



COMMONS REGISTRATION ACT 1965

Reference Nos. 25/D/3
25/D/4

In the Matter of Syderstone Common,
Syderstone, Norfolk.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.1 in the Register of Common Lane maintained by the Norfolk County Council. 25/D/3 is occasioned by Objection No.197B made by Tate & Lyle Farms Ltd and noted in the Register on 13th October 1970. 25/D/4 is occasioned by Objection No. 246B made by Alfred Womack Ringer and William Womack Ringer and noted in the Register on 13th October 1970. Since I can give only one direction to the Registration Authority in respect of the registration to which the two disputes relate, I decided to make an order to consolidate the two matters.

I held a hearing for the purpose of inquiring into the disputes at Norwich on 21st June 1972. The hearing was attended by Mr. J.C.M. Starling, solicitor, for the Syderstone Parish Council, and by Mr. Colin Lamb, counsel for Mr. A.W. Ringer and Mr. William Womack Ringer. Before the hearing all the persons entitled to be heard on 25/D/3 had agreed that the land referred to in Objection No.197B should be excluded from the registration. I am willing to give a decision in accordance with those terms.

25/D/4 relates to the north-western portion of the land the subject of the registration, comprising rather more than half the area. Although the whole of the land the subject of the registration is marked as "Syderstone Common" on the modern Ordnance map, it was not so described in the tithe apportionment, where the portion the subject of 25/D/4 was described as "Syderstone Warren" and the remainder of the land the subject of the registration was in two parcels, described respectively as "The Cover" and "Wicken Common".

Mr. Starling argued that the land the subject of 25/D/4 fell within the first limb of the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being subject to rights of common. These rights of common were, he said, rights of pasture, estovers, soil, and taking rabbits and wild fowl.

A number of local residents were called in support of the registration. They gave evidence about the pasturing of cattle, sheep and goats, and the taking of whins, heather, gravel and rabbits without interference from the owners of the land. None of the witnesses claimed to be the owners of rights of common personally, but said that the persons who acted in the way which they described were "villagers" or "parishioners".

Mr. Starling produced the minute book of the Syderstone Parish Council, which supported the evidence summarized above, for the minutes of a meeting held on 10th November 1921 contain the following passage:-



"re Syderstone Common.

"At the above meeting it was unanimously agreed that the whole of the inhabitants of Syderstone lay claim to the following rights over the Syderstone Common and pit, and that the signature of the parishioners could be obtained if necessary.

1. Right of way over all and any part of the Common.
2. To get sand, gravel, and stones and to remove the same.
3. To cut whins, turf and brakes.
4. To feed any animals thereon.
5. To water the stock and to take water from the pit for any purpose whatever.
6. To take any necessary steps to keep the water in the pit in a clean condition.
7. To hold religious meetings.
8. To kill rabbits.

"The above rights have been enjoyed by the inhabitants of Syderstone for hundreds of years".

Evidence was given by Mr. A.W. Ringer. He said that during the half-century that the land in question had been in his family he and his relatives had raised no objection to the use made of the land by the villagers because they did not want to create a bad feeling, though he said that he had on occasions told some of the villagers that they had no rights over the land.

On this evidence Mr. Lamb submitted that the registration must fail because a right of common cannot exist in a fluctuating body, such as inhabitants or parishioners, and cited in support of that proposition Gateward's Case (1607), 4 Co.Rep. 59b. Mr. Starling replied that he was not supporting a claim for the inhabitants, but for the commoners who must be presumed to exist from the fact that rights were exercised. The difficulty about this "no smoke without fire" argument is that it starts with the assumption that the pasturing of cattle, etc. was done as of right. In my view, the evidence does not support that assumption. It seems to me that the true view is that the villagers have taken some of the produce of the land in question in their capacity as villagers with the good-natured tolerance of the owners of the land. Those who applied their minds at all to the question of whether what they did was of right thought that they had a right to do it as villagers or parishioners. On that I cannot find that there is any right of common known to the law.

For these reasons I can only confirm the registration with the following



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modifications:- namely, the exclusion of the areas of land the subject of Objections Nos. 197B and 246B.

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 **14th** day of July 1972

A handwritten signature in cursive script, appearing to read 'G. D. Lamb', with a horizontal line underneath.

Chief Commons Commissioner