



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/314

In the matter of pieces of land in
Hawsker-cum-Stainsacre,
Scarborough Borough, North Yorkshire

DECISION

This reference relates to the question of the ownership of pieces of land in Hawsker-cum-Stainsacre, Scarborough Borough being the land comprised in the Land Section of Register Unit No. CL 317 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 Hawsker-cum-Stainsacre Local Council claimed (their Clerk's letter received 3 December 1984) ownership of the land in question. Solicitors for Mr Richard Hodgson Price and Mrs Jacqueline Mary Price said (their letter of 19 February 1985) that they were the owners in fee simple of the garden land at School House ("the School Garden Piece") edged red on the attached plan, and that it was purchased by them on 5 June 1981 free from any right of common or other encumbrances. 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 Scarborough on 20 February 1985. At the hearing (1) Hawsker-cum-Stainsacre Local Council were represented by Mr J P Tindale their chairman and Mr Francis Cummins one of their members; and (2) Miss Monica Lucy Ann Strickland on whose application the registration was made was represented by Mr John Harold Harland of Wincote, Robin Hood's Bay.

The land ("the Unit Land") in this Register Unit now comprises 18 pieces in or near Stainsacre or High Hawsker or Low Hawsker including the School Garden Piece claimed as aforesaid by Mr and Mrs Price. For the purposes of this decision I now define (1) the School Garden Piece as meaning that one of the pieces of the Unit Land which is north of the line of the railway, or former railway, from Scarborough to Whitby and which is northeast of the main road A171 between Whitby and Scarborough and which is east of the minor road running from a point on the said main road about 3 miles from Whitby northwards by All Saints Church and known as Hawsker Lane; and (2) the Dale View House Piece as meaning that one of the said 18 pieces of the Unit Land which is that next south of an imaginary east-west line passing through Stainsacre Hall and which is about 200 yards east of Stainsacre Hall (being a triangular area having sides of about 125, 115 and 45 feet and adjoining or near to the east side of the north-south public road between Russell Hall and Asp House). The land in this Register Unit as originally registered on the application of Miss Strickland included two other pieces, one known as The Chapel Green and the other a narrow strip a little under half a mile long a short distance north of what is or was Hawsker Station; these other pieces pursuant to a notice given by the Chief Common Commissioner to the County Council (following his decision dated 26 June 1975) were on 15 October 1975 removed from the Register.



This hearing followed a hearing relating to Register Unit No. CL316, in the course of which oral evidence was given by Mr Harland who said (among other things):- Miss Strickland is the Lady of the Manor of Whitby Laithes and the Manor of Fyling; he is and has been since 1977 her bailiff; and he had since 1948 been a jurymen of the Court Leet. The Manor had come down to her from her father and before him her grandfather; she owns about 8,000 acres of Fytingsdale Moor and much land in Hawsker-cum-Stainsacre.

At this CL 317 hearing Mr F Cummins in the course of his oral evidence said (in effect):- He had been a member of the Court Leet since 1966. The pieces of land in this Register Unit are of the waste of the Manor of Fytings owned by the Lady of the Manor and treated by the Court Leet as common land. Any disputes there may be about the common land are brought before the Court Leet and are dealt with on one day in the year at which fines are levied for encroachments or payment of annual fees required for accesses across or hedges or apple trees on or otherwise relating to the common land; the annual fees vary (according to the subject matter) between 25p and £3 or £4; the fines and fees are collected on behalf of the Lady of the Manor, being Miss Strickland. Exceptionally the School Garden Piece is not common land but is enclosed being part of the garden of the School House now owned by Mr and Mrs Price; he works at Fylingdales and she as a school-teacher; he thought their solicitors could produce deeds. Exceptionally also is a piece near Dale View House Piece owned by Mrs Lillian Smithies; she had asked him (Mr Cummins) to act for her at the hearing; he had been to the office of her solicitors (Burchannan & White of Whitby) and understood there were maps on her deeds; this piece is now and had been always a separate piece of ground, part of Dale View House.

At the hearing I gave liberty to the owner of the School Garden Piece and of Dale View House to send to the office of the Commons Commissioners documents for the purpose of establishing ownership, and Mr Cummins said he would inform the Solicitors who were concerned. Pursuant to the said liberty Thorpe & Co, Solicitors of Whitby on behalf of Mr and Mrs Price under cover of a letter dated 8 March 1985 sent examined copies of the documents specified in the First Schedule hereto; and Buchanan & White, Solicitors of Whitby on behalf of Mrs Smithies sent copies of the documents specified in the Second Schedule hereto; additionally I have letters from Mrs Smithies and Mr Cummins received 3 and 7 January 1986.

On the evidence given at the said CL 316 hearing, and at this Unit Land hearing and on the documents sent to me by Thorpe & Co I am satisfied that Mr and Mrs Price are the owners of the School Garden Piece. Buchanan & White in their letter enclosing documents point out that there is no plan with the title deeds of Dale View House such as Mr Cummins expected; the said documents regularly deduce from the 1930 conveyance the title of Mrs Smithies to the property therein described as "freehold messuage or dwellinghouse and outbuildings thereunto belonging known as Dale View" and "freehold close ... called Foal Croft or Foal Close containing by estimation four acres or thereabouts"; Mr Cummins at the hearing and in his 1986 letter said that the Dale View House Piece is part of the garden and was never within the jurisdiction of the Court Leet; accordingly I am satisfied that Mrs Smithies is the owner of the Dale View House Piece. On the evidence given at the said CL 316 hearing and at this Unit Land hearing, I am satisfied that



Miss Strickland is the owner of all the other pieces of land in this Register Unit. I shall accordingly pursuant to section 8(2) of the Act of 1965 direct the North Yorkshire County Council as registration authority to register (1) Mr Richard Hodgson Price and Mrs Jacqueline Mary Price of School House, Hawsker, near Whitby, North Yorkshire as the owners of the School Garden Piece as in this decision defined; (2) Mrs Lillian Smithies of Dale View House, Mill Lane, Stainsacre, Whitby, North Yorkshire as the owner of the Dale View House Piece as in this decision defined; and (3) Miss Monica Lucy Ann Strickland of Barton Mill House, Whitwell, York as the owner of all the other pieces of land comprised in this Register Unit. Thorpe & Co in their said letters of 19 February and 8 March request that the School Garden Piece be removed from "your (meaning of the Commons Commissioners*) records". Buchanam & White in their said letter say that in their opinion and also in the opinion of Mr Cummins (by him confirmed in his said 1986 letter) CL 317 should not relate to the Dale View House Piece. The Register is kept by the County Council as registration authority; it may be that if within the period prescribed an objection has been made to the inclusion of the School Garden Piece and the Dale House View Piece, they would have referred the resulting dispute to a Commons Commissioner, and he could then under sections 5 and 6 of the Commons Registration Act 1965 have done something about the said request and opinion. In these ownership proceedings under section 8 of the Act I have no jurisdiction to direct the County Council to remove these Pieces from the Register.

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 SCHEDULE

- 5 June 1981 Conveyance by Emily Goodsell as personal representative of Frederick John Goodsell who died 28 March 1980 to Richard Hodgson Price and Jacqueline Mary Price of the property more fully described and referred to in a conveyance dated 11 October 1965 and made between Albert Smith and Frederick John Goodsell.
- 30 October 1980 Letters of administration to the estate of Frederick John Goodsell.
- 11 October 1965 Conveyance by Albert Smith to John Goodsell of "messuage ... formerly used as a School Master's dwelling-house and now known as The School House, Hawsker" for purposes of identification delineated on plan annexed to conveyance dated 31 December 1963 and made between the York Diocesan Board of Finance and the Vendor.



- 4 -

31 December 1963

Conveyance by the York Diocesan Board of Finance to Albert Smith of "piece ... of land ... with ... dwelling-house ... formerly used as a School Master's dwellinghouse ... part of property comprised in a deed of grant and conveyance by Charles William Strickland dated 13 August 1868 ... identification delineated on plan annexed hereto and thereon edged red".

1963

Abstract of the title (examined 12 December 1963) of the York Diocesan Board of Finance being an abstract of a grant dated 13 August 1868 and made by Charles William Strickland of Whitby Abbey under 5 Vict (School Sites Act 1841) and 8 Vict explaining the same to Minister and Churchwardens of the Parish of Whitby of close ... with messge ... together ...".

SECOND SCHEDULE

11 October 1930

Conveyance by Kate Wellburn and Lilian Knaggs Barker to Richard Storm.

3 March 1954

Letters of administration with the will dated 24 December 1930 of Richard Storm (he died 9 March 1953) granted to William Norton Smithies, his wife Marion Smithies (daughter of the deceased) sole executrix and residuary devisee having predeceased.

15 March 1955

Assent by William Newton Smithies in favour of himself

4 June 1979

Probate of will of William Newton Smithies (he died 7 March 1979) granted to his widow Lilian Smithies sole executrix.

15 June 1979

Assent by Lilian Smithies in favour of herself.

Dated this

15/15

day of

January

1936

A. A. Baden Fuller

Commons Commissioner

