



Reference No. 268/U/327

COMMONS REGISTRATION ACT 1965

In the Matter of three pieces of land at the northern end of the village street at Scagglethorpe, Ryedale District, North Yorkshire

DECISION

This reference relates to the question of the ownership of land (3 pieces) at the northern end of the village street at Scagglethorpe, Ryedale District, being the land comprised in the Land Section of Register Unit No. CL48 in the Register of Common Land maintained by the North Yorkshire (formerly East 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: (1) the Hon Mrs Jacquetta Cator supplied (her agents' letter dated 20 November 1984) information in connection with her interest in this area by reference to a plan ("the November 1984 plan") showing the area outside her ownership which has been occupied by her and her predecessors in title for something over 20 years verged green and a plan ("the JC/6 plan") showing the boundary of the land owned by her as per her deeds verged red; (2) Scagglethorpe Parish Council claimed ownership (their Chairman's letters of 23 and 30 November 1984); and (3) Mr John L Brown (letters of 28 November 1984 and 7 February 1985) having claimed ownership said that he did not wish to pursue the claim because he knew the Parish Council had also laid claim to ownership and that for the past 25 years he had regularly cut the grass and generally kept it tidy on behalf of the Village. No other person claimed to be the freehold owner of the land in question 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) the Hon Mrs Jacquetta Cator of Old House, Ranworth, Norfolk was represented by Mr J B L Hoskyns-Abrahall FRICS of Smith Gore, Chartered Surveyors and Land Agents of Darlington; (2) Scagglethorpe Parish Council were represented by Mr J H Redknap their chairman; and (3) Ryedale District Council were represented by Mr A H L Hoppe of their legal department (he explained he attended as a spectator).

Of the three pieces which make up the land ("the Unit Land") in this Register Unit, the largest ("the East Piece") being that most discussed at the hearing, is approximately square having as its east boundary a line (nearly straight) of about 20 yards and as its other boundaries two curved lines and one straight line.

Mr J B L Hoskyns-Abrahall in the course of his oral evidence produced or referred to the documents specified in the Schedule hereto and said (in effect):- He had only known the land since its purchase by Lord Buckton (conveyance of 30 April 1973 by his direction). On behalf of Mrs Cator he claimed ownership of part ("the Claimed Part") of the east piece; the east boundary of the Claimed Part



(the same as the east boundary of the East Piece) is on the ground marked by "not much in a way of the fence"; there is no mark on the ground of the west boundary of the Claimed Part, and it (the boundary) is just part of the Village Green. Of the adjoining land (by the west boundary) "Village Green" is an appropriate description.

Mr Hoskyns-Abrahall indicated that the ownership claim he was making on behalf of Mrs Cator was based on the documents he had produced or referred to, particularly the plan annexed to the 1967 conveyance (JC/1). He had no comments on the suggestions put to him by Mr Redknapp that the Village refer to the green swards and surrounding verges of the roads through the Village where the Jubilee Tree is, and not the Unit Land, as "the Village Green".

Mr J Redknapp who has lived in the Parish 17 years, been a member of the Parish Council 14 or 15 years, and Chairman 9 years, in the course of his oral evidence said (in effect): - He (for the Council) claimed ownership. The village has about 180 inhabitants very closely concerned with each other to keep the Village neat and tidy. Manor Farm is now occupied by Mr Clark (and his wife) as farm manager; he in October 1983 erected a gate across the road leading to the Farm (west of where it used to be as marked on the inset Register Map) with a fence on the East Piece (within its north boundary from its northeast corner to the newly erected gate).

Mr Hoskyns-Abrahall when questioning Mr Redknapp indicated that this newly erected gate and fence (post and chain) would shortly be removed.

After the hearing I inspected the Unit Land in the presence of Mr J Redknapp and Mr B L Hoskyns-Abrahall. There was no sign of the Jubilee Tree marked on the JC/6 map and Mr Redknapp explained that the horse chestnut tree formerly there ~~was~~ (planted in 1935) had recently been cut down and the ground restored. There was nothing on the ground to indicate the west boundary of the Claimed part. There are other Jubilee Trees as marked on the JC/6 map particularly a fine specimen at a T road junction in the middle of the village.

It was not suggested by Mr Hoskyns-Abrahall that there was any evidence in favour of Mrs Cator's ownership of the Claimed Part apart from the plan on the 1967 conveyance (JC/1). I accept his submission to this extent: a conveyance of land is some evidence that the person who made it was when it was made, owner of what was by the conveyance expressed to be conveyed. I do not accept his submission that to find out what has been conveyed the plan on the conveyance is the only relevant consideration. In my opinion the test is what would a person with the conveyance in his hand walking over the area at the date when the conveyance was made and properly informed of the then relevant surrounding circumstances conclude was by it expressed to be conveyed. About the appearance of the East Piece in 1967 little or nothing was said at the hearing; but from the plans I then had and from what I saw during my inspection I conclude that the west boundary of the Claimed Part was not in 1967 apparent, and that at that time there was a horse chestnut tree within the Claimed Part planted in 1935 and well known in the village to be there to celebrate the 1935 Royal Jubilee. For such a tree to be planted on a "farm" and not on land popularly supposed to belong to the Parish would be



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extraordinary. The description of Mr Hoskyns-Abrahall of the fence on the east boundary of the East Piece as being "not much in the way of a fence" during my inspection seemed to me apt; nevertheless it does now appear to be a boundary between land which properly belongs to Manor Farm and land popularly belonging to the Parish, and I infer that as such a boundary it would have been apparent and distinct enough in 1967 when the conveyance was made. I feel some doubt whether either the November 1984 plan or the JC/6 plan is a correct transposition of the 1967 conveyance plan onto something of later date; but however this may be, bearing in mind that the 1967 conveyance plan was for identification purposes only and that the operative part of the conveyance is by reference to a schedule with "OS Number", "description" and "Area", I conclude that a person having the 1967 conveyance in his hand in 1967 would think the Claimed Part was not part of the land thereby expressed to be conveyed because it was not in the schedule described and because the conveyance plan could only sensibly be read as showing the relevant boundary of the conveyed land as being the same as the said east boundary of the East Piece.

My decision is therefore: Mrs Cator is not the owner of the Claimed Part because it was not by the 1967 conveyance expressed to be conveyed to her, and did not therefore under the later conveyances (JC/3 to 5) pass to her.

As I read the November 1984 letter (JC/5) no claim in it was made on behalf of Mrs Cator to the part of the Unit Land in the letter called "the garden area" (being or including the northern of the three pieces which make up the Unit Land). In the letter it is said:-

"the only point we would make at this stage is that our client would very much like to retain occupation of the garden area, at present designated as Village Green, which she maintains to a high standard and does in our opinion, add greatly to the attractiveness of the Village Green as a whole". I am not sure whether Mr Hoskyns-Abrahall was claiming that Mrs Cator owned this "garden area". However this may be I decline to treat the letter as evidence that Mrs Cator has been in possession of this area adversely to the Parish Council; rather I would suppose that her maintenance of it to a high standard was intended by her to add (as the letter says) greatly "to the attractiveness of the Village Green as a whole" and not as an assertion that it was part of Manor Farm for the benefit of her Farm manager.

As to the ownership claim of the Parish Council:- I accept (it being likely and in accordance with the appearance of the Unit Land) the statement of Mr J L Brown that he has regularly cut the grass on the land and kept it tidy on behalf of the village. The planting on it of a Jubilee Tree is some evidence that land was popularly reputed to be Parish property. Appearance favours the conclusion that all three pieces making up the Unit Land are in the same ownership as the East Piece. Having rejected the adverse claim of Mrs Cator, I am satisfied that the Parish Council are the owners of all the Unit Land as the successors of the churchwardens and overseers in whom by law land popularly belonging a parish is vested, see *Doe v Terry* (1835) 4A&E 274, *Haigh v West* 1893 2QB 19 at page 31 and SR&O 1927 No 55. The registration appears to have been made "by the Scagglethorpe Parish Meeting". I have no evidence as to when the



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Parish Council was formed; if the land was ever vested in the Parish Trustees established by Section 13 of the Local Government Act 1972 or their predecessors under the Local Government Act 1933, → on the formation of the Parish Council they would have succeeded as owners.

I shall direct Nottinghamshire County Council as registration authority accordingly to register Scagglethorpe 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 from the decision of the High Court.

SCHEDULE

(Documents produced or referred
to by Mr J B L Hoskyns-Abrahall)

JC/1	2 October 1967	Conveyance by Mary Kathleen Whitley to Mary Hargreaves of Manor Farm containing about 112.913 acres with the farm house and buildings "all which said premises are more particularly described in the first schedule hereto and shc'm for the purpose of identification only on the plan annexed hereto and therein coloured pink"
JC/2	--	Plan (tracing rough) of 1967 conveyance plan.
JC/3	9 April 1969	Conveyance by Mrs M Hargreaves to John Thompson of said premises by reference to said 1967 conveyance plan.
JC/4	5 March 1971	Conveyance by Mr J Thompson to J Thompson Farms Limited of said premises by reference as aforesaid.
--	30 April 1973	Conveyance by J Thompson Farms Limited by direction of Rt Hon Samuel Baron Buckton (purchaser) to Hon Jacquetta Cator (donee his daughter) of said premises by reference as aforesaid



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JC/5

20 November 1984

Letter from Smiths Gore to Commons Commissioner enclosing (1) photocopy of plan attached to the deeds showing verged red the boundary of the farm as adjoining the Village; (2) plan (the November 1984 plan) showing the area immediately in front of the house marked thereon with (among other lines) the boundary of the land owned by Mrs Cator as per her deeds verged red; and (3) extract (JC/6) from OS 1/2500 map of the village showing edged red the boundary "of our client's ownership as transferred from the plan attached to the Deeds"

JC/6

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The said extract OS map

Dated this

16th

—

day of

December

1985

A. C. Baker Fuller

Commons Commissioner

