



In the Matter of A Sand Quarry near Charnel Pool,
Ainstable, Cumbria.

DECISION

This reference relates to the question of the ownership of a sand quarry near Channel Pool, Ainstable being the land comprised in the Land Section of Register Unit No. CL 447 in the Register of Common Land maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Ainstable Parish Council and Mr E C Eckroyd each claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Penrith on 14 October 1981.

At the hearing the Parish Council was represented by Mrs M Wilson, its Clerk, and Mr Eckroyd by Mr D Mellor, solicitor.

By the award made 7 May 1821 under the Ainstable Enclosure Act of 1818 (58 Geo. III, c.9 (private)) the land in question was allotted to the Surveyors for the time being of the High Roads of the parish of Ainstable for the use of the Surveyors and of the owners and occupiers of messuages, lands, and tenements within the parish for a sand pit.

By virtue of ss.25 and 67 of the Local Government Act 1894 the land was transferred to the new Rural District Council set up under that Act. The highway functions of the Rural District Council were transferred to the former Cumberland County Council by s.30 of the Local Government Act 1929, but the County Council would only have taken over the sand pit under s.118(1)(b) of that Act if so desired by the Rural District Council. There was no evidence that the Rural District Council did so desire.

On the other hand, there is no evidence that the Rural District Council ever took any action in respect of the sand pit. It appears from the minutes of the Parish Council that there was a gate to the sand pit placed there by someone unknown before 31 July 1952. During the early part of August 1952 this gate was replaced by a wider gate with a lock, for which the Parish Council paid. At sometime before 20 May 1953 the Parish Council erected a board with the inscription: "Ainstable Sand Pit - Key with Clerk to the Parish Council or at Beck Brow", Beck Brow being the residence of Mr R Davidson, who kept one of the keys. In January 1958 the custody of this key was transferred to Mr E L Prond of Bank House. On 18 January 1960 it was reported to a meeting of the Parish Council that the gate was off its hinges and that the key would not open the lock, so it was agreed that the old lock should be taken



off and the gate left unlocked.

In the absence of evidence to the contrary and particularly in the absence of any objection by the Rural District Council, it must be assumed that the Parish Council had some right to act as it did. A possible explanation would be that the Rural District Council transferred the sand pit to the Parish Council by a conveyance which has been lost. Since the Eden District Council, which would have been the successor in title of the Rural District Council by virtue of the Local Authorities (England) (Property etc) Order 1973 (S.I. 1973 No. 1861), was given notice of the hearing and decided not to be represented, I can only assume that it does not claim to be the owner of the land.

The land in question forms a small part of O.S. No. 19, which is among the freehold properties described in the First Schedule to an assent, dated 24 November 1953, by which the personal representatives of the late Mr W E B Ecroyd assented to the vesting in Mr E P Ecroyd of the late Mr Ecroyd's Low House Estate. In the absence of any evidence of a conveyance by one of the statutory owners I am not satisfied that Mr E P Ecroyd has a good title to the part of O.S. No. 19 consisting of the sand pit.

On the available evidence I am satisfied that the Parish Council is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register the Parish Council as the owner of the land under section 8(2) 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

13th

day of

November

1981

CHIEF COMMONS COMMISSIONER