



COMMONS REGISTRATION ACT 1965

Reference No. 225/U/236

In the Matter of part of Horse Pit at
Fakenham Road, South Creake, Norfolk

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL 259 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 L W Dennis and South Creake Parish Council each claimed to be the freehold owner of the land in question ("the Unit land") 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 Unit land at Kings Lynn on 5 December 1979.

At the hearing Mr Dennis appeared in person and the Parish Council was represented by its clerk, Mr H Sands.

The land adjoining the Unit land on the east, was conveyed to Mr Dennis by a Conveyance dated 12 March 1975. The Unit land is not divided from his land by fence or ditch. There is a stream running along the northern boundary of the Unit land, and Mr Dennis has for a period of 10 to 12 years diverted the water on to the Unit land, which is pastured by his goats for part of the year.

Mr Sands produced an Enclosure Award of 1860 and a tracing from a Parish Map of the same year. The Award referred to one Public Pond measuring one rood and to its adjoining boundaries "which said pond shall from time to time be properly cleaned and repaired by the Churchwardens and overseers of the poor of the said Parish", the said Parish being South Creake. Mr Sands said that the Parish Council had never cleaned out the Unit land - in 69 years he had only seen it cleaned ~~once~~ once by adjoining owners. Access to the Unit land can only be got by walking through the stream from the road - the Unit land had been inspected by the Parish Council, but nothing could be done because of the mud. Mr Sands said, but Mr Dennis denied, that it had been agreed in 1962 that the Parish and Mr Dennis should have respective parts of the Unit land on either side of a line of marked posts.

In my opinion Mr Dennis's evidence was insufficient to establish his ~~claim~~ claim to ownership either by prescription or otherwise. As regards the Parish Council's claim, a comparison of the 1860 Parish Map and the plan referred to in the Conveyance of 12 March 1975 does indicate that the Public Pond mentioned in the Award was, at least to a substantial extent, the Unit land. Although no maintenance or use of the Unit land has been carried out by the Parish Council for many years, I think that they are entitled to ownership derived



from the Award and I shall accordingly direct Norfolk County Council as registration authority to register South Creake Parish Council 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.

Dated

30 January 1980

L. J. Morris Smith

Commons Commissioner