



COMMONS REGISTRATION ACT 1965

Reference No. 269/U/9

In the Matter of "The Clay Pit",
otherwise part of "White Lane Pond,
Four Doles, Clay Pits" in the
parish(es) of (Thorne and) Stainforth,
Doncaster Metropolitan Borough.

DECISION

This reference relates to the question of the ownership of land now known as The Clay Pit on the south side of the Stainforth and Keadby Canal in the parish of Stainforth, formerly or sometimes known as part of White Lane Pond, Four Doles, Clay Pits in the parishes of Thorne and Stainforth, being the land comprised in the Land Section of Register Unit No. VG113 in the Register of Town or Village Greens maintained by the Doncaster Metropolitan Borough Council (formerly West Riding County Council and then South Yorkshire 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 Yorkshire Water Authority in a letter of 31 August 1988 said that they did not claim ownership of any part of the land. Before the reference at a hearing held by me in February 1987 and about which I made a decision dated 19 November 1987, (reference 269/D/24-27) the ownership of the land was claimed as to a small part by British Railways Board and as to the greater and remaining part by British Waterways Board. 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 Thorne on 11 October 1988. At the hearing: (1) British Waterways Board were represented by Mr Colin Dunkley FRICS, formerly (now retired) their principal estate officer; (2) Yorkshire Water Authority were represented by Mr Peter Coleman legal executive of their legal department; (3) Mr E. Higham of 70 Southfield Road, Thorne who was concerned about fishing rights attended in person; and (4) Doncaster Metropolitan Borough Council as registration authority were represented by Mr David Goy a licensing officer in their legal and administration department.

The land ("the Unit Land") in this Register Unit has for its north boundary about 150 yards of the south water edge of the Stainforth and Keadby Canal and for its east boundary about 80 yards of the west lower edge of the embankment carrying the Doncaster-Goole railway to the nearby bridge over the Canal.

As appears in my said November 1987 decision, on 18 May 1987 accompanied by Mr Dunkley and others I inspected the Unit Land, so all at my October 1988 hearing knew I was familiar with it. The part of it near to and within its north boundary is the Canal bank: the remainder is for the most part pond the water level of which is, as also is much of the adjoining land on the south, at least 4 feet (possibly more) below that of the Canal. A small part along and within the east boundary is enclosed with the said embankment.



- 2 -

Mr Dunkley who has been with British Waterways Board ("BWB") since 1954 until when he retired as Principal Estate Officer, 1985, in the course of his oral evidence produced the documents specified in the Schedule hereto, and explained that BWB claimed to own all the Unit Land except a small approximately triangular part ("the BR Part") owned by British Railways; at page 3 of this decision is a plan ("the Decision Plan") being a copy of the Register map on which appears the delineation and hatching made by Mr Dunkley to show the BR Part and to which I have added "PQR" to indicate its boundaries. Mr Dunkley said (in effect):-

(a) As to the Unit Land before 1893:- The Canal next to the Unit Land on the north was under the 1849 Act vested in the River Dun Navigation Company (referring to the Acts recited in the below mentioned 1857 conveyance being 6 Geo.2, explaining 12 Geo.1 and 13 Geo.1 for making navigable the River Dun and uniting the Proprietors into "The Company of Proprietors of the River Dun", the Yorkshire Doncaster and Goole Railway Act 1847 extending all powers under the said Acts to the South Yorkshire and Goole Railway Company and the South Yorkshire and River Dun Act 1850 under which such Company became called "South Yorkshire and River Dun Company" (SY & RDC). The Unit Land with other land to the east and west became vested in the SY & RDC under the 1857 conveyance (BWB/3). The Unit Land and the adjoining Canal under the South Yorkshire Railway and River Dun Company Act 1875 became vested in the Manchester Sheffield and Lincolnshire Railway Company (MS & LRC).

(b) As to the Unit Land less the BR Part from 1893 onwards:- Pursuant to the Sheffield and South Yorkshire Navigation Act 1889 an agreement (BWB/4) dated 27 January 1893 was made as to Navigations to pass thereunder by reference to plans signed by C Hawtrey and A Ross (relevant extract BWB/2) and by a conveyance (BWB/3) dated 11 October 1896 MS & LRC conveyed the said Navigations by reference to the said plans which included all the Unit Land except the BR Part, to the Sheffield and South Yorkshire Navigation Company. From then under the Transport Act 1947 the premises passed to the Docks and Inland Waterways Board, and then under the Transport Act 1963 to BWB. He (the witness) understood that before 1849 the Unit as it now appears did not exist, that the Canal was constructed by extracting clay from the Unit Land and other nearby lands (resulting in pits) and that up to about 1939 clay was taken for puddling the banks. The BWB used it as a disposal place for dredging. A few years ago BWB let the fishing to the Ings Angling Club as recorded at page 10 of my said 1987 decision.

(c) The BR Part from 1893 continued to be railway land as it now appears, being the lower part of the embankment carrying the Doncaster-Goole railway.

After Mr Dunkley had finished his evidence, Mr E Higham said he was concerned with the Thorne fishing rights in the pond on the Unit Land. In these proceedings my jurisdiction is limited to ownership, meaning of the legal estate in fee simple, so nothing in this decision can enlarge or diminish any fishing rights; I so informed Mr Higham.

On the evidence of Mr Dunkley above summarised I am satisfied that BWB are the owners of all the Unit Land except the BR Part.

Mr Dunkley said that he considered British Rail to be the owner of the BR Part. Although British Rail were not represented at my 1988 hearing, they were represented at my said 1987 hearing and → evidence was given on their behalf which related to (among other things) the ownership of the Unit Land, see page 11 of my said November 1987 decision. That British Rail are now in possession of the BR Part is obvious. Upon these considerations I am satisfied that they are now the owners of it.



- 3 -

Accordingly I shall pursuant to section 8(2) of the Commons Registration Act 1965 direct Doncaster Metropolitan Borough Council as registration authority to register British Railways Board as the owner of the part of the land in this Register Unit which is the lower part of their Railway embankment and which is on the Decision Plan delineated, hatched black and marked "PQR" and to register British Waterways Board as the owner of all the remainder of the said land.

At page 32 of my said November 1987 decision, I drew attention to the apparent inappropriateness of the name in the Register given to the Unit Land. I have no jurisdiction to direct in this respect any alteration of the Register. However it may help if I record that those present at my 1988 hearing thought that "The Clay Pit" would be the most appropriate name.

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.

SCHEDULE

(Documents Produced)

BWB/1	--	Statement of evidence of Colin Dunkley
BWB/2	1893	Coloured plan being extract from "Book of Plans" signed by C Hawksley and A Ross and referred to in 1893 agreement (BWB/4)
BWB/3	7 November 1857	Conveyance by William Armitage and Thomas Coupland to The South Yorkshire Railways and River Dun Company of land containing 3 acres and 4 perches bounded towards the north by the Stainforth and Keadby Canal Banks and Works and delineated and coloured red on the plan thereon which said plan shows land bounded by the Canal on the north for a length of about 300 yards
BWB/4	27 January 1893	Agreement headed Sheffield and South Yorkshire Navigation Company 1889: between the Sheffield and South Yorkshire Navigation Company and the Manchester Sheffield and Lincolnshire Railway Company agreeing (among other things) plans defined by C Hawksley and A Ross.



- 4 -

BWB/5 7 October 1896

Conveyance by the Manchester Sheffield and
Lincolnshire Railway Company to Sheffield
and South Yorkshire Navigation Company
Pursuant to the Sheffield and Yorkshire
Navigation Acts 1889 and 1894 by reference
to the 1893 agreement (BWB/4)

Dated this 30th _____ day of November _____ 1988

A. A. Baden Fuller

Commons Commissioner