



COMMONS REGISTRATION ACT 1965

Reference No. 220/U/13

In the Matter of Bentley Moss,
Haslingden, Rossendale Borough,
Lancashire

DECISION

This reference relates to the question of the ownership of land known as Bentley Moss, Haslingden, Rossendale Borough being the land comprised in the Land Section of Register Unit No. CL 279 in the Register of Common Land maintained by the Lancashire 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 (1) Mrs E M Helme of 27 Chapeltown Road, Bromley Cross, Bolton said (letters received 17 September 1985 and 13 May 1986) among other things, that her father Thomas Wilkinson who died in November 1935 was a cattle dealer who used to go to Haslingden Auction every week and it is possible he could have owned this land as a friend of his told her; and (2) Mr T Riley of Tor End Farm, Helmshore, Rossendale said (letter dated 22.8.86) that he had grazed sheep on this land for the last 35 years solely, as owner of High Pastures Farm which when he purchased it he understood had a right of common. No person claimed to be the freehold owner 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 Burnley on 9 December 1986. At the hearing North West Water Authority were represented by Mr J D Prytherch, assistant solicitor of their legal department.

The land ("the Unit Land") in this Register Unit is from east to west about 800 yards long and has an average width of about 400 yards. In the Rights Section a right to graze 20 cattle over it attached to Bank Bottom Farm, Edgworth has been registered on the application of Barbara Jones, Elizabeth May Helme (in the Register written Hulme) and Nora Entwistle as owners.

Mr Prytherch in the course of his evidence produced the documents specified in the Schedule hereto. The plan ("the Decision Plan") being page 2 of this decision is an uncoloured copy of the plan (JDP/21-24) so produced on which I have thickened in black the boundary of one of the parts of the Unit Land on the original edged red, being about half of it. On behalf of North West Water Authority Mr Prytherch claimed they owned parts of the Unit Land edged red on the plans JDP/21-24 being (1) that edged with a thick black line on the Decision Plan thereon including "Kay's o' th' Moss; and (2) a much smaller piece about 150 yards long and about 20 yards wide situated within and adjoining the southeast corner of the Unit Land and on the Decision Plan edged with a thin black line.



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I identify Mrs Helme who wrote the said 1985 and 1986 letters with one of the applicants to the said Rights Section registration. After the hearing she sent letter received in the offices of the Commons Commissioners to 5 January saying that she was unable to come to the hearing as she was ill, she "would not have had any claim as the farm was sold a few years ago ..."

As to part (1):- The plan appearing in the margin of the 1904 conveyance (JDP/22) clearly identifies the land thereby conveyed with the part of the Unit Land edged with a thick black line on the Decision Plan; such conveyance is some evidence that the Bury and District Joint Water Board under it then became entitled to it for a customary freehold estate. By the Law of Property Act 1922, all customary freehold estates where enfranchised so the conveyance is evidence of ownership for a legal estate in fee simple as defined in the Commons Registration Act 1965. At a hearing about Register Unit No. CL 175 held by me on 9 December 1986 before this CL 279 hearing Mr Prytherch said: under the Irwell Valley Water Board Act 1935, the name of the Bury and District Joint Water Board was changed to the Irwell Valley Water Board, under the Bolton Water Order 1962 their property was transferred to the Bolton Corporation, and under the Local Authorities (England) Property etc Order 1973 (SI 1973 1861) their property was transferred to the North West Water Authority. In my view the letters I have from Mrs Helme do not raise any doubt as to the evidential value of the said 1904 conveyance. Upon these considerations I am satisfied that North West Water Authority are the owners of the said part of the Unit Land.

As to part (2):- The plan (12" x 11") annexed to the 1898 conveyance (JDP/23) shows two areas both surrounded by a pink line, and a list of names headed "Contents". One of these areas approximately triangular contains (as deduced from the Contents) 19a.2r.27p; and the other is a strip in outline not unlike the part of the Unit Land edged with a thin black line on the Decision Plan, containing (so deduced) 0a.2r.37p. As submitted by Mr Prytherch I identify the larger of these two areas with the lands adjoining the northeast boundary of the Unit Land and including "Bentley House" marked on the Register map. Mr Prytherch submitted that I should identify the smaller area with the said smaller piece within and adjoining the southeast corner of the Unit Land. Upon a consideration of the 1898 conveyance alone (I have nothing else), I consider this identification unsatisfactory, because if the conveyance plan was intended to indicate ~~the~~ only the size and outline of the two areas (as it effectively does) but also their relative positions, they are on such plan too near together and at the wrong angle relative to each other for the submitted identification to be correct; and because if (as I think likely) the conveyance plan was intended to indicate only the size and outline of the two areas, I have nothing to indicate where the "Head Field" was or is in relation to the Unit Land.



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Because it might be that someone with local knowledge could locate the Head Field, I said at the hearing I would if requested within the next 6 weeks adjourn it so further evidence could be given. No such request has been received. Accordingly for the reasons set out above, I record that I am not satisfied that North West Water Authority or anyone else is the owner of the said piece within and adjoining the southeast corner of the Unit Land or any other part of the Unit Land except that edged with a thick black line on the Decision Plan.

For the above reasons, I shall pursuant to section 8(2) of the Act of 1965 direct Lancashire County Council as registration authority to register North West Water Authority of Dawson House, Great Sankey, Warrington, WA5 3LW as the owners of the land which is part of that comprised in this Register Unit and which is edged with a thick black line surrounding (printed) "Kay's o' th' Moss" on the Decision Plan. The remainder of the land in this Register Unit will remain subject to protection under section 9 of the Act of 1965.

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.

TURN OVER



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SCHEDULE
(Documents produced)

- JDP/21 -- OS Map (12 " x 8"), 6" = 1 mile. Unit land edged black; part of it claimed edged red.
- JDP/22 19 October 1904 Conveyance by Harold Porritt, Catherine Kirk Porritt and William John Porritt to The Bury and District Joint Water Board, Firstly the Farm called Kay's o'th'Moss containing about 45a.1r.38.08p. as described and shown on the map appearing in the margin and surrounded by a red line and also buildings...; and secondly Farm called "Egerton Moss" or "Twitchen Farm" containing 142a.2r.28.64p. coloured blue (west of an adjoining the Firstly) until the same have been enfranchised according to the custom of the Manor of Accrington.
- JDP/23 1 April 1898 Conveyance by William John Porritt, Emily Anna Porritt, Harold Porritt, Catherine Kirke Porritt and Margaret Porritt to the Mayor Alderman and Burgesses of the Borough of Bury of one messuage "situate at Bentley House in Heslingden Grane within the said Manor (of Accrington)" containing the quantities following ... Head Field two roods thirty seven perches and in the whole "21a.1r.24p." as more particularly delineated on the plan annexed hereto and thereon surrounded by a pink line ... and are of the yearly rent to the Lord of the said Manor of eight shillings and seven pence ... HOLD ... until the said hereditaments shall have been enfranchised according to the custom of the said Manor..."
- JDP/24 -- Map same as JDP/21 above.

Dated this 18th — day of February 1987.

A. A. Baden Fuller

Commons Commissioner