



COMMONS REGISTRATION ACT 1965

Reference No 45/U/195

In the Matter of Whirlaw Common, Todmorden,
Calderdale Borough, West Yorkshire

DECISION

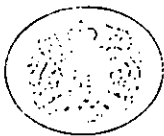
This reference relates to the question of the ownership of land known as Whirlaw Common, Todmorden, Calderdale Borough being the land comprised in the Land Section of Register Unit No CL. 428 in the Register of Common Land maintained by the West Yorkshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Mr J E Gittings claimed to be the freehold owner of part of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Halifax on 6 April 1976. At the hearing: (1) Mr J H Hollinrake, on whose application Entry No 1 in the Rights Section was made and who is one of the trustees of the estate of Mr James Howarth (he died 31 December 1913) was represented by Mr J F Kay, solicitor of Molesworths, Solicitors of Rochdale; (2) Mrs Mary Hardman Hough and Mrs Elizabeth Jane Morrish Hollinrake who are the other trustees of the Estate, were also represented by Mr Kay; and (3) Mr J E Gittings was represented by his son, Mr Edward Gittings.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) 8.019 hectares (about 19.8 acres). It is an irregularly shaped strip of Moorland about 700/750 yards long from the top, which includes or is near Back Stone Hill (over 1350 feet) down to agricultural land about 600 feet up and about $\frac{1}{2}$ a mile northeast of Lydgate. The right registered (there is only one Entry) is attached to Bank Estate, Croslee, and is to graze 24 cattle and 48 sheep. The registration in the Land Section was made in consequence of the registration of this right.

Mr Kay in support of a claim that the Trustees owned the Unit Land (or at least the lower part of it) produced an affidavit sworn by Mr J H Hollinrake on 5 April 1976. The claim as set out in this affidavit was based on a plan annexed to a conveyance dated 3 March 1926 by which a farm house called Scout with 40 acres of land was conveyed to Mr Joseph and Mrs Edith Anne Hollinrake. The east boundary of the land so conveyed corresponds with the west boundary of the Unit Land. On the 1926 conveyance plan, the ownership of the land surrounding that comprised in the conveyance is marked in 3 places "Mr James Howarth's Land" and in 1 place "Late of Mr Hardman's Land", such markings apparently extending to all the surrounding land, the part marked "Mr James Howarth's Land" apparently including all the Unit Land.



Mr E Gittings (the son) in the course of his evidence produced: (1) a conveyance dated 3 March 1941 by which Greenhurst Hey was conveyed to his father Mr J E Gittings and his mother Mrs E M Gittings; (2) an abstract dated 1865 of the title of the trustees of the will of Michael Holliwell and (3) an abstract dated 1857 of the title of Mr John Holliwell. The recitals in the 1941 conveyance commenced with the will dated 24 October 1877 of William Sutcliffe (he died 5 April 1883) and the parcels after describing the dwelling house Greenhurst Hey and the rest, concluded "and also three closes of land therewith occupied and adjoining thereto"; there was on or in the conveyance no plan or other indication by which the closes referred to could be identified. The abstracts include the will dated 10 March 1802 of Holliwell containing the words "and also all that large close or inclosure of pasture ground called the Whirlaw Common which I heretofore purchased from John Sutcliffe".

Mr E Gittings (the son) who is 46 years of age said (in effect):- His father's claim was to the upper part (the north part) of the Unit Land. His father after he purchased Greenhurst Hey Farm which contains about 300 acres and which is east of (adjoining) the Upper Part, had tried to sort out the said closes of land which he had acquired under the 1941 conveyance. The difficulty was that the Farm had only changed hands once in 150 years. The Upper Part is rough land, rocky underneath and on the surface peaty (very acid); a barren space more or less. They had put sheep on it occasionally; they had never deliberately put cattle on although sometimes cattle strayed up there. They had shot over it. It was not capable of improvement because of the acidity and the rocks, and being so high up. The west boundary is naturally impassable for cattle because of the boulders and rocks (Harley Wood Slack is on the west); elsewhere there are remains of some fences. His father had put up a boundary post which had not been objected to by anyone. There is access from Upper Lane, a track which runs east-west across (or near) the land of Greenhurst Hey Farm, and which is joined by Windy Harbour Lane (a public metalled road from the north ending at Upper Lane). The Upper Part (so far as it could be used at all) has not been used by anyone other than those from Greenhurst Hey.

On the evidence summarised above, I conclude that the ownership of the Upper Part under the 1941 conveyance is established.

Mr Kay said that having seen Mr Gittings' deeds, he did not on behalf of the trustees claim the Upper Part. Even with this concession, I am unable to conclude from the 1926 conveyance that Mr James Howarth was then the owner of any part of the Unit Land; the markings on the plan were in no way essential to the operative part of the conveyance, and I see no reason for inferring that those who made it ever considered such markings carefully. Mr Hollinrake in his affidavit put the Trustees' case no higher than he believes the Unit Land "may form part of the Estate"; he says "I have always understood that the said Estates were entitled to the larger part of the Rights of Common over the said land..." (a statement consistent with the Estates having no more than grazing rights over the Lower Part not now claimed by Mr Gittings).



As to the boundary between the Upper Part and the Lower Part, at the hearing Mr Gittings (the son) drew a line a little south of that marked by Mr J. Gittings (senior) on a map enclosed with his letter dated 15 August 1974 to the Clerk of the Commons Commissioners. In such letter he said of such map: "I have drawn 2 lines on (it) in black & our land is northwards of these lines". I consider I should adopt the line suggested by Mr Gittings (senior) in his letter.

Under the 1941 conveyance, the ownership passed to Mr Gittings (senior) and his wife. He in his letter refers to "our" and I have no reasons to suppose that her title has been in any way diminished. I shall therefore treat his claim as made on behalf of both of them.

For the reasons set out above, I am satisfied that Mr and Mrs Gittings are the owners of the Upper Part and I shall accordingly direct West Yorkshire County Council as registration authority under section 8(2) of the Act of 1965 to register Mr John Edward Gittings and his wife Mrs Edna May Gittings both of Greenhurst Hey, Todmorden as the owners of the Upper Part of the land comprised in this Register Unit, and I shall in my direction define the Upper Part as being the part north of the 2 lines drawn on the map annexed (being a copy of the map sent by Mr Gittings with his said letter of 15 August 1974).

As above stated, I am unable to conclude that the Trustees are the owners of the Lower Part (the remainder of the Unit Land). It was not suggested that anyone else could be the owner, and accordingly I am not satisfied that any person is the owner of the remainder of the Unit Land and it will therefore be subject to protection under section 9 of the 1965 Act.

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 16th day of June — 1976

a. a. Baden Fuller

Commons Commissioner