



In the Matter of Low Common, Thurton and
Ashby St. Mary, South Norfolk District,
Norfolk.

DECISION

Three of these five disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No. CL.364 in the Register of Common Land maintained by the Norfolk County Council and are occasioned (1) by (D/192) Objection No. 56B made by Ashby & Thurton Playing Field Management Committee (Secretary Mrs Irene B. Birt) and noted in the Register on 9 June 1970, (2) by (D/193) Objection No. 155B and made by Mr J. L. Reed, Mr R. F. Birch-Reynardson and Mr B. F. Wheeler (Trustees for Lady Leeds 1964 Settlement) and noted in the Register on 11 June 1971 and (3) by (D/194) Objection No. 217B made by Mr M. A. Bailey and noted in the Register on 11 January 1971, and the remaining two of these five disputes relate to the registration at Entry No.1 in the Rights Section of the said Register Unit and are occasioned (4) by (D/195) Objection No. 211B and made by the said Trustees and noted in the Register on 11 January 1971 and (5) by (D/196) the said Objections Nos. 56B, 155B and 217B.

I held a hearing for the purpose of inquiring into these disputes at Norwich on 15 July 1975. At the hearing Mr Bailey was represented by Mr V. C. Raywood, solicitor of Dawnes Thitcock & Back, Solicitors of Norwich and Mr Reed, Mr Birch-Reynardson and Mr Wheeler were represented by Captain R. D. Hutton, Chartered Surveyor. Mr T. A. Birt attended as an observer; he said his wife made Objection No. 56B as secretary of the Association but having in 1971 ceased to be secretary she now had no further interest.

The registration in the Land Section was made in consequence of an application by Mrs Ruth Jane Edwards of Hill Common to register the rights of common now registered in the Rights Section, being a right to graze 1 horse, 6 goats, 6 pigs and 100 geese, to take estovers and sand gravel and clay. The land ("the Unit Land") comprised in this Register Unit is U shaped, and was during the hearing dealt with in two parts: one ("the Northwest Part") being the northwest end of the U, just south of Hill Farm house, and having an area of about 4 acres, and the other ("the Larger Part") being the remained of the U, north of Vale Farm house, crossed by the road between Thurton and Carleton St. Peter, and having a much larger area (perhaps between 20 and 30 acres). The grounds stated in the Objections are in effect: 056B (Mrs Birt) the Unit Land was not, 0155B (the Settlement Trustees) the Larger Part was not, and 0217B (Mr Bailey) the Northwest Part was not, common land at the date of registration, and 0211B (the Settlement Trustees) the rights over the Larger Part do not exist at all and did not exist at the date of registration.

Mr Bailey in the course of his evidence produced a conveyance dated 6 April 1946 by which Hill Farm containing about 60 acres was conveyed to him; in the Schedule, the Northwest Part is included as 4 pieces of "Meadow". He said (in effect):- Since he



- 2 -

had owned the Northwest Part, nobody had any rights over it. Mrs Edwards who died recently used to live in the Village quite near to Hill Farm; he saw her frequently, and she never mentioned that she had any rights over the Northwest Part. Recently he had let the Farm to his son Mr C. M. Bailey.

Mr C. M. Bailey, who is now 49 years of age, in the course of his evidence said (in effect): No rights of any description were exercised over the Northwest Part. Mrs Edwards died (he would say) a little over a year ago and about 3 years ago she left the parish to go to an old people's home. He had no idea why Mrs Edwards registered the rights.

Mr Hutton in the course of his evidence produced a vesting deed dated 24 December 1926 declaring that about 5,813 acres of land were then vested under the will of Sir R. P. Beauchamp Baronet (he died in 1912) in his daughter Mrs S. G. H. M. Barker-Hahlo (she subsequently changed her name to Beauchamp), a copy conveyance dated 14 August 1957 by Mr J. G. R. Beauchamp to Mr C. D. Hurst, and a conveyance dated 29 November 1968 by Mr Hurst to the Settlement Trustees. The 1926 deed included the Larger Part. The 1957 conveyance comprised Langley Hall Farm and Broom Farm of Cledgrave and Vale Farm of Thurnton, and the Larger Part was therein included in Vale Farm (now about 495 acres). The 1968 conveyance included the Larger Part.

Mr Hutton put in statutory declarations made by Mr Hurst on 11 July 1975 and by Mr F. W. G. Starman on 15 July 1975 as evidence by them.

Mr Hurst said (in effect):- In 1944 he became tenant of Vale Farm, and in 1957 became owner: he sold in 1968. During the 24 years which he occupied Vale Farm he was not aware of the Larger Part being common land, or of there being any common rights over it.

Mr Starman who is a tractor driver now aged 59 years said (in effect):- At the age of 15 he was employed by Captain Potre, the resident Land Agent for Mrs Barker-Hahlo. When Mr Hurst in 1934 became tenant of Langley Hall Farm, he (Mr Starman) continued in his employment. By 1968 Vale Farm, Langley Hall Farm, Broom Farm had been joined to Orange Farm, Langley, occupied and farmed by Captain and Mrs R. D. Hutton, with whom his employment had continued. During the 31 years he had worked at Vale Farm he had never seen any person exercise or try to exercise any common rights over the Larger Part or heard of any person claiming it as common land.

Captain Hutton said (in effect):- The 1964 settlement was a family trust comprising land in Norfolk and Yorkshire. He represented the Trustees partly professionally and partly as belonging to the family. He had only once met Mrs Edwards.

I must consider whether by reason of the death of Mrs Edwards and there being before me no appearance on behalf of her personal representatives, I should vary the procedure usual for an enquiry such as this. In her application dated 7 November 1968, Mrs Edwards named Hansell & Co. as her Solicitor; the form states "all correspondence and notices will be sent to the solicitor". Notice of this hearing was sent to Hansell & Co. who when acknowledging it stated that Mrs Edwards had died. During the hearing, a solicitor who was attending a previous hearing also dealing with a registration originating with Mrs Edwards, said that having telephoned Hansell & Co., he was told that they act for her daughter who has a grant of representation to her estate, but that they had no instructions either to pursue or not to pursue Mrs Edwards' claim to rights of common.



- 3 -

Mr Raywood (on behalf of his firm) undertook if I gave a decision favourable to his client, that his firm would use their best endeavours to bring it to the personal attention of Mrs Edwards' daughter with an indication that an application by her to set aside the decision on the grounds that she should have been given notice of the hearing may be made to the Clerk of the Commons Commissioners. In the space for "land to which the right is attached" in the form of application used by Mrs Edwards is written "None: devolves from my ancestors". Having viewed the Unit Land from the road, and heard the evidence summarised above, I think it likely that Mrs Edwards could never have given any evidence of entitlement to rights of common by devolution from her ancestors and that the registrations originated in some misunderstanding on her part. Accordingly rather than refuse to give a decision and adjourn the proceedings, and to save delay and expense, I accept Mr Raywood's undertaking and give my decision as follows.

On the evidence summarised above, I conclude that on 12 February 1969 (the date of the registrations) the Unit Land was not subject to rights of common and that the registrations should not have been made. For this reason I refuse to confirm the registrations. So that anybody claiming under Mrs Edwards will have sometime to consider their position, I shall not until after 10 weeks from the date of this decision give to the registration authority the notice which I am by section 6(2) of the 1965 Act required to give of these registrations having become void. For the benefit of any person claiming under Mrs Edwards who may read this decision, I draw attention to my decision given under reference nos. 25/D/188 - 191 relating to rights of common registered also on the application of Mrs Edwards over land which she said was known as The Hurrys, Mill Common, and which adjoins or is near to and northwest the Unit Land.

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 for the decision of the High Court.

Dated this 30th day of September 1975

a. a. Bailey Fille

Commons Commissioner.