



COMMONS REGISTRATION ACT 1965

Reference No: 268/U/325

In the Matter of One Acre Quarry,
Carlton Town, Hambleton District,
North Yorkshire

DECISION

This reference relates to the question of the ownership of land ("the Referred Land") known as One Acre Quarry, Carlton Town, Hambleton District being the part of the land comprised in the Land Section of Register Unit No. CL173 in the Register of Common Land maintained by the North Yorkshire (formerly North 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 Mr Alfred Suttill said (his Solicitors' letter of 7 December 1984) that the field known as Middle Rigg within which the One Acre Quarry is situated, belonged to him. No other person claimed to be the freehold owner of the land in question 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 Northallerton on 18 April 1985. At the hearing: (1) Carlton Town Parish Council were represented by Mr E W Collins, their chairman; and (2) Mr A Suttill was represented by Mr I C Scott, solicitor of Malcolm E Scott and Son, Solicitors of Leyburn.

The land in this Register Unit is in the Land Section described as: "All those pieces of land being waste land and also Little side, Mel Beck and One Acre Quarry as shown with a green verge line register map"; in the Ownership Section, Carlton Parish Council are registered as owner of all the land "other than One Acre Quarry and the small triangular area in the village". Consequential on a decision dated 21 June 1978 and made by the Chief Commons Commissioner some of the said pieces of land including "the small triangular area in the village" were removed from the Register. So in the result "One Acre Quarry" being the Referred Land is the only part of the land in this Register Unit of which no person is registered as the owner.

Mr E W Collins who now is and for the past 26 years has been chairman of the Parish Council, in the course of his oral evidence produced: an extract (PC/1) from the Carlton West Pasture & Carlton Moor in Carlton in Coverdale Enclosure Award dated 31 August 1815 and an extract (PC/2) from the Enclosure map (such extracts were certified by the County Archivist from the originals in the North Yorkshire County Record office). The relevant part of the Award is:-

"And I do further set out allot and award for the use of the said township of Carlton aforesaid all that piece or parcel of land situate within the said manor and township of Carlton in the parish of Coverham aforesaid containing one acre being within and forming part of the allotment hereinafter set out to the curate of the parish church of West Witton number 46 and bounded on all sides thereof except the south by the said allotment number 46



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and which said one acre is more particularly delineated and described in that part of the plan which describes the allotment number 46 and I order and direct that this allotment shall for ever hereafter be appropriated for the purpose of erecting kilns thereon to be used in burning or making lime and also for the purpose of getting limestone thereout. Nevertheless I direct and award that the quantity of this allotment shall remain with and be deemed and considered as part of the said allotment number 46 and that the herbage arising growing renewing or increasing from upon or out of the said one acre shall for ever hereafter belong to and be the exclusive property of the owner for the time being of such allotment number 46".

Mr Collins said (in effect):- The Referred Land has not been operated as a quarry for many years; he knew of nobody in the village who had ever taken limestone from it. There is nothing on the Referred Land to show that anybody has ever taken any stone from it. As appears from the Enclosure map the South Boundary of the Referred Land is Howden Gill which flows from the west to join the River Cover on the east. The road marked on the map leading from the village through the Referred Land is known as Howden Gill Lane; it is used by persons who farm the land surrounding the Referred Land and by persons coming out to enjoy a walk; nobody uses it to go to the Referred Land particularly; that the Lane leads to the land specified in the above quoted allotment is not apparent at all.

Mr I C Scott in the course of his oral evidence produced: Epitome of title (AS/1) with which is: (1) a certified copy of a vesting deed dated 10 November 1926 by which Hugh Maughan and Clervaux Alexander Chaytor declared that the hereditaments described in the Schedule and coloured pink on the plan annexed were then vested in Amy Williams upon the trusts of the will of Thomas Topham (he died 26 August 1887) and the Schedule included Town Head Farm (423a.3r.2lp.) including "22: West Witton Allotment: 7a.lr.2lp."; (2) an examined copy of a vesting assent and a deed of appointment dated 11 December 1970 which recited a probate granted on 19 April 1948 of the will of the said Amy Williams (she died 2 February 1948) granted to Stafford Hubert Ferrand and Sybil Margaret Craik and her death; and (3) a conveyance dated 4 December 1981 (original produced) by Robert Stafford Ferrand to Alfred Suttill of Town Head Farm and lands described under 5 headings including "fifthly ... Middle Rigg ... (containing 14a.lr.2lp. edged black on the plan number 2 ... formerly described with reference to the said 1926 vesting deed as West Witton Allotment 7a.lr.2lp. and Middle Redcar 7.a ... subject to the registration in Unit number CL173 ...".

Mr Scott conceded on behalf of Mr Suttill that the minerals were severed by the Award into separate ownerships and that accordingly the Parish Council could properly apply for a note to be made on the Register in accordance with regulation 24 of the Commons Registration (General) Regulations 1966.

As to the gap in the paper title produced, after a short adjournment Mr Scott produced a certified copy of the probate dated 16 July 1975 of the will of Stafford Hubert Ferrand (he died 15 March 1975) granted to David Francis Farrand and Roger William Ferrand and an assent dated 1 January 1976 by them in favour of Robert Stafford Ferrand.



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In the context of the Commons Registrations Act 1965 section 22(2) which defines "ownership" as meaning "ownership of a legal estate in fee simple", the above quoted allotment is obscure: either (1) the minerals passed to the person who in 1815 should hold the land on behalf of the township and the surface pass to the curate, or (2) the land (surface and minerals) passed to the said person leaving the curate with a right of herbage and no more, or (3) the division between the township and the curate was in some other way. I have looked at the Coverham township of Carlton Inclosure Act 1808 (48 Geo 3. c.27) under which I suppose the 1815 Award was made and find nothing in it giving guidance. In my opinion, the ownership position as it would in 1815 have been adjudged is not necessarily decisive of what it is now; the documents produced by Mr Scott are relevant. The plan attached to the 1926 vesting deed marks "Old Limekiln" on the Unit Land, suggesting that those entitled to the stone had some surface rights; nevertheless under such documents the surface is treated as passing with the "allotment number 46" from Alfred Topham to Amy Williams and on her death through Messrs Ferrand to Mr Suttill. Whatever may in 1815 have been the true meaning of the allotment, I conclude from the modern documents that under some arrangement now forgotten the ownership is as Mr Scott and Mr Collins agreed, as to the surface in Mr Suttill and as to the minerals in the Parish Council as the person by law entitled to any land possessed as parish property within the popular meaning of these words.

As to the registration of the ownership of the Parish Council from the said regulation 24 I infer that the Ownership Section does not include minerals, unless expressly mentioned, the owner of them being protected in the Register by a "notice" as provided by the regulation. Nevertheless having regard to what was said at the hearing, there should in the Ownership Section against any registered ownership of Mr Suttill be some mention of the minerals and of the possible use of the surface for the purpose of erecting kilns thereon ... On the above considerations I am satisfied that Mr Suthill is the owner of the Referred Land and I shall accordingly pursuant to section 8(2) of the Act of 1965 direct the North Yorkshire County Council as registration authority, to register Mr Alfred Suttill of Coverlea, Carlton, Leyburn of the owner of surface of the Referred Land except the minerals and subject to it being used under the Carlton West Pasture and Carlton Moor Inclosure Award dated 31 August 1815 for the purpose of erecting kilns thereon to be used in burning or making lime and also for the purpose of getting limestone thereout. I shall upon the same consideration give no direction to the registration authority as regards the Parish Council ownership of the minerals leaving them to proceed under the said regulation 24.

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 3rd day of June — 1985.

a. a. Baden Fuller

Commons Commissioner