COMMONS REGISTRATION ACT 1965

Reference No. 268/U/249

C10

In the Matter of Heslington Common, Heslington, North Yorkshire

DECISION

This reference relates to the question of the ownership of land known as Heslington Common, Heslington, North Yorkshire, being the land comprised in the Land Section of Register Unit No.CL.54, in the Register of Common Land maintained by the North 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 the Trustees of the 2nd Earl of Halifax claimed to be the freehold owners 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 Selby on 10 December 1981. At the hearing, the Trustees of the 2nd Earl of Halifax were represented by Mr N Roberts, Solicitor, and Dr. C.S.Kightly, volunteered to give evidence under reg. 23 (5) of the Commons Commissioners Regulations 1971. I also heard Mr J J Pearlman, Solicitor, as amicus curiae.

Although now known as "Heslington Common", the land comprised in the Register Unit is part of a larger area formerly known as Tilmire Common. From as far back as the available evidence goes Tilmire Common was subject to 166 cattle gaits. The exercise of these rights was formerly regulated by bylawmen, who were elected annually by the ratepayers of the township of Heslington and whose expenses were paid by a common right charge levied on the owners of the gaits in proportion to the number of gaits held.

From time to time gaits were purchased by successive lords of the manor of Heslington so that by 1918 160 gaits were owned by the then lord of the manor, Lord Deramore, 4 by a Captain Key, and 2 by Mr Charles Wakefield. Mr Wakefield died on 30 November 1918. and by his will left his property at Heslington and all common rights belonging or attached to it after the death of his sister to the Town Clerk of York with the request that, if possible, it should be conveyed to the York Corporation to be held for the benefit of the citizens of York. By 1 May 1926 Lord Deramore had acquired the 4 gaits owned by Captain Key.

The 2 gaits owned by the York Corporation were registered in the Rights Section of the Register Unit, and that registration has become final. The other 164 gaits were not so registered and are therefore by virtue of section 1 (2) (b) of the Commons Registration Act 1965 no longer exercisable. The failure to register these gaits does not, in my view, affect the question of the ownership of the soil of the land comprised in the Register Unit, the crucial date for the purposes of the argument before me being 31 December 1925.

Mr Pearlman argued that on 31 December 1925, that is to say immediately before the commencement of the Law of Property Act 1925, this land was held in undivided shares, in right whereof each owner had rights and access of user over it, so that being an open space of land, its ownership became vested in the Public Trustee by virtue of para. 2 of Part V of the First Schedule to the Act of 1925.

The ownership of land can only vest in the Public Trustee if the land is held in undivided shares by the owners of the rights. It does not, however, follow from the fact that a number of owners are entitled to gaits over land that the land itself is held in undivided shares. It may or may not be so held. Rigg v. Earl of Lonsdale (1957) 1 H & N 923 is an example of a case in which there were owners of cattle gaits, but the soil of the land was held to be in the ownership of the lord of the manor. It is thus necessary to consider whether there is evidence to show whether this is a case similar to Rigg v Earl of Lonsdale, supra or whether it is a case in which the owners of the cattlegates are also the owners of the soil.

Dr Kightly's researches brought to light two nineteenth century opinions, which Mr Pearlman put forward as relevant to the present case. In an opinion dated 18 June 1816 Mr Robert Sinclair, who was a barrister practising in York, stated that he had perused several entries in a book described as a Byelaw Book whereby it appeared that for upwards of 50 years the last past owners of copyhold lands in the open arable common fields of Heslington had been used and accustomed to meet every year and choose two or more byelawmen, who were authorised to let the balks in the open fields at certain sums by way of rents and thereout support gates and pinfold, scour drains, repair bridges, and pay for other works in the fields. It was further stated that one William How had taken from the byelawmen certain balks in the open fields at a rent and that the lord of the manor had entered upon these balks and had cut and taken away the grass growing thereon. Mr Sinclair advised that although in waste grounds commonly called commons the soil is generally in the lord of the manor, yet in common fields it is in the particular tenants, citing as authority 2 Blackstone's Commentaries 32.

In the second opinion dated 11 April 1829 Mr (later Sir) Frederick Pollock K.C. stated that within the manor and township of Heslington these were four open fields adjoining one another, and the lands therein were partly freehold and partly copyhold of the manor of Heslington and they belonged to a great number of proprietors. One Benjamin Carr, the owner of about 1 ac. of the field land, had erected a house or building on his land, and Mr Pollock advised that Mr Carr could be prevented from continuing any building on his own land part of the open field.

After careful consideration of these opinions I have come to the conclusion that they do not give me any assistance in dealing with the present case. The opinions are concerned with open arable common fields which belonged to a great number of proprietors, each of whom, such as Mr Carr, owned a defined part. As Mr Sinclair pointed out, this is not the same as a common. There is nothing to show that Tilmire Common was part of these fields. It appears from W E Tate's Domesday of English Enclosure Acts and Awards (Reading, 1978), p.202 that the open field arable in Heslington was inclosed in 1857 under the

Inclosure Act 1836.

The earliest direct evidence about the gaits on Tilmire Common which was produced to me is the Heslington tithe award, in which "Tilmire" Common, having an area of 271 a. 2r. 8p. has the words "Land Common" across the columns provided for the names of the owners and occupiers with a marginal note: "The Rent Charge in lieu of the tithes hereof has been apportioned upon the lands of those having rights therein".
Next there comes an indenture of 29 November 1858 made between (1) Sarah Serjeantson and Anne Reynolds (2) George John Yarburgh. Thus recites that Mr Yarburgh as lord of the manor of St.Lawrence Heslington was the owner of the soil of a piece or parcel of ground called Tilmire and containing 271 a.2r.8p. It then goes on to recite that on 26 January 1838 Anne Reynolds and onother had let to a predecessor in title of Sarah Serjeantson for a term of 99 years a house and land in Heslington together with the right of common or stray in Heslington Moor and Heslington Fields. Sarah Serjeantson and Anne Reynolds then granted and released to Mr Yarburgh the leasehold interest and the freehold reversion in their two common rights in Tilmire.

This document is of interest not only as a step in the process whereby 164 gaits were acquired by the lord of the manor, but as showing that in 1838 Anne Reynolds and her co-owner had common rights in both Heslington Fields and Heslington Moor. Heslington Fields I take to be the open arable common fields referred to in the opinions of 1816 and 1829 and which were enclosed in 1857.

While the recital that Mr Yarburgh as lord of the manor was the owner of the soil of Tilmire is not conclusive evidence of that fact, there is nothing legally impossible about it, so it is necessary to see whether there is anything inconsistent with it in the subsequent evidence.

Mr Yarburgh's will was proved on 27 April 1875, and his Heslington estate was vested in his grandson Robert Wilfred, Baron Deramore in fee simple by a vesting deed made 1 May 1926 between (1) George Nicholas de Yarburgh Beteson and George William Lloyd (2) R W Baron Deramore. The parcels of this vesting deed included the land the subject of the reference with a note that it was subject to 166 grazing rights of which 164 belonged to Lord Deramore, who was lord of the manor.

By a lease made 8 June 1934 between (1) R W Baron Deramore (2) The Lord Mayor Alderman and Citizens of the City of York (3) The Fulford (York) Gold Club Ltd Lord Deramore and the Corporation demised to the Golf Club their respective interests in (inter alia) the land in question for 36 years from 6 April 1934, reserving to Lord Deramore all sporting rights other than the right to destroy rabbits. Lord Deramore and the Corporation undertook not to stock the common rights over the demised premises respectively belonging to them, either directly or indirectly, during the term of the lease.

By a conveyance made 6 October 1964 between (1) Stephen Nicholas Baron Deramore (2) Henry William Austin Marwell, Benjamin Charlesworth Ralph Dodsworth and Ernest Smith (3) Stanley Albinus Spofforth and Eric Charles Bousfield the Heslington Estate was conveyed to the parties of the third part, whose successors in title are now Mr E C Bousfield, Mr J D Spofforth and Mr L H Roberts by virtue of a deed of appointment made 22 April 1974 between (1) E C Bousfield (2) Jeremy David Spofforth

and Lawrence Nigel Roberts.

By a lease made 15 November 1965 between (1) S A Spofforth and E C Bousfield (2) The Lord Mayor etc of York (3) The Fulford (York) Golf Club Ltd the respective interests of the parties of the first and second parts in the land in question were demised to the Golf Club for the term of 20 years and 364 days from 6 October 1965 on the same terms (mutatis mutandis) as the lease of 8 June 1934.

The rents payable under the leases of 1934 and 1965 have been collected without any adverse claim.

On this evidence I am satisfied that Mr Bousfield, Mr J D Spofforth and Mr Roberts are the owners of the land, and I shall accordingly direct the North Yorkshire County Council, as registration authority, to register them as the owners of the land under section 8 (2) 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 11th day of January 1982

Chief Commons Commissioner.