



COMMONS REGISTRATION ACT 1965

Reference Nos 270/D/5  
270/D/6

In the Matter of Johnny Browns Common,  
Upton, Wakefield District, ~~West~~ Yorkshire

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry No 1 in the Rights Section of Register Unit No. CL. 436 in the Register of Common Land maintained by the West Yorkshire County Council and are occasioned by Objection No 476 made by Mr William Daniel Walton and Mr Sidney Arthur Walton and noted in the Register on 22 April 1971.

I held a hearing for the purpose of inquiring into the dispute at Wakefield on 8 April 1976. At the hearing (1) Mr S A Walton the surviving Objector (Mr W D Walton died in July 1974) was represented by Mr P Mirfield of counsel instructed by W E Clayton-Smith & Son Solicitors of Pontefract, and (2) Mrs Evelyn Beech, on whose application the registrations were made, attended in person.

The land ("the Unit Land") comprised in this Register Unit is a strip about 400 yards long (from east to west) and having a width (from north to south) varying between about 100 yards and about 30 yards. The east end is at the junction of Back Lane (B6474, off the south side of the Wakefield-Doncaster Road, A638.T) with Minsthorpe Lane. Along the length of the Unit Land is a vehicle track which ends at or near the west end, there becoming a footpath. Apart from this track, some scrub, and some copse, the whole of the Unit Land is grass, being damp in places from the two streams which cross from north to south, one by the west end, and one across the middle.

The registration at Entry No 1 in the Rights Section is of a right attached to OS Field 5957 to graze 4 horses and 2 bullocks over the whole of the Unit Land. The grounds stated in Objection No 476 are: "The land coloured red on the plan attached is not common land at the date of registration, and the right does not exist at the date of registration. Objectors are owners of the freehold fee simple in possession". The plan attached shows the whole of the Unit Land except a narrow triangular piece about 150 yards long at the east end.

Evidence was given in support of the Objection orally by Mr S A Walton who became with his brother Mr W D Walton the owner of the Unit Land under conveyance dated 23 April 1945, and by Mr K D Plant (nephew of Mr Walton's wife). In the course of such evidence Mr Walton produced the said 1945 conveyance and Particulars of the Sale on 5 October 1944 of the North Elmshall Estate comprising 1863 acres, with the plan therein referred to. Lot 11 of the 1945 Particulars comprised Street Farm; the 1945 conveyance was of this Lot; both in the Particulars and in the conveyance the Unit Land was described as 55 (OS No 1932 edition), Grass, 12.065 (area in acres), and treated as part of Street Farm containing (in the Particulars) 122.354 and (in the conveyance) 123.035 acres without distinguishing it from the rest.



Evidence was given in support of the registration orally by Mrs E Beech and by her husband Mr H W Beech; in the course of such evidence Mrs Beech produced a historical sketch prepared by herself and a statement entitled "The Lost Village of Growcock" and typed by Mr A Wilkinson, a historian who has gone into these things. Mr Beech said that on the 1932 edition of the OS map (25 inches to the mile) the Unit Land is plot no 55 and marked as 8.414 acres.

As to the Entry in the Rights Section :-

When Mrs Beech applied for the registration, she and her husband rented Field OS 5957 but do not now rent it; she does not want the grazing for herself; she applied for the registration in the public interest, being advised that she should do so. At the hearing there was no evidence that there was any grazing right which under the Regulations made pursuant to the 1965 Act could be registered on the application of Mrs Beech, and I conclude therefore that the registration was mistakenly made. However for the benefit of whoever it was who advised her about this, I record that if (as seems likely) he said no more than if she was entitled to a right of grazing she ought to register it, he was I think correctly stating the effect of the Act.

As to the Entry in the Land Section:-

Land not subject to any right of common may be registered under the 1965 Act if it is "waste land of a manor", see the definition of "common land" in section 22.

Mrs Beech in support of the registration, as I understood her, relied on the following matters:- (a) On the OS maps, the Unit Land is called "North Elmshall Common" and locally known as "Johnny Brown Common", (b) There is a public bridle way along the above-mentioned vehicle track, and the Unit Land has always been open to this bridleway until 1966 when Mr Walton erected a fence between it and part of the Unit Land to the south; (c) Members of the public have freely ridden horses over the Unit Land and picnicked on it, the Badsworth Hunt have used it, and gypsies have camped on it; (d) No tithes have been paid in respect of it; (e) Historically the Unit Land adjoined the village of Growcock which perhaps comprised a farm and 2 cottages inhabited perhaps between 1540 and 1740, but of which there is now no trace, (f) The Unit Land was formerly owned by Earl Strickland who resided at North Elmshall Hall and was Lord of the Manor and whose employee, Johnny Brown, was self-appointed custodian of the Common.

Mr Walton either in the course of his evidence or through his counsel made it clear that he did not agree the matters on which Mrs Beech relied. However he said (in effect):- He often of the Unit Land used the words "down on the Common"; the track although not a public bridleway is a public footpath leading to Hensworth; the Unit Land was open to this public footpath until about 1956 when he (Mr Walton) erected a fence (now dilapidated) separating part of the Unit Land from the path. Further it appears from the Particulars that the Unit Land was comprised in a mortgage dated 26 April 1894 and made by Sir Charles William Strickland, Baronet.

I am unable from the historical evidence of Mr & Mrs Beech to conclude that the Unit Land was ever waste land of a manor or was ever non-tithable; I know too little about the documents forming the basis of their conclusions and those of Mr Wilkinson. But because, if they had spent more time and trouble in investigating local history, they might have established that Sir C W Strickland was at the date of the 1894 mortgage Lord of a Manor of which the Unit Land was then reputed to be waste land, I record that in my opinion proof of this fact would not



conclusively establish that the Unit Land continued to be waste land of a manor up to the passing of the 1965 Act; in my view land which at one time was waste land of a manor can cease to be such.

The use of the Unit Land described by Mr & Mrs Beech by persons other than gypsies was I think of a kind which the users would consider could not be objectionable to the owners and which the owners would tolerate as unobjectionable; any such use cannot in law be regarded as use "as of right", see *Beckett v Lyons* 1967 Ch 449 at pp 469 and 475. I am not persuaded that there was ever any significant use of the Unit Land by gypsies.

As to the date of the erection of the fence, as to the padlocking of the gate at the east end of the Unit Land and as to the vehicle track being a bridleway, there was a conflict between the evidence given by Mr Walton and supported by Mr Plant and that given by Mr and Mrs Beech. I need not I think resolve this conflict (I have no jurisdiction to determine whether the public have any greater right over the track than to go along it on foot), because in my view the erection of the fence and the padlocking of the gate would not be against, and the existence of a bridleway would not help, a finding that the Unit Land is waste land of a manor.

To resolve this dispute, I must, as I see it, balance the name by which the Unit Land has been known, its openness to a public highway (be it a footpath or bridleway) so that any who liked could picnic or walk or ride over it without obstruction and the use made of it by the daughter of Mr and Mrs Beech and her friends and by the Hunt against the circumstance in the Particulars of the 1944 sale and in the subsequent 1945 conveyance the Unit Land was dealt with by a successor in title of the alleged Lord of the Manor as if it was part of Street Farm in no now relevant way distinguishable from the rest. So balanced, and being of the opinion that the use made of the Unit Land by the public never *within living mem* amounted to much, I conclude that the Unit Land was not in 1965 or subsequently waste land of a manor.

Mr Walton said that the plan attached to his Objection was intended to include all the Unit Land. I know of no reason why the narrow triangular piece he omitted ~~but~~ have a different status under the 1965 Act from the rest. I consider it just that his grounds of objection should be treated as if they extended to this piece.

For the reasons set out above I refuse to confirm the registration.

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 13<sup>th</sup> day of May 1976

a. a. Baden Fuller

Commons Commissioner