



In the Matter of Commondale Moor, Commondale,
North Yorkshire (No. 1)

DECISION

These disputes relate to the registrations at Entry Nos 2, 3, 4 and 9 in the Rights section of Register Unit No. CL 190 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and are occasioned by Objection No. 0205 made by Lord Guisborough and noted in the Register on 6 March 1970, Objection No. 0204 made by Lord Guisborough and noted in the Register on 13 July 1972 and Objection No. 0138 and Objection No. 0141 both made by Lord Guisborough and both noted in the Register on 11 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Whitby on 27 May 1977. The hearing was attended by Mr H D Riley, the applicant for the registration at Entry No. 4, and by Mr J T Todd, solicitor, on behalf of the Objector. There was no appearance by or on behalf of Mr J W Muir and Mr G Robinson, the applicants for the registrations at Entry Nos 2 and 3 respectively, but before the hearing the solicitors for Mr Muir's executors informed the Clerk of the Commons Commissioners by letter that they "withdrew" his application and Mr Robinson's solicitors sent a similar intimation regarding his application, *as did the solicitor for Mr G. W. Martin in respect of Entry No. 9.*

Mr Riley based his case on a conveyance made 19 September 1947 between (1) Percy Sylvester Crossley (2) William Davidson Riley, whereby Moorgate was conveyed to his father. The part of this conveyance upon which Mr Riley relied was the common-form statement that the property was conveyed subject to all easements, rights, etc. affecting it, saying that "rights" included rights of common. Such a statement, however, relates only to rights over the land sold. The benefit of rights over other land would have to be preceded by some such words as "together with the benefit of"

A conveyance in the form of that produced by Mr Riley could only operate to convey to the purchaser rights of common over other land if it fell within the provisions of section 62(1) of the Law of Property Act 1925, whereby, in the absence of the expression of a contrary intention, a conveyance of land is deemed to include (*inter alia*) all commons appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

In order to ascertain whether the conveyance of 1947 could be deemed to convey any right of common over the land comprised in the Register Unit, it is necessary to review the recent history of Mr Riley's land.

The land the subject of the conveyance of 1947 formerly formed part of Skelderskew Farm, which, together with the farm known as Fowle Green, was conveyed on 14 April 1893 with the benefit of a right of common of pasture over the land comprised in the Register Unit. The part of Skelderskew Farm now known as Moorgate acquired a separate identity in 1903 when a house was built on it and it was let to a farmer. In 1927 the farmer was a Mr Welford and his landlord a Mr Cox-Walker, who in that year conveyed the freehold reversion to Mr Welford. In 1937 Mr Welford conveyed to Mr Crossley, when in his reply to a requisition regarding rights of common Mr Welford's solicitor stated that there was a right to get bracken off the Moor, but made no mention of any right of grazing. After Mr Welford left, Mr Riley's father farmed the land as a tenant until he purchased



it from Mr Crossley in 1947. He continued to farm it until he died in 1953, when he was succeeded by his son, the present applicant.

There was no evidence as to any arrangement between the tenants and their successive landlords regarding grazing on the land comprised in the Register Unit. Probably there was none, because Moorgate was a dairy farm and from 1903 until 1957 there was no grazing on the Moor during those 50 years. Between 1953 and 1975 Mr H D Riley sometimes had cattle on the Moor for a week or two at a time, sometimes because they got out and sometimes because he opened the gate. Mr Riley cut bracken and used it for bedding for about a year in 1953. Mr P F G Fawcett, who has been the Objector's land agent since 1949, had never known of any right of common attached to Moorgate.

Until he sold Moorgate to Mr Welford in 1927, Mr Cox-Walker owned the whole of the land included in the conveyance of 1893. On 4 August 1927 he conveyed a part of it with the benefit of the rights mentioned in the conveyance of 1893. The fact that no animals from Moorgate had grazed on the Moor since Moorgate became a separate farm in 1903 probably accounts for the omission of any mention of rights of common from the conveyance of that farm. It would have been legally possible for some part of the right of common mentioned in the conveyance of 1893 to have been apportioned to Moorgate when its ownership was severed from the rest of the property, but in the absence of any express provision to that effect no right would pass by operation of law unless the case fell within the ambit of section 62(1) of the Act of 1925. Having regard to the fact that no cattle from the Moorgate land had been grazed on the Moor since Moorgate became a separate farm in 1903, it seems to me to be impossible to say that a right of grazing was in 1927 appertaining or reputed to appertain to that land or was denised, occupied, or enjoyed with, or reputed or known as part of parcel of or appurtenant to Moorgate or any part of it.

As for the right to cut and take away bracken claimed by Mr Riley, I am not satisfied that any such right ever existed. There is no evidence to support the answer to the requisition in 1937, and Mr Riley's taking of bracken in 1953 is, of course, totally insufficient to support a claim based on prescription.

For these reasons I refuse to confirm the registrations.

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 4~~th~~ day of July 1977

Chief Commons Commissioner