



COMMONS REGISTRATION ACT 1965

Reference No.45/U/222

In the Matter of The Mar,  
Arkendale, North Yorkshire.

DECISION

This reference relates to the question of the ownership of land known as The Mar, Arkendale, being the land comprised in the Land Section of Register Unit No.C.L.261 in the Register of Common Land maintained by the former West 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 Mr. J.L. Gay claimed to be the freehold owner 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 Harrogate on 25th March 1974.

At the hearing Mr. H.D. Hannam, solicitor, appeared on behalf of Mr. Gay and Mr. D. Pounder, solicitor, appeared on behalf of the Arkendale Parish Meeting.

The land the subject of this reference consists of a pond with an area of open ground surrounding it. Mr. Hannam produced from Mr. Gay's muniments articles of agreement made 20th August 1772 between Peter Johnson, lord of the manor of Arkendale, and one Duffield Scarah and other owners of land in Arkendale, whereby it was agreed that the land belonging to the parties should be divided and enclosed under the direction of two named persons. The terms of this agreement were very similar to those found in Enclosure Acts of the period, and the persons named in the agreement made an award, dated 25th February 1773, which is now in the Public Record Office among the records of the Duchy of Lancaster.

It was provided by the agreement that the Great Pond in Arkendale Loftus and the waste ground and plantation near it should be left open and unenclosed, and that all rights of common in the land to be enclosed should be extinguished.

Several persons applied for the registration of rights of common over the land the subject of the reference. These registrations were unopposed and so became final and by virtue of section 10 of the Commons Registration Act 1965 became conclusive evidence of the existence of these rights.

On this evidence I find that the land the subject of the reference was part of the waste of the manor of Arkendale at the time of the agreement and award. The persons who made the award found that the right of the soil of the wastes which were parcel of the manor of Arkendale belonged to Peter Johnson as lord of the manor.



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It does not appear from the evidence before me who was the immediate successor in title of Peter Johnson, but on 29th January 1904 Joseph Henry Nussey mortgaged to Thomas Nussey (a) the manor of Arkendale and (b) certain land specifically described and coloured red on the plan annexed to the mortgage. On this plan the land the subject of the reference is coloured blue, but there is no mention of this land in the mortgage.

Joseph Henry Nussey died on 25th June 1938, leaving his real estate on trust for his widow for her life and then to Mr. Gay. Mrs. Nussey died on 6th December 1970 and letters of administration of her estate were granted to Mr. J.D.E. Lister and Mr. A.G. Bingham on 17th March 1971. On 11th October 1971 Mr. Lister and Mr. Bingham conveyed to J.J. Harrison (Properties) Ltd the land specifically described in the mortgage of 29th January 1904, and on 11th December 1971 they assented to the vesting in Mr. Gay of the manor of Arkendale for an estate in fee simple.

Mr. Hannam contended that Mr. Gay was entitled to the land in question as parcel of the manor. Mr. Pounder said that this was a matter of doubt because there was no mention of waste land in the mortgage of 29th January 1904, so that the waste land could have become separated from the lordship of the manor at some time between the award of 1773 and the mortgage of 1904.

In my view, the mortgage of 1904 ought to be construed by reference to section 62 of the Law of Property Act 1925, which by virtue of subsection (6) applies to all conveyances made after 31st December 1881. Under section 62(3) and (4) a conveyance (which includes a mortgage by virtue of section 205(1)(ii)) of a manor is, unless a contrary intention is expressed in the conveyance, deemed to include all wastes appertaining to it. While it is true that the land in question could have become separated from the lordship of the manor before 1904, the fact that the waste was included in the mortgage in 1904 is a prima facie indication to the contrary. In the absence of any further evidence, I am not prepared to allow my decision to be influenced by a speculation as to what could have happened.

For these reasons I am satisfied that Mr. Gay is the owner of the land, and I shall accordingly direct the North Yorkshire County Council, as registration authority, to register him as the owner 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 **25th** day of April 1974

Chief Commons Commissioner