



In the Matter of Land additional to Leziate Fen,  
Leziate, Norfolk.

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DECISION

This reference relates to the question of the ownership of land additional to Leziate Fen, Leziate, being the land comprised in the Land Section of Register Unit No. CL 181 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 Mr A D Brand 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 King's Lynn on 28 June 1977.

At the hearing Mr P W E Britten, solicitor, appeared on behalf of Mr Brand and Mrs W M Lemmon, Mr R G Sparrow, solicitor, appeared on behalf of Mr W Raspberry and Mrs R M Raspberry, and Mr R Barr, solicitor, appeared on behalf of the Leziate Parish Council.

The evidence regarding the ownership of the land in question can only be described as meagre. It is partly negative and partly positive.

The negative evidence consists of a conveyance made 26 May 1930 between (1) Sir Richard Ludwig Bagge, Kt (2) Unifrax Ltd (3) Harry Lawrence Bradfer-Lawrence, by which there were conveyed to Mr Bradfer-Lawrence, with other property, the lordship and manor or reputed lordship or manor of Leziate with such commonable rights over Leziate Fen (formerly called "Leziate Common") as might be appurtenant to the hereditaments thereby conveyed or any part thereof and also with such rights to feed and turn out beasts and cattle on Leziate Fen appurtenant to the said hereditaments or any part thereof. The land the subject of the reference is part of the land there described as Leziate Fen. This conveyance does no more than show that the vendor was not the owner of the land in question by virtue of being lord of the manor of Leziate, for had the ownership of the land gone with the lordship of the manor, the vendor could not have been entitled to rights of common over it.

The positive evidence, upon which both Mr Britten and Mr Sparrow relied, is in the tithe rent-charge apportionment for the parish of Leziate, dated 31 December 1840, in which the land in question is described as "Common", the landowners being described as "Common Right Owners" and the occupiers as "Themselves". Although its probative value is but slight, it is not without interest to observe that it is recorded in the minute-book of the Parish Council in connection with the assertion of the common rights theretofore enjoyed by the parishioners that: "The Leziate Fen is stated to be the property of the Commoners".



Mr Brand and Mrs Lemmon claim directly as being entitled to the rights of common registered at Entry Nos 1 and 2 in the Rights Section of the Register Unit. Mr Raspberry and Mrs Raspberry claim that they were entitled to similar rights and that, although their rights ceased to be exercisable by virtue of section 1(2)(b) of the Act of 1965 because they were not registered, nothing in the Act of 1965 affected their ownership. Mrs Raspberry's claim to have been entitled to rights over the land in question is based on a conveyance made 26 September 1962 between (1) Eric James Didwell (2) Ruby Maude Raspberry, by which Elm Tree Farm was conveyed to Mrs Raspberry. The vendor's title was derived under the conveyance of 26 May 1930 and the words relating to rights in that conveyance were repeated in the conveyance of 26 September 1962. The evidence of Mr Raspberry's former entitlement to rights over the land in question is less direct. He is the owner of East Farm, which was conveyed to his late father by a conveyance made 10 JUNE 1901 between (1) Albert Collison (2) Walter Raspberry. There were included in this conveyance the commonable and other rights appendant or appurtenant to East Farm, but the land over which such rights were exercisable was not identified. However, Mrs Raspberry, who has lived at East Farm since 1926, gave evidence, which I accept, that Mr W Raspberry, senior, who died in 1940, and Mr W Raspberry, junior, turned out cattle onto the land in question continuously until about 20 years ago and that neither of them exercised rights of common over any other land. I am therefore satisfied that Mr W Raspberry, junior, was entitled to rights over the land in question until those rights ceased to be exercisable as a result of his failure to register them.

On the evidence before me, there is no distinction to be drawn between Mr Brand and Mrs Lemmon on the one hand and Mr W Raspberry, junior, and Mrs Raspberry on the other. Either all four of them are owners of the land by being or having been entitled to rights of common over it or none of them is so entitled.

Prima facie, a person entitled to a right of common over land cannot be the owner of it, for a right of common is a profit à prendre over the land of another. However, the definition of "rights of common" in section 22(1) of the Act of 1965 is not confined to rights of common in the strict sense, but is extended to include cattlegates or beastgates (by whatever name known). The owners of cattlegates are not always entitled to the land over which their rights are exercisable, but it is a legal possibility. Thus, section 11 of the Inclosure Act 1845 refers to "gated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattlegates or other gates or stints, or any of them". It is therefore legally possible that those who owned the common rights in 1840 also owned the soil. This is supported by the fact that a part of the land has ridge and furrow markings indicating that it was formerly under cultivation during the period of the year when not being grazed.

However, accepting the accuracy of the statement in the title rent-charge apportionment that in 1840 the soil was in the ownership of the persons entitled to rights of common, it is necessary for the present claimants to prove that they are the successors in title of those persons both as the owners of the soil and as owners of the rights.

Mr Brand, Mrs Lemmon and Mrs Raspberry claim <sup>under</sup> the conveyance of 26 May 1930, and Mr Raspberry claims under the conveyance of 10 JUNE 1901. The rights referred to in the 1930 conveyance were described as being appurtenant to the land thereby conveyed, and the rights referred to in the 1901 conveyance were described as being appendant or appurtenant to East Farm. In my view, these rights cannot be identical



with the rights to which the owners of the soil were entitled in 1840, for they were entitled to those rights as owners of the soil and not as the owners of other land to which the rights were appendant or appurtenant. I therefore do not consider that the present claimants have the rights which went with the ownership of the soil in 1840. This removes the foundation of the argument of Mr Britten and Mr Sparrow that Mr Brand and Mrs Lemmon are the owners and that Mr Rasberry and Mrs Rasberry are former owners of the rights referred to in the tithe rent-charge apportionment.

In my view, there is a further difficulty in the path of the present claimants. A mere transfer or purported transfer of the rights existing in 1840 would not convey any interest in the soil. Such an interest could only pass on an express conveyance. There is no evidence of the identity of the owners of the soil in 1840 and so none of the devolution of their title.

For these reasons I am not satisfied that any person is the owner of the land, 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 29<sup>th</sup> day of July 1977

Chief Commons Commissioner