



COMMONS REGISTRATION ACT 1965

Reference Nos. 25/D/188  
25/D/189  
25/D/190  
25/D/191

In the Matter of The Hurrys, Mill Common,  
Ashby St. Mary, South Norfolk District,  
Norfolk.

DECISION

Three of these four disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.CL.42 in the Register of Common Land maintained by the Norfolk County Council and are occasioned (1) by (D/188) Objection No. 2B made by Mr F. G. J. Gray and noted in the Register on 12 December 1968, (2) by (D/189) Objection No.7B made by Mr H. Moy and noted in the Register on 28 February 1969, (3) by (D/190) Objection No. 10B made by Mr S. G. Todd and noted in the Register on 26 March 1969, and the remaining dispute relates to the registration at Entry No.1 in the Rights Section of the same Register Unit and ~~and~~ occasioned by (D/191) the said three Objections.

I held a hearing for the purpose of inquiring into these disputes at Norwich on 15 July 1975. At the hearing Mr Gray, Mr Todd and Mr Moy were represented by Mr J. H. Howard solicitor of Cozens Hardy and Jewson Solicitors of Norwich.

The registration in the Land Section was made in consequence of an application made by Mrs Ruby Jane Edwards of Mill Common to register the rights of common registered in the Rights Section, being a right to graze 1 horse, 6 goats, 6 pigs and 100 geese, a right of estovers and a right to take sand gravel and clay. The land ("the Unit Land") now comprised in this Register Unit is less than that originally comprised therein because some parts have been removed (pursuant to other objections) on the application of Mrs Edwards. The grounds of the Objections with which I am concerned are that the therein specified parts of the Unit Land (these parts together make up the whole of the Unit Land) were not common land at the date of registration.

Evidence was given by Mr Gray (an affidavit sworn 11 July 1975) to the following effect:- He now owns part of the Unit Land; it is part of the farm land of about 230 acres which goes with Ashby Hall. The Hall and land has been in his family for many years; he inherited them from his uncle in 1924, and has known them intimately since 1924. By a conveyance dated 4 July 1955, he conveyed the remaining parts of the Unit Land to Mr D. J. Fitcher, so that before this conveyance he (Mr Gray) owned all the Unit Land. Mrs Edwards, who lived in the Village, did not own any land, and she never exercised the rights registered. The abstract (produced) dated 1965 of the title of Mr Moy, which commenced with the will dated 4 March 1858 of R. Gilbert and which included the title of Mr Gray to his part, showed the title in 1965 of Mr Moy to the lands in 1955 conveyed to Mr Fitcher. This abstract includes a statutory declaration dated 31 March 1955 by Mr C. T. Gowing, who was for 40 years before the death of Mr R. T. E. Gilbert on 24 September 1954 his Estate Agent, and who declared that Mr Gilbert had been in undisturbed possession of properties in Ashby St. Mary (including the Unit Land). By a conveyance dated 23 April 1965 Mr Moy conveyed to Mr Todd the land mentioned in Objection No.10B. The Unit Land was included in the



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inclosures allotted by the 1840 Ashby and Hellington Inclosure Award.

The 1840 Award was produced by the County Council (as registration authority they were represented by Mr D. Cubitt solicitor of the Secretary's Department). The Award was made under the Ashby and Hellington Inclosure Act, 7 Will, 4 and 1 Vict.C:7.

Mrs Edwards has died, and I must therefore consider whether for this reason I should (there being before me no appearance on behalf of her personal representative) vary the (usual procedure) for an enquiry such as this. In her application dated 3 August 1967, Mrs Edwards named Hansell & Co. as her solicitors; the form states: "all correspondence and notices will be sent to the solicitor". Notice of this hearing was sent to Hansell & Co., who when acknowledging it, stated that Mrs Edwards had died. During the hearing, Mr Howard telephoned Hansell & Co. and was told that they act for Mrs Edwards' daughter who has a grant of representation to her estate, but th had no instructions either to pursue or not to pursue Mrs Edwards' claim to rights of common.

Mr Howard (on behalf of his firm) undertook that if I gave a decision favourable to his client, that his firm would use their best endeavours to bring it to the personal attention of Mrs Edwards' daughter with an indication that an application by her to set aside the decision on the grounds that she should have been given notice of the hearing may be made to the Clerk of the Commons Commissioners. In the space for "land to which the right is attached" in the form of application used by Mrs Edwards is written "NONE. Devolved from my ancestors". Having inspected the Unit Land and heard the evidence summarised above, I think it likely that Mrs Edwards could never have given any evidence of entitlement to rights of common by devolution from her ancestors and that the registrations originated in some misunderstanding on her part. Accordingly rather than refuse to give a decision and adjourn the proceedings, and to save delay and expense, I accept Mr Howard's undertaking and give my decision as follows.

On the evidence summarised above and from what I saw of the Unit Land when I inspected it, I conclude that on 16 October 1967 (the date of the registrations) it was not subject to rights of common and that the registrations should not have been made. For this reason I refuse to confirm the registrations. So that anybody claiming under Mrs Edwards will have some time to consider their position, I shall not until after 10 weeks from the date of this decision give to the registration authority the notice which I am by section 6(2) of the 1965 Act required to give of these registrations having become void. For the benefit of any person claiming under Mrs Edwards who may read this decision, I draw attention to my decision given under reference nos. 25/D/193-196 relating to rights of common registered also on the application of Mrs Edwards over land which she said was known as Low Common and which adjoins or is near to and southeast of the Unit Land.

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 30th day of *September* 1975

*a. a. Baden Fuller*

Commons Commissioner.