



In the Matter of Snettisham Beach
Shingle Fields, Snettisham, Norfolk

(Preliminary)
DECISION

This dispute relates to the registration at Entry No 1 in the Rights Section of Register Unit No. CL.378 in the Register of Common Land maintained by the Norfolk County Council and is occasioned by Objection No. 256B made by Snettisham Beach Holdings Ltd and noted in the Register on 14 August 1969.

I held a hearing for the purpose of inquiring into the dispute at Golden Cross House, London WC2 on 17 and 18 November 1981. The hearing was attended by Mr R Campbell, of Counsel, on behalf of the Snettisham Parish Council, the applicant for the registration, and by Mr N Le Poidevin of Counsel, on behalf of the Royal Society for the Protection of Birds, the successor in title of the Objector.

I was asked to hear legal argument before hearing any evidence.

The registration is of the right to take shingle from the whole of the land comprised in the Register Unit. It is not stated to be attached to any land. The applicant for the registration is stated to have been Mr C L Bowman (Clerk) on behalf of the Parish Council and the capacity in which he applied is stated as "Owner". In the application for the registration the applicant is stated to be the Parish Council and the capacity of the applicant is stated as "Owners of Rights", but the right is stated to be attached to "land on the South side of the road leading to the head of the Beach from the shingle ridge above high water mark inland to the sea defence Bank and from the aforementioned road southwards to the Parish Boundary with Wolferton", which description is followed by the words "Right held in gross as Trustees".

In addition to the application, there was produced a copy of a notice signed by Mr Bowman, who stated that he was authorised to sign on behalf of the Parish Council, of his intention to make an application for a registration during the second registration period allowed under the Act of 1965. In the part of the notice indicating the general nature of the rights of common to be registered Mr Bowman stated "skingle rights to Parishioners".

It was accepted by both sides that what was intended to be registered was the right of the inhabitants of Snettisham to take "Shingle" from the "Common Beach" for their own several and respective necessary uses in Snettisham and for mending and repairing the roads and highways in Snettisham reserved out of the allotments made by the Snettisham Inclosure Act of 1762 (2 Geo. III, c.27 (Private)).

Both Mr Campbell and Mr Le Poidevin asked me to deal with the matter on the footing that the right described in the Act of 1762 is a right of common as defined in section 22 (1) of the Commons Registration Act 1965, and so capable of registration under that Act.



The grounds stated in the Objection are that the rights stated over the part of the Register Unit edged red on the attached plan do not exist at all and did not at the date of registration. During the course of the hearing I gave leave to Mr Le Poidevin under reg. 26 (1) of the Commons Commissioners Regulations 1971 (S.I. 1971 No. 1727) to put forward the additional ground that the Parish Council was not entitled to apply for the registration in the capacity stated in the Register, and the argument was concentrated on this point.

A registration authority was required by section 4 (1) of the Act of 1965 to register any land as common land or, as the case may be, any rights of common over such land on application duly made to it. It is provided by section 4 (2) that an application for the registration of any land as common land may be made by any person, but the Act does not define the persons who may apply for the registration of rights over land.

The persons who could apply for the registration of a right of common were defined in three categories by reg. 7 (2) of the Commons Registration (General) Regulations 1966 (S.I. 1966 No. 1471), the first category being the owner of the right. This Regulation was, however, replaced by a new reg. 7 by the Commons Registration (General) (Amendment) Regulations 1968 (S.I. 1968 No. 658), it being provided by the substituted reg. 7 (1) that where a right of common is attached to any land, and is comprised in a tenancy of the land, an application for the registration of that right may be made by the landlord, the tenant, or both of them jointly, while the substituted reg. 7 (2) deals with a right of common belonging to a vacant ecclesiastical benefice. The new reg. 7 does not make any further provision as to who may apply for the registration of a right of common, but leaves the matter at large by reg. 7 (3), which provides that the foregoing provisions of the regulation do not affect the right of any person entitled apart from those provisions to make any application under the Act of 1965.

We are thus thrown back on the Act in cases such as the present, in which a right of common is not comprised in a tenancy of the land to which it is attached and does not belong to a vacant benefice. All that is expressly stated in the Act is that an application for the registration of land as common land may be made by any person. The application of the rule of interpretation commonly summarised in the maxim expressio unius est exclusio alterius indicates that an application for the registration of a right of common cannot be made by any person, although the Act does not state how the class of persons to make such an application is to be limited.

An application for the registration of a right of common had to be made in form 2 in Schedule 1 to the Regulations of 1966. Note 2 to that form is headed "Who may apply for registration" and reproduces reg. 7 in its original form, the first category again being the owner of the right, but by the time that the application in the present case was made on 19 September 1968 Form 2 had been revised, so that in Note 2 the words "the owner of the right" had been replaced by "the owner of the right or in certain cases (see below) by someone on his behalf or in his stead". This is followed by three examples of persons entitled to apply on behalf of the owner of the right or in his stead, the examples being a receiver under the Mental Health Act 1959, charity trustees where the land is vested in the Official Custodian for Charities, and trustees of settled land. Note 2 in its revised form then goes on to state: "The registration authority has power to call for such further evidence of the right of the applicant to make the application as it may reasonably require".



If Mr Campbell and Mr Le Poidevin are right in agreeing that the right of the inhabitants of Snettisham under the Act of 1762 is a right of common capable of registration under the Act of 1965, there must have been a way in which an application for the registration could lawfully have been made.

The Act of 1762 was not unique in treating the inhabitants of a parish collectively. For many centuries the inhabitants at large were liable for the repair of the highways in the parish until their liability was abolished by section 38 (1) of the Highways Act 1959. The actual participation of the inhabitants in the repair of highways ceased when the duty (as distinct from the liability) to carry out the repairs was imposed on the Surveyor of highways by section 6 of the Highways Act 1835. It is therefore necessary to consider how the inhabitants of a parish acted collectively in the discharge of their common law liability before the coming into force of the Act of 1835.

It first has to be borne in mind that the "inhabitants" liable to repair the highways of a parish were not literally every man, woman, and child living in the parish, but the occupiers of land in the parish (1 Rolle's Abridgement 390; 1 Hawkins's Pleas of the Crown (2th ed., 1824) 698). Those subject to the liability were therefore easily identifiable, the reference to mending and repairing the roads and highways in the parish of Snettisham in the Act of 1762 shows that these persons are the inhabitants there referred to. It appears from Section 1 of the Statute 13 Geo. III, c.78 that there was in each parish a "usual place of public meetings" and it further appears from section 65 of that statute that the inhabitants of a parish could agree upon action at a "public meeting".

Since it does not appear from the authorities that the inhabitants of a parish in the sense in which the word "inhabitants" is used in the Act of 1762 could take collective action without agreeing upon it at a public meeting, it follows that an application for registration under the Act of 1965 could only be taken in pursuance of an agreement made by the inhabitants at a public meeting. There is at this stage of the proceedings no evidence that such an agreement was ever made, but by the application of the principle conveniently summarised in the maxim Quia Praesumuntur rite et solenniter esse acta it must be presumed that there was such an agreement. Such a presumption is of course rebuttable, so that it is open to the Objector to prove that no public meeting of the inhabitants ever took place or that, if there was such a meeting, the making of the application for the registration was not agreed upon. I ought here to say that at the hearing it was suggested that Mr Bowman could have made the application in his capacity of an inhabitant. In my view ^{as a} ~~an~~ inhabitant could validly make an application of his own motion without the authority of the inhabitants at large in public meeting assembled; see per Lord Denning M. R in Wald v Silver (1963) 1 Ch. 213 at p.257. There is a rebuttable presumption that Mr Bowman was an inhabitant at the material time.

that a meeting was held

If the presumption is not rebutted, it will be necessary to consider whether the application was properly made in pursuance of the agreement by the inhabitants.

On the basis that Mr Bowman was duly authorised to make the application on the behalf or in the stead of the inhabitants of the parish of Snettisham, the application was full of errors. It wrongly stated the applicant to be the Parish Council, the capacity in which the applicant was entitled to apply for registration was wrongly stated as "owners of rights", and it was wrongly stated that the right was held in gross as trustees, while Mr Bowman's statement that he was duly authorised to sign the application on behalf of the Parish Council, if correct, was irrelevant. Even the description of the rights as "Chingle rights of



the parishioners" in the notice of intention to apply for the registration was not wholly accurate, for it is possible for a person not resident in a parish to be a parishioner: see Batten v Gedy (1889), 41 Ch.D.507. Mr Bowman, therefore, being duly authorised by the inhabitants of the parish to make the application, not only failed to state that fact in the application, but incorrectly stated that he was authorised to make it by the Parish Council. Nevertheless, he did state that which he was authorised to do. The fact that he did not do it correctly did not make it void ab initio: at the worst it afforded a ground for objection, and an objection can be met by modifying the registration.

I have so far dealt with this matter on the footing that the right reserved in the Act of 1762 is vested in the inhabitants of the parish of Snettisham and that any valid application under the Act of 1965 must have been made by or on behalf of the inhabitants or by someone in their stead. In my view, however, the Parish Council had a statutory right to act in the matter. The churchwardens and overseers of the poor of a parish were empowered by Section 17 of the Poor Relief Act 1819 to hold for and on behalf of the parish all buildings, lands and hereditaments belonging to the parish. By Section 5 (1) (c) of the Local Government Act 1894 the legal interest in all property vested in the Churchwardens and overseers of a parish was (with some immaterial exceptions) vested in the Parish Council.

Mr Le Poidevin argued that Section 17 of the Act of 1819 and Section 5 of the Act of 1894 could not operate to vest the rights of the inhabitants of a parish in the parish council, and he relied upon the decision in Wyld v Silver. [1963] 1 Ch.245. In that case the inhabitants of a parish had by ancient usage, confirmed by statute in 1799, the right to hold a fair or wake on certain land. An action for an interference with this right was brought by certain inhabitants on behalf of themselves and all other inhabitants of the parish. The defendant objected that the action was not maintainable by the plaintiffs because the right had passed to the Parish Council by virtue of the Acts of 1819 and 1894. It was held that the right there in question was quite incapable of vesting in anyone except the inhabitants and so did not fall within the ambit of Section 17 of the Act of 1819. Russell L J said at p. 271 that the right to hold a fair or wake was not property capable of being turned to account.

In my view, this case is clearly distinguishable from Wyld v Silver. The right to take shingle from the beach, unlike a right to hold a fair or wake, is a right of common, which is an incorporeal hereditament. There is nothing in Section 17 of the Act of 1819 to indicate that the words "hereditaments belonging to such parish" should be construed as limited to corporeal hereditaments. As for the word "belonging", it was held by Lindley L J in Haigh v West. [1895] 2 Q.B.19., at p.31 that it must be construed in this context "in a popular sense". In that sense the right under the Act of 1762 belonged to the parish in 1819, whatever the conveyancing niceties may have been. On this footing Mr Bowman drafted the application perfectly properly.



I was also asked to consider whether it would be possible in law for the rights under the Act of 1762 to have been abandoned. I have no doubt that a right of common created or preserved by a statute for the benefit of the inhabitants of a parish can only be lost by a later statute: see per Lord Denning M. R. in Wyld v Silver, supra, at pp. 255-256.

I have therefore come to the conclusion on the material before me that my proper course is to confirm the registration with the following modifications, namely, the substitution for the words "to take shingle" in column 4 of the words "The right of the inhabitants of the parish of Snettisham to take shingle for their own several and respective necessary uses in Snettisham". Perhaps I should add that I have not included the words "for mending and repairing the roads and highways in Snettisham" because the mending and repairing of roads and highways is no longer a parish matter. It may be that the highway authority could have applied for the registration of a separate right, but that is now idle speculation.

In order to save the incurring of possibly unnecessary further costs, I shall give a decision in the terms stated above unless Mr Le Poidevin's instructing solicitors inform the Clerk of the Commons Commissioners within 28 days from the date on which notice of this preliminary decision is sent to them that it is desired to have the matter listed for the hearing of evidence.

My decision as to costs will be reserved until I finally decide the matter.

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 11th day of January 1982

Chief Commons Commissioner



specified in the First Schedule hereto. Mr Cooke who has lived in the Parish for 5 years, then gave oral evidence in the course of which he produced the documents specified in the Second Schedule hereto, and Mr A H Dewing who has lived in Long Stratton for the last 15 years and is now and has been for the last 10 years a member of the Parish Council, also gave oral evidence. Two days after the hearing I inspected the land, it having been agreed that I might do so unattended.

Mrs Bonney in her declaration said (in effect):- Her father Mr S Reeve purchased the said three dwelling houses on 4 March 1925, and died in Sibford Gower on 17 August 1946. They are now vested in her mother as tenant for life under his will. She (Mrs Bonney) lived in Tupsley from June 1957 for upwards of 2 years and arranged "for the erection of the concrete post and iron bar fencing which exists around The Plain... the pedestrian rights of way across The Plain were respected... The reasons which prompted the erection of this fence were that The Plain was in bad repair and was an eyesore it was used for car parking particularly by visitors to the Swan Public House opposite and frequently by a mobile fish and chip van..."

Mr Cooke said (in effect):- The maps and photographs he produced showed that the Unit Land before it was fenced (in about 1958 as described by Mrs Bonney) had for many years been open space, apparently public land open to the Main Road. He had studied the local history, eg he had looked at the documents from the Parish Chest deposited with the Norfolk County Records; they go back to 1540, and are mainly of Parish Meetings; in these records there are numerous references to Fairs held annually, however he had found in them no particulars of The Plain. He had also looked at Kelly Directories and White Directories, and considered local hearsay from older inhabitants of the Village. (When asked in cross examination what he had read and heard of the use as a fair ground, he said) he had heard that a small Fair with amusements and so on did come and stand in places at various times, and had heard of a market there and read about basket makers.

Mr Dewing said (in effect):- Mr Self a retired butcher had lived in the Parish all his life, and was very much concerned with Parish matters, always attending Parish Meetings. When he died he was about 80 years of age; he lived 50 yards from The Plain.

I record that if the reliability of the copy documents and copy postcards produced by Mr Cooke had been challenged I would have allowed an adjournment, to enable the originals to be produced. However Mr Guppy accepted that the photographs are copies of postcards made about the date stated by Mr Cooke (between 1900 and 1910 so I understood) and that the Parish records do mention Fairs as also stated by Mr Cooke. However what was not accepted was where Mr Self gets the other information mentioned in his statements (RWC 1 and CR 8).

Mr Guppy contended that the hearing was nothing to do with ownership, a matter which I can only consider under section 8 of the 1965 Act, and that the Parish Council had not established in accordance with the burden of proof required by the Act that the Unit Land is within the section 22 definition of a town or village green, which so far as relevant is: "land on which the inhabitants of any locality have a customary right of indulging in lawful sports and pastimes".



As to burden of proof:- Under the 1965 Act, a registration to which no objection is made becomes final without any evidence other than the applicant's declaration on form CR 8 that he believes the land is a town or village green (although Mr Self in this case gave additional information in his "Remarks", he need not have done so). Under the Act a Commons Commissioner has a discretion, see section 6; but subject to exercising this discretion, there is nothing I think in the Act precluding a Commons Commissioner if an Objection is not supported at all from confirming the registration without any evidence being given at the hearing on behalf of the applicant. If Parliament thinks that a declaration on form CR9 enough when there is no Objection, I should not I think impose a greater burden on an applicant if the objector does no more than claim, without providing any reasons or evidence, to be the owner.

However in this case some evidence, ie the declaration of Mrs Bonney against the registration was given; I must therefore balance \longleftrightarrow as best I can the evidence for and against the registration; but I reject the suggestion that the Act imposes some special standard of proof.

I accept that I am not concerned to determine ownership of the Unit Land, but do not accept that evidence such as documents of title, acts of possession and other acts of ownership are irrelevant on the question whether land is within the definition. If, for example, evidence had been given that the Unit Land had been dealt with in the documents of title relating to the three dwelling houses as if it belonged to them (eg expressly or impliedly conveyed as being free from any customary rights), or evidence had been given that successive owners or occupiers of the three dwelling houses had on the Unit Land done acts of possession inconsistent with it being subject to customary rights, such evidence would in the balance weigh heavily against those who contended for a customary right. But contra if no such evidence is given by persons who could if it existed easily provide it, or if their evidence is slight, evidence for a customary right although also slight may on the balance be decisive. Without some qualification therefore, it is not correct to say that the burden of proof against an owner is heavy, and as against a non-owner is light; evidence which would support an objection that there is no customary right, may be the same as the evidence which could in proceedings under section 8 support an ownership claim, but the question in the section 6 proceedings is different, because land privately owned may be subject to a customary right; in proceedings under section 6 it is necessary to consider whether the evidence indicating ownership, in addition or alternatively indicates the non-existence of a customary right.

No explanation was offered as to why the conveyance of the three dwelling houses to Mr Reeve when he purchased in 1925, was not produced. Mrs Bonney in her declaration says that when he purchased it was "described as...containing according to the Tithe Apportionment of the said Parish altogether thirty perches...". The tithe map produced by Mr Cooke shows the east boundary of the Main Roads through the Village as an irregular line apparently the front walls and fences of the adjoining lands and buildings, and shows that the Unit Land and the road as all one piece, that is it shows that the Unit Land was not included in any tithe apportionment. I conclude that there is no document of title to the three dwelling houses made on the basis that the Unit Land belongs to them.

At the hearing the Unit Land was always referred to as "The Plain". Mrs Bonney in her declaration always so calls it. Apart from the below mentioned Rights of Way Act 1932 notice, it does not appear to belong to the three dwelling houses. I conclude that the Unit Land was never reputed so to belong.



But Mrs Bonney does say she erected a fence, and erecting a fence is an act which could be such an interruption of a customary right as to indicate that there never was any such right. From the appearance of the fence and Mrs Bonney's reasons for erecting it, I conclude that the three dwelling houses do benefit from it. But the fence is of a character (it is not exactly as Exhibit A describes as "proposed"), that it is appropriate for the preservation of the land for reasonable use by the public; pedestrians are not obstructed from going on it wherever they please; there are gaps in the iron bars, so the fence does not altogether prevent motor cars being driven onto the Unit Land; for purposes such as are usually associated with amusement fairs, the bars are little or no obstruction. As to the grateful letter for permission (Exhibit B) written by Mrs Sargent, I have no evidence of her knowledge of the locality; the permission referred to was not for any recreational use.

In my view the evidence summarised above against any customary right does not amount to much. Mr Guppy contended in effect that there was no contra evidence or no reliable contra evidence. It being agreed that in recent years there has been no use of the Unit Land for recreational purposes, I must consider whether any use in the past (say before the 1939-45 war) can be inferred.

It is I think unfortunate that no inhabitant of the Village who has lived in the Village more than 15 years ago, gave oral evidence. It is also unfortunate that Mrs Reeve who is convinced that the Unit Land is not within the 1965 Act could not give or provide oral evidence and did not say why she was so convinced. I know what the Unit Land and its surroundings now looks like, and I have evidence (the photographs) of what it looked like 70 years ago, and evidence (the maps) of what it looked like in 1850; I have the evidence of the concern of the Parish authority over many years with Fairs. In this context I must consider the observations of Mr Self which I can treat as evidence of matters within his knowledge.

In his 1968 letter (RWCl) Mr Self says:- "The plain from living memory; & before has always been reckoned as parish property, & until recently no claim has been made otherwise by the Reeve family. Many old residents can confirm that it was used as - a market place. Fair ground, stalls, pedlars, etc. Political meetings. Parade ground for Home Gd & British Legion. Shoppers Car Park, also old type steam engines, for a pull up place on passing through. Two fairs were held annually Whit Tuesday & Oct 12th (confirmed by old records). A fair ground was granted to Stratton by King John in 1267, also recorded..." His remarks (CR8) are similar except he also mentions "Fancy dress parades etc...Village Quoit Games..."

Although Mr Self uses the words "Many old residents can confirm", having regard to what Mr Dewing said about him, I interpret his letter as stating not only what many old residents had said to him about the things which had happened, but also what he as an old resident himself knew had happened.

It is unfortunate that Mr Self in his statements did not clearly indicate what he knew from personal observations during his lifetime and what he inferred from his researches into what had happened before he was born. Notwithstanding the gaps in the information put before me, having walked up and down the main road by the Unit Land, having compared it as it now is to what the postcards show it to have been, having considered the apparent age of the houses (nearly all around the Unit Land appeared now to be essentially the same as they were 70 years ago),



and having considered the general layout of the Village, I feel no hesitation in concluding from Mr Self's statements that the Unit Land and its surroundings have for many years been used as he described. It would be unrealistic to suppose that he used the word "Fairs" as a term of art limited to marketing, see *Wyld v Silver* 1963 1 Ch 243; and as not meaning, or at least including amusement fairs such as Mr Cooke said he had heard about; without his evidence, I should infer that amusements fairs must for many years before and after the 1914-18 war have come to this Village as they then came to many others.

Mrs Bonney in her declaration says: "I myself have never heard of The Plain being used as a recreational ground by the Villagers or for holding fetes, fairs or parades. It seems to me that by reason of the size of the piece of land, and its proximity to the main road, even if such fairs were commonly held, these days the piece of land would not be suitable for holding of such events upon it". I agree that the Unit Land, being so small could not sensibly be described or used as a "recreation ground", or sensibly by itself be used for fetes, fairs or parades. But in my opinion a registration is not invalid merely because those responsible for it might have registered more land; there is no reason in law why land should not at the same time be highway, and place for a market, and a fair ground (using the words as a term of art) and subject to customary recreational rights; the circumstance that for the last 20 years greatly increased motor traffic has made it impracticable to use the main road for anything but highway, is not I think a reason for invalidating a registration under the 1965 Act of any land which may be left. In addition to the Unit Land being used with the surrounding land for an ordinary amusement fair (as I infer that it has been for the reasons above stated), Mr Self particularly mentions quoits. For such a pastime the Unit Land is as regards size and \longrightarrow (being near public houses) situation, very suitable.

The evidence in favour of the Unit Land having been used by the inhabitants of Long Stratton for sports and pastimes for many years before the 1939-45 war, when analysed as above may appear to be slight; but when balanced against the contrary evidence, is I think enough to be decisive. It is perhaps unfortunate that I did not at the hearing have more information; but from what I was then given and from what I saw at my inspection, I am convinced that the Unit Land (possibly with other land surrounding it) is subject to the customary rights as now claimed by the Parish Council.

I record that on my inspection I noticed on the front wall of the dwelling houses, this notice: "RIGHTS OF WAY ACT 1932. THIS FORECOURT IS PRIVATE LAND. PARKING OF MOTOR CARS OR OTHER VEHICLES IS NOT ALLOWED BUT THE PUBLIC ARE PERMITTED TO USE IT ON FOOT UNTIL FURTHER NOTICE". As above stated the Unit Land in my opinion has never been private land, and it was apparently accepted expressly by Mrs Bonney and impliedly by Mrs Reeve's solicitors in their letter of June 1976 that the public have rights to use it on foot. However as this notice was not mentioned by either side at the hearing, I have in reaching my decision disregarded it.

For these reasons I confirm the registration without any modification.

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.



FIRST SCHEDULE

documents produced on behalf of Mrs Reeve

Exhibit A		Sketch Plan
Exhibit B	11 March 1959 (Received)	Letter from Mrs M M Sargent of Morningthorpe Manor, Long Stratton to Winter & Co (solicitors to Mrs Reeve)

SECOND SCHEDULE

documents produced on behalf of Parish Council

RWC1	7 April 1968	Copy of letter sent by Mr Self to the Depwade RDC
RWC2	-	PRO copy of Tithe map
RWC3	1896	Copy of Plan of an Estate in Long Stratton, Wacton & Tharston for sale by auction by Salters Simpson & Sons
RWC4	1905 (Reprint)	OS Survey 2nd edition 1/2,500
RWC5		Colour photographs (transparencies)
	1975	A Taken by of Unit Land viewed from the west looking east
	1905	B Copy post card; view of main road looking south; Unit Land in the middle distance
	1900-1910 ("turn of the century")	C Copy post card; view of main road looking south; the south end of the Unit Land in the foreground
	ditto	D Copy post card Long Stratton Starr's Series 5840; view of main road looking south; part of Unit Land visible in foreground
	ditto	E Copy post card; view of main road looking north; Unit Land just visible in background
RWC6	23 November 1967	Letter Depwade Rural District Council to Long Stratton Parish Council

Dated this 23rd day of September 1976

a. a. Bado Fuller