



Reference No 225/U/176

COMMONS REGISTRATION ACT 1965

In the Matter of Newton-by-Castleacre
Village Green, Newton-by-Castleacre,
Breckland District, Norfolk

DECISION

This reference relates to the question of the ownership of land known as Newton-by-Castleacre Village Green, Newton-by-Castleacre, Breckland District being the land comprised in the Land Section of Register Unit No VG 109 in the Register of Town or Village Greens 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 K Moulton, acting clerk of Newton-by-Castleacre Parish Meeting said (letter of 31 January 1976) that the Parish wished to claim ownership, and Mr Andrew Fountaine claimed (letter of 8 November 1976 from his Agent) that he should be considered for ownership. No other person claimed to be the freehold owner of the land in question to have information as to its ownership.

I held a hearing for the purposes of inquiring into the question of the ownership of the land at Norwich on 5 December 1978. At the hearing Mr A D A M Fountaine was represented by Mr H A P Picarda of counsel on the instructions of Risdon & Co, Solicitors of Willerton, Somerset.

The land ("the Unit Land") in this Register Unit as originally registered on the application of Mr C K Faircloth on behalf of the Parish Meeting was a triangular piece situated at a road junction with the A1065 road near to All Saints Church and to the Manor House, and it contained (according to the Register map) 0.199 of an acre; in 1970 on his application, following an objection by the County Council, the registration was reduced to about 1/4 of its original area.

Mr A Foster, a land agent who has since 1956 been employed by the Narford Estate, in the course of his evidence in support of the ownership of Mr Fountaine ("the Claimant") produced: (1) a history of the parish of Salle (1937) by W L E Parsons; (2) an indenture dated 21 September 1804 by which "the Manor of Newton juxta Castleacre" and 347 acres of land therein specified and "also all houses ... commons ..." were conveyed to Brigg Fountaine; (3) a PRO copy of his will dated 23 December 1824 and letters of administration to his estate dated 13 July 1825; (4) copy probate dated 17 July 1835 of Andrew Fountaine (he died 7 June 1835); (5) a copy of the will dated 2 April 1873 of another Andrew Fountaine (he died 11 August 1874), (6) a disentailing deed dated 18 July 1900 by Charles Andrew Fountaine (born 25 May 1879 later to become an Admiral) with the consent of Algernon Charles Fountaine; (7) copy probate dated 16 July 1946 of the will of Admiral Fountaine (he died in 1946); and (8) an assent dated 24 August 1953 by his personal representative in favour of the Claimant.

Mr Foster said (in effect):- Some of the land originally registered has been taken for road widening. The Unit Land (as now registered) is grassland. All the land to the east and north of the Unit Land is part of the Narford Estate, held by the



- 2 -

Fountaine family in succession since the 1804 indenture; the family history is set out in Parsons supra at page 210.

On the documents produced I conclude that the Claimant is now the owner of the Manor in succession to Brigg Fountaine the grantee under the 1804 indenture. On the question whether the Unit Land has been shown to appertain to or to be reputed to be part or parcel of such Manor, Mr Picarda referred me to 7 decisions all dated 14 November 1977 and made by Mr Commissioner C A Settle QC in which he considered the ownership of the commons mentioned in the Schedule hereto with the result therein stated. In those cases the evidence offered in support of the Claimant's ownership was the same as that before me, and Mr Settle had the benefit of Mr Faircloth's observations.

In my opinion these 7 decisions establish that there are a number of pieces of land near to the Unit Land (some much larger and one very near) which are held with the Manor. I consider that I can and ought to reach the same conclusion as regards the Unit Land. I am therefore satisfied that the Claimant is the owner of the land, and I shall accordingly direct the Norfolk County Council as registration authority to register Mr Andrew Douglas Algernon Maclean Fountaine of Narford Hall, Kings Lynn, Norfolk as the owner of the land under section 8(2) 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.

SCHEDULE

Ref No	Common	Unit No	Decision
225/U/77	Winchester Hill	CL 297	Owned by Mr Fountaine; against a claim by Mr Faircloth that the Parish had a possessory title
225/U/78	Grove Common	CL 298	Owned by Mr Fountaine; no contra claim by Mr Faircloth
225/U/79	Sidestock	CL 299	Owned by the Parish Trustees; in the course of the hearing Mr Picarda conceded their possessory title
225/U/80	Newton Heath and Whinhall Common	CL 300	Owned by Mr Fountaine; no contra claim made by Mr Faircloth
225/U/81	Wells Green	CL 301	Owned by Mr Fountaine; no contra claim by Mr Faircloth



- 3 -

SCHEDULE (continued)

Ref No	Common	Unit No	Decision
225/U/82	Land by Castleacre road	CL 302	Owned by Mr Fountaine; no contra claim by Mr Faircloth
225/U/83	The Pound	CL 303	Owned by Mr Fountaine; no contra claim by Mr Faircloth

Dated this 15th —day of *January* 1979*a. a. Baden Fuller*

Commons Commissioner