



COMMONS REGISTRATION ACT 1965

Reference No. 45/U/210

In the Matter of Sand Holes, Hirst
Courtney, Selby R.D., Yorkshire
West Riding

DECISION

This reference relates to the question of the ownership of land known as Sand Holes, Hirst Courtney, Selby Rural District being the land comprised in the Land Section of Register Unit No. CL.490 in the Register of Common Land 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 Hirst Courtney Parish claimed to be granted ownership of the land in question and no other person claimed to be the freehold owner of the land 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 Wakefield on 6 February 1974. The hearing was attended by Mr. J. H. Ormisher, clerk of, and by Mr. W. Denby, chairman of the Hirst Courtney Parish Meeting.

Mr. Ormisher handed me a statement signed by himself, Mr. Denby and 5 others who had been resident for various periods between 26 and 80 years that "The Sand Holes ... are not in the occupation of any person and are not owned by any person. We also state that during the period of residence by us in the Village these areas have never been used or occupied by any person".

The claim of the Parish to be granted ownership was in a letter dated 5 October 1973 from Mr. Ormisher in which he said:- "One of the Sand holes has been filled in and levelled off and it is proposed to make the area available as a play area for the village children. A Committee has been formed to organize this project and they are anxious to go ahead and provide facilities ... so that plans with the play area may proceed to the great advantage of the village children who at the moment have only the roads available which with ever increasing traffic is to say the least, rather dangerous ..."

The land comprised in this Register Unit is two pieces. One ("the West Piece"): forming according to the Register map the greater part of O.S. No. 89 containing .508 of an acre) is approximately square, is on the Temple Hirst (west) side of the Village, and is bounded on the north by the road from Carlton to Chapel Haddlesey which runs from east to west through the Villages of Hurst Courtney and Temple Hirst. The other ("the East Piece": forming according to the Register map the greater part of O.S. No. 42 containing .427 of an acre) is also approximately square, is on the east side of the Village of Hurst Courtney and bounded on the north by the same road.

Mr. Denby who was born in the Village 75 years ago, has lived there ever since (he farms the land surrounding the West Piece), and has been chairman of the Parish Meeting



For about 20 years (his father before him) gave evidence. All his life the West Piece has been a ground on which people have dumped rubbish; when he was a boy it was water, about 8 or 10 feet deep, appearing to be a worked out clay and sand pit (the clay is about 4 feet down under the sand); about 12 months ago the Parish Meeting decided that it should be filled up; local builders in the Village were invited to deposit their rubbish there and the Selby Rural District Council invited local builders in the District to do the same; in the result it was filled up very quickly, grass has started to grow but as yet there is not top soil; a local committee has been formed as stated by Mr. Ormisher in his above quoted letter. The East Piece when he was a boy looked much the same as the West Piece, although the East Piece is smaller and at a slightly lower level; it is now much the same as it was when he was a boy, but the present intention of the Parish Meeting is to fill it up and improve it as they have the West Piece.

After an adjournment, Mr. Pickersgill who was attending as representing the County Council as registration authority, produced from the West Riding Deeds Registry a book containing the Inclosure Award dated 30 June 1801 made for the township of Hirst Courtney in the parish of Birkin, made under the Birkin Inclosure Act 1799 (39 Geo. 3 c.lxiii). The Award contained an allotment in these words:- I do direct and appoint that there shall be the following common pits for getting Sand Gravel and Stones for repairing the Highways and private Roads within the said township of Hirst Courtney that is to say I do set out assign and allot two Roods of Land being part of West Field to the inhabitants for the time being within the said township of Hirst Courtney for the purpose of getting Sand, Stone, Gravel and other Materials to be applied in or towards the repairing and maintaining of the said several public and private Roads and Ways within the said Manor and Township of Hirst Courtney aforesaid bounded ... Temple Hirst Road on or towards the North the Road leading to the said Nathaniel Fowler; Buys allotment on or towards the West ... And I Do order and direct and appoint that the Surveyor or Surveyors of the Highways within the said Township of Hirst Courtney or his or their Successor or Successors for the time being shall for ever hereafter maintain the fence on the north side thereof against Temple Hirst road and on the west side thereof against the Road leading to the said Nathaniel Fowler's allotment in the Buys, And I Do further set out assign and allot two other Roods of Land being part of an ancient inclosure called Badger hills to the said Inhabitants for the time being within the said Township of Hirst Courtney for the purpose of getting Sand, Stone, Gravel and other Materials to be applied in or towards the repairing and maintaining of the said Public and private Roads within the said Manor or Township of Hirst Courtney aforesaid bounded by a Road set out for the use of and herein awarded to the said Charles Weddall on or towards the east ... the Road leading from Hirst Courtney aforesaid to Carlton on or towards the North ... And I Do hereby order direct and appoint that the Surveyor or Surveyors of the Highways within the said Township of Hirst Courtney or his or their Successor or Successors for the time being shall for ever hereafter maintain the fences and ditches on the east north and south sides thereof ..."

From the Award map kept within the book produced from the Deeds Registry, I was able to identify the West Piece with the land allotted by the first of the above quoted allotments (on the Award map called "Sand pit"); the West Piece appears to include the adjoining part of "the Road leading to Nathaniel Fowler's allotment in the Buys" and to identify the East Piece with the land allotted by the second of the above quoted allotments (on the Award map called "Sand"; the East Piece appears to include the adjoining part of "the road set out for the use of ... Charles Weddall".



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By the 1799 Act it is "Enacted That the said Commissioner shall and he is hereby empowered and required ... (to set out watering places) ...; and the said Commissioner shall also set out, allot and appoint such Parcel or Parcels of Land in and upon some Part of the Lands or Grounds in the said Township, as he shall think proper, to be used as common Pits for getting Sand, Gravel, Stones, and other Materials for making and repairing the public Roads and Ways and also such other public and private Ways, Roads, Bridges and Fences as shall be set out and appointed as herein is directed within the said Township And ... Enacted That the soil of the ... common Pits for getting Sand, Gravel, Stones and other Materials as herein provided shall be vested in the Lord of the said Manor (of Hirst Courtney) for the Time being; and the Grass and Herbage ... which shall be set out for ... common Pits as aforesaid shall be vested in the Surveyor or Surveyors of the Highways of the said Township for the Timebeing in Trust to let the same Annually on Easter Monday to the best Bidder ... for mowing or for depasturing Cattle, and such Surveyor or Surveyors shall apply the Rents and profits thereof in the Reparation of the public Roads and Ways within the said Township ..."

Having regard to the words above quoted from the 1799 Act, I cannot construe the 1801 Award as vesting the Unit Land in the Township or in the Surveyors of the Highways or in the churchwardens and overseers of the Township for a legal estate in fee simple; the words of the Act by which the Unit Land was then vested in the Lord of the Manor are too plain.

But, coupling together the fact that the Unit Land has ever since Mr. Denby can remember been used by the inhabitants of the Parish as a rubbish dump and the fact that the Parish Meeting has (although very recently) been able with considerable publicity to deal with the West Piece in a manner quite inconsistent with the soil rights by the 1799 Act granted to the Lord of the Manor, I conclude that the Parish has during Mr. Denby's lifetime been in possession of both the West Piece and the East Piece, to the exclusion of the persons who could claim under the 1801 Lord of the Manor. In accordance with the principles established (although the facts were different) in Smith v Stocks and Thew v Wingate (1869) 10 B. & S. 701 and 714, I find that the title of those claiming under the 1801 Lord of the Manor has been extinguished by the Limitation Act 1939 and that the Parish is now the owner. I can think from the absence in these proceedings of any claim either by the County Council or by the Rural District Council assume that they do not by reason of the above quoted provision of the 1799 Act relating to herbage claim ownership.

For the above reasons, I am satisfied that the Unit Land is owned by the Parish of Hirst Courtney and I shall accordingly (in accordance with the Local Government Act 1933 Section 47) direct the West Riding County Council to register the Representative Body of Hirst Courtney as the owner of the land under section 8 (2) 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 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 8th day of March 1974.

a. a. Baden Fuller