



In the Matter of Bradley Moors, Bradley Bents,
Bradley High Pasture and Cowside, Carlton Highdale,
North Yorkshire.

DECISION

This reference relates to the question of the ownership of land known as Bradley Moors, Bradley Bents, Bradley High Pasture, and Cowside, Carlton Highdale, being the land comprised in the Land Section of Register Unit No. CL/78 in the Register of Common Land maintained by the former North Riding of 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 Mrs D H Clarke 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 Richmond on 21 July 1977.

At the hearing Mr E R D Johnson, solicitor, appeared on behalf of Mrs Clarke, and Mr J S Huntington, solicitor, appeared on behalf of the applicants for registrations in the Rights section of the Register Unit.

Mrs Clarke's claim was founded on a conveyance made 3 December 1973 between (1) Robert Hewitt Chapman-Robinson (2) Roderick Hamilton Whitehead, and Ernest Willis (3) Dorothy Helena Clarke. The parcels of this conveyance included the moor or common known as Cowside, which is part of the land the subject of the reference, subject to the ownership by Margery Freeman of two cattle gaits on it. The vendor's root of title was a vesting deed made 24 August 1926 between (1) Henry Robinson Chapman-Purchas, John Hutchinson Wood and Roderick Hamilton Whitehead (2) William Robinson Burrill-Robinson. However, the parcels of this vesting deed include only 23 cattle gaits on Cowside, to which there is a note that the whole of the cattle gaits belonged to the estate except two which belonged to Sod Hall Farm, which was Mr Burrill-Robinson's own property. These two gaits now belong to Mrs Margery Freeman, being registered at Entry No. 1 in the Rights section of the Register Unit. Mrs Freeman said that the 23 gaits belonged to three farms owned by Mr Burrill-Robinson, who was her half-brother.

In my view the conveyance of 3 December 1973 was inoperative in so far as it purported to convey the freehold interest in Cowside. Although there was a time when Mr Burrill-Robinson owned all the gaits, he could only have acquired the freehold by having been in adverse possession. The mere exercise of the gaits would not constitute taking possession of the land. In order to prove that Mr Burrill-Robinson had been in possession Mr Johnson relied on a statutory declaration made on 15 October 1971 by Mr William Lambert, who had been employed as a gamekeeper by Mr Burrill-Robinson for twenty-four years until the latter's death in December 1969. Mr Lambert stated that he verily believed that during the years he was so employed Mr Burrill-Robinson was in receipt of the rents and profits of the land without any adverse claim and also that he verily believed that Mr Chapman-Robinson had since been in receipt of the rents and profits of the land without any adverse claim.





In considering the probative value of this declaration I have in mind that the declarant did not specify the nature of the rents and profits to which he referred and that his employment as a gamekeeper would be unlikely to put him in a position to know what rents or profits had been received by his employer. However, Mr Lambert did state that during the years of his employment as a gamekeeper the land he worked on included Cowside. This is something which could not have been done by virtue of Mr Burrill-Robinson's ownership of gait and can therefore be regarded as a taking of possession of the land. I have therefore come to the conclusion, though not without some hesitation, that Mr Burrill-Robinson acquired a possessory title to Cowside.

Mr Huntington informed me that he had no evidence as to the ownership of the remainder of the land comprised in the Register Unit.

In these circumstances I am satisfied that Mrs Clarke is the owner of Cowside and I am not satisfied that any person is the owner of the remainder of the land comprised in the Register Unit. I shall accordingly direct the North Yorkshire County Council as registration authority to register Mrs Clarke as the owner of Cowside under section 8(2) of the Act of 1965. The remainder of the land 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.

Dated this 9th day of August 1977

Chief Commons Commissioner

