



COMMONS REGISTRATION ACT 1965

Reference No 234/U/42

In the Matter of Hinderclay Fen,
Hinderclay, Mid Suffolk District, Suffolk

DECISION

This reference relates to the question of the ownership of land known as Hinderclay Fen, Hinderclay, Mid Suffolk District being the land comprised in the Land Section of Register Unit No CL 3 in the Register of Common Land maintained by the 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 this reference no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership.

Mr Commissioner C A Settle QC held a hearing for the purpose of inquiring into the question of the ownership of the land at Ipswich on 12 January 1979. At the hearing Hinderclay Parish Council were represented by Mr D G Lawrence a former chairman who produced a "Survey of Common Lands" of the Parish of Hinderclay relating to (i) Hinderclay Fen and (ii) Sandy Common, and based on Rickinghall Superior and Inferior and Hinderclay Inclosure Award dated 1819. Mr Commissioner Settle adjourned the hearing pending enquiries as to whether the Charity Commissioners have any claim to this land.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Ipswich on 2 October 1979. At the hearing Mid Suffolk District Council were represented by Mr K Charman legal executive in their Solicitor's Department, and Suffolk County Council as registration authority were represented by Mr J W Gibbs and Mr I Sands of the County Secretary's Department.

The land ("the Unit Land") in this Register Unit is a strip approximately rectangular being (as I scale the Register map) about 950 yards long from east to west and about 150 yards wide and containing about 30 acres.

Mr Charman said that his Council did not claim ownership of the Unit Land. Mr Gibbs produced from the County Archives the said Award (it is dated 13 July 1819) and was made under the Rickinghall Superior, Rickinghall Inferior and Hinderclay Inclosure Act 1815 (55 Geo. 3. c.12). The Award contains the following allotment:-

"... unto the Lord of the Manor of Hinderclay, the Rector, Churchwardens and Overseers of the Poor of the said Parish of Hinderclay for the time being and to their respective successors for ever In trust for the use and benefit of such poor persons and in such manner as is directed by the said first recited Act All that piece of Waste Land called Hinderclay Wet Fen containing by measure thirty acres bounded ...".

The said Survey which is dated January 1957 and appears to have been based on information obtained from Mrs E Rivett, Clerk of the Parish Council and Mr W Pilbrow, trustee of Hinderclay Fuel Allotment refers to the Tithe Apportionment dated 16 November 1843 in which the Fen is a Fuel Allotment measuring 29 acres 2 roods 0 perches, the landowners being the Hinderclay Churchwardens and Overseers, the occupiers the Poor of Hinderclay, no rent charge was payable in respect of it. According to the Survey, the Fen is (1957) administered by Trustees (two named) and records of income and expenditure are kept.



It can be recalled that cattle were grazed on the Fen 30/40 years ago and the grazing fee was 10/- per head; any parishioner has the right to graze cattle, but in view of the land becoming waterlogged no animals have been grazed for some considerable length of time. The Fen is (1957) let for grazing and shooting at £10 per annum the income is distributed in cash in lieu of fuel to all persons who reside in the Parish but do not own property (ie tenants).

Before the hearing I had a letter dated 28 September 1979 from the Charity Commission in which they refer to the 1815 Act requiring land not exceeding 30 acres to be allotted for the use and benefit of the poor persons legally settled and residing within the Parish of Hinderclay and to be employed for the purpose of providing fuel for the necessary firing of the said poor person; and refers to the above quoted 1819 Award. The letter continues: "Accordingly the present trustees of the charity should consist of the Lord of the Manor and the Rector of Hinderclay and four trustees appointed by the Parish Council. But the Commissioners have taken no action to transfer the legal estate in the land from the quasi-Corporation consisting of the Lord of the Manor, a Rector, the Churchwardens and Overseers of the poor created by the Act of 1815 and it is by no means clear that the legal estate of this land is vested in the present trustees. Rather the Commissioners consider that the legal estate in the land may remain outstanding in the said quasi-Corporation. But the Office of the Overseer has of course been abolished by statute and the Commissioners have not yet been able to ascertain whether the ecclesiastical parish of Hinderclay has been united with any other parish nor whether there is a Lord of the Manor. Consequently there is some doubt so far as the Commissioners are concerned as to where the legal estate in this land in fact lies, although they have no doubt that it is held in trust for the charity. In order to dispose of the doubt as to the whereabouts of the legal estate in the land the Commissioners will invite the charity trustees to make application to them for an Order under Section 18 of the Charities Act 1960 vesting the legal estate in this land in the Official Custodian for Charities in trust for the charity."

On the evidence and information summarised above I conclude that the Unit Land is now held in trust for the said charity. In my opinion I must not give a decision prejudicial to the charity merely because there is some doubt or uncertainty as to who are the trustees, and I can in accordance with Section 3 of the 1965 Act properly say that I am satisfied that the Unit Land is now owned by the persons whoever they may be who are the proper trustees of the charity. There is however I think no need for me to adjourn the proceedings (as it is suggested in the said Charity Commission letter) for the purpose of discovering whether a vesting order in favour of the Official Custodian for Charities be made because I can postpone the direction which by the section I am required to give to a registration authority until the Charity Commissioners have decided whether or not they will make such an order. Accordingly these reasons if I do not before the expiration of 90 days from the day on which this decision is sent to the Parish Council, the Charity Commissioners and the other persons entitled to it, receive a Charity Commissioners' order vesting the land in the Official Custodian for Charities, I shall pursuant to Section 3(2) of the Act of 1965 direct the Suffolk County Council as registration authority to register as the owners of the land the persons, corporation or quasi-corporation in whom are or should be vested the lands of the charity established by the said 1819 Award in accordance with the provisions of the said 1815 Act requiring "land not exceeding 30 acres to be allotted for the use and benefit of the poor persons legally settled and residing within the Parish of Hinderclay"; and



if I do within the said 90 days (or such further time as I may on application to me allow) receive such a vesting order, I shall pursuant to the said Section 8(2) direct Suffolk County Council as registration authority register the Official Custodian for Charities as owner of the 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 16th — day of November — 1979.

a. a. Baden Fuller

Commons Commissioner