenging or contesting the objections whatever they may consist of; (3) dated 26 November 1981 from Morcross Lees & Riches, Solicitors of Oldham saying that Mr J M Hopkinson (the Rights Section registration at Entry No. 41 was made on his application) will be withdrawing his application; and (4) dated 1 December 1981 from Mills Best & Wills, Solicitors of Huddersfield saying that their clients Mr Robert Howard Lockwood and Mrs Karen Aston Lockwood as successors in title of Mr Patrick Tobin of Hetherwood Farm on whose application the registration at Rights Section Entry No. 52 was made, conceded the objections.

As regards the Land Section registration, everyone present or represented at the hearing conceded the Objections. Having regard to the other concessions herein before recorded and in the absence of any evidence that the hatched red and the hatched blue lands could be within the 1965 Act definition of Commons Land, I conclude that such land should not have been registered.

As regards the registration in Rights Section Entry No. 41 (Mr J M Hopkinson) in view of the above mentioned withdrawal on his behalf recorded by his solicitors, I conclude that this registration should not have been made.

Notwithstanding that the grounds of the objections are expressly limited to the hatched red and the hatched blue lands, on the words of Section 5 of the 1965 Act, these objections put the registrations wholly in question. Notwithstanding ~~that~~ ^{the} evidence in support of those registrations was given at the hearing, I have the statutory declarations made by the applicants for them; if the Land Section registration had never included the hatched red and the hatched blue lands and accordingly the Objections had never been made, as regards the remaining land the ~~Land~~ ^{Rights} Section registrations would have become final under Section 7 of the 1965 Act without there ever having been any reference to a Commons Commissioner; I conclude that I ought to produce the same result (except as regard the registration at Entry No. 41). It follows from this conclusion the ~~Land~~ ^{Rights} section registrations as ~~made~~ ^{made} ~~as~~ ^{as} regards all the rest of the Unit Land ~~was~~ ^{was} properly made.



The Ownership Section registration will cease to apply to the hatched red and the hatched blue lands on their removal from the Register. As regards to the remainder of the Unit Land it appears from the said letter of 17 November 1981 that in 1955 the National Trust received some 5,700 acres of open moorland from the Treasury which ~~was~~ accepted in lieu of death duties and that the Trust registered its ownership under the 1965 Act in the usual way. Notwithstanding that no evidence was given at the hearing of their ownership I have in addition to the statement in the letter, ~~the~~ statutory declaration made on their behalf when the registration was applied for. If the hatched red and the hatched blue land had never been included in the registration and the said objections had never been made, this Ownership Section registration would have become final under section 7 of the 1965 Act; I consider I should produce the same result and conclude that the registration except as aforesaid was properly made.

For the above reasons: I confirm the registration at Land Section Entry No. 1 with the modification that there be removed from the Register the land hatched red on the plan attached to Objections Nos. 63 and 155 made by Mrs Bray and the land hatched blue on the plan attached to Objections Nos. 450 and 454 made by Mrs Flint; I refuse to confirm the registration at Rights Section Entry No. 41 (Mr Hopkinson); I confirm the registrations at Rights Section Entry Nos. 3, 5 to 10 inclusive, 12 to 27 inclusive, 31 to 36 inclusive, 37, 39, 43, 44, 46, 48 and 50 (that is all the other Right Sections registrations now in question) without any modification save such as is necessary consequential upon the removal of the said hatched red and hatched blue lands from the Register; and I confirm the registration at Ownership Section Entry No. 1 without any modification save such is necessary consequential upon the removal of the said lands from the Register.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 15th — day of March 1982.

a. a. Barber Jullie

Commons Commissioners