



COMMONS REGISTRATION ACT 1965

Reference No. 270/D/54-58

In the Matter of Inchfield Moor TodmordenDECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No. CL.472 in the Register of Common Land maintained by the former West Riding County Council and is occasioned by Objection Nos 56 and 275 made by the former Calderdale Water Board and John Wheatley respectively and noted in the Register on 4 February 1970 and 19 April 1971 to the Registration at Entry Nos 1-9 (inclusive) in the Rights Section of the same Register Unit and occasioned by the said Objections No. 56 and 275 of the said Calderdale Water Board and John Wheatley and to the Registration at Entry No 1 in the Ownership Section of the same Register Unit occasioned by Objection No. 1680 made by the said Calderdale Water authority and noted on the Register on 4 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Bradford on 11 February 1981. The hearing was attended by Mr W F Lloyd (Secretary) appearing for the East Lancashire Commons Association, Mr R Simpson, Solicitor, appearing for the Yorkshire Water Authority, successor to Calderdale Water Board, Mr A. Wright of Messrs. Varley, Thomas & Wright, Solicitors of Rochdale appearing for Mr J P Dearden and Mr D Acklam of Messrs. J V Pilling and Co., Solicitors of Bacup appearing for Mr Wheatley. Mr J Resp, Mr G Whitworth, Mr S Rowe and Mr W F Lloyd appeared in person.

Undivided
Until 1900 Inchfield Moor which was waste land of the manor of Rochdale had been divided into 365 ~~individual~~ shares of sheepgates which conferred common rights on the owners of various ~~tenants~~ surrounding the Moor. In the last decade of the 19th century Todmorden Corporation obtained statutory powers to acquire part of the Moor for the purpose of its waterworks undertaking and to extinguish by compulsory purchase on payment of compensation the rights of the Commoners.

The object was to protect the waters and waterworks against pollution, nuisance, encroachment or injury. The Corporation built the Gorpsey Reservoir and the rights it acquired covered the area of the gathering grounds for the Reservoir. Compensation was duly paid and the rights were transferred to the Corporation. As a result of these transactions the Corporation claimed to have acquired an area of about 325 acres which is shown edged red on the plan attached to the objection No. 56 lodged by the former Calderdale Water Authority which at the date of the objection was the successor of the Todmorden Corporation as Water Authority and has itself been subsequently replaced by the Yorkshire Water Authority.

As a result of these transactions the Yorkshire Water Authority (hereinafter referred to as 'the authority') rightly in my opinion contends that any rights of common claimed over this area must depend on proof of user since the date of compulsory acquisition.



Originally there were nine applications in the Rights Section, one of which at Entry No.8 was withdrawn before the hearing.

Mr Wheatley, who had lodged objections in both the Land and Rights Sections relating to a narrow strip of land on the western edge of the Moor withdrew his objection in the Land Section during the hearing.

Mr Dearden, who laid claim to ownership of the whole of the Register Unit accepted that the authority was the owner of the whole of the area edged red on the plan attached to its objection except a small area of about $8\frac{1}{2}$ acres in the N.W. corner. This small area was admitted to the common land.

Entry No. 1 Parrocks Farm, Mr John Heap aged 42 said that he had lived at Heightside Farm which adjoins Parrocks Farm for the past 27 years. He and his wife purchased Parrocks Farm in 1978 from a Mr Ball who had purchased it from the original applicant Robert Grayburn in October 1969. When the witness went to live at Heightside Farm a Mr Cross was fencing Parrocks Farm. Cross put both cattle and sheep on the Moor 50 cattle and 300 sheep. There were no fences and the right was exercised continuously. Cross sold to Grayburn in 1967 who only put 40-50 cattle on the Moor.

Both continued to put cattle on the Moor when the witness purchased Parrocks Farm in February 1978, he put 20-30 cattle on the Moor and a few sheep. He was at present gathering together a flock of 100-150 sheep to put on the Moor. He had himself built a stock proof fence on the boundary with the moor with a gate in it.

The claim is for grazing for 25 cows with followers and 250 sheep with followers.

Entry No.2 Shackleton & Shackleton Holme Farms. Mr Whitworth was born in 1920 and had lived at Shackleton Holme Farm since 1924. His father owned the farm. The other farm was owned by the Lord of the Manor. In 1940 he had 100 sheep grazing on Shackleton Holme Farm on the Moor today there are only 70. His father had no sheep. There was a gateway from his farm to the Moor. No one had ever tried to prevent him grazing. He did not know that Inchfield Moor was grazed by farmers who put their flocks also on Inchfield Pasture which was formerly known as Ox Pasture. In 1970 the witness had 250 sheep.

The claim is for grazing 250 sheep.

Entry No.3 Thorns Greece, Height Houses, Pot Ovens and Ditchers Farms. Mr Sidney Rowe, the applicant had purchased the farms in 1969, he said he owned 120 gates which equalled 300 sheep & 80 cattle.

In cross-examination he said the the grazing rights over Inchfield Moor & Inchfield Pasture were dealt with at the same meeting. In 1966 there were 365 gates when the moor was sold, and $325 \times \frac{1}{365}$ parts or shares of the Moor were transferred to Todmorden Corporation.

The right claimed was grazing for 600 sheep.



Entry No. 4 Heigher Trough Farm. Mr W F Lloyd said he was the owner and the Secretary of the East Lancashire Commons Association, the applicants in the Land Section. In 1949 he was farming Higher Trough Farm and in that year he purchased two other farms. He then purchased some sheep and by 1957 he had a flock of 180 sheep

In cross-examination he said that he had never been told that he was not allowed to graze horses, sheep or cattle on the Moor. He had not kept sheep for the past 7 years. His claim was calculated by reference to the custom of Rochdale Manor. His animals hardly ever went near the land now owned by the authority.

His claim was to graze 4 horses, 9 cattle and 80 sheep.

Entry No. 5 Bury Lane Farm. This farm had been inherited by Mr Lloyd's father in 1906. In 1949 when the witness went to this farm no animals were being grazed from the farm. His father died in 1951 and he was one of three executors. His father's tenant (Mr Stott) had grazed cattle and a few sheep on the Moor. In the middle 1950's the witness took over the tenancing of this farm. The tenant continued to graze cattle but not sheep.

In cross-examination the witness agreed that he could not establish any consistent exercise of grazing rights from his own knowledge.

The claim was for the right to graze 4 horses, 10 cattle and 25 sheep.

Entry No. 6 New Hill Farm. This had been bought in 1960 by Mr Lloyd and his co-executors and the Vendor remained in possession as a tenant. The farm was resold in 1971 and the present owners' name is Boardman.

The claim to graze 2 horses, 8 cattle and 10 sheep was based on information supplied to Mr Stott.

Entry No. 7 Freeholds Farm. This farm is also owned by Mr Lloyd and his co-executors. The tenant from 1939-1954 was George Birtles who was succeeded by John Stott who gave up in 1970.

The rights claimed were to graze 4 horses, 10 cattle and 25 sheep and a right of turbary. Mr Lloyd admitted that no sheep had been grazed on the Moor from this farm.

Entry No. 9 South Grain Farm. I was told that the tenant Mr George Bennett, who had made the application had died and no one appeared to support the application.

Mr Whitworth was recalled and said that his father and Mr Cross's predecessor at Parrocks Farm were cousins. The predecessor let animals graze on the Moor, 25 milk cows and 100 sheep. 25 beasts grazed throughout the year on the top-side of the Moor.



Mr Palmer for the Authority submitted that by reason of the compulsory purchases of the Commoners' rights at the beginning of the century any rights claimed today must be based on user under the Prescription Act 1832.

Dealing with the evidence he submitted that it was doubtful whether having regard to the fluctuation in the number of beasts alleged to have been grazed at different times and by different occupiers any rights could be established and in any event the evidence did not establish that there had been regular grazing of the area in which the Todmarden Corporation had extinguished the rights of the former commoners. Having regard to the purpose for which this extinguishment had been affected I should have required very clear evidence that grazing had taken place in any area where it might cause pollution of the public water supply.

In my view the evidence adduced by the applicant does not establish that there are any rights of common subsisting over the land originally acquired by the Todmarden Corporation.

For these reasons my decision is as follows:-

1. I confirm the registration in the Land Section except with regard to the land shown edged red and not hatched on the plan annexed thereto.

2. In the Rights Section, I confirm the following registrations.

Entry No. 1 Limited to 25 cows with followers.

Entry No. 2 Limited to 100 sheep.

I do not confirm any of the other entries.

3. In the ownership Section, I confirm the Registration at Entry No. 1 in respect of the land which is Common Land.

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

5th 1981

day of

May

1981

Henry Herdman

Commons Commissioner