



In the Matter of (1) North Holme, South Holme, and Smithy Marsh (2) 26.878 acres adjacent west side of South Holme and (3) Land on south-west Bank of River Trent to west of the Manor all at Sutton-on-Trent.

DECISION

This reference relates to the question of the ownership of the land above mentioned being the land comprised in the Land Section of Register Unit No. CL.1, CL.3 and CL.11 in the Register of Common Land maintained by the Nottinghamshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held hearings for the purpose of inquiring into the question of the ownership of the land at Nottingham on 31 October 1984 and 26 February and 4 June 1985.

Mr Maher appeared for the Registration Authority, Mr F B Raven of Wells & Hind Solicitors of Nottingham appeared for the Executors of the late Colonel W M E Denison, Mr H S Lucas Estate Surveyor appeared for Redland Aggregates Ltd, Mrs J M Mackin (Clerk) appeared for Sutton Parish Council, Mr M Daniel of Larken & Co., Solicitors and Mr J W Raithton of Hodgkinson & Tallents Solicitors, both of Newark appeared or gait - holders Crawshaw of Messrs. Becke Phipps, Solicitors of Northampton appeared for Mrs J M Kerrow, an owner of 5 beast gaits and Mr C Hodson of Rotheras, Solicitors of Nottingham appeared for Southwell Diocesan Board of Finance as an owner of beast gaits.

I agreed to the request that I should hear all three cases at the same time because they had the common fact that each was the subject of an Inclosure Award executed on 16 December 1808 pursuant to an Inclosure Act passed in 1803. The stated purpose of the act was for dividing, allotting, regulating and inclosing the open fields, common meadow pastures and waste grounds within the parish of Sutton-upon-Trent.

On the map which forms part of the Award North Holme and South Holme adjoin each other on one side of the River Trent and Smithy Marsh is immediately opposite on the other Bank. Register Unit CL.3 is shown on the Map as Lamb Holme and Register Unit CL.11 is made up of three contiguous parcels of land numbered 132, 133 and 134 on the Map.

At the first hearing the claimants were the owners of beast-gaits on one side and the Denison Estate on the other.

As no copy of the Inclosure Award was available I adjourned the first hearing to enable the parties' representatives to look into the Award.

At the second hearing Mr Raven produced photostats of a small part of the Award and conceded that his client no longer claimed to be the owners of the soil. The photostat copy of the Award did not cover 10 per cent



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of the full text and one difficulty that was left was that 'the Holme' was not anywhere defined.

At the final hearing I was provided by the Parish Council with another copy of the act, which had two advantages over the copy with which I had been provided namely that it was written in legible characters and was more comprehensive than the other copy. I am grateful to Mr J V Bradbury for his assistance in this regard.

One of the provisions of the Award arose from the right previously enjoyed by the owners of beast-gaits on the Holme to graze the Meadow which was an area on the same bank as North Holme and South Holme and downstream of those two areas.

This grazing right was extinguished by the Award and the various owners were allowed to fence off their plots. By way of compensation what is now Register Unit No. CL.11 was allotted to the owners of beast gaits on the Holme. *(of parts of the Meadow)*

The Award contains provisions for the maintenance of bridges, fences, banks and ditches, for the *election* of the overseer and for definition of the rights of the owner of a beast gait. It is clear from the wording of these provisions that for the purposes of the allotment 'the Holme' included North Holme, South Holme and Smithy Marsh (Register Unit CL.1) and Lamb Holme (CL.3).

In my opinion the Register Units CL.1 and CL.3 and CL.11 were at the date when the Law of Property Act 1925 came into force open spaces of land held in undivided shares in right where of each owner had rights of access and use over the open spaces. See the First Schedule Part 1 para 2 of the Law of Property Act, 1925, and the legal estate ~~had~~ vested in the Public Trustee as therein provided.

In this evidence I am satisfied that The Public Trustee is the owner of the land, and I shall accordingly direct the Nottinghamshire County Council, as registration authority, to register the Public Trustee 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 the case for the decision of the High Court.

Signed this 29th day of July 1985.

George Hurrell
Commons Commissioner