



COMMONS REGISTRATION ACT 1965

Reference No. 24/U/11

In the Matter of Belton Low Closes
Turbary, Belton, Lincolnshire (Parts
of Lindsey)

DECISION

This reference relates to the question of the ownership of land known as Belton Low Closes Turbary, Belton, being the land comprised in the Land Section of Register Unit No. C.L.8 in the Register of Common Land maintained by the Lindsey 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 Belton Parish Council claimed to be the freehold owner of the land in question and there was a conflicting claim by the Committee of the Belton Private Roads and Drains.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Lincoln on 4th May 1972.

The land the subject of this reference was allotted by the Inclosure Award made in 1803 under the Isle of Axholme Inclosure Act passed in 1795 (35 Geo. III, c.107) as a turbary for the use and benefit of the inhabitants of the parish of Belton. There was a similar allotment in the Award of land called the Stockholes Turbary. The Commissioners ordered and directed that all allotments should be under and subject to certain rules, orders, regulations, and restrictions under certain penalties. By the rules each inhabitant was limited as to the amount of turf which he could take in any one year under a penalty of 20 shillings a load for any excess to be levied in default on conviction before a justice of the peace and paid to the overseers of the poor to be applied for the use and benefit of the poor of the parish.

The Parish Council bases its claim to the ownership of this land upon the transfer to them by section 6(1)(c)(iii) of the Local Government Act 1894 of the powers, duties, and liabilities of the overseers with respect to the holding or management of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants. It may be that the functions of the overseers with regard to the receipt and application of the penalties for excessive taking of turf could be said to relate to the management of the land and so passed to the Parish Council, but there is no provision in the Award (or at any rate no provision to which my attention was directed) that the overseers should hold the land.

In the absence of any specific provision as to the ownership of the land, it would remain with the pre-inclosure owner, and in this connection it is interesting to observe that Mr. Gordon W. Clark stated in a statutory declaration made in 1958, to which I shall have occasion to refer later, that he had always understood that originally and immediately after the award and subject thereto the ownership would be in the Lord of the Manor. Whoever may have been the true



owner, it was not, in my view, the overseers. Therefore, quite apart from any question arising out of the conflicting claim, I cannot find that the ownership of this land passed to the Parish Council under the Act of 1894.

The Parish Council has in fact done nothing in respect of this land within living memory. It is not now used for turf digging, but for grazing. For many years, certainly since 1910 and possibly earlier, the grazing on the land (but not on the Stockholes Turbary) has been let annually from April to November by tender by Mr. Gordon W. Clark, now deceased, and after him by Mr. Samuel Arthur Hackney, purporting to act as Surveyor on behalf of the Belton Private Roads and Drains Committee. I say "purporting" because I shall have to consider the position of Mr. Clark and Mr. Hackney in more detail later in this decision. The receipts from the letting of the grazing have been applied to the necessary outgoings, such as the drainage rates and the provision and repair of fencing, and the water for the cattle trough, and any balance has gone towards the maintenance of certain private roads and (until the coming into force of the Land Drainage Act 1930) drains. The late Mr. G.W. Clark stated in his statutory declaration that he had never known any other person or persons or body of persons exercise any rights over Low Closes Turbary, nor had anyone to his knowledge ever made any claim adverse to the right of the Committee to let and receive rents or payment for the grazing. However, Mr. R.A. Kelsey, a member of the Parish Council, gave evidence about an occasion when the application of the receipts from the grazing was raised at a meeting of the Parish Council, upon which Mr. Clark took umbrage and left the meeting.

It is now contended that by the uninterrupted receipt of the rents and profits the Committee has acquired a squatter's title.

In order to decide whether this claim is well founded, it is necessary to consider the history and constitution of the Committee. It appears from the statutory declaration made by the late Mr. Clark that he regarded himself as the Surveyor to the body or Committee of persons known as the Belton Private Roads and Drains Committee elected pursuant to the provisions in that behalf contained in the Inclosure Award, he having been elected annually since the month of October 1932.

An examination of the Inclosure Award sheds further light on the matter. The Commissioners set out various private roads (which are accommodation roads affording access to the various inclosures) and then went on to provide that these roads should be made, maintained, repaired, and supported by and at the expense of the several proprietors of the inclosures specified in the rate annexed to the Award. They then provided that the necessary work should be done by a person or persons annually elected or appointed by the major part in value of the proprietors of the lands liable for the payment of the rate, or their agents, assembled at a meeting to be held in Belton parish church in the last whole week in October. The necessary expenses of the person or persons so elected or appointed were to be recovered by levying the rate annexed to the Award or such larger or smaller rate as should be thought necessary. Lastly, the Commissioners ordered that the person or persons so elected or appointed were to be allowed such yearly salary as the major part in value of the proprietors or their agents so assembled should fix and appoint to be paid out of the rates received.



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The Inclosure Commissioners then went on to set out various private drains and to provide for the maintenance of the drains by a procedure exactly the same mutatis mutandis as they had provided in respect of the private roads.

It is not clear for how long the procedure laid down by the Award for electing a person or persons to do the necessary works of maintenance was followed. It has not been done during the memory of Mr. S.A. Hackney, who has been a member of the Committee since 1952 and succeeded Mr. Clark as Surveyor in 1959. During Mr. Hackney's time the Committee has been self-elected and self-perpetuating. When a vacancy occurs, the survivors consider the names of suitable residents in the parish to be invited to be elected. The only qualification for election is residence in the parish, it not being regarded as necessary for the candidate to be the owner or occupier of any agricultural land, though in fact eight of the present members are farmers.

Although not appointed in the manner provided for in the Award, the members of the Committee have been performing the functions assigned to the elected person or persons. They have not been receiving any salary themselves, but they have been paying a small salary to their Surveyor, who has in fact for many years been one of their number. The balance of the money received from letting the grazing on the Low Close Turbary after meeting the expenses has been applied to purposes which would otherwise have had to be paid for out of the rates levied on the owners of the inclosed lands.

Had the Committee been a body corporate I should have felt bound to hold that the title of the true owner, whoever he may be, had been extinguished by adverse possession. But the Committee is not a body corporate. It cannot even be said to have the status of an unincorporated society. It is a name adopted by a number of persons who have taken it upon themselves to carry out the functions which should have been carried out by a person or persons elected annually in accordance with the provisions of the Inclosure Award. They have acted as individuals and the one whom they have chosen to nominate as their Surveyor has acted as the agent of each of them and not of all of them collectively. The adverse possession has not been by or on behalf of the Committee, but by or on behalf of a number of persons whose identities have changed over the years.

I find myself quite unable to find that this amorphous collection of persons is capable in law of having become the owner of any piece of land.

Mr. Collins, who appeared for the soi-disant Committee, suggested that I should direct the Registration Authority to register four members of the Committee as the owners of the land. This I have no power to do. It is not for me to decide who should be the owners of the land. I can only give a direction under section 8(2) of the Act of 1965 if I am satisfied that a person is the owner.

In this case I am not satisfied that any person is the owner of the land. The land will therefore fall to be protected under section 9 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



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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 30th day of May 1972

A handwritten signature in cursive script, appearing to read 'G. S. Quibb', with a horizontal line drawn underneath the signature.

Chief Commons Commissioner