



## COMMONS REGISTRATION ACT 1965

Reference No.45/U/28

In the Matter of Hole Bottom,  
Hampsthwaite, Nidderdale R.D.,  
Yorkshire West Riding

DECISION

This reference relates to the question of the ownership of land known as Hole Bottom, Hampsthwaite, Nidderdale Rural District being the land comprised in the Land Section of Register Unit No.CL.161 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 no person claimed to be the freehold owner of the land in question and no 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 Harrogate on 31 October 1973. At the hearing, Hampsthwaite Parish Council were represented by Lieutenant-Colonel G. N. Bailey, their clerk.

Evidence was given by Miss D. Barker (she has lived in the Village all her life: 67 years) by Mr. G. U. Averdieck (now 75 years old; he has lived in the Village since 1934), by Mr. J. A. Hardcastle (he was born in the Village 71 years ago and has lived there practically all his life; he has been a member of the Parish Council for over 35 years and of the Rural District Council for about 25 years; for the last 11 years he has lived at Rowden Lane Farm, about  $\frac{1}{4}$  of a mile south of the land in question), by Mrs. H. Sell (she has lived in the Village for 50 years, having come there when she was 14 years of age), and by Colonel Bailey (he has been clerk of the Parish Council for the last 2 years).

The land ("the Unit Land") comprised in this Register Unit, is bounded on its east side (about 35 yards) by Rowden Lane a metalled road leading from the south end of the Village to the main road (A.59) between Harrogate and Skipton, and is bounded on the west side by a small stream, Cockhill Beck which runs through the Village down to the River Nidd. From the road the Unit Land slopes steeply down to the stream; down this slope (on the north part of the Unit Land) there is a footpath (rather muddy when I inspected the land) leading to a footbridge across the stream. The rest of the Unit Land is almost everywhere covered with trees, shrubs and blackberry bushes, so as to render it for the most part practically impenetrable. The north and south boundaries are reasonably well defined. The whole contains (according to the Register map) .376 of an acre.

The footpath has always been there. As Mr. Hardcastle first remembers the Unit Land and for long afterwards, it was a watering place for use in times of drought, particularly for cattle from farms near the Harrogate-Skipton road, whose wells had dried up; piped water for domestic purposes was brought to the Village in about



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1935, and brought to the farms in about 1953; since then the Unit Land has not been used for watering. The Unit Land was also occasionally used for the disposal of rubbish from the Village, particularly for larger items not easily got rid of elsewhere; the rubbish was left on the higher ground near the road; a few years ago as a result of a suggestion made at a Parish Meeting, the Rural District Council put up a notice: "NO TIPPING ALLOWED" (still there); I saw no sign of any deposited rubbish, and I assume that any there is, is now overgrown. Miss Barker remembered children playing on the Unit Land when she was young; there were fewer bushes and trees then; she remembered gypsies and travelling tinkers camping there; also more recently young people with tents. Except as above mentioned none of the witnesses remembered the Unit Land being used for any purpose. The adjoining road was made up about 10 years ago; before then Rowden Lane was a cart road. The footpath and beyond is not only a short cut but also a pleasant country walk. The occupiers of the adjoining farms had been approached and could give no evidence of ownership of the Unit Land.

On the evidence outlined above and from the appearance of the Unit Land, I conclude that it has always belonged to the parish in the popular use of that expression. Having regard to the principles set out in Doe v Terry (1835) 4 A & E 274 at page 281 and Haigh v West 1893 2 QB19 at page 31, I deduce that the Unit Land vested in the churchwardens and overseers under section 17 of the Poor Act 1819, which section was not confined to land acquired for purposes relating to the poor, see Doe v Hiley (1830) 10 B & C 885 and compare Wylde v Silver 1963 1 Ch. 243 at page 271. Nothing having happened to divest the churchwardens and overseers, the Unit Land vested in the Parish Council under the Overseers Order 1927.

For <sup>the</sup> above 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 Hampsthwaite Parish Council 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 9<sup>th</sup> day of November 1973.

a. a. Baden Fuller

Commons Commissioner