



## COMMONS REGISTRATION ACT 1965

Reference Nos. 11/U/16  
11/U/17  
11/U/18

In the Matters of (i) the Goosepool (ii) Thorngyll Syke Quarry and (iii) Blakeley Hill Quarry, all off the Eggleston Road, Staindrop, Barnard Castle R.D., Durham.

DECISION

These references relate to the ownership of lands known as (1) the Goosepool, (ii) Thorngyll Syke Quarry and (iii) Blakeley Hill Quarry, all off the Eggleston Road, Staindrop, Barnard Castle Rural District being the lands comprised in the Land Section of Register Unit Nos (i) CL12, (ii) CL10 and (iii) CL11 respectively in the Register of Common Land maintained by the Durham County Council of which no persons are registered under section 4 of the Commons Registration Act 1965 as owners.

Following upon the public notice of this reference "the Freeholders of Staindrop" by Mr. J.S. Watson as secretary of "the Staindrop Freeholders Committee" claimed to be owners of the lands and no other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring in to the question of the ownership of the lands at Durham on 8 November 1972. The hearing was attended (i) by the Staindrop Freeholders Committee who are Mr. Thomas Cadle, Mr. Rowland Henry Dent, Mr. Cecil Arthur Mudd, Mr. Henry Metcalfe and Mr. Christopher Midcalf and their secretary Mr. John Staley Watson who were all represented by Mr. W.I. Watson solicitor of Messrs. Watsons Solicitors of Barnard Castle; (ii) by the Barnard Castle Rural District Council who were represented by Mr. J.A. Jones who is their clerk and (iii) by the Right Honourable Harry John Neville Baron Barnard who was also represented by Mr. W.I. Watson. It was agreed that I should hear all these references together.

Mr. W.I. Watson submitted that I should vest these lands in the "Freeholders of Staindrop", they being entitled under the Staindrop Inclosure Act 1764 (4 Geo. 3 chap. 63) and the Award dated 1 March 1765 made thereunder; alternatively that the Freeholders were entitled because their Committee were now and had for many years been in possession of these lands or of the rent thereof. Lord Barnard was in respect of these lands their tenant under a tenancy agreement dated 24 October 1963; he did not claim in conflict with the Freeholders.

The relevant section of the 1764 Act is :- "... the said Commissioners... shall and may and they are hereby authorised and impowered to lay out, assign, and allot such Part or Parts of the said Moor or Common, hereby appointed to be inclosed, as they shall think proper, in the most convenient Places, for common Quarries for the Purposes aforesaid, and also publiĳ and common Wells and Watering Places for Cattle and all other Purposes."

Mr. J.S. Watson gave evidence. He is 83 years of age, has lived in Staindrop for many years (he now lives at Barnard Castle), owns freehold land (now let) in Staindrop, and has for the last 36 or 37 years been a member of the Staindrop Freeholders Committee and their secretary for the last 35 years.



Mr. J.S. Watson produced a book inscribed as a present made in 1916 to the Committee of the Staindrop Freeholders and containing a printed copy of the 1765 Act, manuscript copies of petitions, minutes of meetings, valuations and other instruments relating to the Award including a copy of the Award itself. The manuscript in the book appears to be at least 150 years old and by inspecting it, I conclude it was written shortly after the Award was made. The copy Award is lengthy (40 foolscap pages closely written on both sides); I accept the certificate subscribed at the end that it was on 27 September 1765 examined with the original of which it is a true copy.

The relevant part of the 1765 Award is as follows:-

Thorngyll Syke Quarry

WE DO hereby Order, appoint, and set out, at a place called Thorngyll Syke upon the said Common or Waste, a Common Limestone and Freestone Quarry containing four Acres two Roods and six Perches of Land, as the same is by Stakes and Landmarks staked and set out, situate....

Blakeley Hill Quarry

WE DO hereby further order, appoint and set out, at a place called Blakely Hill upon the said Common or Waste one other Common Freestone Quarry containing two Acres two Roods and eleven Perches of Land, as the same is also by Stakes and Landmarks staked and set out, situate lying and being .....which said Limestone and Freestone Quarrys we do hereby order and appoint shall be used and occupied in Common for the winning working and burning of Lime and for the winning working obtaining and getting of Freestone by all the Owners and Proprietors of Lands and Tenements within the said Township of Staindrop for their respective Uses at their Wills and pleasures and to take load and carry away such Lime and Freestone from the same respectively.

.....  
.....

Goose Pool

AND WE DO hereby also further Order, direct, and appoint that that part of the ancient Pool of Standing Water upon the said Common or Waste commonly called or known by the Name of Goose Pool lying on the North side of the said Land called Eglestone Lane shall henceforth lye open to the said Land, so that the Said Owners or Proprietors of Allotments upon the said Common or Waste or persons using the said Road Eglestone road may from time to time forever hereafter have the use and benefit of watering their Cattle at the said pool called Goose Pool."

Mr. J.S. Watson identified the lands comprised in these Register Units with those similarly described in the Award under the same names. Thorngyll Syke is now a fox covert; in Mr. Watson's time nobody has burnt any lime and there are no remains of a kiln. The last occasion when Mr. Watson can remember any person from the village taking stone from Blakeley was about 40 years ago when a little stone was taken. Goosepool was drained before his time.

Mr. J.S. Watson described how since he had been secretary the lands had been managed by the Committee. Out of their funds payments had been made to provide (1936) a site for Village public lavatories, (various times) seats for the Village Green and (1962) a donation to the Village Hall. The lands are now let to Lord Barnard under a tenancy agreement dated 24 October 1962 and produced to me; the



landlords are described as "the Freeholders of Staindrop", and there was reserved to them a right to obtain and take away stone for their own use. The proceedings of the Committee were recorded in a minute book produced to me.

The first record in the minute book was of a general meeting of the Freeholders of Staindrop held on 3 May 1888 "duly called by handbill" at which it was first resolved "to reconstitute the Officers & Committee". There follows a record of: 12 meetings of the Freeholders Committee between 1888 and 1903, at which the Committee arranged for flagging of and otherwise improving the Village footpaths; a general meeting of the Freeholders held on 30 August 1907 "duly called by handbill" at which it was first resolved "to reconstitute the Officers and Committee"; 18 meetings of the Committee up to that held on 20 August 1937 (Mr. J.S. Watson was then appointed secretary) at which the Committee arranged for further improvements to the Village footpaths and for other Village amenities; and more meetings of the Committee since Mr. J.S. Watson was appointed.

At the conclusion of the evidence of Mr. J.S. Watson, there being some discussion as to whether any ownership was established, Mr. W.I. Watson suggested that if ownership under the 1764 Act had not devolved on the Freeholders, it must now be in the Lord of the Manor. Accordingly he gave evidence upon which I conclude that Lord Barnard is Lord of the Manor of Raby, as successor in title to the Earl of Darlington in the preamble to the 1764 Act, to be the then Lord of the Manor; this evidence was given by reference to the evidence given by Mr. W.I. Watson at a hearing before me on the previous day in the matter of the Hill, Middleton-in-Teesdale; reference 11/U/9 and set out in my decision dated first December 1972, which decision should so far as necessary be treated as part of this decision.

To determine the present ownership of the lands, I must I think first consider the effect of the 1764 Act apart from the activities of the Freeholders and their Committee as described by Mr. J.S. Watson and as they appear from the minute book he produced.

As a general rule, a right cannot be granted to a fluctuating body of persons, such as the owners for the time being of lands in a township, to take without limit the profits (eg. stone) of a piece of land (eg. a quarry); as an exception or apparent exception to this general rule, land may be validly granted upon trust for the inhabitants or particular class of inhabitant of a town, and such a trust is a valid charitable trust, see Goodman v Saltash (1882) 7 A. C. 634; and compare Beckett v Lyons 1967 1 Ch. 449. I construe the 1764 Act as authorising the creation of such a trust. The "purpose aforesaid" in the above quotation refer I think to the "publick Utility" mentioned in the preamble, there being in relation to public quarries wells and watering places no other possible antecedent.

In my view the 1765 Award is not a grant in fee simple of land to the "Owners and Proprietors of lands and Tenements within the said Township" or the "the Owners or Proprietors of Allotments ..."; the words used are not appropriate to such a grant. Further the Act did not authorise the Commissioners to incorporate the owners and proprietors or otherwise create an exception to the general rule above mentioned. The Award should not be construed as an attempt by the Commission to do this. By the Award the lands were I think subjected to a valid public charitable trust as authorised by the Act.

It is I think impossible from a consideration of the 1764 Act and the 1765 Award by themselves to reach any conclusion as to who under them became the owner of the estate in fee simple of the lands. Neither the Act nor the Award contains any words such as were then currently used for grants of such an estate.



In my view, the uncertainty as to ownership resulting from the Act and the Award was removed by section 17 of the Poor Relief Act 1819 (59 Geo. 3 Chap. 12) and the decisions of the Courts as to the effect of such section. By the section 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 the parish notwithstanding that the land was not acquired for purposes relating to the poor and notwithstanding that such land might be vested in trustees (the mischief resulting from uncertainties as to how trusteeship has 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 4 A & E 274 at page 281 and Haigh v West 1893 2 Q B 19 at page 31; this last case although distinguished on the facts was recognised as stating law still applicable, in Wylde v Silver 1963 1 Ch 243 at page 271. The words "common quarries" and "common wells and watering places" in the 1764 Act have I think the effect of the showing that the land was to belong to the parish or township in "the popular sense of that expression". The express reference in the 1765 Award to the "Owners" and "Proprietors" cannot I think qualify the Act.

It is not necessary to consider whether Staindrop was at the time a parish or township, because the 1809 Act is applicable to church wardens and overseers of a township, see section 21 of the Poor Relief Act 1662 (13 & 14 Car. 2 Chap 12).

On the above considerations, I conclude the title of the Lord of the Manor to these lands before 1764 was extinguished, if not by the 1764 Act and the 1765 Award, at the latest by the Poor Relief Act 1819. Unless something has happened divesting the churchwardens and overseers, the lands are now vested in the Staindrop Parish Council as their successors 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 the section 21 of the 1662 Act above quoted, the township of Staindrop is a "parish" within the meaning of the 1925 Act.

On the evidence of Mr. J.S. Watson I conclude that these lands have sometime before 1888 for the benefit of the locality been managed, not by the church wardens and overseers or by the Parish Council but by the Freeholders Committee of which he is and has for many years been secretary. I accept the submission that I should presume the happening of something which will make this management lawful.

I feel no difficulty in presuming that at some time after the Poor Relief Act 1809 and before 1888, the churchwardens and overseers authorised the Freeholders by themselves or their Committee to manage these lands; at that time the Freeholders would not have been numerous and they would have been concerned more than anyone else to see that the terms of the 1764 Act, and 1765 Award were observed. But I cannot I think presume anything under which the "Freeholders" or "the Committee" could now be the owners of the estate in fee simple, because in the absence of incorporation ownership of such an estate by a fluctuating body of persons is not a form of ownership recognised by law. The evidence before me is not I think enough to enable me to presume incorporation; apart from the meetings held in 1888 and 1907, the Freeholders as such never met; the Committee perpetuated itself by augmenting its membership as vacancies occurred by co-opting some person who owned freehold land in the Township. In the context of ownership of land, I cannot treat the name "the Freeholders Committee" as being more than a convenient description of those concerned. It was not suggested that the possession and control of the Committee was such as to confer on the persons who were from time to time members of the Committee, absolute ownership under which they could lawfully do with the lands anything they pleased; indeed their conduct as described to me by Mr J.S. Watson and as it appeared in the minute book showed them



to be acting entirely in the public interest in a disinterested manner with a view to preserving the rights of the public as established by the 1764 Act and the Award made under it; in such circumstances they could not acquire possessory title such as would extinguish the charitable trusts applicable to the land, see re Ingleton 1956 1 Ch. 585.

For the above reasons I am satisfied that Staindrop Parish Council is the owner of these lands and I shall accordingly direct the Durham County Council as registration authority to register the Staindrop Parish Council as the owner of these lands under section 8 (2) of the Act of 1965.

I am not concerned with the question whether the Parish Council can or should revoke the authority which I have presumed that their predecessors in title conferred on the Freeholders of the Committee; but I record that I have rejected the submissions made to me on behalf of the Committee with some regret because, so it seems to me, their disinterested attention to these lands since 1888 had preserved them for the benefit of the locality; I hope that their registration under the 1965 Act of these lands as common land will not result in any discontinuance of their activities.

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 six 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

9<sup>th</sup>

day of February 1973

A. A. Baden Fuller

Commons Commissioner