



In the Matter of Brandwood Higher End
Moor, Rossendale B.

DECISION NO.1

These disputes relate to the registrations at Entry No.1 in the Land section and Entries Nos 1 to 9 in the Rights section of Register Unit No. CL213 in the Register of Common Land maintained by the Lancashire County Council. They are occasioned by Objection No.281 made by Castleton Sand and Gravel Quarries Ltd ("Castleton") and Objection No. 337 made by Patrick Dunne, noted in the Register respectively on 28 April 1972 and 8 June 1972. The registrations at Entries Nos 7 & 8 in the Rights Section have also been referred as conflicting and thereby occasioning a dispute.

I held a hearing (adjourned from 27 June 1984) for the purpose of inquiring into the disputes at Blackpool on 2 and 3 October 1984. At the hearing Mr E B Jones of Counsel, appeared on behalf of Castleton and Mr C K Machin of Counsel on behalf of Mr Dunne; The East Lancashire Commoners Association, which applied for registration of the Moor as Common Land, was represented by its Secretary, Mr W F Lloyd, who also appeared as Executor of W A C Lloyd, the applicant for registration at Entries Nos 7 & 9, and in addition represented Mrs N E Barnett and Mr J B Askew, the applicants for registration at, respectively, Entries Nos 1 and 4. As regards the remaining Entries in the Rights Section (A) Mr J Thorpe, successor to the applicants for registration at No. 3 and Mr S Thorpe, applicant for registration at No. 8, both appeared in person (B) the applicants for registration at Entries Nos 2 (Mr B B Matthews) and at Entries Nos 5 & 6 (P & W Keiley) were not present or represented.

Since the hearing the parties concerned in the disputes occasioned by Objection No. 281 have been engaged in negotiations for an agreed settlement of their disputes; these registrations have been protracted and have involved the deferring of my Decision pending their outcome. I understand that the terms of a settlement have been agreed in principle but that the documentation is still incomplete. In the meantime the other Objector (Objection No. 337), who is not concerned in the negotiations, is anxious for a Decision on the disputes occasioned by his objection and this Decision relates only to those disputes, and one or two other matters which were not contested at the hearing.

(2) The land ("the unit land") comprised in this register unit is a stretch of high moorland which I viewed (as far as the weather permitted) on the 3 October. Its western boundary adjoins Greens Moor (registered as CL.237), though there is no physical demarcation of the boundary so that the two moors are effectively all one. An area in the north western part of the unit land is a quarry. The Quarry, which, together with the greater part of the rest of the unit land is in the ownership of Castleton or its associated company, High Moor Quarries Ltd. Further to the east a strip ("the Dunne Strip") running from north to south, of the unit land and adjoining Stubbylee Moss Farm, was owned by



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Mr P Dunne who has recently conveyed it to his son, Mr C O Dunne, who, as the present owner of the strip with which ~~they owners~~ are concerned, is maintaining his father's Objection. The extreme eastern end of the unit land is an area ("the E area") which on the register map lie to the east of a line marked A B.

(3) Entry No 8 is a grazing right over the E area only and neither of the Objectors objected to that registration; accordingly I shall confirm that registration and, correspondingly, the registration of the E area in the Land Section.

(4) Of the remaining Entries, No 1 is a grazing right over the whole of the unit land, and Nos 2, 4, 5 and 6 are grazing rights over the unit land except the E area. None of the applicants for registration of these rights gave or called evidence in support of their rights; nor in the evidence (summarised below) given at the hearing was there sufficient to establish the acquisition by grant prescription or otherwise of the rights claimed by these applicants. Accordingly I refuse to confirm the registrations at Entries 1, 2, 4, 5, and 6.

(5) The remaining Entries, Nos 3, 7 & 9 are of rights over the unit land except the E area and claimed to be attached No. 3 to Height Barn Farm, No. 7 to Cwm Farm and No. 9 to New Barn Farm. Mr Lloyd produced two deeds of 1712 and 1713 which were difficult, in the case of the 1712 deed to translate, and in the case of the 1713 deed to read; I understood from him that the Record Office had identified them as Deeds of Recovery in favour of ~~Garnavie~~ Lloyd, who was a party to the 1713 deed. This identification was not challenged by Mr Jones or Mr Machin, but so far as I could see the only property included in the transaction which is of possible relevance was "Brandwood" together with its appurtenances and common of pasture and turbary. There was no further indication of what Brandwood comprised or of the land over which the common rights extended, and the Deeds seem to me at best historical evidence of Lloyd ownership of property in this area and of common rights over unidentified common land. As further evidence of Lloyd ownership of such property Mr Lloyd referred me to rental records which referred inter alia to Heights (which lies to the west of CL.237), and to a 1761 Book of the Lloyd estate ^{and} a contemporary map which showed Cwm as part of the estate.

(6) Giving evidence, Mr Lloyd said that he first came to live in the area in 1949. His father, W A C Lloyd, who was then a sick man owned land in the area which included Cwm Farm, which lies to the east of the register unit, and New Barn Farm which lies to the west of CL.237. He was taken round the land by his father's solicitor who told him that there were grazing rights over the moor i.e. Brandwood Higher End Moor and Greens Moor. The tenants of each of these farms then grazed cattle over the moor, the whole of which was unenclosed so that cattle put on wandered over both the register unit and CL.237. The Moor is still largely unfenced except on the northern side and on the west and part of the east side of the Quarry, and stock can still move freely from one part to another. Both farms have continued to be tenanted,



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though part of New Barn Farm was sold to the County Council after his father's death. The tenants have normally kept animals up to the levant and couchant limit on their farms and grazed them on the moor in the summer. Mr S Thorpe (Entry No. 8) has put sheep on from Cowm Farm.

In cross-examination by Mr Jones, Mr Lloyd said that he had no personal knowledge of the grazing on the Moor before 1949, when the general areas of the moor, not its boundaries, were identified to him. The farms in the area are small and it has always been normal practice to graze on the moor in the summer- sheep sometimes all the year round.

Cross-examined by Mr Machin, Mr Lloyd said that his father inherited the land from his uncle. What the Solicitor told him in 1949 may well have been as to what the tenants were then doing on the moor. In his view the rights were partly a result of historical records and partly of what has actually happened in the more recent past. He has from time to time visited Greens Moor and Brandwood Higher End Moor, as he is personally interested, first as Secretary of the Commoner's Association and as Landlord of the tenanted farms. He has seen his tenants sheep and cattle on the moor - they are clearly identifiable.

Mr Lloyd had never seen any fence or wall or their remains on the south or west of the Dunne strip. Its northern boundary is fenced and just outside its eastern boundary was an old tramway line with a retaining wall which is not a stock proof wall. The Dunne strip is not good grazing ground and the grazing season on it is very short.

As regards the rights of turbarry and taking stone registered in entry No. 9 Mr Lloyd said he did not know of any exercise of a right of turbarry, but stone has been taken in recent times for the repair of walls and tracks.

(7) Mr Stanley Thorpe giving evidence said that he had known the moor since about 1935. He went there as a boy with his father who had cattle on the moor from Cowpa Farm. He had never seen any fences in any part of the moor. There was a tramway wall of which there is now little left, it was never an obstacle to cattle- it consisted of stones here and there, with higher places for rolling off drums of quarried stone. He himself became tenant of Cowm Farm in 1957, since when he had about 150 sheep, 8 horses and 20 cattle which grazed on the moor, and there were other farmers including Askew, Matthews, John Thorpe and Keiley who kept sheep on the moor. The total number of animals on the moor would be several hundred getting on for 1,000 sheep or 200 cattle. In peak season there is plenty of grass which recovers when they move on.

Cross-examined by Mr Jones, Mr Thorpe said there were about 8 square miles of moorland altogether and the animals wandered about it; sheep born on the moor returned to the same area and wandered about that.



Mr Machin put to Mr Thorpe the O S Map of 1927 which showed a fence along the southern boundary of the Dunne strip. The witness said that there was no fence on the north or west sides of the strip; he ran sheep there every day - the tramway wall was no obstacle.

(8) Mr J Thorpe gave evidence - he was born in 1950.

As a boy of about 10 years he lived at Cown Farm - he was familiar with the moor. His wife, then a Miss Stansfield, lived at Height Barn Farm which he came to know about 1966. Her father allowed him to run his (Mr Thorpe's) own sheep from the farm at that time - he had about 40 sheep of his own, which he bought from money he had earned or was given. He succeeded his father in law Harry Stansfield to ownership of Height Barn Farm in 1976 - by then the number of sheep he, the witness, was grazing had increased to 60 or 70. Before that his father in law had about 8 cattle which probably strayed onto the moor from the farm; he himself had about 20 cattle which grazed on the moor - they came into the farm around Christmas and early May, but his sheep were on the moor all the year round. He had also taken peat from the moor which he dried for fuel.

There were other farmers who turned out sheep on the moor - among them Ernest Chadwick, Stanley Thorpe, Bill Keiley and the witness's father Joe Thorpe. At the best times there were several hundred sheep there altogether.

Cross-examined by Mr Machin, the witness said that his father in law had 50 acres on the farm where he grazed his cattle; he himself only had cattle for some 5 years. He did not remember any fences on the Dunne Strip; there was a bit of a wall along the tramway which is now mostly covered over and has been since 1976, and there is no other fencing now.

to Patrick Dunne

(9) Mr Machin produced a Conveyance dated 17 July 1965/by a Mr. Kershaw and others of Stubbylee Moss Farm, which included the Dunne Strip. Patrick Dunne, now a retired farmer, confirmed that he bought Stubbylee Moss Farm in 1965 when he went to live there. Since then he has handed it over to his son. There were markings of an old tramway running from east to west along the northern boundary of the Dunne Strip. He agreed that there was a wall running from north to south, with old strips of metal, which is still there. The land was not fit for grazing - he put a few young cattle on, but they went off it. The wall marked the boundary - there were fences on other parts in 1965. He saw no sheep on the strip. Cross-examined by Mr Lloyd, he said that he had seen other people's sheep on the land in winter weather. He agreed that there were public rights of way over the land.

Mr Charles O Dunne, son of the last witness, said that he had lived at Stubbylee Farm since about 1969. There was a fence along the northern boundary of the strip consisting of wood from old telegraph poles and strips of metal. On the eastern boundary there was a stone wall; on the southern boundary and the western boundary there was fencing



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similar to that on the northern boundary. That was the situation in 1969, since when the fences had deteriorated. He had frequently walked up to the top on the strip and had never seen any cattle or sheep on it, either in summer or winter. Cross-examined by Mr Lloyd, he said that he had seen straying sheep on the land but hadn't seen them come down from the top.

Conclusions..

1. Rights Entry No 3. This entry, made on the application of Harry Stansfield in respect of Height Barn Farm and now sought to be maintained by his successor Mr J Thorpe, is a right of grazing for 21 cattle, 100 sheep and 4 horses over the whole of the Unit Land except the E area. The evidence in support of this right is that given by Mr J Thorpe; whilst I accept his evidence, it was of no substance in relation to any period before 1966 when he first came to know the circumstances of Height Barn Farm. The basis for the claimed right can only be that of prescription. Mr Dunne's objection was made in 1972, so that the period after 1966 in which grazing by Mr Thorpe took place falls substantially short of the period required for any form of prescription. For this reason, I refuse to confirm the entry.

2. Rights Entry No. 7. This entry made on the application of the Executors of W. A. C. Lloyd, of whom Mr W.F Lloyd is one, is of a right attached to Cowm Farm to graze 4 horses, 18 cattle and 150 sheep over the whole of the Unit Land except the Eastern area. Mr J Thorpe's evidence satisfied me that such grazing took place from Cowm Farm from 1957 onwards. As regards the pre- 1957 period Mr Lloyd's evidence is less specific but his evidence that the tenants of the farm in that period had exercised grazing rights over the Unit Land was not seriously challenged and, combined with Mr Thorpe's evidence, shows in my view a period of user sufficient to found a claim based on prescription under the doctrine of the lost modern grant.

The evidence given by Mr Patrick Dunne and his son mainly related to the existence of fences or a wall around the boundaries of the Dunne Strip, evidence which, Mr Machin submitted, showed that the strip was enclosed during part at least of the relevant period. As to the wall, this was a retaining wall to support the tramway used by a mining Company and was not erected to enclose the strip at its eastern boundary or as an obstacle to access. As to the fences the evidence was somewhat confusing, but I find that at some time there were fences of a sort along the other boundaries, but there was no evidence as to their origin or that at any time they prevented access to the strip by animals. Indeed the evidence of both the Dunes as to the occasional presence of other people's animals on the strip, and of Mr Patrick Dunne as to the existence of public rights of way indicate that there have been means of access to the strip. On the evidence as a whole I find that there were animals from Cowm Farm grazing over the Dunne Strip during the relevant period and I confirm the registration at Entry No.7

in relation to that Strip.



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(3) Rights Entry No 9. This entry, also made on the application of the Executors of W A C Lloyd, is of rights of grazing and turbarry and a right to take stone attached to New Barn Farm. In support of this, Mr W F Lloyd's evidence was to the same effect as that summarised above; but there was no evidence from any tenant of the farm or other witness as to the exercise of the particular rights registered and I do not find that these rights are established. Accordingly I refuse to confirm this registration.

The confirmation of the registration at Entry No. 7 in relation to the Dunne Strip means that the registration at Entry No. 1 in the Land Section is also confirmed as regards that strip. The overall result of this Decision is therefore that (1) I confirm the registration at Entry No. 1 in the Land Section in respect of the E area and the Dunne Strip (2) I confirm the registrations at Entries No 7 and ~~8~~ (in respect of Strip) Nos 1 to 3 in the rights section (3). I refuse to confirm the registrations at Entries Nos 1 to 6 and No. 9 in respect of the Dunne Strip. I should record that no suggestion was made or evidence given to the effect that the registration in the Land Section could be supported on the ground that the Unit Land is Waste Land of the Manor.

As regards the alleged conflict between Entries Nos 7 and 8 in the rights section, though both are claimed to attach to Cowm Farm, they were registered No. 7 by the owners and No. 8 by the tenants of that property; they are of different grazing rights over different parts of the Unit Land. At the hearing no submissions were made on this matter and on the face of it I do not see that the two registrations are conflicting or that they give rise to a dispute requiring to be resolved.

I direct that the costs of Mr Charles Oliver Dunne in connection with these proceedings be taxed on Scale 3 in accordance with the provisions of the Second Schedule to the Legal Aid Act 1974. Otherwise I make no order as to costs.

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

17th

day of

June

1985

L. J. Morris Smith

Commons Commissioner