



COMMONS REGISTRATION ACT 1965

Reference No.25/U/28

In the Matter of The Staithe,
Ormesby St. Michael, Great
Yarmouth District, Norfolk

DECISION

This reference relates to the question of the ownership of land known as The Staithe, Ormesby St. Michael, Great Yarmouth District being the land comprised in the Land Section of Register Unit No.CL.128 in the Register of Common Land maintained by the Norfolk 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 East Anglian Water Company claimed to be the owner of part of the land in question and no other person claimed to be the owner or 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 Norwich on 13 June 1973 and 20 March 1974. At the 1973 hearing, on the application of Mr. Young (mentioned below), I adjourned the proceedings without hearing any argument or evidence. At the adjourned 1974 hearing, (i) Ormesby St. Margaret Parish Council ("the Applicant Council"), on whose application the registration was made, and (ii) East Anglian Water Company were both represented by Mr. D-G. Young articled clerk with Lucas & Willys Solicitors of Great Yarmouth.

Evidence was given on behalf of the Applicant Council by Mr. E. G. Tennant who is 69 years of age, has lived all his life in the parish of Ormesby St. Margaret (which with Scratby is regulated by the Applicant Council: the land in question is in the adjoining parish of Ormesby St. Michael), and has been clerk of the Applicant Council for the last 29 years. Evidence was given on behalf of the East Anglian Water Company by (i) Mr. F. B. Fitch who is their secretary and (ii) Mr. K. B. Clarke who is their chief engineer.

Mr. Tennant produced an Inclosure Award dated 16 May 1845; it was made under the Ormesby St. Margaret, Ormesby St. Michael, Ormesby St. Peter and Ormesby St. Andrew and Scratby otherwise Scroteby Inclosure Act 1842 (5 Vict; sess. 2; cap.ix). By the Award "The ... Commissioners ... set out and allot unto the Surveyors Churchwardens and Overseers of the said Parishes of Ormesby Saint Margaret Ormesby Saint Michael and Scratby otherwise Scroteby and to their successors for ever the two pieces of land next hereinafter described ... First one piece of land marked 92 on the said Plan containing by measure one rood and twenty nine perches bounded by ... the Public Road Tenthly described towards the East by the sixteenth allotment hereinafter made to Richard Glasspoole towards the South ... Second one other piece of land ... containing by measure two roods and eleven perches ... and we do hereby ... declare that



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we have given directions for making Fences on the East and South part of the said first allotment ... And We do hereby order and direct that the said Surveyors and Churchwardens and Overseers shall for ever after keep in good repair and condition the same fences ... And we certify and declare that the said two allotments so last made to the said Surveyors Churchwardens and Overseers of the said several Parishes are made to them as and for public Staithes or land places and that such allotments and Staithes shall henceforth be vested in such Surveyors, Churchwardens and Overseers for the time being in trust for the purposes aforesaid and that the grass and herbage of such allotments shall from time to time be let by such Surveyors, Churchwardens and Overseers for the most money that can be obtained for the same and that the rents and profits thereof shall be applied first in making and keeping up the said Staithes and the said Fences thereof and in the next place for the benefit of poor persons residing in the parish in which the said last mentioned allotment (sic) are situate in such manner as the said Surveyors, Churchwardens and Overseers shall direct ... And We the said Commissioners do ... allot unto Richard Glasspoole ... sixteenth one other piece of land marked 93 on the said plan containing by measure two roods bounded by the first allotment herein before made to the Churchwardens and Overseers of the said Parishes for a public Staithe towards the north by the Public Road tently described towards the East ..." The Award plan shows the pieces marked 92 and 93 as bounded on the west by the east end of the arm of Ormesby Broad which on the north side of Rolleston Bridge stretches out to the east, and as bounded on the east by the road or the then intended road which is now known as Decoy Road and now leads to Decoy Farm.

Mr. Fitch produced a conveyance dated 6 October 1938 by which a "piece of land situate in Ormesby Saint Michael ... containing half an acre or thereabouts abutting on Ormesby Broad and the Road to the Decoy Farm ... delineated on the plan drawn hereon ..." was conveyed to the Great Yarmouth Water Works Company. He said that this Company was incorporated by the Great Yarmouth Waterworks Act of 1853 (16 & 17 Vict. c. xvii), and was by the East Anglian Water Order 1962 (made under section 9 and 23 of the Water Act 1945) joined with the Lowestoft Water Company and became East Anglian Water Company. Mr. Clarke produced a plan ("the 1974 plan") which had been prepared under his direction to show the pieces 92 and 93 as they now are.

There was some discussion at the hearing of the following questions:- (i) what are the present boundaries of the land now held on the trust for a public Staithe under the 1845 Award and of the land adjoining it on the south now held by those claiming under Richard Glasspoole; (ii) how has the ownership of the Staithe land devolved since 1845; and (iii) what are the present boundaries of the land comprised in this Register Unit No. CL.128.

As to question (i) ^{above} mentioned:-

By comparing the 1845 Award plan with (i) the Ordnance Survey map on which the Register maps are based, (ii) the 1938 plan and (iii) the 1974 plan, I infer that the water edge of the Broad had moved west, thus increasing the land area. There is nothing to suggest that this move was caused otherwise than by a natural accretion (such as might be expected in this area), and I shall accordingly proceed on the basis that the ownership of the accrued land is the same as that of the land to which it accrued, see Theobald, Law of Land (2nd edition 1929) page 238.



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By making the same comparison, I identify the north boundary of piece 92 and the south boundary of piece 93 as being for the most part the dykes which now run to the Broad, ^{point} near and at right angles to Decoy Road and for the remaining part as ~~the~~ line of these dykes (these dykes are marked on the 1974 plan) and I identify the east boundary as Decoy Road.

As to the boundary between piece 92 and piece 93 (to which most of the discussion related):- Mr. Clarke said that he had recently walked over the land which I have identified as comprising pieces 92 and 93 and found that there was on such land running approximately from east to west the remnant of a post and wire fence in the position marked on the 1974 plan. Mr. Tennant said the land he had always known as the Staithe was that situated to the north of this fence, that such land had always been very rough land with a lot of growth on it, that the adjoining water of the Broad was very shallow, and that there was there a broken down landing stage for boats. The line of this fence ~~is~~ so far as I can judge from the Award map is a little to the north of the line delineated on such map. Nevertheless having regard to the obligation imposed in the Award to maintain the fence, I conclude that the boundary between the two pieces should now be taken to be the line of the said fence and I shall presume that if this boundary was not that intended by the Commissioners, under some arrangement, which has now been forgotten the boundary was adjusted so as to coincide with this line. Accordingly I conclude the land to the north of this line is that which is now subject to the trust declared by the words above quoted from the 1845 Award.

As to question (ii) above mentioned:-

The Applicant Council claim the owners^{ship} of this land as successors in title of the Surveyors, Churchwardens and Overseers of the Parishes of Ormesby St. Margaret Ormesby St. Michael and Scratby and notwithstanding that the land is situate in what is now the parish of Ormesby St. Michael. Mr. Tennant said that all three parishes had at one time been the same but they had some time ago been separated, and that the parish of Ormesby St. Margaret and Scratby being nearer the coast than that of Ormesby St. Michael and having become more populated, ~~and having~~ a larger Parish Council. The 1842 Act refers to "the Churches of Ormesby St. Margaret and Ormesby St. Michael" apparently on the basis that the other three parishes mentioned then had no Church (as seems likely from the Ordnance Survey map) and on the basis that there was then only one vicarage in and one vicar for all five parishes. Section 59 of the Act (providing for allotments for the poor) makes a distinction between the Churchwardens and Overseers of the poor of the parishes of Ormesby St. Margaret and Scratby and the Churchwardens and Overseers of the poor of the parish of Ormesby St. Michael. Section 62 of the Act clearly authorises the allotment for Staithe as above quoted, and expressly provides that one of the Staithe shall be near Rolleston Bridge and that the other shall be at or near the point where the land now under consideration is; although the former Staithe would be more convenient for the residents of Ormesby St. Michael and the latter more convenient for the residents of Ormesby St. Margaret, there is nothing in the Act (or indeed in the allotment above quoted) suggesting that the Staithe now under consideration should for ever be under the control of one parish rather than the other.



Mr. Tennant said that while he had been clerk of the Applicant Council he had arranged for the Staithe now under consideration to be registered under the 1965 Act, assuming that it belonged to the Applicant Council. Under the 1842 Act and the 1845 Award the Staithe, although it is to be a public Staithe for everybody, is nevertheless vested in a local authority. Notwithstanding that I feel some uncertainty as to exactly how the legal estate in the land has passed from the local authority grantees under the allotment above quoted; because all concerned local authorities have had notice of this hearing and the Applicant Council is the only claimant, I can I think properly conclude that the Applicant Council is the owner; all other possible claimants being in default, I need not I think require the Applicant Council to provide more evidence (this would involve them in trouble and expense) merely to prove that the legal estate has not passed to some other local authority.

For the above reasons I am satisfied that the Applicant Council is the owner of all the land comprised in this Register Unit which is north of the line of the said fence.

As to question (iii) above mentioned:-

The land comprised in this Register Unit is in the Register described as follows:- "The piece of land known as the Staithe ... as marked with a green verge line inside the boundary ... of the register map ..." The Register map shows the width of the land comprised in the Register Unit and width of the land south of it extending to dyke as bearing a proportion approximately 7 to 4; the 1974 plan shows the width of the land north of the line of the fence and the width of the land south of the fence as bearing a proportion of approximately 6 to 5. Accordingly if Mr. Tennant be correct in saying that the land known as the Staithe is only that north of the line of the said fence, the Register map is incorrect.

I have no jurisdiction on this reference to determine whether (a) the description in the Register should be considered as definitive and the map rejected or (b) the map should be considered as definitive and the description rejected. If the County Council as registration authority take the view that the map is incorrect (this is the view to which I incline), they have I think power under regulation 36 of the Commons Registration (General) Regulations 1966 to correct the "error" in the map. But I have no jurisdiction to direct them to do this.

In these circumstances I should I think so express the direction which I am bound under section 8 of the 1965 Act to give to them as registration authority that direction will be valid whether the true view to the extent of the land comprised in this Register Unit is in accordance with (a) above or in accordance with (b) above.

If it is in accordance with (b) above, then I must determine who is the owner of the part of the land comprised within this Register Unit which is south of the said fence. On the evidence given by the Anglian Water Company as outlined above, I am satisfied that they are the owners of this part.



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Accordingly I shall direct under section 8(2) of the 1965 Act the Norfolk County Council as registration authority to register Ormesby St. Margaret Parish Council as the owner of so much of the land comprised in this Register Unit as is north of the line, remnant of the post and wire fence which is delineated on the 1974 plan and to register the East Anglian Water Company as the owner of so much if any of the land comprised in this Register Unit as is south of the said line and I shall to my direction annex a copy of the 1974 plan.

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 22nd day of April 1974

a. a. Baden Fuller

Commons Commissioner