



COMMONS REGISTRATION ACT 1965

Reference Nos. 25/U/105
25/U/106

In the Matters of (1) Hardwick Narrows
and (2) a piece additional to Hardwick
Narrows, North Runcton, West Norfolk
District, Norfolk

DECISION

These references relate to the question of the ownership of (1) land being part of that known as Hardwick Narrows and (2) land being part of a piece additional to Hardwick Narrows, both in Runcton, West Norfolk District being the parts of the lands comprised in the Land Section of Register Unit (1) No. CL. 110 and (2) CL. 311 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 no person claimed to be the freehold owner of the lands in question and Norfolk County Council in a letter dated 10 November 1975 said (among other things) that part of the CL. 110 Land now forms part of the Birmingham-Great Yarmouth Trunk Road (King's Lynn Southern By Pass) being subject to a Compulsory Purchase Order. No other person claimed to have information as to the ownership of the said lands.

I held hearings for the purpose of inquiring into the ownership of the said parts of the said lands at King's Lynn on 25 and 27 November 1975. At the hearing on 25 November, (1) Mr C E Fuller on whose application as "Common Reeve to the Common" the CL. 110 Land was registered in the Land Section and also on whose application a right to graze 8 head of cattle was registered at Entry No. 1 in the Rights Section, attended in person; and (2) Norfolk County Council were represented by Mr D Cubitt, solicitor with them. At the hearing on 27 November, (3) Mr Lewis Peter Starling was represented by Mr P Britton articled clerk with Hawkins Ferrier & Co Solicitors of King's Lynn.

The CL. 110 Land comprises Ordnance Survey plots 240 and 236 (7.122 and 14.570 acres); the parts, the ownership of which has been referred under the 1965 Act are 4 strips: (i) a strip at the northeast end of plot 240 now part of a newly constructed traffic roundabout (the junction of the A47, A10 and A149 roads); (ii) a strip on the east side of plot 240 being a newly constructed addition to the A10 road; and (iii) and (iv) a strip across the southeast corner of the north part of, and a strip across the south part of plot 240, being two sections of a newly constructed side road leading off the A10 road to a cattle market and industrial buildings on the west of plot 240.

The CL. 311 Land comprises Ordnance Survey plot 238 (8.063 acres); the parts the ownership of which has been referred under the 1965 Act, are (i) a strip on the east side of plot 238 being another newly constructed addition to the A10 road, (ii) a strip being the remaining section of the newly constructed side road, and (iii) the piece southeast of the last mentioned strip or section being a field containing about 7 acres.



On two points these proceedings may be regarded as extraordinary, or as dealing with circumstances not contemplated by the 1965 Act. First, this hearing comes in the middle of a process by which part of the CL. 110 Land is being lawfully changed from common land to highway land; if this process had been completed before the hearing, the strips (i), (ii), (iii) and (iv) part of the CL. 110 Land and the strips (i) and (ii) part of the CL. 311 Land would have ceased to be common land, have been removed from the 1965 Act register, and accordingly ceased to be subject to any jurisdiction of a Commons Commissioner. Secondly, until the day of the hearing (so Mr Britton said) Mr Starling did not know that the field (iii) part of the CL. 311 Land had been registered under the 1965 Act; if he had known and had objected in time, this field would or might have been removed from the register, and ceased to be subject to any jurisdiction of a Commons Commissioner.

As to the first point, it seems to me that I should inquire into the ownership of the strips in accordance with the 1965 Act, notwithstanding that it is likely that the result may benefit nobody; it is I think equally likely that the result will do no harm. As to the second point, the 1965 Act and the regulations made under it, provide in effect, that registrations which have been advertised as prescribed and to which no objection has been made within the time limited shall become final; in my opinion neither on a reference such as is now before me, nor on any other reference which could now be made to a Commons Commissioner have I any jurisdiction to correct the injustice which Mr Starling may have suffered by not having seen or heard of any such advertisement and having therefore not objected within the time allowed, see my decisions dated 16 October 1970 re River Bank, Ropewalk reference 6/U/22 and dated 9 February 1973 re Three Corner Piece reference 38/U/38; again it seems to me that I should inquire into the ownership of the field in accordance with the 1965 Act, and by so doing I cannot prejudice any claim Mr Starling may make either that the law should be altered or that some authority other than the Commons Commissioners should give the relief which in my view I cannot.

In the Rights Section of the CL. 110 register, there are 7 Entries of grazing rights, 3 of which were made on the application of Mr F W Fryett. In the ownership section Mr R J Hanby Holmes is registered as owner of all the CL. 110 Land except the said strips (i)(ii)(iii) and (iv). Mr Cubitt produced a copy of the Norfolk County Council (North Runcton) Compulsory Purchase Order 1965 by which the County Council were authorised to purchase all these strips the then reputed owners being "exors of the late Miss S A C Edleston per E R Hanby Holmes..." and the reputed occupiers being "the Commoners of Hardwick Common...". He also produced a consent dated 19 December 1967 made by the Minister of Land Natural Resources under section 22 of the Commons Act 1899 consenting to the enclosure of 3 of the strips.

It seems likely that the legal estate in fee simple (being the only form of ownership with which I am concerned, see section 22 of the 1965 Act) is still in Mr Hanby Holmes, and that the reason why he did not apply to be registered as owner of these strips is that he thought having regard to the Compulsory Purchase Order he could not properly do so. However this may be, the County Council have not yet had any conveyance from him or anyone else of the strips and accordingly in the absence of any evidence of the ownership of Mr Hanby Holmes or anyone else I can reach no conclusion about their ownership.

For the above reasons I am not satisfied that any person is the owner of the said strips (i), (ii), (iii) and (iv) being the part of the CL. 110 Land of which no person is registered under the 1965 Act as the owner, and they will therefore remain subject to protection under section 9 of the Act.



In the Rights Section of the CL.311 register there are 3 Entries of grazing rights made on the application of Mr F W Fryett, and CL. 311 Land registered in the Land Section by reason of the registration of such rights. In the ownership section Mr R J Hanby Holmes is registered as the owner of a small part ("the Northwest Part") at the northwest corner of the CL. 311 Land.

Mr Cubitt in the course of his evidence produced the said Compulsory Purchase Order which described the strips (i) and (ii) and the piece (iii) of the CL. 311 Land and the Northwest Part as being all in the reputed ownership and occupation of Mr Starling and which provided that the Northwest Part should vest in the person (stating the effect of the provision shortly) who were entitled to the common land by the Order to be compulsorily purchased; (2) an abstract dated 1967 of the title of Mr Starling to Ordnance Survey plot no. 238 commencing with a conveyance dated 15 December 1942 by Mr T H Andrews to Mr L G Starling and continuing with a deed of gift dated 15 August 1960 by Mr L G Starling to Mr L P Starling and (3) a conveyance dated 7 December 1967 by which Mr L P Starling conveyed to the County Council the said strips (i), (ii) and the Northwest Part, all part of the CL. 311 Land. By the effect of the Compulsory Purchase Order, the Northwest Part was added to the Common in substitution for the part of the CL. 110 land taken for highway purposes.

Mr Britton in the course of his evidence^{produced} (as showing the title of Mr L P Starling to plot 238, (1) a conveyance dated 22 January 1920 to Mr T H Andrews, (2) said conveyance dated 15 December 1942, (3) probate dated 20 December 1967 of the will of Mr L G Starling (he died on 12 May 1967) granted to Mr L P Starling and Mr D C E Ridgeon. Mr Britton said he was not aware of the 1960 deed of gift mentioned in the abstract produced by Mr Cubitt and that he had not been able to find any assent by Mr Ridgeon in favour of Mr L P Starling, although it seemed that Mr Starling was entitled to such an assent because under the will he was entitled to all the residuary estate.

It seems likely that Mr Fryett when he applied for the registration of rights over the CL. 311 Land intended his application to relate only to the part which under the Compulsory Purchase Order was intended to be added to Hardwick Narrows. However this may be, I must, for the reasons already stated, in this decision assume the registration to be valid.

The abstract of the 1960 deed of gift is I think sufficient evidence that it was made not only for the purpose of supporting the claim of the County Council who produced it, but also for the purpose of supporting the claim of Mr Starling, whose solicitors (having only had very short notice of the hearing) had not discovered it. Accordingly on the evidence summarised above, I am satisfied that the County Council are the owners of the said strips (i) and (ii) and Mr Starling is the owner of the piece (iii) of the CL. 311 Land, and I shall accordingly under section 3(2) of the 1965 Act direct the Norfolk County Council as registration authority to register as owners of the part of the CL. 311 Land of which no person is registered under section 4 as the owner: the Norfolk County Council as the owners of (i) a strip on the east side of and being a newly constructed addition to the A10 road and (ii) a strip being a newly constructed side road leading off the A10 road to a cattle market and industrial buildings to the west of the CL. 311 Land; and



Mr Lewis Peter Starling of Park House, Watlington, King's Lynn as the owner of (iii) the piece or field being all the remainder of the said part.

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 4th day of March — 1976

a. a. Baden Fuller

Commons Commissioner