



COMMONS REGISTRATION ACT 1965

Reference Nos 44/D/23
44/D/24
44/D/25
44/D/26
44/D/27
44/D/28
44/D/29
44/D/30
44/D/31

In the Matter of the Green,
Skeebly near Richmond
Richmond R.D., Yorkshire

DECISION

One of these disputes (D/23) relates to a registration at Entry No 1 in the Land Section and the eight other of these disputes, to registrations in the Ownership Section of Register Unit No VG.15 in the Register of Town or Village Green maintained by the North Riding County Council; they are occasioned by objections and conflicting registrations as follows:-

| <u>Ref No</u> | <u>Entry</u> | <u>Occasion of Dispute</u> |
|---------------|---|--|
| D/23 | Land entry of all as a town or village green | Objection No.071 by Major Arthur Duncan Gregory and Mrs Helen Mary Gregory |
| D/24 | Ownership entry No 5 Mrs Alice Eleanor Garforth of part | Objection No.018 by Skeebly Parish Council |
| D/25 | Ownership entry No 1 Skeebly Parish Council of all except part | The said objection by Major & Mrs Gregory |
| D/26 | Ownership said entry No 1 | Conflicting registration at Ownership entry No 2 Mr Robert Sowerby of part |
| D/27 | Ownership said entry No 2 | Conflicting registration at said entry No 1 |
| D/28 | Ownership entry No 3 Mrs Ivy Annie Mary Glover of part | Conflicting registration at said entry No 1 |
| D/29 | Ownership said entry No 1 | Conflicting registration at said entry No 3 |
| D/30 | Ownership entry No 4 Mr Ralph Whitell Waggett and Mr David Hedley Waldie | Conflicting registration at said entry No 1 |
| D/31 | Ownership said entry No 1 | Conflicting registration at said entry No 4 |



I held a hearing for the purpose of inquiring into these disputes at Richmond on 23, 24, and 25 January 1973. The hearing was attended by (1) and (2) Major & Mrs Gregory; (3) Mr John Henry Carter (the personal representative of Mrs Garforth; she died on 22 October 1972) and (4) Mr Sowerby who were all four represented by Mr R W Waggett (being one of the owners mentioned in the said entry No 4) solicitor of Hunton & Garget, Solicitors of Richmond; by (5) Mrs Glover who was represented by Mr R W Hinks solicitor of Latimer Hinks Marsham & Little, Solicitors of Darlington; by (6) Mr Waggett in person; by (7) Mr Waldie who was represented by Mr Waggett; and by (8) Skeeby Parish Council who were represented by Mr A J Smith, their clerk. With the agreement of all those attending, I heard all these disputes together.

The land ("the Unit Land") comprised in the Land Section of this Register Unit is in four pieces. One piece ("the Largest Piece") is a long strip running nearly the whole length of the Village (or what the Village used to be before the newly built houses were erected) being bounded on the north for the most part by the metalled carriageway ("the Main Roadway") of the main road from Richmond to Darlington which passes through the Village and for the remaining part by the west, south and east sides of a building known as "Church Cottage" and bounded on the south by the front walls of the dwelling houses, of the other buildings and of the enclosures fronting on the strip. Another piece ("the North-East Piece") is a much shorter strip on the other side of the Main Roadway and opposite Church Cottage and the east part of the Largest Piece. The two other pieces are much smaller than the Largest Piece (one is situate north of the Main Roadway between The Wynd and Linden Road and the other east of the Largest Piece south of the Main Roadway beyond the Church) and are not the subject of any of these disputes.

The grounds of objection of Major & Mrs Gregory were as follows:- "1. Part of the land registered, namely the part shown coloured red on the attached Plan, does not form part of the Village Green. There are no recreational Rights over it. 2. The land coloured red on the plan does not belong to the Skeeby Parish Council". The land ("the First Appendix Land") coloured red on the said plan is described in the First Appendix hereto.

The part of the Unit Land of which the Parish Council is provisionally registered as owner (entry No 1) is the whole of the Unit Land except the Church Cottage Strip below mentioned.

The part ("the Laurels Piece") of the Unit Land of which Mr Sowerby is provisionally registered as owner (entry No 2) is the part of the Largest Piece between the front wall of the dwelling house and garden known as "The Laurels" No 42 Richmond Road and the Main Roadway.

The part ("the Ivy Cottage Piece") of the Unit Land of which Mrs Glover is provisionally registered as owner (entry No 3) is the part of the Largest Piece between the front wall of four dwelling houses (all substantially one building) known as, "Greystones", "Ivy Cottage", "Holmleigh" and "Stoneleigh" and the Main Roadway.

The part ("the Bungalow Piece") of the Unit Land of which Mr Waggett and Mr Waldie are provisionally registered as owners (entry No 4) is the eastern part (except the site of so much of the stream as does not run underground) of the North East Piece.

The part ("the Church Cottage Strip") of the Unit Land of which Mrs Garforth is provisionally registered as owner (entry No 5) is the part of the Largest Piece which is south of the south wall of the building known as Church Cottage, including the part which is south of part of a building now used as a garage and including also a small piece of land on which there now stands the south wall of the building which forms part of or is an extension of the garage. The grounds of objection of the Parish Council to this registration were: "The land in question is owned by the Parish Council.



and is coloured green on the attached plan"; the land so coloured differs from that registered on the application of Mrs Garforth in that the registration includes the land ("the Second Appendix Land") described in the Second Appendix hereto and possibly also some other land whose area is insignificant.

Evidence was given (1) by Mr J B Hutchinson (orally on behalf of the Parish Council; he is sixty years of age and has lived in the Village all his life); (2) by Mr F L York (orally on behalf of the Parish Council; he is 56 years of age, is and has for the last ten years been a member of the Parish Council, is and has been for the last five years a member of the Richmond Rural District Council and has lived in the village for 45 years); (3) by Major Gregory (orally on behalf of himself and Mrs Gregory); (4) by Mr R Sowerby (an affidavit sworn on 22 January 1973 on behalf of Major Gregory and an affidavit sworn on 17 January 1973 on behalf of himself); (5) by Mr M Collin (orally on behalf of Mr Waggett and Mr Waldie who are the personal representatives of Mr W Collin who died on 8 June 1966); (6) by Mrs M J Collin (affidavit sworn on 22 January 1973 on behalf of Mr Waggett and Mr Waldie); (7) by Mr D J Brunton (orally on behalf of Mr Carter; Mr Brunton is a nephew of Mrs Garforth and for many years has been tenant of Church Cottage); (8) by Mr Waggett (orally on behalf of those he represented and himself); (9) by Mrs Glover (orally; she resides at Ivy Cottage and is the owner of it and of Greystones, Holmleigh and Stoneleigh); and (10) by Mrs S R Collin (orally; she offered to clear up a point of local history that had arisen). A copy of the Ordnance Survey map for 1857 was agreed.

I inspected the land between the first and second day of the hearing and again after the third and last day of the hearing. It was agreed that I should do this unattended.

The Objection of Major & Mrs Gregory

The Parish Council after the position had been discussed at a well advertised Parish Meeting, applied to have the Unit Land registered as a town or village green because (so Mr Smith stated) the inhabitants at large had always been able to use it for recreation and enjoyment without restriction; in effect claiming (as I understood the case put by Mr Smith, bearing in mind that he told me that he had no legal qualifications) that the inhabitants of the Village of Skeeby had on the Unit Land a customary right to indulge in lawful sports and pastimes within the definition in section 22 of the Act of 1965.

The First Appendix Land is for the most part a concrete apron or paving in front of the House No 44, where Major & Mrs Gregory now reside, is for most of the remainder some steps leading from the apron down to a small enclosed part of their land (the front walls were at one time of a building held with the dwelling house) and is for the remainder (a very small piece) grass land surrounded on three sides by the enclosure the steps and the apron. From Mr Sowerby's affidavit of 22 January 1973 and the written statement which Major Gregory put in as part of his oral evidence, I conclude that the concrete apron had been there as it now is for more than 20 years.

Mr Waggett produced a conveyance dated 25 March 1946 by which Mr R H W Jaques conveyed the house (No 44) to Mr T Brown, an examined abstract showing his death and a grant to his estate to Mr O J Brown and a conveyance dated 30 January 1970 by which Mr O J Brown conveyed the house to Major & Mrs Gregory. The plan on these conveyances did not include the First Appendix Land.

On the assumption (being that most favourable to the Parish Council) that the Unit Land comprises or included a substantial area of land on which the inhabitants have a customary right to indulge in lawful sports and pastimes, and that such piece of land abutts on the First Appendix Land, I conclude from the evidence as outlined above



and from what I saw on my inspection that the First Appendix Land does not belong to or form part of such piece of land. There being no evidence upon which I could find that the First Appendix Land considered by itself is subject to any such customary right, it follows that the Unit Land as far as it relates to the First Appendix Land is not properly registerable as a town or village green.

Mr Waggett submitted that I should go further and refuse to confirm the registration altogether (not merely modify it by excluding the First Appendix Land). Neither from the grounds of their objection nor from any of the evidence before me can I find that Major & Mrs Gregory have any proprietary, financial or other interest in contending that any other part of the Unit Land is not properly registerable as a town or village green. I construe their grounds of objection as limited to the First Appendix Land. So far as regulation 26 of the Commons Commissioners Regulations 1971 is applicable, it would I think not be just in all the circumstances to allow Major & Mrs Gregory to put forward as an additional ground of objection that no part of the Unit Land is properly registerable as a town or village green.

The Ownership Claim of Mrs Glover

At entry No 3, Mrs Glover is registered provisionally as owner of the Ivy Cottage Piece without qualification; her claim at the hearing was as personal representative of her husband Mr J J Glover who died on 6 April 1965 and whose will she proved on 14 May 1965.

His title to the cottages now known as Greystones and Ivy Cottage commenced with an indenture dated 7 August 1841 by which these cottages were conveyed by Miss E James to Mr W Glover (his grandfather) by the following description:- "ALL that cottage... recently erected and built with a garden or piece of ground behind the same containing ... bounding on the West and South on a Garth or piece of ground now late belonging to William Readhead in the possession of Mr Harrison on the North on the Town Street of Skeeby aforesaid and on the East on a house and garden now or late belonging to Lillian Emerson in possession of William Pattison ...". This title continued with the probate of the will of Mr T Glover (he died on 8 May 1919; he was the only son of Mr W Glover father of Mr J J Glover) and an assent dated 18 December 1939 in favour of Mr J J Glover.

His title to the cottages now known as Holmleigh and Stoneleigh commenced with a conveyance dated 20 October 1915 by which these cottages were conveyed by Miss F Wallace to Mr T Glover by the following description:- "ALL THOSE two cottages or dwelling house with the gardens outbuildings and appurtenances belonging thereto situate ... WHICH said hereditaments are bounded on the North by the Main Road on the West by other property of the said Thomas Glover and on the East and South by property belonging to Leonard Jaques Esquire". The title continued with a conveyance dated 3 July 1948 by Mr T Glover to Mr J J Glover.

It was argued that the 1841 indenture and the 1915 conveyance showed that the Ivy Cottage Piece was included in the land acquired under the above two titles because the above quoted words showed that the land conveyed was bounded on the north by "the Town Street" and by "the Main Road", meaning the strip of land which is now metalled and which I am in this decision calling the Main Roadway. I reject this argument for the following reasons.



From the 1857 map and from the three postcard photographs produced by Mr York (all apparently taken before 1914 and showing the village as he knew it when he first remembered it, in the early 1920's), I infer that in 1841 and 1915 the Largest Piece was much as it appears in the photographs, rough grass and bare ground, that the macadamed road was then in much the same position as the Main Roadway, and that the walls of the houses and other enclosures on the south were much on the same line as now. Mrs Glover and Mrs S R Collin had never heard of anyone in the village using the expression "the Town Street" with reference to the Main Roadway, although some older inhabitants refer to "the Street". I am not persuaded by the evidence of Mrs S R Collin as to the possible history of this old road and its connection with the old Roman road to Piercebridge, that the expression "Town Street" in this locality in 1841 could not sensibly be understood as including the rough grass and bare ground to the south of the Main Roadway.

I am concerned first to determine what the words "Town Street" as used in the 1841 indenture would have meant to a person who read it in 1841. Such a person if he read the expression as meaning no more than the macadamed road would be doing violence to the rest of the description in three ways; he would be reading the words "garden or piece of ground behind the same" as including a piece of ground in front of the same, he would be reading the words "garth or piece of ground" as including something which could not possibly be described as a garth, and he would be reading words "house and garden" as including something which could not possibly be so described; if he read Town Street as meaning the whole area comprising what is now the Main Roadway and the Unit Land he would I think be using words not inappropriately; the words "street" in a legal document is capable of a variety of meanings (as appears from Legal Dictionaries); Skeeby was part of the Parish of Easby; and was therefore in accordance with usage then current properly described as a "town" or "township".

I am next concerned to determine what the words "Main Road" as used in the 1915 conveyance would have meant to a person who read it in 1915. Having regard to the appearance of the Village as shown in the postcard photographs and my conclusion that the "property of the said Thomas Glover" did not in 1915 include by virtue of the 1841 indenture part of the Ivy Cottage Piece, I am unable to read the words "gardens outbuildings and appertunances" in the 1915 conveyance as including the remaining part of the Ivy Cottage Piece; I conclude that the words "the Main Road were used in this conveyance with the same meaning as were used the words "the Town Street" in the 1841 indenture.

It was argued in the alternative that Mrs Glover had a possessory title to the whole or some part of the Ivy Cottage Piece. For the purpose of exposition it is convenient to divide the Piece into three parts; (i) the tarmacadamed ten foot strip ("the Second Appendix Land") described in the Second Appendix hereto which was at the cost of Mr Glover in 1949 tarmacadamed; (ii) the grassland between the Second Appendix Land and the Main Roadway and (iii) the roughly made up land between (i) and (ii).

As to (ii): Mrs Glover had placed white stones on the grassland to discourage persons from driving or parking motor vehicles over or on it; these stones have recently been rearranged to suit the convenience of her neighbour Mr Sowerby. She kept the grass tidy so far as necessary. On the assumption that the Ivy Cottage Piece was not subject to any customary or other rights vested in the inhabitants of the Village or any other section of the public, she did not I think by these activities take possession of the grassland; on this assumption the obvious way of taking possession would be to fence it in in some way and this neither she nor Mr J J Glover ever did. Mrs Glover who gave her evidence with great candour realised that by reason of rights of the villagers



(she could not explain exactly what they were, but they included a right at least to walk across) she could not properly take possession of the Ivy Cottage Piece by erecting a fence all round it: and she said that for reasons personal to herself (she was responsible for an ambulance which had to leave at times in front of her cottage and she liked the open appearance) she did not wish to do so. There is no reason in law why a person should not acquire possessory title over land over which inhabitants of a village have a customary right of indulging in sports and pastimes (this I think follows from Haigh v West 1893 2 Q B 19), but on the assumption that the true owner of the land held it subject to the obligation to leave it open so that such a right could be exercised, the activities of Mr J J Glover and Mrs Glover never in my opinion amounted to taking possession of the grass land.

As to (i):- In my opinion Mr J J Glover and Mrs Glover as his successor did take possession of the tarmacadam strip, because their use of it was personal to them and inconsistent with its ^{ownership} by any other person. It is reasonably certain that this possession could not be disturbed and I conclude she has established a possessory title to the Second Appendix Land.

As to (iii), the considerations are I think evenly balanced. However having looked at the land my conclusion is that Mrs Glover did not take possession.

I conclude therefore that Mrs Glover is properly registered as owner of the Second Appendix Land but not properly registered as owner of the remaining part of the Ivy Cottage Piece.

The Ownership Claim of Messrs Waggett & Waldie

At entry No 4, Messrs Waggett & Waldie are registered provisionally as owners of the Bungalow Piece. I have for the purposes of exposition so called it because Mr M Collin resides with his wife and two sons in an adjacent bungalow.

Messrs Waggett & Waldie have no personal interest in this matter being concerned only as executors of Mr W Collin who died on 8 June 1966 and who left his widow Mrs M J Collin and his son Mr M Collin. Mr W Collin owned the farmland which adjoins the Bungalow Piece on the North; an abstract of his title was produced from which it appeared that he claimed under an assent dated 30 March 1948 made in his favour by the executors of the will of his father Mr J Collin who died on 23 May 1947 and that by a conveyance dated 14 February 1920 the said farmland (therein described as containing 6.803 acres) was conveyed by Mr R H W Jaques with the concurrence of his trustees to Mr J Collin.

The 1920 conveyance did not include the Bungalow Piece and Mr Waggett made it clear that this ownership claim is based on possession. Mrs M J Collin in her affidavit said in effect that since 1932 Mr J Collin and subsequently Mr W Collin maintained the Bungalow Piece and that it is now being maintained by Mr M Collin and that they had cleared the stream of weeds. Mr Collin in a written statement which he handed to me as part of his evidence relied on his grandfather, his father and himself having maintained and kept tidy the Bungalow Piece, having cleared out the stream, on his having driven as a small boy cattle across the Bungalow Piece from land owned by his father at the western end of the Village, the cattle grazing there, on his grandfather having built an additional roadway for threshing machines (so there is now double access) and on his father giving permission for the Womens Institute 15 years ago to plant daffodils there.

The affidavit and written statement were prepared on the basis that the Bungalow Piece could not be in the ownership of the Parish Council and could never have been part of a village green. Mr M Collin gave oral evidence on the same basis. But he was



unable to give any reason why neither he nor his father nor his grandfather had ever enclosed the bungalow piece by fencing it off from the Main Roadway. The fence separating the Bungalow Piece from the farmland on the north appeared to have been erected in the last few years, and it would have been easy if ownership was claimed to have erected it on the south side. There is a railing between the stream and the Main Roadway; this protects passers by from driving or walking into the Stream and has no inclosing effect. The planting in 1937 of a tree to commemorate the coronation of H M King George VI is an indication that the Bungalow Piece was not then owned by Mr J Collin. In his old age he used to rattle his walking stick at children who came from the nearby school to play on the Bungalow Piece; but I do not regard this activity or any of the other activities described in the affidavit and the written statement as amounting to a continuing claim of ownership publicly made or as establishing possession. Before the discussion in the village of the effect of the 1965 Act, the question whether these activities amounted in law to acts of ownership was not I think ever considered. They can I think be ascribed to a right of way from the Main Roadway across the Bungalow Piece to and from the farmlands on the north or can be regarded as activities unobjectionable to the true owner because they did no harm or because they were for the general benefit of the Village, being no more than a fair contribution, having regard to the extent of the frontage of the adjoining farmlands owned by Mr J Collin and his successors in title.

Whether these activities are regarded on the basis on which the affidavit and written statement were prepared or on the basis (more accurate I think) that the Bungalow Piece was in law subject to a customary right as claimed by the Parish Council, in my opinion neither Messrs Waldie & Waggett nor any of their predecessors in title nor Mr M J Collin and Mr M Collin as their beneficiaries have ever been in possession of the Bungalow Piece, and I accordingly conclude that they have not established any possessory title as they claimed.

The Ownership Claim of Mr Carter

At entry No 5 Mrs Garforth is registered provisionally as the owner of the Church Cottage Strip. Mr Carter attends these proceedings as her personal representative.

By an indenture dated 7 February 1920 Mr R H W Jacques and his trustees conveyed to Mr W H Garforth land by this description:- "First ALL that dwelling house... (formerly in two cottages) with the outbuildings thereto belonging situate in the Middle Row, Skeeby aforesaid bounded on the North by Middle Row aforesaid on the South by a street called South Row on the East by a piece of vacant ground and on the West by premises belonging to the Vendor and secondly ALL that plot ... situate on the southerly side of the hereditaments hereinbefore described and bounded on the Northerly side by South Row aforesaid on the Southerly and Westerly side by ... and on the Easterly side by ...". Mr W H Garforth died on 8 April 1963 and Mrs Garforth as his personal representative and the only person entitled by an assent dated 19 August 1963 assented to the cottage and premises known as Church Cottage vesting in herself. The land by the 1920 indenture first conveyed is (with the possible exception of the garage extension below mentioned) the same as what is now known as Church Cottage; Middle Row is the same as Church Cottage Strip; the land secondly conveyed by the 1920 conveyance is a small enclosure with out-buildings on the other side of the Church Cottage Strip and held and occupied with Church Cottage.

Mr Waggett who in his evidence proved the title as outlined above, said that Mr Carter's claim was based on possession. In support of this basis he relied on the evidence of Mr Brunton.



The Church Cottage Strip is grassland much worn down by the passage of vehicles (probably light motor vehicles) over it. It is bounded on the east by hard ground which provides access to it from the Main Roadway; of this hard ground the Parish Council are provisionally registered as owners. There is no apparent boundary on the west, the grassland there joining up evenly with the rest of the grassland forming the Largest Piece.

Clearly if Mr Carter is the owner of the Church Cottage Strip it would be a great advantage to him and to Mr Brunton as his tenant; if inhabitants of the Village or members of the public can walk or drive across or otherwise use the Church Cottage Strip or it is in the ownership of anyone other than Mr Carter, the occupier of Church Cottage would necessarily suffer substantial inconvenience and loss of amenity. Accordingly in this dispute between the Parish Council and Mr Carter there is much substance.

The Objection of the Parish Council is as therein expressed based on the ownership of the Parish Council. Whether or not the Parish Council own the Church Cottage Strip I consider it just in all the circumstances that their objection should be treated as made on the additional ground that Mrs Garforth had herself no possessory or other title to it, so that if the Parish Council are not now owners they can when a reference is made to a Commons Commissioner under section 8 of the 1965 Act, properly claim that a direction be made for their benefit under subsection (3). The hearing was conducted on this basis; if I had been asked I would have expressly allowed this under regulation 26 of the Commons Commissioners Regulations 1971.

Mr Brunton said that he had built on the piece of land ("the Third Appendix Land") specified in the Third Appendix hereto an extension to his garage as therein described. It was not disputed by the Parish Council that he had on behalf of Mr Carter at least to this extent taken possession of the Church Cottage Strip and that I should therefore confirm the registration of Mr Carter as owner at least to the extent of the Third Appendix Land.

The porch of the door into Church Cottage projects into the Church Cottage Strip. No mention of this was made at the hearing. Nevertheless I should I think record that as I contrive the Register, neither the porch nor the concrete apron near it, is comprised in the Land Section of this Register Unit.

Clearly the owner of Church Cottage has at least a private right of way on foot, from and to the porch to and from the Main Roadway. Whether or not this right includes vehicles, I infer that Mr Brunton drives his motor car along it as may be convenient. Mr Hutchinson said that all his life there had been free access for all to the Church Cottage Strip; obviously any person walking or riding or driving animals along the Main Roadway would for choice go along the Church Cottage Strip to avoid the metalled carriageway and Mr Hutchinson had seen this happen. He also said that fences at one time erected across Church Cottage Strip had been pulled down.

Mr Brunton who has been a tenant of Church Cottage for at least 14 years, in a written statement that he handed to me as part of his evidence said in effect that the Church Cottage Strip had been looked after by him exclusively and it has never during his tenancy been used by anyone else: however in his oral evidence he made it clear that to his annoyance and inconvenience many persons had walked and driven vehicles along it.

The electricity poles mentioned in his written statement are near the Main Roadway hard against the north-east and north-west corner of Church Cottage and not on the Church Cottage Strip; nor is the tarmac (or at least most of the tarmac) which he mentions as being at the East end. I ascribe his use of the Church Cottage Strip for



his motor car to a possible right of way (with which I am not concerned). Even assuming that neither the Parish Council nor anyone else other than Mr Brunton has ever done anything to maintain the Church Cottage Strip, his activities in cutting the grass and tidying up, have not made ~~the effect~~ of the western boundary of the Church Cottage Strip in any way distinctive and they do not I think amount altogether to anything of legal significance. Either on the basis that the Church Cottage Strip is not subject to any customary right as now claimed by the Parish Council or on the basis that it is subject to some such right, the activities of Mr Brunton did not in my opinion amount to taking possession of the Church Cottage Strip (apart from the Third Appendix Land).

The Ownership Claim of Mr Sowerby

At entry No 1, Mr Sowerby is registered provisionally as owner of the Laurels Piece.

Mr Sowerby is the owner of the dwelling house and garden known as the Laurels situate north of the Laurels Piece being entitled thereto (i) under an indenture dated 2 February 1920 by which Mr R H W Jacques with the concurrence of his trustees conveyed land to Mr G Sowerby (he died on 28 March 1953) and (ii) under an assent dated 14 May 1955 by his personal representatives in favour of Mr R Sowerby. By the 1920 indenture the land thereby conveyed is described as follows:- "ALL that dwelling house ... (formerly two cottages ...) with the outbuildings thereto belonging and also the garden adjoining the same ... all which said premises are ... bounded on or towards the north by the Town Street of Skeeby aforesaid, on or towards the South by part of a farm known as Hall Farm belonging to the Vendor ... on or towards the east by other property of the Vendor and on or towards the west by premises belonging to the trustees of the late Thomas Glover". The land comprised in the 1955 assent was therein described as "bounded on or towards the north by the Town Street".

I reject the argument that the land described in the 1920 indenture by express description included the Laurels Piece. On the evidence of Mr Hutchinson and the appearance of the village as shown in the postcard photographs, I consider that the Laurels Piece could not in 1920 be sensibly described as part of "the garden adjoining" the dwelling house conveyed or (for the reasons given above in connection with the claim of Mrs Glover) as bounded by "premises belonging to the Trustees of the late Thomas Glover. In this indenture, I construe the words "Town Street" as I have done ~~in~~ the same words in the 1841 indenture.

Mr Sowerby was unfortunately unable to travel so as to attend the hearing and give oral evidence. I therefore evaluate the evidence set out in his affidavit having regard to the oral evidence given by others particularly by Mrs Glover. So evaluated and bearing in mind what I saw of the Laurels Piece when I inspected the land, I conclude that Mr Sowerby has established a possessory title of the land ("the Fourth Appendix Land") described in the Fourth Appendix hereto, but not any title to the remainder of the Laurels Piece.

The Ownership Claim of the Parish Council

At entry No 1 ~~is~~ the Parish Council are registered provisionally as owners of the whole Unit Land except the Church Cottage Strip (more or less the same as the land in the 1920 indenture described as Low Row). Entries Nos 2 ~~and~~ 5 being in conflict are by regulation 7 of the Commons Commissioners Regulations 1971 to be treated as objections to Entry No 1.



The disputes so arising are in one respect unreal because if I refuse to confirm Entries Nos 2 to 5 any refusal by me to confirm Entry No 1 may effect the Parish Council very little; they will still have the chance, amounting practically to a certainty, that the whole of the Unit Land will be vested in them under section 8 of the 1965 Act. Notwithstanding this chance I must in these proceedings consider the ownership claim of the Parish Council as falling for determination wholly under section 6.

There was no evidence that the Parish Council had ever in their corporate capacity ever done anything particularly to the Ivy Cottage Piece or to the Laurels Piece or to the Church Cottage Piece, (except possibly the planting of a coronation tree) to the Bungalow Piece. Accordingly, to none of these four pieces of land, if they be regarded as separate from the Unit Land, have the Parish Council established any possessory title. In my view the Parish Council unless they are owners of the whole (or substantially the whole) of the Unit Land, with or without the Church Cottage Strip, are owners of none of it.

Mr Smith put the case of the Parish Council shortly as follows:- the Parish Council had no paper evidence of ownership; it relies solely on the habitual use by the people. By paper evidence Mr Smith clearly had in mind conveyances and documents of title commonly produced by individuals wishing to sell their land, and not to the documents below mentioned.

Habitual use by the people as far back as living memory extends was I think established by the evidence of Mr Hutchinson and Mr York. The former said that the whole of the Unit Land had been used as a village green and everybody had had unrestricted access to it over 50 years; the latter said he had always realised the land was common land; in the context in which they made these statements and notwithstanding Mr Hutchinson's statement that he could not say anything about ownership, they were I think not using the words "village green" and "common" in the ~~same~~ sense defined in the 1965 Act or as may be usual among lawyers but as intending to convey that the Unit Land had always been used in the most ample and comprehensive way in which land belonging to a parish, township or village in the popular sense of that expression can be used. The three postcard photographs produced by Mr York show I think the appearance of the village 10 or 20 years before he was born. The 1857 map shows the general appearance of the village to have been then much as now (apart from recent building). From the indentures of 1841 and 1920 I deduce ^{that} when they were made the Unit Land and the Main Roadway together could sensibly be described as "the Town Street". The Parish Council had arranged for the now existing car park next to the Travellers Rest Inn to be constructed and for the siting of the new Bus Shelter and had in 1954 granted the Northern Gas Board permission to lay a main along the Unit Land.

The relevant legal considerations applicable to ownership by a parish or township are I think as follows:- By section 17 of the Poor Relief Act 1819 (59 Geo. 3 chap 12) the Churchwardens and overseers of a parish were empowered to "accept take and hold in the nature of a body corporate for and on behalf of the parish all lands belonging to the parish". In Doe v Hiley (1830) 10 B & C 885, Lord Tenterden C J held that this section had the effect of vesting in the churchwardens and overseers all land belonging to a parish withstanding that the land was not acquired for purposes relating to the poor and not withstanding that such land might be vested in trustees (the mischief resulting from uncertainties as to how trusteeship had devolved being contemplated by the legislature). This decision has since been treated as applicable to all lands "belonging" to a parish in the "popular sense of that expression", see Doe v Terry (1835) 4 A & E 274 page 281 and Haigh v West 1893 2 Q B 19 at page 31; this last case although distinguished on the facts is recognised as stating law still





applicable in Wylde v Silver 1963 1 Ch 243 at page 271. It was said that Skeeby (at any rate until recently) was not a separate parish but was part of the parish of Easby; this does not I think prevent the cases cited being applicable because the 1809 Act is applicable to churchwardens and overseers of a township, see section 21 of the Poor Relief Act 1662 (13 & 14 Car 2 chap 12). Any land formerly vested in the churchwardens and overseers of Skeeby has now devolved on the Parish Council either under the Local Government Act 1894 sections 5 & 67 or under the Overseers Order 1927 (S R & O 1927 No 55) made under the Rating Act 1925; by section 68 (4) of the 1925 Act having regard to section 21 of the 1662 Act above quoted, the township of Skeeby is a "parish" within the meaning of the 1925 Act.

The considerations set out in the preceding paragraph show I think that the test I have to apply is whether I can find from as far back as any records produced to me go, that the Unit Land has always belonged to the parish or township of Skeeby in the popular sense of that expression.

There was nothing to suggest that this land was waste of a manor; the plan produced to me of the lotting of the land sold in 1920 by Mr R H W Jaques (a considerable area of the village) bears no indication of his being in any way concerned with a manor, or having any claim to ownership of any part of the Unit Land; indeed the deeds above referred to as far as they go negative any such claim. There was nothing to suggest that the Unit Land might belong to some land owner who had developed all the adjoining land and had retained the Unit Land as an amenity or because it never occurred to him to dispose of it. It was not suggested (in the circumstances rightly I think) that under any presumption of law, either that the Unit Land was part of the highway (Mrs Glover and Mr Brunton, whatever might be the rights of pedestrians, did not want vehicles of other persons to pass over the Unit Land) or that all the owners of land abutting on the Unit Land were entitled to so much of the Unit Land as extended from their frontage to the centre of the Main Roadway. Apart from the Parish Council I cannot imagine who could be the owner of the Unit Land. When I inspected the land it seemed to me that the description "Town Street" as applicable to the Unit Land and the Main Roadway including South Row was very apt, particularly if it were applied in or before the first twenty years of this century; the most striking feature of this Town Street is the conjunction of vehicular highway and stream, providing easy transport to the village and a plentiful source of water for men and animals living in or near or coming to the Village. Having in mind what I had read and been told at the hearing, on looking at the land I concluded that the Unit Land or the greater part of it had at least since the indenture of 1841 belonged to the parish or township in the popular sense of the expression. I reached this conclusion, not I think because I was unable to discover any other person to whom it might belong but because I cannot imagine how it could reasonably belong to anyone else.

Having no evidence upon which I could conclude that any of the outlying pieces of the Unit Land could be treated as separate from the greater part of it, I shall treat my conclusion to the ownership of the Parish Council as applicable to the whole of the Unit Land including Church Cottage Strip. There is no apparent boundary between the Church Cottage Strip and the remainder of the Unit Land on the west; there is no good reason for treating the Church Cottage Strip as a piece of land distinct or separate from the remainder of the Unit Land.

However I cannot I think in these proceedings properly modify the registration at Entry No 1 so as to include the Church Cottage Strip in the now registered ownership of the Parish Council; if I did this I would in effect be allowing the Parish Council merely because an objection had been made to their registration of most of the Unit Land, to register out of time their ownership of the remainder and thus avoid the procedure





set out in section 8 of the Act of 1965; such a course would I think be contrary to the Act. By not so modifying the registration I am I think not prejudicing any claim under subsections (2) or (3) which may be made by the Parish Council at the hearing of an inquiry held under section 8 of a reference relating to part of the Unit Land of which no person will after this decision be registered under section 4 as owner.

Is there a village green at Skeeby?

Mr Waggett requested me to make a finding of fact as to whether there was any village green in the Village; the objection of Major & Mrs Gregory that the First Appendix Land does not form part of a village green would he said be established if there is in fact no village green at all in Skeeby.

On the state of the Register summarised above, it is clear that none of those who attended the hearing with the possible exception of Major & Mrs Gregory could in these or any other proceedings before a Commons Commissioner claim that the whole or any part of the Unit Land is not properly registered as a town or village green. For the reasons given above, it is not I think open to Major & Mrs Gregory so to claim; but as I may be wrong as to these reasons, so in case these proceedings are taken on appeal to the High Court, I will make the finding requested.

From the evidence of Mr Hutchinson and Mr York I conclude that the Unit Land generally as long as they can remember has been open for access to the inhabitants of the Village without any obstruction, that up until the beginning of the 1939-45 war quoits had regularly been played there (generally on the Largest Piece near to or just to the west of Church Cottage), that there was a maypole on it a long time ago, and that until the recent opening of a recreation ground at the higher end of Linden Road, children regularly played there. From the postcard photographs, the 1857 Ordnance Survey map, the use of the words "Town Street" in the 1841 and 1920 indentures, and the general appearance and arrangement of the Village, I infer that the Unit Land or the greater part of it has been open for access to the inhabitants of the village for 100 years and upwards. A likely explanation of the non inclosure of the Unit Land is that there was some sort of law local to the area preventing for the benefit of the inhabitants any such inclosure. As already stated it was not suggested that any part of the Unit Land is highway and there was no evidence that it is or was manorial waste.

The evidence that the Unit Land had been used for the playing of quoits by adults and youths and for games by children may be slender. If such evidence had been controverted by a person who was the owner or in possession of the Unit Land, I should have had to consider whether in all the circumstances such sports and pastimes were as against the owner indulged in "as of right", having regard to the views expressed as to the meaning of these words in Beckett v Lyons 1967 1 Ch 449 at pages 468, 469 and at 475. But there is no such controversy; it is unlikely that the churchwardens and overseers or the Parish Council as their successors would ever consider such indulgence not to be as of right and the Parish Council now contend in effect that such indulgence was always as of right.

In these circumstances, and bearing in mind the great probability that such a customary right did exist (inhabitants of villages have from time immemorial wanted to indulge in lawful sports and pastimes and the inhabitants of this Village had not in the past as they have now, anywhere else) I find on the evidence summarised above that there is at Skeeby a village green within the definition in section 22 of the 1965 Act.



The recreational activities described or to be inferred were I think mostly on the part of the Unit Land ~~which~~ near the School or near the entrance to Hall Farm. In the absence of argument or evidence as to the extent of any village green I might find to exist, I see no reason for not treating the whole of the Unit Land as subject to the customary right claimed by the Parish Council. Such a right is by law subject to the qualification that it must be exercised reasonably and the circumstance that it may be difficult to imagine how anybody could ever reasonably indulge in any sports and pastimes over some parts of the Unit Land provide no reason for exonerating such parts (if they can properly be regarded as part of the same piece of land) from the burden of the customary right.

Some of the witnesses against the Parish Council in their evidence either expressly or impliedly suggested that it was absurd that the Unit Land should be treated as subject to a customary right as claimed by the Parish Council because it would not now and had not been for some time ever exercised. I agree to this extent that children are not likely anyomre to play much on any part of the Unit Land, because of the more attractive playground recently provided at the top end of Linden Road and that adults and youths are not likely to indulge in sports there because travelling being now easier, they will go where there are better facilities. But I do not agree that these proceedings are absurd. The object of the 1965 Act in relation to the facts of this case, is not to sterilise land by limiting its use to the exercise of some obsolescent customary right or in any other way to perpetuate the past; its object is to record the past so that upon such record present rights may be determined and on the basis of such determination land may be used most advantageously for the present and future generations. There is nothing unusual about the ownership boundaries between lands being dependant on things which have been done long ago and which now have for any other purpose no significance. The alternative would be for the Unit Land to be used at the discretion of anyone. In Skeeby this result might not lead to difficulties; their success in the Tidy Village Competition and the attitude shown by all or some of the witnesses who gave evidence before me shows that in Skeeby much for the general benefit of the village can be done in spite of doubts as the legal position. But such result could only be achieved, as I find the facts in this case, by persons doing things on the Unit Land which they in law have no right to do. And this in the long run is unlikely to be satisfactory.

Summary of this Decision

For the above reasons I confirm the registration at Entry No 1 in the Land Section with the modification that the land described in First Appendix hereto be removed from the Register. I confirm the registration at Entry No 1 in the Ownership Section (Skeeby Parish Council being the owner) with the modification that the land to which this registration applies is (as now) "other than the area shown edged red and numbered 4 of Sheet 15(a) of the Register map" and also (as I now decide) other than the land described in the Second Appendix, the Third Appendix and the Fourth Appendix hereto. I confirm the registration at Entry No 2 in the Ownership Section (Mr Robert Sowerby being the owner) with the modification that the only land to which registration applies is that described in the Fourth Appendix hereto. I confirm the registration at Entry No 3 in the Ownership Section (Mrs Ivy Annie Mary Glover being the owner) with the modification that the only land to which the registration applies is the land described in the Second Appendix hereto. I refuse to confirm the registration at Entry No 4 in the Ownership Section (Mr Ralph Whittle Waggett and Mr David Hedley Waldie being the owners). I confirm the registration at Entry No 5 in the Ownership Section (Mrs Alice Eleanor Garforth, now deceased, being registered as owner) with the modification that the only land to which this registration applies is the land described in the Third Appendix hereto. I make no order as to costs. This decision is without



prejudice to any claim the Parish Council may make at any inquiry under section 8 of the 1965 Act relating to part of the Unit Land of which (as a result of this decision) no person is registered under section 4 of the Act as owner.

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.

FIRST APPENDIX

(Major & Mrs Gregory)

First the rectangular piece of land being a concrete apron or paving bounded on the south by the front wall of the dwelling house in which Major A D & Mrs H M Gregory now reside and which is known as No. 44 Richmond Road, and bounded on the west north and east by the edge of the concrete, and having a width (this measurement being stated for identification purposes only) of approximately 9 feet. And Secondly the adjoining piece of land being part concrete steps and in part grass and bounded on the south by the said front wall, bounded on the east by the wall which was at one time a wall of a building held with the said dwelling house, bounded on the west by the said rectangular piece of land first hereinbefore described and bounded on the north by a straight line being a prolongation of the straight line forming the north boundary of the said rectangular piece of land.

SECOND APPENDIX

(Mrs I A M Glover)

A rectangular piece of land bounded on the south by the front wall of the building comprising the four cottages known as Greystones, Ivy Cottage, Holmleigh and Stoneleigh, bounded on the north by a straight line which is approximately parallel to the said front wall, of which the easterly part is the north edge of the tarmacadam and the south edge of the adjoining grassland, of which the westerly part is the north edge of the more substantial tarmacadam and the south edge of less substantial rougher tarmacadam or hard core and which (this measurement being for identification only) is about 12 feet distant from the said front wall and bounded on the east and west by lines being the prolongation south of the sides of the said building, or of the boundary of the land (if any) held with Greystones or Stoneleigh along such sides of the building.

THIRD APPENDIX

(Mrs A E Garforth deceased)

The part (if any) of the land comprised in this Register Unit which is situate at or near the south west corner of the dwelling house known as Church Cottage and now occupied by Mr D J Bruton, and on which there now stands a building being part of the garage situate at the west end of the said cottage and held and occupied therewith or being a recently built extension or addition to the garage so occupied and held (notwithstanding that such addition may be used or is only usable for purposes distinct from the garage).

FOURTH APPENDIX

(Mr R Sowerby)

A rectangular piece of land which (1) is bounded on the south by the front wall of the dwelling house known as "The Laurels" and being No 42 Richmond Road, the front wall of the garden on the west side of such dwelling house and held therewith, the doors or gates of the garage and the smaller gate to the land behind the garage; (2) comprises (for the most part) cultivated flower beds approximately five feet wide in front of the said north boundary and a footpath about three feet wide in front of the said flower beds, (3) is bounded on the north by a straight line being the north edge of the said footpath and the south edge of the adjoining grassland; (4) includes so much of the pathway leading to the front door of the said dwelling house and the road or track leading to the said garage and garden as is south of the prolongation of the said straight line being the north edge of the said footpath and (5) is bounded on the east and west by the land described in the First Appendix and Second Appendix hereto.

Dated this

4th

day of

May

1973

a. a. Baden Fuller

Commons Commissioner