



COMMONS REGISTRATION ACT 1965

Reference Nos. 262/U/358
to 362 inclusive

In the Matter of (1) Kell Springs,
(2) Hewer Hill Quarry, (3) Hewer
Hill Freestone Quarry, (4) Cow Gill
Water Hole, and (5) Stockwell Spring,
all in Castle Sowerby, Eden District,
Cumbria

DECISION

These references relate to the question of the ownership of lands known as (1) Kell Springs, (2) Hewer Hill Quarry, (3) Hewer Hill Freestone Quarry, (4) Cow Gill Water Hole, and (5) Stockwell Spring, all in Castle Sowerby, Eden District being the lands comprised in the Land Section of Register Unit (1) No. CL 335, (2) No. CL 334, (3) No. 336, (4) No. 337, and (5) No. CL 338 in the Register of Common Lane maintained by the Cumbria (formerly Cumberland) 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 no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Penrith on 18 and 19 June 1981. At the hearing Castle Sowerby Parish Council on whose application the registrations were made, were represented on the first day by Mr J Stobart their chairman, and on the second day by Mr J Rogers their clerk.

On the first day of the hearing Mr J A Foster who has lived in the area for the last 35 years, is now and has been for the last 3 years a member of the Parish Council, and has on their behalf done some research in the County Archives, in the course of his oral evidence produced the Parish Council Minute Book from 1894 to 1963, referred to a 1769 Inclosure Award, and gave me (as below summarised) some information about each of the said lands.

On the second day of the hearing Mr D W Bowcock who is senior assistant archivist at Carlisle produced from the County Record Office the Castle Sowerby Inclosure Award dated 25 April 1769 and the map therein referred to. The poor condition and the length of the Award is such that without the help of Mr Bowcock I would have found it (as would I suppose many others not well acquainted with manuscript of that date) difficult to discover and read the relevant part.

As to the CL 334 land, Hewer Hill Quarry, being an area having a frontage to a public road of about 100 yards and extending north-westwards from it for about 200 yards and being 1/2,500 OS No. 407 containing 5.037 acres:-

Mr Foster said (in effect):- This land, unlike the other Hewer Hill Quarry mentioned in these proceedings, is a limestone quarry (the other is freestone). He could not remember it ever having been quarried and it is now in effect a nature reserve "a piece of natural England at its best, a habitat for wildlife, and one of the few



places where it is not spoilt by chemicals". The Parish Council keep it tidy and only allow tipping of certain materials which are not toxic. There is a lot of top grass which is grazed by a local farmer who keeps the internal fences in order under a verbal arrangement made with the Parish Council about 10 years ago. The Parish Council keep the roadside gates in order and locked to prevent undesirable tipping.

In the Minute Book there are references to this land: 15 April 1895 a committee set up to look at any parish charity, watering place, quarries and footpaths; 11 February 1904 Hewer Hill Quarry advisability of having it fenced off as it was considered dangerous; 28 August and 30 October 1907 letter to District Council, ^{and} meeting of sub-committee to provide for proper inclosure of quarry including 2 gates; January 8 and February 26 and March 1908, inclosures completed, discussions about letting tenders for the estate, and one offer accepted (rental £4 per annum); 24 March, 22 June 1909 suggestion that surveyor of the highways be charged for the stone or its use limited to the Parish.

Mr Stobart said that the Book shows this land to ^{have} been regularly let by the Parish Council ever since.

On the 1769 Award map the land thereon marked "A Limestone Quarry" can be identified with the CL 334 land.

The 1769 Award was made under the Castle-Sowerby Inclosure Act 1767 (7 Geo. 3 c.93) which authorised the setting out of "Two or more places for Limestone Quarries and also watering places for cattle or wells ... for the common Use and Benefit of the Lord of the Manor and all the Land Owners and Tenants within the same for and in respect of the several Messuages, Lands and grounds within the said Manor only and not elsewhere".

The Award sets out this land as "a place for getting limestone and burning lime by the several persons their heirs and assigns who have share~~d~~ hereafter set out unto them and are owners of messuages lands and tenements within the said Manor", and otherwise follows the words above quoted from the Act. However additionally (without any express authority contained in the Act) the Award includes lengthy provisions for the election of five "land graves" for the ordering of the said freestone and limestone quarries and for other matters relating to their business. There is nothing either in the Act or the Award expressly providing who shall be the owner of the quarries and watering places set out. There are two possibilities as to this: (a) that this quarry was allotted on a public charitable trust for the benefit of the Parish; or (b) that it was allotted on private trust for the benefit of individuals, being the Lord of the Manor and the owners of messuages etc.

As to possibility (a):- Any uncertainty as to ownership was removed by section 17 of the Poor Act 1818 (59 Geo 3 c.12) and the decisions of the Court as to the effect of such section. By the section the churchwardens and overseers of a parish were empowered to "accept take and hold in the nature of a body corporate for and on behalf of the parish all land belonging to the parish". In *Doe v Hiley* (1830) 10 B & C 885, Lord Tenterden CJ held that this section had the effect of vesting in the churchwardens and overseers all land belonging to the parish notwithstanding that the land was not acquired for purposes relating to the poor. This decision has since been treated as applicable to all land "belonging" to a parish in the "popular sense of that expression", see *Doe v Terry* (1835) 4 A & E 274 at page 281 and *Haigh v West* 1893 2 QB 19 at page 31; this last case although distinguished on the facts was



recognised as stating law still applicable in *Wylde v Silver* 1963 1 Ch 243 at page 271. Any land formerly vested in the churchwardens and overseers of Castle-Sowerby is now vested in the Parish Council under the Overseers Order 1927 (SR&O 1927 No. 55) made under the Rating Act 1925.

As to possibility (b):- The evidence above summarised shows that the Parish Council have by their tenants been in possession long enough for the interests of any persons interested under any private trust for their benefit to be extinguished by the Limitation Act 1939 or the Acts replaced by it.

So for the reasons above stated I am satisfied that the Parish Council are now the owners of this CL 334 land.

As to the CL 337 land, Cow Gill Water Hole being an area adjoining the River Caldew, approximately triangular with sides of about 50 yards and including a strip about 100 yards long affecting the south end of the area with a public road, and being 1/2,500 OS No. 562 containing 1.281 acres including OS No. 560 containing .624 acres:-

Mr Foster said (in effect):- There are silver birches on the land and along it there is a bridle path connecting with a ford across the River. The land is used by fishermen going down to the River.

The Minute Book contains an entry relating to this land dated 18 April 1934 recording that Jacob Millburn be allowed to take and clear the rubbish; there is no other entry.

On the 1769 Award map the land thereon marked "B Watering Place" can be identified with this CL 337 land.

The 1769 Award set out this land as "a common watering place", and with no additional words (apart from a detailed description of its locality and boundaries). In my opinion there is only one possible view as to the effect of the Award; this land was allotted upon public charitable trusts for the benefit of the Parish.

So for the reasons set out above in relation to the CL 334 possibility (a), I am satisfied that the Parish Council is the owner of this CL 337 land.

As to the CL 335 land, Kell Springs, being an area approximately circular (diameter about 35 yards) and being 1/2,500 OS No. 657 containing .889 acres:-

Mr Foster said (in effect):- These Springs supply several streams watering quite a lot of agricultural land; the pipes there are such that the water flows out in more than one direction. The area is surrounded by a thorn hedge and it is connected to the public road ~~to~~ the south-east (a little more than 200 yards) by a road (? track).

In the Minute Book there are references to the Springs: 15 April, 15 July and 6 October 1897, the committee to control this watering place met and reported that Kell Springs ought to be enclosed: 27 August and 8 November 1902 on a report that Kell Springs were unsatisfactory state a committee was appointed to inspect when the work was finished the treasurer authorised to pay £1; 11 February 1903, a reference to rails at Kell Springs; 30 August and 11 October 1905 discussion about water supply at Kell Springs and a meeting of the Council there. And so on throughout the Book. Mr Stobart who has been a member of the Parish Council for 7 years said that the Kell Springs came before the Parish Council about every 2 years and they pay for any work needed.



On the 1769 Award map the land thereon marked "D Kell Springs" can be identified with CL 335 land ~~in this~~, and the strip connecting it with the public road thereon delineated can be identified with the said road (? track).

The 1769 Award sets out this land as "a common watering place" but with additional words not only describing ~~its~~ its locality and boundaries but also describing in detail the various "currents" of water which run out from these springs, providing how the amounts of water flowing to these currents from the Spring are to be practically regulated ("a broad stone with a hole in it which hole shall not be above one inch and one half in diameter"), providing for cleansing and scouring of the current and for the said "landgraves" or a majority of them to be satisfied about this.

The regulation of a natural water supply capable of being made to flow to more than one valley by hole of a fixed diameter as set out in the 1769 Award and as described to me by Mr Foster is ~~not~~ in England unique, but it is remarkable; and I think of some historic interest that this system of regulation mentioned in the 1769 Award (even then it may not have been new) should have continued until today. Of it Mr Rogers said that as far as he knew nobody had within living memory acted as a landgrave such as is mentioned in the 1769 Award; however he referred to an entry in the Parish Council minute book recording that at an annual general meeting on 16 August 1906 mention was made of a reply from the Charity Commission (I suppose in answer to a question from the Council) that no change could be made by them legally to the provisions relating to landgraves/so as to transfer their powers to the Parish Council.

In the 1767 Act there is not only no mention of landgraves but also nothing conferring upon the Commissioners thereby appointed to make an award, any power to regulate currents of water. Nevertheless even if the Commissioners exceeded their powers in some respects, the words of the Award dealing with this land begin: "also shall be common watering places about the Springs called Kelle Spring ..." These words notwithstanding anything else contained in the Award indicate that the Commissioners intended to allot this land as one of the "watering places for Cattle" as they were by the Act authorised to do.

Although this ~~land~~ ^{land} may be quite different from the CL 337 land above discussed, as regards ownership my conclusion is the same. So I am satisfied that the Parish Council is the owner of the CL 335 land.

As to the CL 338 land Stockwell Spring being an area approximately triangular adjoining the public road a short distance south-east of Stockwell House with a frontage thereto of about 40 yards being on the 1/2,500 OS map marked as having thereon "Well":-

Mr Foster said (in effect):- This land is just a piece of wet land off the highway. Because anybody living near has piped water, it is not now needed as a watering place: probably now the well has been trodden in. It is not mentioned in the Minute Book.

Mr Stobbard said that he could not remember any discussion with the Parish Council about it and it probably had not been used for some time.

On the 1769 Award map delineated a small rectangular indentation on the south side of the road marked "E and Stockwell Spring".



The Award contains no allotment or (except for the map) other reference to this land. So all that can be deduced from it is that the land was in 1769 a supply of water open to a public highway and apparently then usable by anyone who wanted it.

I have I think enough evidence to infer that at least until the coming to the Parish of piped water, this land belonged to the Parish within the "popular sense of that expression" ~~but as~~ used in Doe v Terry supra. In accordance with what I said above about this case, I am satisfied that the Parish Council as successors of the churchwardens and overseers are the owners of this CL 338 land.

As to the CL 336 land, the Hewer Hill Freestone Quarry, being a triangular area with sides of about 60, 90 and 95 yards, and being 1/2,500 OS No. 300 containing 1.512 acres:-

Mr Foster said (in effect) that he could find no mention of this land in the Minute Book. It is surrounded by land forming part of a farm owned or farmed by Mr Brian Strong; he grazes it and keeps up the gates leading into it. There is on it a lot of gorse. Mr Strong farms the land as ~~sole~~ of and in succession to his father Mr Reginald Samuel Strong who was in 1970 the chairman of the Parish Council and who ~~was~~ (as appears from the Register) signed the application for its registration. He understood Mr R S Strong had always stated that it was "Parish Land".

The land delineated in detail on the 1769 Award map does not include anything which can be identified with the CL 336 land in this Register Unit.

On the above evidence I am not satisfied that the Parish Council or any other person is the owner of this CL 336 land. Because at the hearing there was some discussion as to the possibility of Mr R S Strong having mistakenly thought that this land although surrounded by his farm was not part of it, ~~and~~ a copy of this decision will be sent to Mr Brian Strong of Hewer Hill Farm, Castle-Sowerby, and I give to him and to any other person having an interest in such farm liberty within 42 days of this decision being so sent to apply to the Commons Commissioners to re-open this hearing and set aside this decision so far as it relates to this CL 336 land. Any such application should be in writing (it may be by letter) and sent to the Clerk of the Commons Commissioners with a copy to Castle-Sowerby Parish Council and to Cumbria County Council as registration authority; such application should summarise the evidence which would be re-opened ~~here~~ as to the ownership of this land and list any documents which ~~will~~ be relied on (stating their effects so far as necessary).

As a consequence of my conclusions as set out above I shall pursuant to section 8(2) of the Act of 1965 direct the Cumbria County Council as registration authority to register Castle-Sowerby Parish Council as the owners of the CL 334 land Hewer Hill Quarry, the CL 335 land Kell Springs, the CL 337 land Cow Gill Water Hole and the CL 338 land Stockwell Spring. And unless this decision is set aside pursuant to the liberty to apply herein before granted, the CL 336 land, Hewer Hill Freestone Quarry will remain subject to protection under section 9 of the Act of 1965.

T. J. H. EVER



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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 the 5th — day of October — 1981.

a a. Baines Jinks

Commons Commissioner