



In the Matter of Brumstead Common,  
Brumstead, Norfolk (No 2)

DECISION

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This dispute relates to the registration at Entry No 2 in the Rights section of Register Unit No CL 383 in the Register of Common Land maintained by the Norfolk County Council and is occasioned by Objection No 363B made by the Brumstead Parish Council and noted in the Register on 26 January 1970.

I held a hearing for the purpose of inquiring into the dispute at Norwich on 14 March 1978. The hearing was attended by Mr Mack, the eldest son of Mr A J Mack, the applicant for the registration, who died in 1972 and by Mr A D K Wood, solicitor, on behalf of the Objector.

The registration is of rights to graze 3 animals, to cut and take during April of each year bushes and tree loppings, and to cut and take herbage between 20 and 30 June in each year.

Mr Mack said that his father had never grazed any animal on the land, nor had he taken the herbage, but that he had regularly taken pea-sticks from 1930 until his death. Mr Mack contended that his father had a right to do this under the Inclosure Award made on 16 May 1806 under the Brumstead (sic) Inclosure Act of 1805 (45 Geo. III, c.20 (private)).

The Act provided that the Commissioner should assign, set out, and allot to the Lord or Lady of the Manor of Brumstead Roses Parkers and Walshams, the Rectory of Brumstead, and the Churchwardens and Overseers of the Parish of Brumstead land to be vested in them as trustees for the poor of the parish to the intent and purposes that the trustees should permit and suffer the poor inhabitants of the parish to cut fuel in part of the land and to use and enjoy the remainder as a common of pasture in such proportions as the trustees should appoint and prescribe and in accordance with rules prescribed by the trustees. The land the subject of this reference was the land so assigned, set out, and allotted.

Mr Wood admitted that the rights created under the Inclosure Act and Award still existed, but argued that such rights were not rights of common.

In my view, Mr Wood's contention is correct. It is not possible in law for a fluctuating body like the inhabitants of a parish to have a right of common: see Gateward's Case (1607) 6 Co. Rep. 59b. Furthermore, the inhabitants in this case are not given an absolute right to cut fuel or to pasture their animals on any particular area of land, but only on such parts of the whole of the allotted land as should be prescribed for the cutting of fuel or for use as a common of pasture, it being open to the trustees to vary the parts from time to time. Such variable rights are not rights of common in law, but are statutory rights created by the Act of 1805 and are peculiar to that Act. The registration is of rights to be exercised over such parts of the land comprised in the Register Unit as the owner or occupier of the late Mr Mack's cottage and land might choose. These are rights of an entirely different nature from



those created by the Act.

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 25~~th~~ day of April 1978

CHIEF COMMONS COMMISSIONER