



COMMONS REGISTRATION ACT 1965

Reference No.45/U/14

In the Matter of Allotments in
Stripe Lane, Hartwith-cum-Winsley,
Ripon and Pateley Bridge R.D., Yorkshire.

DECISION

This reference relates to the question of the ownership of land known as Allotments, Stripe Lane, Hartwith-cum-Winsley, Ripon and Pateley Bridge Rural District, being land comprised in the Land Section of Register Unit No. V.G.26 in the Register of Town or Village Greens maintained by the West Riding 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 Hartwith-cum-Winsley Parish Council ("the Parish Council") and the Hartwith Parochial Church Council ("the P.C.C.") 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 Wakefield on 17th May 1972.

At the hearing the Parish Council was represented by the Clerk, Mr. C. Brown and the P.C.C. was represented by the Treasurer, Mr. J. L. Dawson.

The land comprises several narrow strips on both sides of a public highway which passes by St. Jude's Church, Hartwith. Their total area is about 3 acres, and they extend (so far as I can judge from the register map) along about 200 yards of the highway.

On behalf of the Parish Council, Mr. Brown during his evidence produced a copy of an Inclosure Award (including a map annexed to it) made on 9th January 1858 and apparently approved by the Inclosure Commissioners on the 12th January 1858. By this Award the valuer appointed under the Act awarded and set out:-

"One Public Carriage Road or Highway of the width of thirty three feet to be called the Hartwith and Ripley Road commencing at the point marked E on the said Map and extending thence to a point marked F on the said Map and terminating at the point marked J upon the said Map".

I identify the public carriageway so awarded and set out as including the public highway between the strips of land above mentioned (the way so awarded extends a considerable distance beyond to the north).

The award also contains the following further declaration:-

"AND I declare that I have set out and do hereby set out allot and award unto the Churchwardens and Overseers of the Poor of the said Township of Hartwith-cum-Winsley in the parish of Kirby Malzeard all that piece or parcel of land numbered 5 on the said Map containing three acres one rood and sixteen perches to be held by them and their successors in trust



-2-

as a place for Exercise and Recreation for the Inhabitants of the said Parish and Neighbourhood subject nevertheless to the rights of the Public to use as a Public Carriage Road such parts thereof as are hereinbefore set out for that purpose".

I identify the land so set out with the land which is the subject of this reference.

Mr. Brown claimed that under section 5 of the Local Government Act 1894 the Parish Council was owner of the land as successor in title of the Churchwardens and Overseers of the Poor. He said that the Parish Council had from time to time when the land became overgrown with brambles asked the County Council to treat it, which they did, and that the Post Office paid to the Parish Council a wayleave for a telegraph pole on the land. It was suggested to him by Mr. Dawson that there was a discrepancy between the areas given in the award (3a. 1r. 16p.), in the register (3a.) and on the register map (4.596a.); I agree with his answer that this discrepancy is explained by the possible inclusion in the larger figure, of the roadway, the metalled part of which is now in places only about 18 feet wide and of strips of land north of that which is the subject of this reference; the discrepancy does not, I think, cast any doubt on the identification which I made as above mentioned. Mr. Brown agreed with Mr. Dawson that the part of the land opposite and near the Church had been maintained by "the Church" for the last 10 or 14 years; and that four photographs of this part which showed that the grass was attractively and well maintained, correctly showed the present appearance but he said (disagreeing with Mr. Dawson) the making of the car park near the Church had been arranged by the Chairman of the Parish Council and not (as was suggested) by the Church.

On behalf of the P.C.C. Mr. Dawson claimed that the P.C.C. owned the whole of the land the subject of this reference. The P.C.C. were, he said, the successors of the Churchwardens and the land was "property connected with the affairs of the Church" and therefore section 5 of the Local Government Act 1894 had no application: he referred me particularly to subsection (c) of section 19 of the Act. I reject this claim because in my opinion it is based on a mistaken view of the effect of the declaration in the award quoted above and of the 1894 Act.

On behalf of the P.C.C. Mr. Dawson alternatively claimed that the P.C.C. owned the part of the land the subject of this reference which extended (on both sides of the road) from the old vicarage (marked "722" on the register map) on the north down to the point near the letter "e" in the word "Lane" on the register map. This claim was based on the proximity of this part of the land to St. Jude's Church and on the maintenance of it by those who used the Church and on it being therefore "property connected with the affairs of the Church" to the ownership of which the P.C.C. had under the Act succeeded the Churchwardens. I reject this alternative claim because in my opinion again it is based on a mistaken view of the effect of the declaration in the award above quoted and of the 1894 Act.

Finally Mr. Dawson requested me to adjourn the hearing so that he could obtain further evidence. He had made researches into the history of the





-3-

lands and buildings near St. Jude's Church which showed, so he told me, that such lands and buildings had been used for Church purposes for over 250 years. He indicated in a general way to me what he had discovered: he felt that if further researches were done he would be able to establish that the award made in 1858 was on a mistaken basis.

Mr. Dawson told me that the P.C.C. had no point on the copy award (including the copy map) produced to me not being true copies and agreed that there was no need to have an adjournment merely to enable the Parish Council to get the originals. As a general rule, the original award if relied on should, I think, be produced at the hearing; but bearing in mind that in the absence of any evidence at all I would under section 8(3) of the 1965 Act direct the registration authority to vest the land in the Parish Council I am of opinion that in deciding whether I should or should not be satisfied in this case as to the title of the Parish Council, I can properly act on the copy award produced by the Parish Council because the P.C.C. has agreed that there is no need to produce the original.

I reject Mr. Dawson's request for an adjournment because in my view he did not show that there was any real probability that he could obtain any evidence which would impeach the validity of the award: by the Annual Inclosure Act 1852 (15 Vict. chap. 2) certain proposed inclosures (which expressly included that of Hartwith High Pastures in accordance with a provisional order dated 4th July 1851) were to be proceeded with. Mr. Dawson, I thought, disclosed no grounds for supposing that what the Act directed was not in due course effectively carried out by the 1858 award.

In my view the Parish Council has shown a 'good title to the land under the last mentioned Act, the award of the 13th January 1858, the 1894 Act and the acts of possession which (as above mentioned) Mr. Brown said had been done.

For these reasons I am satisfied that the Parish Council is the owner of the land and I shall accordingly direct the West Riding County Council as registration authority to register the Hartwith-cum-Winsley Parish Council as the owner of the land.

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.

A. A. Baxter Fuller

Dated this 12th day of June 1972

Commons Commissioner