



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/102

In the Matter of The Sands,
Durham City, Durham

DECISION

This reference relates to the question of the ownership of land known as The Sands, Durham City being the land comprised in the Land Section of Register Unit No. CL29 in the Register of Common Land maintained by the Durham 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 Council of the City of Durham claimed (the City Solicitor's letter of 12 December 1985) to be the freehold owner of the land in question, saying that they are such under a conveyance dated 20 December 1860 and made between the Ecclesiastical Commissioners for England and the Mayor Aldermen and Citizens of the City of Durham, that this conveyance was referred to by the (former) Chief Commons Commissioner (Mr G D Squibb QC) in his decision dated 25 July 1980 (being decision No. 1 of the three so dated relating to this land) by which he refused (to confirm) the Town or Village Green (VG97) registration, and that the land is subject to an agreement (also referred to in the said decision) dated 3 November 1897 with the Trustees and Warden of the Freemen which permits the land to be used as a public recreation ground notwithstanding the Freemen's herbage rights; and (2) Mr H M Taylor of 35 Wearside Drive, Durham, as a member of the Sands Residents' Association in a letter dated 3 January 1986 said (among other things) that in about 1893 the Freemen granted a lease of the common rights which they held to the Durham Corporation and from this rather curious transaction there has arisen the widespread belief that the Freemen actually owned the Sands, that at the previous hearing (meaning that held on 2 July 1980 on which the said three decisions were based) the claim of the Freemen to the pasturage or herbage for so many animals was upheld (meaning decision No. 3 on file 211/D/83) and that if the Freemen have common rights it would be contradictory for them to hold the freehold estate as well. 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 Durham on 5 February 1986. At the hearing (1) the Council of the City of Durham was represented by Mr Peter Alan Broome the City Solicitor, and (2) the said Mr H M Taylor attended in person.

The land ("the Unit Land") now in this Register Unit is a piece nearly all of which is by the River Wear, its southeast end being about 600 yards below Framwellgate Bridge; nearly all the north side of the piece (a little less than 600 yards) adjoins the River. Originally the registration included two smaller pieces one to the southwest and the other to the east and all were in conflict with the VG97 registration; by the said decision the two smaller pieces were excluded from the Register and the conflict was resolved by confirmation of the VG97 registration being refused. Entry No. 1 in the Rights Section now is (as it always has been) of a right to graze 20 cows, 50 sheep, 10 goats and 10 horses over the whole of the Unit Land, not expressed to be attached to any land and made on the application of "the Trustees & Wardens of the Freemen of the City of Durham".



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At the hearing Mr H M Taylor said that he was ^{not} intending to watch and made no ownership claim. Mr P A Broome who is and has been for the last 11 years the City Solicitor, in the course of his oral evidence produced a copy certified by himself of the said 1860 conveyance and of a deed of exchange dated 29 March 1941 and made between (1) the Mayor Aldermen and Citizens of the City of Durham and Framwellgate ("the Corporation"); (2) Thomas Theophilus Atkinson and four others ("The Wardens") and (3) Frederick James Smith (ice manufacturer "the grantee"). By the said 1860 conveyance there was expressed to be conveyed to the Corporation their successors and assigns forever the lands delineated on the plans endorsed and coloured thereon. The lands so delineated and coloured included the whole of the Unit Land except a narrow strip near or at its west end on the said plan edged blue marked "MILL RACE". In the said 1941 deed of exchange there was expressed to be conveyed to the Corporation the premises described in the Second Schedule thereto being the course of water with the banks and the surrounding land appurtenant thereto delineated and described on the plan annexed thereon coloured green, which said plan showed the said MILL RACE, particularly so much thereof as is included in the Unit Land. On this evidence I am satisfied that the Durham Corporation is the owner of the Unit Land and I shall accordingly direct the Durham County Council as registration authority to register the Council of the City of Durham 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 14th — day of May — 1986.

a. a. Baden Fuller

Commons Commissioner