



COMMONS REGISTRATION ACT 1965

Reference No.25/U/65

In the Matter of East Ruston Common,
East Ruston, North Norfolk D., Norfolk

DECISION

This reference relates to the question of the ownership of land known as East Ruston Common, East Ruston, North Norfolk District (formerly Smallborough Rural District) being the land comprised in the Land Section of Register Unit No.CL.142 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 Colonel R. G. Cubitt in a letter to the Clerk of the Commons Commissioners dated 12 March 1974 said (in effect):- The south part of the land (O.S. No.4333) is not common land and never has been; it is freehold land in the ownership of the Trustees of the R. G. Cubitt Settlement No.2; the north part (O.S.166 pt) is in the parish of Honing and is in the Honing Parish Tithe Award dated 1841 shown as "Common Severall held as Glebe Severalty in the ownership of the incumbent of Stalham; with regard to the south part the Commons Commissioners have (so Colonel Cubitt submitted) no jurisdiction. The Clerk of the East Ruston Parish Council in two letters to the Clerk of the Commons Commissioners said (in effect):- The Parish Council has no jurisdiction over the Common Land in the parish as this is charity land owned by the Trustees of the East Ruston Charity Pools Allotment (part of the land originally comprised in this Register Unit was the subject of an objection dated 13 December 1968 and made by the said Charity Trustees; this part was removed from the Register on 19 November 1969); the north part (of the land now comprised in this Register Unit) is in the parish of Honing; the said part must the Parish Council think at one time in the past have gone with the Charity Land, but apparently there are no documents relating to it either in the possession of the Charity Trustees or of the Parish Council; it is believed (although this may have no bearing on the ownership of these parts) that at one time the Hundred Stream (which runs between the north part and the south part) was diverted when the canal was built. No other person claimed to be the freehold owner of the land in question or 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 19 March 1974. The hearing was attended: (1) by Colonel R. G. Cubitt as a person having information as to the ownership of the land and as representing Mr. T. R. Cubitt, Mr. T. R. C. Blofeld and Mr. S. E. Ruggles-Brise ("the Settlement Trustees"); (2) by Mr. C. Spanton who represented the East Ruston Pools Allotment Trustees (of which Trustees he is the secretary); (3) by Mr. R. Hamstead who represented the East Ruston Parish Council (of which he is the chairman); and (4) by Mr. C. Watson who represented the Smallborough Rural District Council (of which he is the clerk).



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The land now comprised in this Register Unit is in two parts: a piece ("the Meadow") which contains about 5 acres, is approximately square, and is meadow land in the parish of East Ruston on the east side of Hundred Stream; and another piece ("the Sloughs") which contains about 2 acres, and is scrub and woodland in the parish of Honing on the west side of Hundred Stream. The south east corner of the Sloughs is opposite (on the other side of Hundred Stream) to the north west corner of the Meadow. The registration was made pursuant to an application made on behalf of the Norfolk Naturalist Trust; their application included not only the Meadow and the Sloughs but also a comparatively ~~very~~ large area of land (hatched purple on the Register map) which is in the parish of East Ruston on the east side of Hundred Stream, which surrounds the Meadow on three sides, which adjoins the east side of the Sloughs and which includes a large piece north of the motor road which runs eastwards from Honing across a bridge over the Hundred Stream towards Ruston and Happingburgh. The hatched purple land was deleted from the Register following an objection made on behalf of the East Ruston Poor Allotment Trustees. On the O.S. map (being that on which the Register map is based) the hatched purple land is shown as part of East Ruston Common, the south part (being that now surrounding the Meadow) being called "Mown Fen", and the Sloughs is shown as part of Honing Common. On the information put before me I can find no reason why the Meadow and the Sloughs should be considered as one piece of land or should continue to be described (as they are together in the Register described) as "East Ruston Common".

Mr. Watson produced the East Ruston Inclosure Award dated 24 January 1810 and made under the East Ruston Inclosure Act 1806 (46 Geo. 3 cap. x). The Award map coloured green the inclosures made by the Award; corresponding to part of the Meadow there is on the Award map a small unnumbered and uncoloured piece marked "John Cole". The rest of the Meadow is on the Award map ~~and~~ numbered 129, coloured green, and was by the Award allotted to John Cole. The hatched purple land is on the Award map numbered 128 and coloured green and was by the Award allotted to the Trustees of the Poor.

Colonel Cubitt gave evidence, confirming his letter above referred to, and saying in effect:- The Meadow is the property of the Settlement Trustees. It is surrounded by a ditch; it is now and from his own personal knowledge he could say that for the last seventy years it always has been meadow land as it now appears. It was part of the land ("the Honing Estate") in or near Honing of which his father Mr. E. G. Cubitt was the absolute owner. His father died in 1933; under his father's will he became absolute owner; his father's executors were Mr. C. R. Birkbeck now deceased and himself. The settlement mentioned in his said letter was made by himself; the Mr. J. R. Cubitt mentioned named in it is his nephew. The Meadow is now (with other land) let to Mr. J. Dixon and the rent payable under this letting is paid to the Settlement Trustees. It is within his (Colonel Cubitt's) knowledge that for at least seventy years the Meadow has been occupied by tenants of his father, of himself and of the Settlement Trustees and that their ownership of the Meadow has never been contested.

With regard to the Sloughs, Colonel Cubitt produced (i) a copy of the map (being that apparently annexed to the Honing Tithe award) signed James Wright, Land Surveyor and dated May 1841 and also (ii) a copy (apparently made many years ago) of the Schedule to the Tithe Award. He identified plot No. 420 on the map with the Sloughs. In the Schedule under the heading "Common Severals" appeared an item being that relating to plot 420, the quantity of which was stated to be 1-5-30, and the landowner of which was stated to be "Cubitt Rev Benjamin", Colonel Cubitt was able to verify the copies



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he so produced because as patron of the Living of Honing, he holds the original Tithe Award. He said that the Rev. Benjamin Cubitt was vicar when the Award was made, that he believed there had been a Honing Inclosure Award but he had never found anybody who knew where it was.*

Mr. Spanton said that the East Ruston Poors Allotment Trustees claimed ownership of the land hatched purple (no longer comprised in this Register Unit) but did not claim ownership of and were not concerned with either the Meadow or the Sloughs.

Mr. Hamstead said that the East Ruston Parish Council did not claim either land.

At the conclusion of the hearing, I told Colonel Cubitt that I considered I was by the 1965 Act required to proceed with this reference on the basis that the Meadow had been properly registered under the Act as common land, that in my view I had jurisdiction to and was obliged by the Act on this reference to consider who are the owners, that I inclined to the view that the Settlement Trustees are the owners, but that I was doubtful whether I could be satisfied as to their ownership without having more precise information than he had given me as to the contents of the conveyance by which the Meadow was conveyed by his father's executors to himself and as to the contents of the settlement which he had made in 1965. Colonel Cubitt said in effect that it was monstrous that I should by the Act be required to inquire into the ownership of the Meadow when nobody had the smallest doubt as to the title, and that if I was obliged to do this there had been a slip up in the Act; however he made it clear that he was generally in sympathy with the objects (as he understood them) of the Act and wished (as was obvious from the help he had already given me at the hearing) to further such objects, and he agreed that he would instruct his solicitors (who also acted as solicitors for the Settlement Trustees) to provide information about the conveyance to himself and the settlement he had made.

After the hearing, Nicholson Cadge & Gilbert, Solicitors of Norwich sent to the Clerk of the Commons Commissioners: (i) a photostat copy of the relevant parts of a conveyance dated 5 April 1965, (ii) a photostat copy of the relevant parts of an assent dated 30 July 1934 and (iii) an indenture dated 5 March 1878. In a recital in the 1878 indenture, the following description appears to have been intended to refer to the Meadow or part of it: "The said Marsh formerly of the said Joseph Bullemore ~~at~~ ~~the~~ ~~said~~ John Cole and then of him the said John Cole Cubitt ~~lying~~ and being in East Ruston in the said County of Norfolk next and adjoining to the Rivulet or Stream that divided the Hundred of Happing and Tunstead on the part of the West and contained by estimation four acres were the same more or less" and in the parcels of the indenture described as "And Number 513 Meadow containing four acres and twenty perches and Number 519 Ruston Pightle containing one acre and thirteen perches which two last mentioned pieces or parcels of land are situate in the said parish of East Ruston all which premises are now in the occupation of Thomas Andrews and are particularly delineated and laid down in the Map or Plan drawn in the margin of the second Skin of these presents ...": the said map shows the Meadow much as it appears now and as it appears on the said Award map, plot 519 being that apparently land then owned by John Cole and plot 513 being land by the Award allotted

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* The return of Inclosure Acts made in 1914 to the House of Commons does not include any Act apparently relating to Honing, so it maybe that there has never been any within the commonly accepted meaning of the words "inclosure award".



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to him. The Meadow is included in item 27 in the Schedule to the 1934 assent being therein called "East Ruston: 432 and 433: Severals: 1.621 and 3.463". The 1965 conveyance is a conveyance by Colonel Cubitt to the Settlement Trustees of lands therein as delineated on the plan and set out in the Schedule upon trust for sale and upon trust to hold the proceeds upon the trusts of a deed of even date therein referred to as "the Number 2 Settlement"; the Schedule includes in the Honing Estate, "St. Villier's Farm" having an acreage of 30.071 part of which is O.S. No. 433 with an acreage of 5.084".

In my view (as I said at the hearing) I have no jurisdiction on this or any other reference to avoid the registration under the 1965 Act of the Meadow as common land. The circumstances of this case are in this respect essentially the same as those considered in my decisions dated 16 October 1972 in re River Bank Ropewalk reference 6/U/22 and dated 9 February 1973 in Three Corner Piece reference 38/U/35 and I adhere to the opinions I then expressed.

I am therefore obliged by the 1965 Act on this reference to consider the ownership of the Meadow. By section 22 the ownership which I have to consider is of "the legal estate in fee simple".

In the documents produced by Colonel Cubitt and in his oral evidence, there are references to "Common Several" and to "Severals", and the latter word is used in the 1934 assent as descriptive of the Meadow. In the Oxford English Dictionary volume 8 (1914), the word "Several", as a substantive in the sense (being that used in the documents produced to me) "Land in private ownership or over which a person has a particular right; chiefly in particularised use, a plot of such land: especially enclosed pasture land as opposed to common" is said to be obsolete except in dialect: the most recent examples given are: "1787 Norfolk: ... a piece of land upon a heath or common, off which one particular person has a right to cut fuel" and "1895 (E. Anglia) 'a portion of common land allotted to a certain person.' My guess is that John Cole and his predecessors used the piece unnumbered on the 1810 Award map in the 1787 meaning, and in 1810 he was in the absence of any contrary claim treated as the owner: the numbered piece is clearly within the 1895 meaning. Accordingly although the words "Common Several" and "Severals" suggest ~~the~~ right of common or some form of ownership less than the legal estate in fee simple, I should not I think in relation to the Meadow treat them as now having any limiting significance. Apart from the point discussed in the previous paragraph the title of the Settlement Trustees to the Meadow does not call for any comment; it is from the 1934 assent regularly deduced and supported by the oral evidence of Colonel Cubitt.

For the above reasons I am satisfied that the Settlement Trustees are the owners of the Meadow, and I shall accordingly direct the Norfolk County Council as registration authority to register Mr. Thomas Randall Cubitt of 97 Hampstead Way, London NW11, Mr. Thomas Robert Calthorpe Elofeld of Keveton House, Broxham, Norfolk and Mr. Stephen Evelyn Ruggles-Brise of 3 Dover House, Gatton Park, Reigate, Surrey as the owners of the part of the land now comprised in this Register Unit which is on the east side of the Hundred Stream.



The evidence of Colonel Cubitt about the Sloughs is I think not enough (he did not suggest it was) to enable me to conclude that the incumbent of Stalham or any other person is now the owner. In the absence of any other evidence (none was forthcoming from Stalham, although following Colonel Cubitt's letter of 12 March, a letter was sent to Stalham Vicarage giving notice of this hearing), I am not satisfied that any person is the owner of the Sloughs and this piece of land will therefore be 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 5th day of June 1974.

a. a. Baden Fuller

Commons Commissioner