



COMMONS REGISTRATION ACT 1965

Reference No. 225/U/205

In the Matter of Flordon Common, Flordon,
South Norfolk District, Norfolk

DECISION

This reference relates to the question of the ownership of land known as Flordon Common, Flordon, South Norfolk District being the land comprised in the Land Section of Register Unit No. CL 36 in the Register of Common Land maintained by the Norfolk 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 Upper Yare and Tas Internal Drainage Board said (letter of 29 December 1975) that they were interested as to the ownership (and occupation) as part was within their area and therefore assessable to Drainage Rates which they had been unable to collect for the past few years due to being unable to establish either the ownership or occupation; and Mr G Webster sent (with a letter of 26 December 1975) a schedule of deeds and documents relating to the Manor of Flordon (9 court and minute books 1625-1919, a 1960 abstract and certificate of search, and a 1960 conveyance to himself). No person claimed to be the freehold owner of the land in question and no other person claimed 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 Norwich on 3 April 1979. At the hearing (1) Flordon Parish Council were represented by Mr R Howes one of their members (Mr S Burnham another member was present); (2) Mrs I E Holmes (the registration at Rights Section Entry No. 2 of a right attached to Harvey House to graze 7 goats, 1 donkey, 2 ponies, 2 cows, 4 young cattle, 3 geese and 15 pigs was made on her application) attended in person; (3) Mr G H Fincham (the registration at Rights Section Entry No. 7 of a right attached to Orchard Farm to graze 12 head of adult stock was made on his application) attended in person; (4) the said Drainage Board was represented by Mr J L Fielding a surveyor to the Board; (5) Mr G Webster (the writer of the said 1975 letter) attended in person; and (6) Dr Edward Augustine Ellis of Wheatfen Broad, Surlingham as below-mentioned took part in the discussion. Mr Howes explained that he was also concerned as successor in title to Mr W B Cousins (now deceased; the registration at Rights Section Entry No. 1 of a right attached to Birds Farm to graze 10 cattle or 10 horses or 10 donkeys, 10 sheep or 10 geese, or cattle, horses, donkeys, sheep or geese up to a maximum of 10 animals was made on his application) in that he and Mr Golden now owned (each a part) what was Birds Farm, and they had apportioned the registered right between them.

No-one present other than Mrs Holmes put forward any ownership claim. In support of her claim, she and her daughter Mrs C Doy gave oral evidence in the course of which they referred to: (1) a reprint from the Transactions of the Norfolk and Norwich Naturalists Society, Vol ix, entitled "The Fauna and Flora of Flordon Common" by W H Burrell, FLS and W G Clarke read 27 September 1910; and (2) a book of press cuttings including a report of a judgment given in the County Council on 20 May 1966 by His Honour Judge Carey Evans. Mr Burnham for the Parish Council was against any person being given ownership of the Common, and suggested that the public should be able to use and enjoy it (or part of it). Dr Ellis said that the Common was of great biological interest by reason of its variety; it is a Site of Special Scientific Interest. On the day after the hearing I walked the length of the Common.



The Common is a strip of land just under a mile long, and extends westward from the centre of the Village of Flordon; it is crossed by the Flordon-Slapton road, and is there about 300 yds wide; but elsewhere its widths which varies much is generally much less, and in one place it is no more than about 15-20 yds wide. Along most of its south side is a stream, which floods over the lower part of the Common. There is much scrub and vegetation usual on damp ground but also on the higher parts there are 3 substantial grass areas, at the east end, opposite Harvey House and west of the Flordon-Slapton road.

In appearance the Common is very varied. I have no difficulty in understanding why some of those present at the hearing differed as to how it could best be dealt with, even assuming that those concerned were legally entitled to do as they pleased. But as there seemed to be some misunderstanding at the hearing as to my jurisdiction, I record that on this reference I am concerned only to say whether I am satisfied as to who if anyone is now the owner, meaning owner of the legal estate in fee simple, see section 22 of the 1965 Act; I have no jurisdiction to give the ownership to the Parish Council or any other person merely because I think it expedient or in the public interest or to direct how it shall be managed. I shall therefore confine myself to considering the evidence offered by Mrs Holmes in support of her claim.

Burrell & Clarke supra give the area of the Common as 33 a. 1 r. 17 b, and describe it as it was in 1910 in great detail. Nobody suggested that it is now in any relevant way different. At page 175 they say: "Mrs Potter has lived all her life at the cottage adjoining the Common on the north, and her father came to live there in 1813 ... she says that the Common is very much drier now than when she was a girl. Much of the marshy portion was then impassable and in many places a rake could be put into the water without the bottom being touched ...". Mrs Holmes identified the cottage referred to with Harvey House where she now lives, and said that the Mrs Potter referred to was her grandmother. She, Mrs Holmes, now owns Harvey House and the buildings and land (about 2½ acres) held with it, having acquired it as sole beneficiary under the will of her aunt Miss E E Potter who died in 1950 and who herself succeeded her mother (the Mrs Potter mentioned by Burrell & Clarke) when she died in 1920.

Mrs Holmes said she understood that since 1813 her great-grandfather, grandfather, and father had all been the pinman of the Common and had looked after it as she had done since from Harvey House, and this was confirmed by Mrs Doy. Both were questioned about the extent of the acts done by them for the maintenance of the Common. They instanced cutting hedges, clearing the river, seeing people did not dig up the Common, showing around persons interested in the flora and fauna.

Having regard to the central situation of Harvey House in relation to the Common and the absence of any other house so conveniently situated for looking after the Common I am not surprised that everyone concerned thought it right that whoever lived there should be the pinman (pindar), and I accept that Mrs Holmes has for sometime acted as such. Although there was no evidence that she or her aunt, father or grandfather had ever been regularly appointed by anyone as pinman, I shall assume in favour of her claim (as is likely) that her care for the Common was with the agreement of all concerned (I had no evidence to the contrary). But I am not persuaded that she ever did any acts which were beyond those appropriate for a pinman or which could amount to taking possession as owner. Her hedge cutting was confined to the roadside of the hedges which separate the Common from the Flordon-Slapton road. The stream flows so fast that I cannot regard any clearing of it as being significant. Indeed the variety of the Common is such that in my opinion anything that Mrs Holmes did there



cannot be ascribed to taking possession of any part of the Common (and a fortiori of the whole of the Common) rather than to doing something in exercise of or incidental to the grazing right which has been registered under the 1965 Act on her application. From the way she gave her evidence, I conclude that the activities she described were done by her pursuant to her desire to preserve the Common for the benefit of all concerned without any intention of benefitting herself; in my opinion she never intended to act as owner, and her claim at the hearing was made because she believed that if she could become the owner as a "squatter" she could somehow in the public interest preserve and improve the Common in a way which she (and perhaps many others) thought desirable. In my opinion she never intended to take possession of the Common on her own account and never did anything which could properly be regarded as such. So I reject her claim based on possession.

Burrell & Clarke supra at page 171 say: "... the common is awarded under an Enclosure Act of which no local copy exists, and the copyhold tenants of Sir Kenneth Kemp's manor - held by the Kemps since 1372 - had the sole rights of pasturage and sedge cutting. Until the Enclosure Act the Common extended eastward to the Tass ...". I have been unable to trace the Enclosure Act referred to in any index of such Acts available to me. Mr Webster did not produce any of the documents referred to in his 1975 Schedule because I suppose, he considered that they would not help with ownership. I paid no attention to the 1966 judgment because I was told that although the judge stated that "the parish council were not the owners of the land (ie the Common) and had no rights over it whatever" he did not make any observation relevant to the question who is now the owner. The Parish Council made no claim at the hearing before me and I accordingly treat the 1966 proceedings as irrelevant.

Having rejected the claim of Mrs Holmes to a possessory title, in the absence of any evidence of her ownership under any other title or of anybody else being the owner, I am not satisfied that any person is the owner of the Common and it will therefore remain subject to protection under section 9 of the Act of 1965.

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 18th — day of May — 1979

a. a. Baker

Commons Commissioner