



COMMONS REGISTRATION ACT 1965

Reference No.25/U/73

In the Matter of The Commons,
Swann Hill, South Creake,
Docking R.D., Norfolk

DECISION

This reference relates to the question of the ownership of land known as The Commons, Swann Hill, South Creake, Docking Rural District being the land comprised in the Land Section of Register Unit No.CL.180 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 South Creake Parish Council claimed to be the freehold owner of the land in question 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 land at Norwich on 12 June 1973. The hearing was attended by South Creake Parish Council who were represented by Mr. H. F. Sands, their clerk.

Mr. Sands who has lived in South Creake since he was 3 years old (he is 66 years of age) and been a member of the Parish Council since 1946, gave evidence. After the hearing, I inspected the land, (with the agreement of Mr. Sands) unattended.

The land ("the Unit Land") comprised in this Register Unit is a rectangular piece having an area (according to the Register map) of 3.109 acres. On its south side (about 200 yards long) there is a public road (C.336) which runs east and west. On its other three sides it is surrounded by woodlands, the trees appearing to have been planted about 30-40 years ago. Near the public road, the Unit Land is mostly a few feet above road level and entirely covered by bushes and scrub; there is no obvious entrance from the road anywhere, but a close examination shows that it is possible in three or four places to gain access on foot to the middle and back of the Unit Land through gaps in the bushes and scrub. However by using a track leading from the public road across the adjoining land on the west it is possible to get a vehicle to the middle and back part of the Unit Land. Along the west and north sides of the Unit Land there is a little used vehicular track apparently made for the convenience of the surrounding land (it may be ^{the} this track ^{is} outside the Unit Land). About one quarter to half of the Unit Land is so overgrown by thick scrub as to be impenetrable except by someone prepared to cut his way through. The rest, except for some grass tracks and some small patches of grass, is covered with bracken, blackberry bushes and other rough vegetation. The land is uneven, containing a number of depressions (disused quarries, I suppose) now much overgrown and therefore inaccessible. No part was cultivated or otherwise apparently used or capable of being used profitably by anyone. I saw a small heap of recently deposited rubbish, and it looked as if rubbish had in past years been left there from time to time by unauthorised persons.



At the hearing Mr. Sands produced the South Creake Inclosure Award dated 11 September 1860 which contained allotments as follows:- "And I declare that I have set out and do hereby set out allot and award unto the Surveyors of the Highways of the said Parish of South Creake and their successors for ever All that piece or parcel of ground numbered 416 on the said Map and containing by admeasurement two acres And I direct that such Allotment piece or parcel of ground shall be appropriated and used as a public quarry for supplying Stone Gravel and Sand for the repair of the Roads and Ways within the said parish And I direct that the Fences on the east south and west of such an allotment shall be made and from time to time be repaired and maintained by and at the expense of the Surveyors of the Highways of the said parish of South Creake for the time being ... (there then follows an allotment of plot 403 as a recreation ground and an allotment of plot 433 for the poor) ... And I declare that I have set out and do hereby set out allot and award unto the Churchwardens and Overseers of the Poor of the said parish of South Creake and their successors forever All that piece or parcel of ground numbered 415 on the said Map and containing by admeasurement one acre. And I direct that such allotment piece or parcel of ground shall be appropriated and used as a public clay pit for supplying the Owners and Occupiers of land within the said parish of South Creake with clay for the manurage of the land situate within the said parish but such clay shall not be used for building purposes nor be sold nor consumed for any purpose whatever other than for manuring the said land as before described and I direct that the fences on the east and south side of such allotment shall be made and from time to time be repaired and maintained by and at the expense of the Churchwardens and Overseers of the poor of the said parish of South Creake for the time being ... "

As appears from their minute book produced by Mr. Sands, the Parish Council between 1928 and 1961 considered the Unit Land on four occasions:- 19 March 1930, the gravel pit was not to be handed over to the District Council for the County Council to take over. 30 May 1934, a letter from Holkham Estates (suggesting they purchase; they own the adjoining land) was not to be entertained. 26 June 1946, the Rural District Council was to be asked as to ownership. 3 July 1946, the Rural District Council in a letter said that the 2 acres was parish property, was let to Mr. F. L. Perowne at a yearly rent of £2, collected by the Rural District Council and placed to the credit of the Parish.

Mr. Sands also produced some correspondence which in 1950 passed between the Parish Council and the Rural District Council and which was occasioned by refuse being dumped on or near the gravel pit. The District Council wrote (among other things):- The Council "have not used this tip for the disposal of refuse for many years" ... "The lands have been let to Mr. Perowne and his predecessors for many years, and the rent of £2.0.0. per annum is collected by the District Council and credited to the parish of South Creake in relief of rates. I can trace no agreement regarding the letting of these lands".

Mr. Sands said he remembered seeing pits on the Unit Land looking as if they had been cut into the hill side, but he had never seen any thing taken out of them. He remembered seeing rubbish dumped there.

After the hearing, Mr. Sands sent me a tracing of the relevant part of the map mentioned in the 1860 Award, from which it appeared that plots 416 and 415 together comprise the Unit Land, the line dividing them being a straight line at right angles to the public road.



The 1860th Award was authorised by the Second Annual Inclosure Act 1856 (19 & 20 Vict. c.106).

The Unit Land is not being used and is unlikely in the future ever to be used for the purpose for which it was allotted under the 1860 Award. To those concerned, the determination of the most advantageous way of dealing with the land must give rise to difficulties; practically, what is the best use which could be made of the land; legally who can authorise such use. I cannot deal with all the legal difficulties which may arise, because under the 1965 Act my jurisdiction at this hearing is limited to determining the ownership of the legal estate in fee simple in the Unit Land, see section 8 and 22(2).

The evidence shows that the Unit Land is the same as plot 416 and plot 415 mentioned in the 1860 Award. In my opinion the Unit Land so far as it was by the Award allotted to the Overseers was by the Local Government Act 1894 sections 25 and 67 vested in the Rural District Council; and so far as it was by the Award allotted to the Churchwardens and Overseers, was by the Overseers Order 1927 (made under the Rating and Valuation Act 1925) vested in the Parish Council. Although in present circumstances the division of the ownership of the Unit Land between the Rural District Council and the Parish Council may serve no useful purpose and be productive of some inconvenience, there are I think no grounds upon which I can treat the legislation above quoted as not being applicable and decisive. Plot 416 is (or at least may be) "parish property" within the definition in section 305 of the Local Government Act 1933; but it would not by operation of the definition pass into the ownership of the Parish Council, because the Act does not so provide; section 166 shows that "parish property" may be vested in a rural district council.

The dividing line between plots 416 and 415 as determined by the 1860 Award is not marked by anything on the ground. The Register map (based on the Ordnance Survey) shows the Unit Land as divided into two pieces:- O.S.no. 268, being a triangular piece with an area of 1.278 acres fronting on the public road; and O.S. no. 268a being the remaining piece with an area of 1.831 acres; the pieces so shown are not now marked by anything on the ground. In giving my decision I must therefore determine the dividing line as best I can from the Award map.

Upon the considerations set out above, I am satisfied that the Rural District Council is the owner of the part of the Unit Land situate on the west side of a straight line (not marked on the ground) drawn at right angle to the adjacent public road in such a way that the part of the Unit Land on the west side of such straight line is twice the area of the part of the Unit Land on the east side of such straight line, and I am satisfied that the Parish Council is the owner of the remaining and last mentioned part of the Unit Land. I shall accordingly direct the Norfolk County Council, as registration authority to register Docking Rural District Council and South Creake Parish Council as the respective owners of the said two parts of the Unit Land under section 8(2) of the 1965 Act.

By section 67 of the 1894 Act (stating its effect shortly) the District Council hold their part for the same purposes as it would have been held if the Act had not been passed. As above stated, I am concerned only with ownership. Accordingly nothing in this decision should be taken as exonerating the Unit Land from the purposes set out in the 1860 Award, or as precluding the District Council or the Parish Council from taking such action as may be appropriate consequent on these purposes (they appear to be charitable) having become impracticable.



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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 28th day of September 1973.

a. a. Baden Fuller

Commons Commissioner