From: [redacted]
To: Keadby 3
Subject: Keadby 3
Date: 28 November 2022 09:11:00
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To David Wagstaff

Response to 22nd November 2022.

I have still not received confirmation that the file of document and Acts of parliament sent to Garth Leigh and signed for has been received by PINS and I am concern only 2 parts have been publish

The ownership of the Subsoil of the highway Bonnyhale road does not have to be shown on the land registry registered titles of ownership, over which all his Majesty's subjects have a right to pass by Section 53 of the Stainforth and Keadby Canal Act
And the Act and SI obtained to divert it

I have Attached copy of Prat and Mackenzie Highway Law Chapter 11 Creation of a highway by or under Statute Pages 17-18. The whole section is on the internet . I do not have copy Sauvain Highway L 4th addition excerpt 3-20 were the principle is also found.

John Carney [redacted]

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CHAPTER II.

DEDICATION OF HIGHWAYS.

Creation of Highways by or under Statute.—A road which is already in existence may be directly created a highway by Act of Parliament, and no act on the part of the public is needed to supplement the force of the statute (*a*). And any persons, who are empowered by Act of Parliament, may make a highway, as was commonly the case when roads were constructed by trustees under a Turnpike Act (*b*), or set out by commissioners under an Inclosure Act, or as now constructed by the Minister of Transport (*c*) or a local authority (*d*). The conditions which must be complied with before the public right to the new way is perfected, depend on the construction of the particular statute.

Where a statute authorises but does not compel the making of a road or system of roads for the benefit of the public, and contemplates the possibility that all the works may not be executed, the completion of the entirety is not a condition precedent to any part becoming a highway (*e*). Where a road had been set out under an Inclosure Act, and fenced, but had never been formed and completed so as to satisfy the requirements of the General Inclosure Act, 1801 (41 Geo. 3, c. 109), ss. 8, 9, and the jury expressly found that the public had never used or taken to the road as a highway, it was held that the road had not become a highway (*f*). In this case it was argued that the suspensory condition had reference to the obligation of repair only, and that the right of passage enured whenever the road was set out; but the court declined to adopt this view, though apparently thinking that if the evidence had shown actual user of the unfinished road by the public it would have made a difference. "Where, therefore, the intended road has never been taken to by the public,

(*a*) *Rex* v. *Lyon* (1825), 5 D. & R. 497.

(*b*) *R.* v. *Lordsmere* (1850), 15 Q. B. 689; *Sutcliffe* v. *Greenwood* (1820), 8 Price, 535.

(*c*) The Development and Road Improvement Funds Act, 1909; Roads Act, 1920, *post*.

(*d*) The Housing, Town Planning, etc. Acts, 1909 and 1919, and other Acts.

(*e*) *R.* v. *French* (1879), 4 Q. B. D. 507, overruling *Rex* v. *Cumberworth* (1832), 3 B. & Ad. 108; (1836), 4 Ad. & E. 731; *Rex* v. *Edge Lane* (1836), 4 Ad. & E. 723. See also *Roberts* v. *Roberts* (1862), 3 B. & S. 183, and *R.* v. *W. Riding of Yorks JJ.* (1834), 5 B. & Ad. 1003.

(*f*) *Cubitt* v. *Maxse* (1873), L. R. 8 C. P. 704.

before it can be considered as a common and public highway, it must have been completely formed in the manner prescribed by the Act. It may be that, if the public take a road before it is completed, they cannot afterwards on account of its incompleteness say it is not a highway " (*g*).

Dedication and Acceptance.—With the foregoing exceptions, no highway can be created except by the dedication, express or presumed, by the owner of land, of a right of passage over it to the public at large, and the acceptance of that right by the public. " It is necessary to show, in order that there may be a right of way established, that it has been used openly as of right, and for so long a time that it must have come to the knowledge of the owners of the fee that the public were so using it as of right, and from this apparent acquiescence of the owners a jury might fairly draw the inference that they chose to consent, in which case there would be a dedication " (*h*). " The public can only acquire a right over the lands of an individual by dedication on the part of that individual, and user is only valuable as evidence of the dedication by the private owner " (*i*). An owner may dedicate without the assent of an adjoining owner in whom there is a statutory right of pre-emption (*k*).

A highway cannot be dedicated to a limited part of the public, such as a parish ; and if the owner attempts to make such a partial dedication it will not operate in favour of the whole public, but will be simply void (*l*).

Nor can a highway be dedicated for a limited time, although by statute (*e.g.*, a Turnpike Act) a highway may be created to last only for a limited period. But a lessee, or a limited owner, if he cannot dedicate in the strict sense, may probably confer on the public a right which will be enforceable against him either by way of estoppel or contract during the continuance of his interest (*m*).

The acceptance of the right of passage by the public is generally

(*g*) *Ibid.*, *per* BRETT, J. ; *cf. R.* v. *Lordsmere*, *ubi supra*, where the road was not completed under the local Act yet the public took to it, and it was held that it was a highway repairable by the parish.

(*h*) BLACKBURN, J., in *Greenwich Board of Works* v. *Maudslay* (1870), L. R. 5 Q. B., p. 404.

(*i*) NEVILLE, J., in *Holloway* v. *Egham Urban District Council* (1908), 72 J. P., at p. 434. And see *Muhammad Rustam Ali Khan* v. *Karnal City Municipal Committee*, L. R. 48, Ind. App. 25, P. C.

(*k*) *Coats* v. *Hereford County Council*, [1909] 2 Ch. 579.

(*l*) *Poole* v. *Huskisson* (1843), 11 M. & W. 827 ; *Vestry of Bermondsey* v. *Brown* (1865), L. R. 1 Eq. 204 ; *Hildreth* v. *Adamson* (1860), 8 C. B. (N.S.) 587. And see *Farquhar* v. *Newbury Rural District Council*, [1909] 1 Ch. 12.

(*m*) *Corsellis* v. *London County Council*, [1908] 1 Ch., at p. 21. And it may be that a road recognised as impassable in winter may be dedicated for use in summer only. *R.* v. *Brailsford* (1860), 2 L. T. 508.