



## COMMONS REGISTRATION ACT 1965

Reference No.25/U/84

In the Matter of the Village  
Green, Martham, Blofield and  
Flegg R.D., Norfolk

DECISION

This reference relates to the question of the ownership of land known as the Village Green, Martham, Blofield and Flegg Rural District being the land comprised in the Land Section of Register Unit No.VG.34 in the Register of Town or Village Greens 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. Claude Louise Carter and Mr. Edwin Bell Vincent as trustees of the will of William Bracey deceased claimed to be the freehold owners of the land in question and Mr. Arthur Cornford 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 13 and 14 June 1973. The hearing was attended by Mr. Carter and Mr. Vincent who were represented by Mr. N. Cadge solicitor of Nicholson & Cadge, Solicitors of Loddon, Norfolk, and by Mr. Cornford in person.

Evidence was given orally by Mr. Vincent (he is 63 years of age and since 1945 has lived in Martham and been employed by William Bracey Limited of which he is now a director) and by Mr. J. Brown (he is 64 years of age and has lived in Martham for 50 years; he is and has been for the last 6 years been chairman of the Parish Council and been a member for 20 years). The Martham Inclosure Award dated 12 July 1812 was produced; as also was the Martham Parish Tithe Apportionment Award dated 24 December 1841.

The land ("the Unit Land") comprised in this Register Unit contains (as I estimate from the information I have) between  $5\frac{1}{2}$  and 6 acres. Mr. Vincent said he had always known it as "The Martham Green". Mr. Brown remembered that it was before 1930 used for fairs and fetes, and that it was regularly grazed by cattle belonging to members of the parish (there were others who used it). In the middle 1930's, this grazing ceased, probably because with the increase of traffic it became too expensive to look after the animals. Mr. Bracey then arranged for the grass to be cut mechanically. After his death (12 January 1949), his Trustees kept the Unit Land tidy until 1965 when (as mentioned below) it was leased to the Parish Council who have since maintained it in accordance with the lease.

Mr. Vincent produced a conveyance dated 10 March 1938 by which there was conveyed to Mr. W. Bracey "ALL THAT the Manor ... of Martham ... and also all estate or rights as may now be vested in them (the conveying parties) in or over the waste of the said Manor known as the Green". He also produced the probate of the will of Mr. W. Bracey, an appointment of new trustees dated 28 September 1960 and an assent dated 29 September 1960, upon which I am satisfied that Mr. Carter and Mr. Vincent are now entitled to any estate in the Unit Land taken by Mr. Bracey under the 1938 conveyance.



The 1812 Award included an allotment as follows:- "AND we, the said General Commissioners, do hereby assign, set out, and allot unto the said Special Commissioner and their successors, in trust for the Lord of the said Manor of Martham (according to his estate and interest therein, immediately previous to the passing of the said Act) his heirs and assigns, and in trust for a common of pasture for all the proprietors of hereditaments, in the said Parish of Martham, who immediately previous to the passing of the said act, had rights of common on the waste lands, in the said parish, their heirs and assigns, ONE PIECE OF LAND, marked No.219, in the said Map or plan, containing by measure, five acres, one rood, and thirty-two perches, bounded by ... "

The Schedule to the 1841 Tithe Award included 33 pieces of land (all "pasture" containing all together 48.1.29.) shown as owned and occupied by "Commissioners of Drainage"; two of these pieces numbered "323" and "684" and having an area of "2.0.2" and "3.1.26." are described as "The Green". The two pieces correspond closely with the Unit Land except that the Unit Land may include two pieces in the Schedule numbered "320" and "321", having named owners and being described as "Sawpit - Waste".

The below mentioned 1807 Act, under which the 1812 Inclosure Award was made, was not available at the hearing. I have since looked at it. It is the Martham Inclosure and Drainage Act 1807 (47 Geo. 3. cap xxxix; amended in a way not now relevant by a 1827 Act 7 & 8 Geo. 4 cap. xvii). The two most relevant sections are:- XVIII. And be it further enacted, That the said General Commissioners shall, in the next Place, assign, set out and allot the Part of the said Commons and Waste Grounds, called Martham Green, unto the Special Commissioners hereinafter appointed, and their Successors, in Trust for the Lord of the said Manor of Martham, (according to his Estate and Interest therein immediately previous to the passing of this Act) his Heirs and Assigns, and in Trust for a Common of Pasture, for all the Proprietors of Hereditaments in the said Parish of Martham, who immediately previous to the passing of this Act, had Rights of Common on the Waste Lands in the said Parish their Heirs and Assigns; and the said General Commissioners are hereby required, in their said Award, to determine the Limits of the said Green, and the means of preserving it for the Purposes aforesaid. XXXIX. And be it further enacted, That the Lord or Lords, Lady or Ladies of the said Manor of Martham, the Vicar of the said Vicarage of Martham for the Time being, and each and every Owner or Proprietor of Twenty Acres of Land to be drained by virtue of this Act, shall from and after the Execution of the Award herein directed to be made by the said General Commissioners, be and are hereby appointed Special Commissioners, for the Purpose of draining the Marshes, Commonable Fen Lands, Commons and Waste Grounds directed to be drained by virtue of this Act".

The trusts declared by the above quoted allotment, having been expressly authorised by the 1807 Act, cannot (however extraordinary in their application to a village green they may be) be invalid in their application to the Unit Land. In my opinion under the allotment the legal estate in the land was vested in the Special Commissioners and the Lord of the Manor took no legal estate but only a beneficial interest under a trust. In this matter I am only concerned to determine the ownership of the legal estate, see section 22(2) of the 1965 Act. In making this determination, I conclude that unless the Special Commissioners or such other persons as have as their successors become trustees of such trusts have since 1812 been in some way divested, the ownership of the legal estate is now in them.



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In considering whether there has been any such divesting, I assume that Mr. Carter and Mr. Vincent are now the owners of at least the beneficial interest in the Unit Land created by the allotment for the benefit of the Lord of the Manor, because on the evidence outlined above I am satisfied so far.

As the trust were originally constituted, the Special Commissioners could not properly convey the land to the Lord of the Manor without (at least) the consent of all the "proprietors ... who immediately before the passing of the said act had rights of common on the waste lands ...", or of all their successors in title. There was no evidence of any such consent having been expressly given. I cannot imply the giving of such consent from the circumstance that for some years no cattle have been grazed under the trust; the cesser of the grazing is I think more properly ascribed to it having become unprofitable than to any intention of those entitled to give up their rights; it was not suggested that there has ever been any fence or other obstruction preventing any grazing on the Unit Land. I conclude therefore that the Special Commissioners could not have properly conveyed the Unit Land to the Lord of the Manor, and I decline therefore to presume that they ever did so.

In my opinion, Mr. Carter and Mr. Vincent and their predecessors have not by possession established under the Limitation Act 1939 any title against the Special Commissioners and their successors. Under the allotment, the Special Commissioners could properly allow the Lord of the Manor to take possession and use the land in any manner not inconsistent with the trust for a common of pasture; possession referable to a lawful title and not inconsistent with the title of the true owner is outside the scope of the Act, see Preston and Newson Limitation of Actions (3rd edition 1953) page 89 and Moses v Lovegrove 1952 2 Q. B. 533 at page 539. From the registration of the Unit Land under the 1965 Act and its description as "Martham Green" in the 1807 Act, I infer that it has always been subject to a customary right for the inhabitants to use it for recreational purposes, and that the title taken by the Special Commissioners under the allotment was subject to such customary right; Section XVIII of the 1807 Act contemplates that the Special Commissioners may not take an absolute interest; accordingly the use of the Unit Land for fairs was not inconsistent with their ownership. Nor was the receipt by Mr. Bracey of the tolls, because he could, if these had been paid to the Special Commissioners or their successors have called on them to account.

I conclude therefore that the Special Commissioners or their successors have not been divested and I am therefore not satisfied that Mr. Carter and Mr. Vincent are the owners of the Unit Land.

At the hearing there was no evidence of the identity of the persons who are now the Special Commissioners as defined by the 1807 Act or as to anything ever having been done by them or on their behalf. By the Act, they are given extensive powers in relation to the drainage of the "Lands and Grounds to be drained by virtue of this Act", see section XL to LX, in effect being thereby appointed a drainage authority. It is possible that they have been taken over by some more recently constituted drainage authority under the Land Drainage Act 1930 or otherwise; the East Fleggan, Martham, Ripps and Thurne Internal Drainage Board was mentioned, but I have no evidence of their constitution.



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By section 8 of the 1965 Act, I am required to say whether I am satisfied that any person is the owner of the Unit Land. In my view I can properly be so satisfied, if I can specify as owner the persons who are the trustees of an identifiable trust notwithstanding that I cannot name the trustees. A trust cannot fail because the trustees cannot be found.

From the considerations set out above I am satisfied that the Trustees of the trust mentioned in the above quoted allotment are the owners, and I shall accordingly direct the Norfolk County Council under section 8(2) of the 1965 Act to register as owners of the land the Special Commissioners constituted under section XXXIX of the Martham Inclosure and Drainage Act 1807 (43 Geo. 3 cap. xxxix) or other the trustees of the trusts declared pursuant to section XVIII by the Martham Inclosure Award dated 12 July 1812 concerning the land therein described as a piece of land marked No.219 on the map or plan therein referred to. If it shall ever become necessary to effect any dealing with a legal estate in the land, and it is then doubtful who are the trustees, an application can be made under the Trustee Act 1925 to appoint new trustees or for other relief as may be appropriate.

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 22<sup>nd</sup> day of October 1973.

a. a. Bacon Fuller

Commons Commissioner