



COMMONS REGISTRATION ACT
1965

Reference No. 270/U/43

In the Matter of Castleshaw Moor, Delph,
Saddleworth, West Yorkshire

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL.494 in the register of common land maintained by the former West Yorkshire Metropolitan County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land in question ("the unit land") on 3 June 1986. *at Halifax*

At the hearing two claimants appeared - Mr Alfred W Wharton represented by his son-in-law, Mr D Kershaw, and Mrs A Maylor who appeared in person. A claim by North West water ("the Water Authority") had been notified: however that claimant was not represented at the hearing but has since submitted evidence in support of its claim.

The area of the unit land is stated in the Register to be 316 acres. The various claims are to parts only of the unit land. I consider them in detail below - that of the Water Authority is to a comparatively small area, and Mr Wharton does not contest the claim. Despite several requests Mrs Maylor has not indicated her acceptance or otherwise of the claim, but she was finally notified on 18 June 1987 that it was assumed she did not wish to contest the claim and that the Commissioner was preparing this Decision on that assumption.

Mr Wharton's claim

This claim is based on a Conveyance dated 30 March 1966 by which Harold Partington conveyed to Mr Wharton a farm property known as Bleakhey Hook, Delph shown on a plan annexed to a Conveyance of 16 March 1918: and also "all that dole of common rough of unimproved land lying upon Castleshaw Moor... as the same was formerly in part enclosed extending from the Bleakhey Field or Rookall all along the Cornhill Ditch as far as Standedge or Stone Edge containing by estimation thirteen acres of large Cheshire measure". From the plan annexed to the 1918 Conveyance it appears that the farm property adjoins the south-eastern boundary, but is not part of the unit land, and Mr Wharton's claim is to the part of the unit land answering the description of the dole of common land. I understand that the area "thirteen acres of large Cheshire measure" is the equivalent of some 27.5 acres.

'Dole' in this context means a part or share, and in relation to common land might mean the share in land which was divided periodically and distributed among the dole owners. The owner of a dole in some cases had a freehold interest in the soil and, as I understood Mr Wharton's claim, it is to the freehold of a specific part of the unit land of the acreage mentioned in the Conveyance. He was not able, however, either by reference to the description in the Conveyance or on an inspection on the ground, to identify the specific area which he claimed.

Mrs Maylor's claim

Mrs Maylor said that this was a claim to one-eighth of Cudworth Pastures and one-quarter of all commons formerly belonging to William Scholefield. She did not herself give evidence either documentary or oral, in support of her claim as so formulated, but called as a witness Mr Julian Hunt. He is a Local Studies Librarian in the Oldham Metropolitan Borough, and told me that the history of Saddleworth had been part of his work, that he is the editor of Saddleworth Historical Society Publications and that his studies have included the agricultural areas of Saddleworth and Castleshaw Moor. He gave me an interesting account of the result of his researches in relation to Castleshaw Moor, which I accept as accurate on the basis of the records which he has found.

From his account it appears that in 1618 the tenants of farms in Castleshaw Valley acquired the freeholds of their farms, and following a survey of Castleshaw Moor, the Moor was divided into ~~1/4~~ for allocation to the farms. For this purpose the Moor was divided into three portions - the Moor, Millstone Edge and Backside - which were layed out in strips or doles: and each farm had a strip in each of the three portions. The strips were not fenced off but probably marked off by stones or other indicators. Gradually knowledge of the ownership of the various strips was lost sight of, and when after 1875 Oldham Water Board purchased some of the farms particulars of the ownership of the various strips could not be ascertained. Bleak Hey Farm and its allotment of strips was not purchased by the Water Board.

(once part of the Scholefield estate)

Mr Hunt told me that the farm called Higher Castleshaw was purchased by Mr and Mrs Maylor in 1962, and that the title has since been registered under the Land Registration Acts. The Conveyance of 1962 to Mr and Mrs Maylor did not specifically mention rights over the common: Mrs Maylor has grazed animals on the unit land but there are no rights registered as attached to the farm.

Mr Hunt also said that in 1688 there was a subdivision of Scholefield's farm estate but that it is not now possible to define the physical outcome of one quarter of the strips of common allotted to that farm. These would have been spread over all three portions of the Moor, in differing sizes.

Mr Hunt expressed the view that the 13 Cheshire acres claimed by Mr Wharton were in the strip adjacent to Bleak Hey Farm but lying outside the south-eastern boundary of the unit land. This is not acceptable by Mr Wharton. On such plans as I have seen it seems to me, however, that it is not improbable, but, on the view which I have formed it is not, I think, necessary to attempt to reach a definite conclusion.

The Water Authority's claim

By an Appointment dated 31 August 1885 made between (1) Frederick H. Henry and another (2) the Corporation, there was conveyed to Oldham Corporation land in the parish of Saddleworth of an area of 82 acres which included the part of the unit land marked with the letters D E F and G on the Register Map. This is the part now claimed by the Water Authority which, as regards this part, is the statutory successor to the Oldham Corporation.

Conclusion

As regards the claims by Mr Wharton and Mrs Maylor I am not, on the evidence, satisfied that either is the owner of any part of the unit land which can be identified. It may be the case that originally certain areas, or strips, of the unit land belonged to their predecessors in title to a farm, or part of a farm, which they came to own, but in the absence of more precise evidence of such areas it is not possible to find ownership by them of a definable part of the unit land. It may on the other hand be the case that their predecessors in title were tenants in common of the whole of the unit land with rights over the whole, but with individual rights over their allotted strips in periods when grazing ceased: in this case ownership of the unit land might have become vested in the Public Trustee under the transitional provisions of the Law of Property Act of 1925. This possibility was not canvassed before me, nor again on the evidence adduced would I have been satisfied that this was the case.

As to the claim by the Water Authority I am satisfied that it is the owner of the part marked with the letters D, E F and G on the Register Map and I shall accordingly direct the Kirklees Metropolitan Council as registration authority to register the Water Authority as such owner under section 8(2) of the Act of 1965; the remainder of the unit land will remain subject to protection under section 9 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

6th

day of

August

1987

L. J. Morris Smith

Commons Commissioner