



COMMONS REGISTRATION ACT 1965

Reference Nos.25/D/142-146

In the Matter of Flordon Common,
Flordon, Norfolk.

DECISION

These disputes relate to the registration at Entries Nos.4,5,6 and 7 in the Rights Section of Register Unit No.CL.36 in the Register of Common Land maintained by the former Norfolk County Council and are respectively occasioned by Objection No.216B (relating to all four Entries) made by Mr.J.T.Golden and noted in the Register on 20th November 1970, by Objection No.63B (relating to Entry No.6) and Objection No.64B (relating to Entry No.5), both made by Mrs.I.E.Holmes and both noted in the Register on 23rd June 1970, and by Objection No.65B (relating to Entry No.6) and Objection No.66B (relating to Entry No.5) both made by Mr.H.Smith and both noted in the Register on 23rd June 1970.

I held a hearing for the purpose of inquiring into the disputes at Norwich on 25th June 1974. The hearing was attended by Mr.G.Dalton, solicitor, on behalf of Mr.G.Webster and Geoffrey Webster and Sons Ltd, the applicants for Entries Nos.5 and 6, Mr. G.H.Fincham, the applicant for Entry No.7, Mr.Golden and Mrs.Holmes. Mr.Smith and Mr. and Mrs.R.A.Brotherton, the applicants for Entry No.4, did not appear and were not represented.

Before the hearing Mr.Dalton's firm gave notice that it had been decided not to pursue the applications of Mr.Webster and Geoffrey Webster and Son Ltd in respect of rights of pasture and taking the grass from the Common, but that the claim of Mr.Webster to have the sporting rights registered remained.

This withdrawal and the non-appearance of Mr.and Mrs.Brotherton left me with the following matters to consider:-

- (1) Entry No.5. Mr.Webster's claim to a right to shoot and to take game, attached to Flordon Hall Farm. Neither Mr.Golden nor Mrs.Holmes objected to this part of Entry No.5.
- (2) Entry No.7. Mr.Fincham's claim to a right to graze 12 head of adult stock, attached to Orchard Farm, Flordon.

Before Mr.Webster purchased Flordon Hall Farm it and the lordship of the manor of Flordon formed part of the property subject to the settlement created by the will and codicil of the Revd Sir William Robert Kemp,Bt, who died 29th May 1874. Mr.Webster became tenant of Flordon Hall Farm in 1932. At that time the shooting on the Common was let by the Kemp family to a Mr.Du Pre. Mr.Du Pre died about 1938 and the shooting was let to a Mr.Collins. The Farm was conveyed to Mr.Webster on 11th November 1947 by the tenants for life under the Kemp settlement. Mr.Collins gave up the shooting the season before Mr.Webster purchased the Farm, and Mr.Webster has shot over the Common every season since without anyone ever trying to prevent him and has prevented others from so doing. On 19th January 1960 the lordship of the manor was



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conveyed to Mr. Webster by the than tenants for life of the Kemp settlement.

On this evidence I am not satisfied that Mr. Webster has a right of common. The evidence indicates that he may well have an exclusive right of shooting and taking game on the Common, but that is not a right of common: see In the Matter of Lumley Moor Reservoir, Skelding and Grantley, North Yorkshire (1974), No. 45/D/12. A right of common at common law necessarily involves more than one person being entitled to the same right, i.e. at least one commoner and the owner of the soil. If the owner of the soil is excluded a right over his land is not a right of common. Certain exclusive rights are deemed to be rights of common for the purposes of the Commons Registration Act 1965 by virtue of the definition of "rights of common" in section 22(1) of that Act, but an exclusive right of shooting and taking game is not included within that definition.

There being no evidence in support of the part of Mr. Webster's registration relating to the taking of fodder and to grazing, I therefore refuse to confirm Mr. Webster's registration in toto, but this does not carry with it any implication that he is not entitled to the sporting rights which he claims. I am solely concerned with rights of common and not at all with sporting rights which are not rights of common.

Mr. Golden's objection to Mr. Fincham's registration relates to part of the land comprised in the Register Unit. Mr. Golden himself is entitled to graze 10 animals over the whole of the Common, and Mrs. Holmes and Mr. Smith are also entitled to grazing rights, all of which rights have been registered without objection.

Mrs. Holmes, who was born in 1914, has lived beside the Common all her life. She remembers that until 1934 Mr. Fincham's predecessors at Orchard Farm used to graze cattle on the Common without any objection from anyone. When Mr. Fincham took over Orchard Farm in 1934 he was not keeping cattle and he kept no cattle until 1950. These cattle he did not graze on the Common because at that time what is now Mr. Golden's farm belonged to a Mr. Cousins, who kept a dairy herd, largely relying on the Common for grazing, and Mr. Fincham did not wish to deprive Mr. Cousins of any of the grazing. Mr. Cousins gave up farming in 1968, but by that time Mr. Fincham had a brucellosis-free herd of cattle and he could not then put them on the Common for fear of infection. The area has now been declared to be brucellosis-free, and Mr. Fincham says that he may wish to put his cattle on the Common in the future.

Mr. Golden bases his objection on the fact that Mr. Fincham has never grazed cattle on the Common since 1934. This, Mr. Golden contends, shows either that the right never existed or that it has been abandoned. I am satisfied on Mrs. Holmes's evidence that there was a right of grazing attached to Orchard Farm before Mr. Fincham purchased it, and I am satisfied by Mr. Fincham's explanation of the non-exercise by him of the rights that he had no intention of abandoning them.



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For these reasons I confirm Mr. Fincham's registration.

There being no evidence to support Mr. and Mrs. Brotherton's registration (Entry No.4) and Geoffrey Webster and Son Ltd's registration (Entry No.6), I refuse to confirm these registrations.

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 July 1974

A handwritten signature in black ink, appearing to read 'G. J. G. G.', written over a horizontal line.

Chief Commons Commissioner