



COMMONS REGISTRATION ACT 1965

Reference No.268/D/88

In the Matter of Ugthorpe Moor,
Ugthorpe, North Yorkshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No.CL 137 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No.045 made by Mr J.J.Readman and noted in the Register on 10th February 1970.

I held a hearing for the purpose of inquiring into the dispute at Whitby on 3rd June 1975. The hearing was attended by Mr K.Bagshawe, solicitor, on behalf of the Objector. The Objection relates to only a comparatively small part of the land comprised in the Register Unit. The Marquis of Normanby, the applicant for the registration, did not appear and was not represented, but Mr T.M.Hill, who applied to be registered in the Ownership section of the Register Unit as the owner of the whole of the land comprised in the Register Unit stated that he wished to support this registration in toto. Although Mr Hill was not a person entitled to be heard under reg.19(1) of the Commons Commissioners Regulations 1971, Mr Bagshawe did not object to his being heard.

The land the subject of the Objection lies to the west of Frankland's Farm, which belongs to the Objector. Mr Hill's case for saying that this land was properly included in the Register Unit was that it was not differentiated from the rest of the land in the Register Unit on the 1919 edition of the Ordnance Survey Map. It is true that no boundary between the two areas is shown on the map, but this does not show that the whole of the land was subject to rights of common: it only shows that the surveyor saw no physical boundary between the two areas. Nevertheless, the absence of a physical boundary could have been due to the fact that the two areas were in other respects undifferentiated. I therefore turn to the other evidence relating to the land the subject of the Objection.

The Objector produced a series of title deeds of Frankland's Farm, the earliest being an indenture dated 10th October 1767 made between (1) Anthony Pearson (2) Johnson Harwood. Anthony Pearson was described as the son and heir of William Pearson, who was the son and heir of Mary Linton, widow, by her former husband Anthony Pearson, so the title goes back some way beyond 1767. There was included in the indenture land next to Frankland's Farm described as formerly part of the Esp Field. This land appears in the subsequent deeds, but information as to its situation beyond that it was next to Frankland's Farm does not appear until an indenture dated 5th June 1879 made between (1) George Trattles Knaggs (2) Thomas White (3) William Taylor, where the adjoining properties are mentioned, including "the Common or Moor" towards the west. The identification of the land does not become certain until an indenture dated 13th December 1902 made between (1) Andrew



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Moscroft and William Joseph Moscroft (2) Thomas Souter (3) Thomas Wilson (4) Agnes Emily Woodwark, by which there was conveyed with Frankland's Farm all such estate, right, property, and interest (if any) as Isaac William Taylor had at the time of his death in or over or upon a parcel of ground shown on a plan drawn on the deed and marked "Supposed Intake" and which was stated to be the land conveyed by the indenture of 5th June 1879. The land marked "Supposed Intake" on the plan comprises the whole of the land the subject of the Objection together with a small appendage to the north-east.

In none of the Objector's deeds is the land the subject of the Objection stated to be conveyed subject to any rights of common nor is there anything to indicate that it was not an ordinary piece of freehold agricultural land before its description as "Supposed Intake" on the plan drawn on the 1902 indenture. On the contrary the description of the land to the west as "the Common or Moor" in the 1879 indenture indicates that this land was not then regarded as part of "the Common or Moor".

Turning from the deeds to the position on the ground, the western boundary of the land in question consists of a bank on which there were formerly the remains of some dead thorn bushes, which Mr Readman removed. It may be that these bushes were the remains of a hedge which formerly separated the land in question from the rest of the land comprised in the Register Unit, but it is now possible for animals to stray over the whole area. If there was a hedge, it must have ceased to be recognisable as such a long time ago, since it is not shown on any Ordnance Survey map which was produced to me.

Giving this somewhat indeterminate evidence the best consideration that I can, I have come to the conclusion on the balance of probabilities that the land in question at some time before the middle of the eighteenth century formed part of Ugthorpe Moor; that it was inclosed from the Moor by an owner or tenant of Frankland's Farm; that the persons entitled to rights of common either agreed to or acquiesced in this inclosure; and that any rights of common existing over the land so inclosed were abandoned. When the hedge on the bank ceased to be maintained by the occupier of Frankland's Farm in a stock-proof condition it became possible for the cattle of the commoners to graze on the land which had been inclosed.

Although it appears that the occupier of Frankland's Farm took no steps to exclude the trespassing cattle, I do not, however, consider that this revived the rights of common which had formerly existed over the land the subject of the Objection.

For these reasons I confirm the registration with the following modification:- namely the exclusion of the land the subject of the Objection.

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 26th day of June 1975


Chief Commons Commissioner