



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/67

In the Matter of part of Hope Moor, Newsham,
Richmondshire D., North Yorkshire

DECISION

This reference relates to the question of the ownership of land being part of that known as Hope Moor, Newsham, Richmondshire District being the land comprised in the Land Section of Register Unit No. CL.196 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 Mr Robert Marwood claimed ownership of the land in question; no other person claimed to be the freehold owner or 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 29 October 1974. At the hearing Mr Marwood was represented by Mr R. Metcalfe solicitor of Freeman Daly & Jacks, Solicitors of Darlington.

The land ("the Unit Land") comprised in this Register Unit is a triangular piece whose sides (as I scale the Register map) are about 500, 600 and 750 yards long. The south boundary is Arndale Beck (here it is also the boundary of Newsham parish). The northwest and east boundaries meet at the summit of Cocker Hill (also the meeting place of the boundaries of Newsham, Barningham and Hope parishes.) The remaining part of Hope Moor (a very large area of moorland) is to the west (outside Newsham parish).

In the Rights Section of the Register there is an Entry (which being undisputed has become final) of a right (held in gross) to graze 200 ewes over the Unit Land and an adjoining part of Hope Moor.

Mr Marwood in the course of his evidence produced a tenancy agreement dated 1 April 1948 under which he became (and still is) tenant of Long Green Farm, comprising more than 800 acres adjoining the Unit Land on the east. He said (in effect):- The Unit Land is known as Whisky Gill, after the stream which flows across it into Arndale Beck. The Unit Land is not included in the tenancy agreement. Since he had been a tenant of Long Green Farm he had let his sheep stray onto Hope Moor (including the Unit Land) just as the previous tenant had done; he had never had any claim by any other person to be the owner and nobody had asked him for rent for the Unit Land or said that his sheep ought not to be there; he had never acknowledged to anybody that his sheep were there by the permission of anyone else. Apart from grazing his sheep and shepherding them, he had never done anything on the Unit Land; it was rough moorland which he had treated as part of Long Green Farm. Sheep, not his, grazing on other parts of Hope Moor may have strayed onto the Unit Land ("you just have to give and take"), but apart from these nobody else had grazed the Unit Land. The east boundary of the Unit Land (separating it from Long Green Farm) is a dry stone wall with a gate in it at the north end at Cocker Hill; the northwest boundary of the Unit Land (notwithstanding that it is also the Parish boundary) is unfenced, so that there





is nothing to prevent sheep moving from the Unit Land onto the rest of Hope Moor.

Mr Marwood also produced a copy of his application dated 25 March 1968 for the registration of grazing rights (being that now entered as above mentioned in the Rights Section) over the Unit Land and an adjoining part of Hope Moor; in the application, the right is described as:- "The Right is believed to be held in gross but was formerly enjoyed (prior to May 1966) by the occupier of West Hope Farm, by whom it was assigned to the present Applicant. Unlimited right of grazing normally exercised by a heafed flock of 200 ewes and their followers".

Mr R.F. Iceton, whose brother Mr J.T. Iceton (now deceased) was tenant from 1936 to 1946 of Long Green Farm, in the course of his evidence said (in effect):- He had been familiar with the Unit Land (always known as Whisky Gill) since 1919; during his brother's tenancy of Long Green Farm, he often went there. The Unit Land was not part of his brother's tenancy, but it (or the use of it) went with the Farm. No person other than his brother claimed rights over the Unit Land, however he wished to mention that Mr Sid Coates sometimes went onto the Unit Land (and I suppose the adjoining part of Hope Moor) to shoot a grouse or two (as did his brother).

Mr Letcalfe said that the rest of the land over which Mr Marwood had in his said 1968 application claimed a right of common (being an adjoining part about 1½ miles long and 1/2 a mile wide of Hope Moor) was (except for two small pieces on the north side) now comprised in Register Unit No. CL.23. This explains why the grazing right claimed was for as many as 300 ewes. However I am not on this reference otherwise concerned with Register Unit No. CL.23.

By section 22 of the 1965 Act, the ownership with which I am concerned is ownership of a legal estate in fee simple. I am not persuaded by the evidence outlined above that Mr Marwood ever had any interest in the Unit Land greater than a grazing right. He made his 1968 application "as owner of the right of common by way of sole pasture". If he was then the owner of the Unit Land, his application was irregular, because (save in exceptional circumstances of which there was no evidence) a person cannot in law at the same time own a piece of land in fee simple and have a separate and distinct right of grazing over it; any grazing done on the land by such a person is by him as owner. Mr Marwood did not suggest that his circumstances had since 1968 changed in any relevant way.

Further even if I disregard any irregularity in and as a consequence of the 1968 application, I am not persuaded that Mr Marwood ever did anything on the Unit Land in purported exercise of a right of ownership as distinct from a right of common. I accept that he has continuously grazed his sheep on the Unit Land as he described, and can therefore be regarded as having been and being in possession of a right of common; but in my opinion he was never in possession of the land itself.

Further even if (contrary to my opinion) Mr Marwood by grazing the Unit Land, can properly be regarded as being in possession, so that the rights of the true owner were extinguished by the Limitation Act 1939, the Unit Land would in the result be annexed to the land comprised in his tenancy, and his landlord (not him Mr Marwood) would in the result be the owner, see Halsbury's Laws of England (3rd edition, 1958) volume 23, paragraph 1,146 et seq.

In my view the irregularity above mentioned is a matter of substance and precludes me from giving effect to Mr Marwood's ownership claim. But for his 1968 application, the Unit Land would not have been registered under the 1965 Act as common land at all,



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and this hearing would therefore never have taken place; I can therefore only direct his registration as owner on the basis of facts which show that my jurisdiction to give the direction has only arisen as a result of an irregularity for which Mr Marwood is wholly responsible. *Subscribed*

When at the conclusion of the hearing I suggested that the evidence showed that any rights Mr Marwood had in the Unit Land were annexed to his tenancy, Mr Metcalfe pointed out that ~~the~~ tenancy expressly provided for the tenant having stints on Barningham Moor and contained various provisions as to how these should be exercised between the landlord and the tenant, but contained nothing whatever about grazing rights on Hope Moor, and Mr Marwood said (in effect) that he, when he took over the tenancy, took over the sheep from the previous tenant, and that as in the result the sheep were not comprised in the tenancy but became his property it follows that any right the previous tenant had and he has in the Unit Land now belongs to him.

I am not concerned with any question there may be between Mr Marwood and his landlord. A common over which a number of persons have grazing rights may be owned by such persons or trustee for such persons; - But there was no evidence of any such ownership in relation to the Unit Land. The fact that the flock acquired by Mr Marwood was in relation to the Unit Land and another part of Hope Moor a heafed flock cannot I think by itself be evidence that the owner of the flock also owns the heaf.

For the reasons set out above, I am unable to conclude that Mr Marwood is now in any relevant sense the owner of the Unit Land. In the absence of any evidence that anyone else is the owner, I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 3 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 14th

day of January 1975

A. A. Baden Fuller

Commons Commissioner

