



In the Matter of River Don and its Banks, Kirk  
Bramwith, Snaith and Cowick, Fishlake, Sykehouse,  
Shotne, South Yorkshire (No. 1)

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No.VG.119 in the Register of Town or Village Greens maintained by the South Yorkshire Metropolitan Council and are occasioned by Objection No. 475 made by Mr A Pashley and noted in the Register on 29 July 1971, Objection No. 645 made by Mr W H Lucas and noted in the Register on 21 May 1971, Objection No. 858 made by the British Waterways Board, Northern Region and noted in the Register on 7 June 1971, Objection No. 1128 made by the former West Riding County Council and noted in the Register on 4 June 1971, Objection No. 1527 made by the former Yorkshire River Authority and noted in the Register on 7 February 1972, Objection No. 1677 made by Ms M Harrison and noted in the Register on 7 July 1972, Objection No. 1735 made by Mr S Powell and noted in the Register on 11 July 1972, Objection No. 2145 made by the former Thorne Rural District Council and noted in the Register on 23 October 1972 and the conflicting registrations at Entry No 1 in the Land section of Register Unit No.CL.327, Entry No 1 in the Land Section of Register Unit No.CL.333 and Entry No. 3 in the Land Section of Register Unit No.CL.401 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Thorne on 13 February 1984. The hearing was attended by Mr David Rose, of Counsel, on behalf of the Stainforth Parish Council whose application was noted under Section 4 (4) of the Commons Registration Act 1965. Mr P M Stowe, Solicitor, on behalf of the Thorne Town (formerly Parish) Council, whose application was also noted under Section 4 (4) of the Act of 1965, Mr Francis Radcliffe, of Counsel, on behalf of the Doncaster Metropolitan Borough Council, the successor authority of the former Thorne Rural District Council, Miss Gillian Darley, of Counsel, on behalf of Mr Pashley, Mr W K Irving, an officer of the South Yorkshire Metropolitan County Council, and Mr C.Dunkley, the Principal Estate Officer of the British Waterways Board. There was no appearance by or on behalf of Mr W Bunting, the applicant for both the registration and the conflicting registrations or the other objectors

Mr Stowe did not adduce any evidence in support of the registration.

As in In the Matter of White Lane Pond, Four Doles, and Clay Pits, Thorne and Stainforth (No. 1) (1984), Ref. Nos. 269/D/56-59, Mr Bunting's application for the registration was made in the first registration period and the objections were made in the second objection period, while the registration was made on 24 March 1969. Having dealt with the validity of such objections in that case, no useful purpose would be served if I were to repeat what I there said. In my view, all the objections were made in time.

Mr Rose based his case on the third limb of the definition of "town or village green" in Section 22 (1) of the Act of 1965, namely, that the land comprised in the Register Unit is land on which the inhabitants of the locality have indulged in lawful sports and pastimes as of right for not less than twenty years. The general observations which I made about that definition in the White Lane Pond Case, supra, are equally applicable to this case, so I shall confine myself to stating my findings of fact and considering the consequent conclusions.



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Mr Rose called a number of witnesses, and Mr David Owen volunteered to give evidence under regulation 23 (5) of the Commons Commissioners Regulations 1971. The land comprised in the Register Unit consists of the old bed and banks of the River Don before it was straightened some years ago. Although the lengths of the old bed of the river which were bypassed when the river was straightened are no longer navigable, they still have water in them, as they did during the twenty-year period relevant to the definition of "town or village green" in Section 22 (1) of the Act of 1965. There is a public footpath along the whole of the north side and another along the western part of the south side of the old course of the river between Kirk Bramwith and Stainforth. The footpath was stated in the survey of public rights of way made under the National Parks and Access to the Country Act 1949 to have an approximate width of 3 feet, but, as Mr Owen said, this is an imaginary width undifferentiated on the ground from the rest of the land along the sides of the old course of the river, which Mr Owen estimated to be as much as 80 feet wide in places.

Mr Owen suggested that the land fell within the first limb of the definition of "town or village green" by virtue of section 4 of the Don Navigation Act of 1726 (13 Geo. I, c.11) which gave the owners and occupiers of land or tenements adjoining the river to use pleasure boats without paying tolls. This, however, relates only to riparian owners and occupiers, and not to the inhabitants of the locality.

Most of the evidence related to walking with or without dogs along the strips of land following the course of the public footpaths. For reasons given in my decision in the White Lane Pond Case, Supra, I do not regard walking on a public footpath as indulging in sports or pastimes as of right within the meaning of section 22 (1) of the Act of 1965. There was no evidence of any sports or pastimes on the land covered with water. Some people have been seen fishing in the river. Mr Dunkley took the point that they could not have been fishing as of right, since fishing without a licence would be illegal. In any case, the people seen fishing were not identified as inhabitants of the locality.

There remains to be considered evidence of local children playing, gathering mushrooms and blackberries, and camping on the banks of the old course of the river between Kirk Bramwith and Stainforth. I find myself unable to hold that these activities were carried on on the banks as of right for two reasons. The first is that there can be no right to obstruct the banks of a navigable river, and the second is that the site of the footpath being undefined, there is no identifiable part of the bank on which activities incompatible with the right of public passage could be carried on, while activities ancillary to the right of passage would be carried on by right and not as of right.

For these reasons I refuse to confirm the registration.

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

30th

day of

March

1984.

  
Chief Commons Commissioner