



COMMONS REGISTRATION ACT 1965

Reference Nos. 234/U/174-182

- In the Matter of
- (1) Blacksmiths Common, Ilketshall St. Andrew
  - (2) Mill Common, Ilketshall St. Andrew
  - (3) Little Common, Ilketshall St. Andrew
  - (4) Great Common, Ilketshall St. Andrew and Ilketshall St. John
  - (5) Holden's Common, Ilketshall St. Andrew
  - (6) Backs Green (or Becks Green) Ilketshall St. Andrew
  - (7) Parts of Great Common & Holden's Common, Ilketshall, St. Andrew
  - (8) Part of Blacksmith's Common, Ilketshall St. Andrew
  - (9) Part of Great Common, Ilketshall, St. Andrew
- 

## DECISION

These references relate to the question of ownership of the following land:-

| <u>Reference No.</u> | <u>Particulars of Land</u>                                    | <u>Register Unit No.</u> |
|----------------------|---------------------------------------------------------------|--------------------------|
| 234/U/174            | Blacksmiths Common, Ilketshall St. Andrew                     | CL.7                     |
| 234/U/175            | Mill Common, Ilketshall St. Andrew                            | CL.8                     |
| 234/U/176            | Little common, Ilketshall St. Andrew                          | CL.9                     |
| 234/U/177            | Great Common, Ilketshall St. Andrew and Ilketshall St. John   | CL.10                    |
| 234/U/178            | Holden's Common, Ilketshall St. and St. John                  | CL.11                    |
| 234/U/179            | Backs Green (or Becks Green) Ilketshall St. Andrew            | CL.100                   |
| 234/U/180            | Parts of Great Common & Holden's Common Ilketshall St. Andrew | CL.105                   |
| 234/U/181            | Part of Blacksmith's Common Ilketshall St. Andrew             | CL.125                   |

234/U/182 Part of Great Common, Ilketshall St. Andrew CL.13  
being the land comprised in the Land Section of the above mentioned Register Units respectively in the Register of Common Land maintained by Suffolk 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 these references the Executors of the late Bernard Marmaduke 16th Duke of Norfolk claimed to be the freehold owners of the land in question.



I held hearings for the purpose of inquiring into the question of the ownership of the above mentioned land at Lowestoft on 17th November 1987. As the claim made by the Executors of the late Duke of Norfolk was to ownership of all nine commons listed above, and as the evidence adduced in support of their claim was the same in all nine cases, it is convenient that I should give only one Decision incorporating the facts and my conclusions concerning them all.

The hearings were attended by Mr R P Herring of Smiths Gore Chartered Surveyors of Newmarket appearing for the Executors of the late Duke of Norfolk Mr B C Snowden Chairman of the Ilketshall St. Andrew Parish Council and of the Ilketshall St. Andrew and St. Johns Commoners Association Mr F Altarelli Mr B E Peirson Mr N H Walbancke Mr F J Godfrey Mr J V Burrows Mr D Hodge Mrs C Hodge Mr J D Cottam Mr E J Revell Mrs J S Gladwell and about half-a-dozen other commoners or villagers having no registered rights of common.

Before Mr Herring opened his case on behalf of the Duke of Norfolk's Estate I drew attention to the Decision of Mr Commissioner Baden Fuller dated 29th November 1973 in respect of previous hearings inquiring into the ownership of the first five of the commons listed above which were held at Halesworth on 3rd October 1973. At those hearings Ilketshall St. Andrew Parish Council was represented by Mr F W White (their clerk) and Mr E G Tozer (their chairman) and Mrs Peirson (the wife of Mr B E Peirson) and Mrs P E Watkin gave evidence.

I read out the following passage from the Decision of Mr Commissioner Baden Fuller:

"Mr White said as regards all five commons that the Parish Council have no evidence of ownership; from time to time the Parish Council have had various requests for permission to do on Great Common various things (e.g. erecting telegraph poles, laying water pipes), and these have been referred to the agent of the Duke of Norfolk, because according to the Council minute books, the Duke owns or may own the mineral rights.

Mrs Peirson said:- Great Common and Holden's Common are a disgrace; the land is all grown up and nobody takes an interest in it. She remembered the Commons years ago when the land was better. Mrs Watkin agreed with Mrs Peirson.

Mr Tozer said that if the Duke of Norfolk (he was not represented at the hearing) had no ownership, the Parish Council would welcome the ownership of all the Commons being vested in some local authority, preferably the Parish Council."

Mr Commissioner Baden Fuller went on to say that after the hearing he walked over all the commons, and concluded as follows:-

"I have no difficulty in understanding why there are many in the village who consider that there should be some person or authority having power to control manage and improve all these commons, for the benefit of all those interested."

He then said that in the absence of any evidence of ownership, he was not satisfied that any person was the owner of the land, and that they would therefore be subject to protection under section 9 of the Act.



At the hearing before me Mr Snowden said that since 1973 the condition of the commons had been greatly improved. The St. Andrew and St. John's Commoners Association had been formed, consisting of the rights holders on all nine commons. The Association met once or more per year to agree on management of the commons. The improvements were carried out by the Association, and not by the Duke or his estate. He also said that since 1973 the Parish Council had been instructed by the County Council to act in the manner of a prudent landlord; and that the Parish Council had always consulted Waveney District Council or the County Council before taking any action concerning the commons. Mr Snowden's statement that the commons had been greatly improved since 1973 met with general assent from those present at the hearings.

In support of his claim on behalf of the late Duke's estate Mr Herring relied on a Statutory Declaration made on 27th May 1986 by Philip Adlington Broke. Mr Broke was a partner in Smiths Gore from 1958 until his retirement in 1978 and as such acted as Land Agent to the late Duke of Norfolk until the latter's death in 1975 and to his Executors thereafter. From 1945 to 1958 he was personally employed by the late Duke as his Agent in respect of his Norfolk estate. In his Declaration Mr Broke said that he was well acquainted with the commons named above. He went on to declare as follows:-

" The said lands form part of the manorial waste of the Manor of Ilketshall St. Andrew of which the late Duke and his ancestors were Lords for many years past and in all events since the year 1945 until my retirement in 1978 I acted in the management of the said lands which management involved dealing with the following matters:- Discussions with local authorities including Parish Councils on problems; dealing with encroachments, including access and footpaths; communication with statutory authorities, for example, the Post Office regarding telephone call-boxes and the electricity board with regard to poles and stays."

After stating that there were so far as he was aware no documents in the custody of the late Duke or his solicitors or his Executors or their Solicitors relating to the lands, Mr Broke concluded his Declaration by declaring that to the best of his belief the late Duke and his ancestors until 1975 and his Executors since that date had been in full and undisturbed possession and enjoyment of the lands and in receipt of the rents and profits without adverse claim during the whole of the period from 1945 to 1978.

Mr Herring supplemented this Declaration with his own evidence. Since 1978 he had taken over from Mr Broke as the Agent to the Duke's Executors. He knew of an encroachment on the commons which took place in 1984. This was a minor matter raised by Mr Walbancke who wrote to Smiths Gore, and they contacted the Parish Council. Somebody had filled in a ditch and laid kerb-stones. Although the incident was minor it led to his firm making inquiries as to the ownership of the commons. Those inquiries were made by a Mr Bourne, who had now gone to another office.

Mr Herring said that in 1978/9 the Duke had conveyed such rights as he might possess in the site of the Village Hall to the Village Hall Trustees without charge. This was on Great Common. He was unable to produce any copy of this Conveyance.



Mr Herring produced original wayleave agreements granted by the Duke or his Estate to the Electricity Board going back to 1965 and to the Post Office (telephones) going back to 1958. He also produced a statement of account showing that over the years a total of some £39 had been paid in respect of these wayleaves to the agents of the Duke or his Estate; and he added that the Agents had not always bothered to collect the small sums due.

I pointed out to Mr Herring that in order to establish a claim by the Dukes's Executors to ownership of the commons as Lords of the Manor of Ilketshall St. Andrew he would first have to provide some documentary evidence that the late Duke was Lord of the Manor; and secondly have to show that the commons formed part of that Manor. Mr Herring said that he had been unable to trace any manorial records. The Duke was Lord of a great many manors. The Estate Archives were at Arundel, but he had not thought it sensible to go to any great expense in conducting research. He had confined his local researches to a perusal of White's Suffolk 1855 Edition which contained a reference to "several greens.... being...in the Duke of Norfolk's Liberty".

Mr Jellicoe Burrows gave evidence that he was 70 years of age next birthday. That his mother had told him many years ago that Mr French who then lived at St Johns Hall was Lord of the Manor of both Ilketshall St. John and St. Andrew. That the present owner of St. John's Hall and a lot of surrounding land was aware of these hearings, but was not present.

Mr Revell gave evidence that he had studied and taken copies of some old documents in his father's possession which stated that in November 1895 Sir Hugh Edward Adair was Lord of the Manor.

Mr Cottam gave evidence that in the 1930's another local land owner used to walk the boundaries of St. Andrews annually.

Since the hearing I have referred to a copy of the 1844 Edition of White's Directory. At page 439, immediately after the words quoted by Mr Herring, the entry in respect of Ilketshall St. Andrew continues as follows:-

"The soil belongs to Wm. Adair Esq, Lord George Beresford, Rev. J. Day, J. Garden Esq, Rev. C. Clark, Thomas Farr Esq, and several smaller owners".

The entry on the same page in respect of Ilketshall St. John (which Mr Herring did not cite to me) is even more damning to the claim of the Duke's Estate, since it reads:-

"John Day Esq is lord of the manor, but part of the soil belongs to the Rev. R Day, Mr John Hall, and two smaller owners".

Since the hearing I have also inspected the relevant entries in the Manorial Documents Register compiled by the Department of Agriculture and Fisheries in 1925 and now kept by the Royal Commission on Historical Manuscripts, Quality Court, Chancery Lane, London WC2A 1HP. These show that the Rev. Thomas Scott Huxley was lord of the manor of Ilketshall St. Andrew in 1871; and that the court books, minutes, survey and stewards' papers from 1658-1930, were deposited in the Suffolk Record Office, County Hall, Ipswich IP4 2JS in 1951 by Sir Ralph Blois, Bart. The corresponding entry for Ilketshall St. John merely shows that the manorial records from 1385-1624 are deposited in the British Library. I also perused (at the Chancery Lane address) the indexes of documents held in the Duke of Norfolk's archives at Arundel, but found nothing of relevance to the present inquiry.



On this evidence I have no hesitation at all in concluding that Mr Herring failed to establish a case that the late Duke was Lord of the Manor of Ilketshall St. Andrew (or St. John). There is substantial evidence to the contrary, but even if I discount this, there is absolutely no evidence before me to support the bare allegation that the Dukes were Lords of the Manor made by Mr Broke in his Statutory Declaration.

As to the possible alternative claim to a possessory title, put forward as I understand it primarily in support of the claim to be Lord of the Manor, the acts relied on turned out to be very slight indeed. Although some small sums had been collected the improvements effected on the land were done by the Commoners Association or the Parish Council and not by the Duke or his estate. The Conveyance of such rights as the Duke possessed in the site of the Village Hall to the Village Hall Trustees could be explained by the belief that the Duke owned the mineral rights. Mr Herring was asked what proof the Duke's Agents had provided to the Electricity Board or the Post Office that the Duke was entitled to grant the wayleaves. Mr Herring did not know of anything specific. He had merely inherited the belief that the Duke was owner. He was not aware of the existence of any minerals. He suggested that the Village Community and the Duke's estate might manage the commons altogether; the Duke's estate would not be like an ordinary landlord; it would be concerned in maintaining traditional values and would be conservation conscious. Mr Snowden replied that the Commoners Association were satisfied with the existing arrangements. Mr Herring admitted that he had not seen the commons recently.

Mr Snowden said that the commons were of great importance locally. The grass was cut and sold annually by individual commoners; there was an apportionment by agreement. Since 1973 there had been fantastic improvements in the condition of the commons. He repeated that the commoners regarded the situation which has existed since registration as satisfactory, and would like it to continue.

Eight of the rights holders and several of the villagers indicated that they opposed the claim of the Duke's estate.

On this evidence I was not satisfied that the late Duke's Executors could establish their claim to ownership either by virtue of the Dukes being Lords of the Manor or under a possessory title. Although there is substantial evidence suggesting that some other person might be Lord of the Manor, no-one appeared before me to pursue any such claim. Anyone wishing to do so in future could well start their researches in the Suffolk Record Office.

I am accordingly not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

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 19<sup>th</sup> day of January 1988

*Mati Rott*

Commons Commissioner