COMMONS REGISTRATION ACT 1965

Reference Nos 268/D/430 to 435 inclusive

In the Matter of Clapham Common,
Clapham cum Newby, Craven
District, North Yorkshire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section, ■ Nos 1 to 10 inclusive, 12 to 28 inclusive, 30, 31, 32, 34 (replacing No. 29) and 36 (replacing No. 11) in the Rights Section and ■ Nos 1 and 2 Ownership Section of Register Unit No. CL 209 in the Register of Common Land maintained by the North Yorkshire (formerly West Riding) County Council and are occasioned by Objection No. 20 made by Frank Haining Johnston and Kathleen Johnston and noted in the Register on 18 June 1969, by Objection No. 320 made by Dr J A Farrer and noted in the Register on 8 December 1970 and by the Ownership Section registrations being in conflict with each other.

I held a hearing for the purpose of inquiring into the disputes at Skipton on 6 February 1985. At the hearing (1) Dr John Anson Farrer who made the said Objection No. 320 and applied for the Ownership Section registration at Entry No. 1 and (with various other persons) for the Rights Section registrations at Entry Nos 13 to 23 inclusive, attended in person; (2) Mrs Lilian Price as applicant with Mr Henry Snow Price (he died in 1971) for the Rights Section Registration at Entry No. 3 and as one of the applicants for the Rights Section registration at Entry No. 36 was represented by their son Mr Alan Henry Price; (3) Mr Robert Richard Burns as applicant with the said Dr J A Farrer and his father Mr Henry Richard Burns (he died in 1983) for the Rights Section registration at Entry No. 17 attended in person; and (4) the said Alan Henry Price who was the other applicant for the said registration at Entry No. 36 also attended on his own behalf. Present also was Mr J R Fairhurst, gamekeeper for Dr J A Farrer.

The land ("the Unit Land") in this Register Unit is a L shaped track. Its north-south part is a little under 4 miles long and, except for about 1 mile at its south end, has an average width of about ¼ of a mile and in many places a width less than 100 yards; along it runs the minor road (fit for motor traffic) from Clapham in the north to Slaidburn in the south. Its east-west part is about 2 miles long and has an average width of about ½ a mile; it is far away from the part of the Unit Land with which I am in this decision concerned.

At the hearing I first considered Objection No. 20, the grounds of which are: "The land edged red on the annexed plan, was not common land at the time of registration and is in our ownership, used as a private dwellinghouse, garden and land". On the annexed plan is marked an area of "1a. Or. Op.", on the east side of and adjoining the said road and on the south side of the track which leads from it to Dubsyke; it is about ½ a mile south of the Keasden crossroads. The Objection is dated 4 March 1969.

Against this Objection in the course of his oral evidence Dr J A Farrer who in the Ownership Section at Entry No. 1 is registered as owner of all the Unit Land said (in effect):- The land ("the Objection Area") specified in the Objection has on it a dwellinghouse which with its enclosed garden is only small (comparatively

very small) part of the Objection Area. The Objection Area is not and as far as he knew never had been fenced from the rest of the Unit Land. The history of the Objection Area was stated in a letter dated 3 October 1947 from Sir Leslie (then Mr W L) Farrer of Farrer & Co, Solicitors of London, written to Mr Claude Barton of the Ingleborough Estate Office:-

> "The general position (of Keasden School) appears to be that James Ferrer as Lord of the Manor of Clapham, granted the school site to the Vicar and Churchwardens for the purpose of a Church School under the School Sites Act 1841. Under that Act if the School ceases to be used for the purpose for which it was granted the site reverts to the original Grantor or his successors in title ... I take it ... that the discontinuance of the use of the School has now become permanent, and therefore that the School has already reverted to the successors in title of James Farrer as Lord of the Manor of Clapham who now are the personal representatives of Sidney James Farrer ... You asked me how it came about that the Estate could fence off part of Clapham Moor for the erection of a School without any compensation being paid to the Commoners. The answer is that this could be done under the specific provisions of the School Sites Act which empowered the Lord of the Manor to grant common land under the Act and by such grant to bar the Commoners' rights ... On the other hand when the site reverted the Commoners' rights revived. The legal position therefore is that the soil and building belong to the executors subject to the Commoners' rights ... The next question is what to do now ... I therefore think that the reverter must be claimed ..."

After the said Objection, he (the witness) wrote to the County Council (letter dated 11 July 1969) saying:-

> "... I am not objecting to the house and garden; Mr and Mrs F H Johnston have a valid title to this; but I am objecting to one acre of land. Very briefly I hold a letter dated 1947 which states that this acre of land reverted to Common Land, after formerly being part of a small school. Since that date the Commoners have enjoyed grazing rights over this piece of land which has never been fenced off from the Common ..."

He had been the owner of the Ingleborough Estate since 1953 when he succeeded his uncle Mr Roland Farrer; before him from 1891 to 1946, his great uncle [redacted] Mr James Farrer had been the owner. As recorded in a letter dated 25 August 1969 to his Solicitors, Mr F H Johnston the then owner of the house, formerly Keasden School, approached him and said that he would like a deed of disclaimer; he (the witness) objected to one acre of land, but not to the house and garden. He was advised (letter dated 22 October 1969) that if Mr Johnston's request did not extend to the one acre, there was no objection to a deed of disclaimer of the "house and garden", but that he could only disclaim his rights as Lord of the Manor, he could not surrender any Commoners Rights. So in a letter dated 30 October 1969 he instructed his Solicitors to go ahead with a deed of disclaimer. After that he (the witness) executed a deed of disclaimer; he had no copy, but supposed his Solicitors had one.

Mr R R Burns who was born in 1931 in the course of his oral evidence said (in effect):- Between the ages of 6 and 10 years he was at the school. It (meaning the buildings and the wall enclosing the garden) were then as now, save that the garden was the playground. There were between 20 and 30 boys and girls at the School. It was closed in 1947. Outside it, it was moorland like the rest of the moor.

I have a letter dated 18 October 1984 from Oglethorpe, Sturton & Gillibrand, Solicitors of Bentham saying that Mr and Mrs Johnston not very long after March 1969 moved to School House at Keasden, that several years later they disposed of the School House and they believed it has changed hands several times since then. I also have a letter dated 26 October 1984 from the Very Reverend K N Jennings of the Deanery, Gloucester saying that he and his wife have been joint owners of the School House, Keasden since September 1979.

Two days after the hearing I inspected the Objection area. The words: "the house formerly being Keasden School and the buildings and enclosed garden in 1968 held with the house" describe a premises which are extraordinary: they (disregarding small irregularities in the boundary walls) are no more than about 25 yards by 20 yards; the front and side accesses are from the Slaidburn road and the Dubsyke track across strips,about 18 yards and 14 yards wide, of moorland which except for the tracks and hardstanding next mentioned are apparently the same as the nearby parts of the Unit Land; there is a made-up access track from the Slaidburn road to the front entrance near to which there is some hardstanding, and there is also a made-up track from the Dubsyke track to the garage part of the premises.

On the above evidence I infer that the deed of disclaimer executed by Dr Farrer was accepted by Mr and Mrs Johnston as an agreed solution of the dispute resulting from their said Objection. I consider I can properly act on the agreement so reached and my decision is therefore that the said Objection of Mr and Mrs Johnston succeeds as regards the house and garden as described in the deed of disclaimer and fails as regards the remainder of the Objection Area.

The house and garden have been enclosed for so long that I conclude any rights of common which ever existed over such enclosure have by now ceased to exist. My decision is therefore that none of the Rights Section registrations to the extent that they were over such enclosure were rightly made.

In the absence of any representation by Mr and Mrs Jennings or other successors of Mr and Mrs Johnston, I shall not put anybody to the expense of providing a copy of the deed of disclaimer, because [redacted] the words of description used above by myself without any detailed plan are I think, having regard to the comparatively enormous area of the rest of the Unit Land, practically enough for all registration purposes. Accordingly, I confirm the Land Section registration at Entry No. 1 with the modification that there be inserted after the words "as marked with a green verge line ... register map and distinguished by the number of this register unit" the following words: "except the house formerly being Keasden School and the buildings and enclosed ~~land~~ in garden 1968 held with the house".

As to the conflict between the Ownership Section registrations at Entry No. 1 (Dr Farrer owner of all the Unit Land) and at Entry No. 2 (Mr and Mrs Johnston owners of the Objection Area):- I am not now concerned with the ownership of the house, buildings and garden which consequentially by my above decision will be removed from the Register, because any entry in the Ownership Section which could relate to them, will be cancelled pursuant to section 6(3) of the Commons Registration Act 1965. As to the remaining part of the Objection Area I infer that the agreement between Dr Farrer and Mr and Mrs Johnston embodied in the deed of disclaimer provided either expressly or impliedly for the avoidance of the

Johnston Entry No. 2 in the Ownership Section. Accordingly my decision about the conflict is: I confirm the Ownership Section registration at Entry No. 1 without any modification save such as is consequential on the removal of the said house buildings and garden from the Register and I refuse to confirm the Ownership Section registration at Entry No. 2.

The grounds of Objection No. 320 made by Dr Farrer are: "The boundaries of the land are wrongly defined and should include registered units CL 270, CL 304 also". Upon the Objection form the only register unit to which this objection is stated to be applicable is "CL 209" (being paragraph 5 of the form).

I have a copy of the CL 270 and CL 304 Register map. The CL 270 land adjoins the north boundary (about 200 yards) of the Unit Land and extends in an irregular manner for a little over 1 mile northeastwards to the other side of the railway. The CL 304 land is a comparatively very small piece near the railway and adjoining (some distance from the Unit Land) the CL 270 Land. A telephone inquiry made of North Yorkshire County Council office during the hearing revealed that because no Objection was made to any of the CL 270 and CL 304 registrations, they were all without any reference to the Commons Commissioners, recorded as having become final.

Dr Farrer explained that all three Register Units were one grazing area, and that rights essentially the same having been registered on all three register units, is confusing.

Regulation 10 of the Commons Registrations (General) Regulations 1966 provides that where registration of lands falls to be made in pursuance of an application which relates to two or more pieces of land, the registration authority may if it thinks fit prepare two or more register units ..., see paragraph (4). In my view a Commons Commissioner has no jurisdiction to direct the County Council as registration authority to consolidate register units which they have thought fit to be separate. Further in my opinion grazing rights which are registered in identical terms over two or more register units are not thereby increased or otherwise changed from what they would have been if all the register unit lands had been comprised in one register unit.

In my opinion there is nothing in Objection No. 320 which ever required the County Council as registration authority to treat it as requiring them to take any action on the CL 270 and CL 304 registers. Even if this opinion is not correct, because the County Council as registration authority have not made any reference to the Commons Commissioners about the CL 270 and CL 304 registrations, I have no jurisdiction in these (or in any other) proceedings to consider the CL 270 and CL 304 registrations.

For these reasons my decision is that Objection No. 320 is misconceived, and my decision is therefore that I shall consequentially on it do nothing about any of the registrations in the Unit Land register or in the CL 270 and CL 304 registers.

The Rights Section registrations are in question because by section 5(7) of the 1965 Act any objection to the registration of any land (Objection No. 320 is such) is to be treated as an objection to any registration of any rights. At the hearing no doubt was expressed about the propriety of any of the Rights Section registrations except as regards the Objection Area; and Dr Farrer and Mr Burns if not expressly at least impliedly ~~that~~ they were all safe as regards the said house buildings and garden, proper. Accordingly I confirm the Rights Section registrations at Entry Nos. 1 to 10 inclusive, 12 to 28 inclusive, 30, 31, 32, 34 (replacing No. 29) and 31 (replacing No. 11) without any modification except such as is necessarily consequential on the removal from the Register as aforesaid of the said house buildings and garden.

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 poin 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 16th day of May 1985.

a. a. Baden Fuller.

Commons Commissioner