



COMMONS REGISTRATION ACT 1965

Reference No. 24/D/1

In the Matter of The Chalk Pit and Copse,  
Fotherby, Lincolnshire (Parts of Lindsey)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No. C.L.9 in the Register of Common Land maintained by the Lindsey County Council and is occasioned by Objection No. OB 1 made by Frank Howard and Jack Douglas Howard and noted in the Register on 1st April 1969.

I held a hearing for the purpose of inquiring into the dispute at Lincoln on 3rd May 1972. The hearing was attended by Mr. W.R. Wallis, solicitor for the Fotherby Parish Council, and by Mr. A.J. Horne, solicitor for the Objectors.

The land the subject of this reference consists of two contiguous portions. The western portion (O.S.No.32) is an old chalk pit, now used as a rubbish tip, with an area of 1.905 acres, and the eastern portion (O.S.No.32a) is a copse with an area of 2.111 acres. There is no objection with regard to the chalk pit, which was allotted to the surveyor of highways by the Fotherby Inclosure Award in 1764.

In the Award the chalk pit is stated to be bounded on the east by land belonging to the Dean and Chapter of Lincoln. There is no evidence as to the immediate successor in title of the Dean and Chapter, but the Objectors now hold it under a conveyance dated 29th October 1963. Before then their father had occupied it as a tenant since 1940.

The eastern portion is alleged to be common land because parishioners of Fotherby have gathered wood, bracken and fern, and blackberries, sloes and cider apples, and have shot rabbits in it as of right for many years.

There is evidence that for the period of living memory some parishioners have taken wood, etc. from this land and there has been an oral tradition that parishioners have a right to do this. There has also been an oral tradition that parishioners have a right to take chalk from the pit. That this latter tradition is without foundation is demonstrated by the terms of the Inclosure Award, whereby the pit was allotted to the surveyor of highways with the right to take materials for the repair of the highways in the parish. The tradition about the copse must be equally without foundation, for no such right as that alleged can in law belong to parishioners as such. Parishioner is but another name for an inhabitant of a parish. It was decided as long ago as Gateward's Case (1607), 6 Co.Rep.59b that there cannot be any right to a profit à prendre in a fluctuating body like the inhabitants of a particular place. In my view, the taking of wood, etc. which has been proved can be explained by toleration on the part of the owner of the land: cf. Alfred F. Beckett Ltd. v. Lyons, [1967] Ch. 449, per Harman L.J., at p.474.

For these reasons I refuse to confirm the registration of the land the subject of the objection, known as The Copse.



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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 30<sup>th</sup> day of May 1972

A handwritten signature in cursive script, appearing to read 'C. B. Lamb', written in black ink.

Chief Commons Commissioner