



COMMONS REGISTRATION ACT 1965

Reference Nos 25/D/31 to 33 inclusive

In the Matter of Ingleborough Hill, West Runton Common (inclusive of Cooper's Common, Station Common and the Hurns), Town Hill, Congham Hill, Greens Common, Abbs Common, Oxwell Cross, Deers Hill, East Runton, Lower and Top Commons, Sparrows Park, Runton

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section and the Entry Nos 1 to 77 inclusive in the Rights Section of Register Unit No CL. 5 in the Register of Common Land maintained by the Norfolk County Council and are occasioned by Objection Nos 183B and 208B made by J D Remers and D T Abbs and noted in the Register on 22 and 23 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Norwich on 11 January 1977.

The hearing was attended by Miss Cameron counsel instructed by Messrs Mills & Reeve on behalf of the Runton Parish Council and the applicants for rights hereinafter mentioned.

The Objectors claimed that certain parcels of land had been wrongly included in the land registered in the Land Section of the Register and Miss Cameron had agreed with them that I should exclude these lands from the Land Section Registration and she also invited me to exclude Deers Hill from that registration. The lands to be excluded will be identified on plans to be annexed to my direction which are Deers Hill, Oxwell Cross and part of Town Hill.

I am satisfied that I must confirm the Entry in the Land Section modified so as to exclude the above mentioned lands. These lands are the whole year commons available for grazing throughout the year mentioned in my decision dated 9 March 1976 following an inquiry held by me on References Nos 25/D/34 to 78 relating to the alleged Half Year Land in Runton; Unit No CL. 6. The evidence given at that inquiry satisfied me that the lands the subject of this inquiry (the whole year lands) are waste of a manor.

Having indicated that I would confirm the Entry in the Land Section modified as aforesaid I went on to indicate that I would need to be persuaded that I should confirm any of the Entries in the Rights Section. All these Entries are similar in form to the Entries in the Rights Section of Unit CL. 6, the half year lands, with one exception Entry No 51. The rights claimed over the half year lands were claimed by the applicants as inhabitants and at the inquiry into the half year lands Miss Cameron accepted at the outset that she could not support those claims and rested her case on the Parish Council's claim as trustee for the inhabitants and three other applicants who claimed rights of shack.



In the instant case no Entry in the Rights Section except No 51 claims rights as appurtenant to any land and I infer that these Entries were made on the footing that the applicants claimed similar rights over the whole year lands as they claimed over the half year lands. In these circumstances I asked Miss Cameron how she could invite me to confirm claims to rights which on another inquiry she herself felt unable to support and which were clearly misconceived.

Miss Cameron's first answer to this question was to submit that I had no jurisdiction to do otherwise and I deal first with that submission which is based on the proposition that having dealt with the Objections by the modification of the Entry in the Land Section there is no outstanding Objection or dispute as regards the rights affecting that modified Entry and I must treat these claims to rights as if they were undisputed. In order to deal with this submission I must refer to the Act of 1965 and the Regulations made thereunder.

The Objectors in the instant case claimed that part of the land was not common land but there being no provision in the Act for objecting to part of an Entry in the Land Section the effect of the Objections was to make the Entry in the Land Section provisional and all the Entries in the Rights Section provisional: see section 5(7) of the Act.

All the Regulations being provisional there was a reference to a Commissioner by virtue of section 5(6) of the Act which is in the following terms:-

"(6) Where such an Objection is made then unless the Objection is withdrawn or the registration cancelled before the end of such period as may be presented the Registration Authority shall refer the matter to a Commons Commissioner."

The extent of the jurisdiction of a Commons Commissioner must in my view depend upon what on the true construction of sub-section 5(6) is meant by the matter.

Miss Cameron's submission is that the "matter" is the dispute between the Objector and applicants and that once that dispute has been resolved the Commissioner has no jurisdiction to make any finding against an applicant not affected by that dispute. Put another way her submission is that the matter is a dispute "inter partes" and the Commissioner has no jurisdiction to deal with questions not the subject of that dispute and in particular the claims of persons not involved in the dispute.

Support for this submission is to be found in Regulation 8 of the Commons Commissioners Regulations 1971 which is in the following terms:

"(8) A matter may be referred to a Commissioner by lodging with the Clerk a notice of reference in form 36 or 37 as the case may require."

Form 36 is ⁱⁿ with Schedule to the said Regulations and so far as material "refers to a Commons Commissioner the dispute as to the registration...occasioned by Objection No -."

While the form of the Notice of Reference (Form 36) does lend some support for Miss Cameron's submission the view which I take is that the dispute which is referred is as to whether the provisional registration occasioned by the Objection is to be confirmed with or without modification, or not.



Section 6(1) of the Act so far as material is in the following terms:-

"The Commons Commissioner to whom any matter has been referred under Section 5 of this Act shall inquire into it and shall either confirm the Registration with or without modifications or refuse to confirm it"

The word inquire is one of wide application and suggests that the duty of a Commissioner is not confined to trying issues inter partes, but while this is perhaps no more than an indication of what is meant by the matter what I find inconceivable is that Parliament intended to compel a Commissioner to confirm registrations which he is satisfied are bad in law and ought not to be confirmed. By way of illustration in the instant case it is inconceivable that 76 individuals have rights in gross and there are numerous applications to graze chickens which are not commonable animals and there can be no common right to graze chickens. Whilst my experience has disclosed numerous Entries in Registers which have become final by reason of their being undisputed, the Act cannot have intended a Commissioner when dealing with a provisional registration to confirm a registration which ought not to have been made.

Support for this view is to be found in Regulation 31 of the above mentioned Regulations which provides that a Commissioner may give a decision if he thinks fit in accordance with terms agreed in writing by all the persons entitled to be heard at a hearing. This Regulation clearly confers a discretion on a Commissioner not to give effect to the terms agreed between the parties to a dispute and it is in my view implicit in this Regulation that a Commissioner must have the same discretion at a hearing.

Then again Regulation 19(1)(b) provides that in the case of a reference of a provisional land registration all the concerned authorities are entitled to be heard. So that in the case of a registration of land as common land by A and an Objection by B "the matter" cannot be confined to a lis between A and B. Concerned authorities are not entitled to be heard on disputes relating to rights of ownership and I therefore am not entitled to have regard to the views or wishes of the North Norfolk District Council or the Bunton Parish Council as to whether or not the Rights Entries should be confirmed. However insofar as Miss Cameron appears for individual claimants for rights her submission I am now considering is validly taken.

For my part the view which I take is that Sections 5 and 6 of the Act must be read together and that the matter which is referred to a Commissioner is the provisional registration for his decision as to whether to confirm it with or without modification or alternatively refuse to confirm it.

Miss Cameron did at one stage tentatively suggest that in the instant case the claimants for rights were claiming as owners of their respective properties not as in the half year land case as inhabitants, but when it was pointed out that except in one case the Entries in the Register did not so state, she accepted that I could not if I had jurisdiction confirm these rights without modification.

Miss Cameron then invited me, if the view which I take as to my jurisdiction is correct, to confirm with modifications Entry Nos 17, 76, 51, 40, 19 and 12.



I deal first of all with Entry No 40 made by Mrs O'Hanlon and Entry No 19 made by her son in law Mr Bakewell who were the only applicants who gave oral evidence.

Mrs O'Hanlon in her Entry No 40 gave her address as Gotoground Kennels and stated she was the owner of that property and claimed the right to graze 2 horses, 2 ponies and 2 cows on all the whole year commons and she did not claim these rights as appurtenant to any land. She said in evidence that she was in Runton before the 1939/45 War and had a riding school in 1938. She left Runton on war service and thereafter returned to Runton and bought a pony in 1946 and later acquired three more ponies and she always had four ponies till 1971. The ponies grazed on the main common near the station and others near her riding school which was situate on land known as the Nursery (OS 38). She lived at Bridgend and bought the nursery in 1946 and still owns that land. From time to time she had kept seven goats, two cows and two other horses. She told me that she quantified her claim to rights having regard to those which she might wish to exercise. Her son in law, Mr Bakewell, now runs the riding school.

Mr Bakewell by his Entry No 19 gave his address as Close Cottage, Water Lane, West Runton and stated that he was the owner of that property and he claimed to graze 2 ponies, 2 head of cattle and 10 head of poultry over the whole year commons.

Neither Mr Bakewell nor Mrs O'Hanlon produced any documentary evidence in support of thier claims which could therefore only be by prescription. On this evidence it appeared to me that the only possible claim was for rights appurtenant to the Nursery and I have considered whether I can modify Mr O'Hanlon's claim by inserting in the fifth column of the Rights Section of the Register that land. I have with some reluctance come to the conclusion that I cannot take this course. I am satisfied that both Mrs O'Hanlon and Mr Bakewell made their claims in common with all other applicants save possibly No 51 as inhabitants and that they swore their statutory declarations in support on that footing. In my view in the circumstances of this case and in the context of the Act of 1965 if I were to take this course I would be admitting a new claim never made before the eleventh hour at the hearing and I would not be modifying a claim entered on the Register.

Mr Robert Love of Apple Tree Cottage, East Runton by Entry No 76 stated that he was the owner of that property and claimed the right to graze 10 ducks, 10 geese and 10 chickens and a right of estovers; he swore an affidavit on 10 January 1977, the day before the hearing, that from 1933 to 1958 he kept a horse which he grazed on Top Common and Sparrows Park Common and that his grandfather and father kept a donkey and geese on Lower Common. He does not state where his grandfather and father lived or how long he has lived at Apple Tree Cottage. His affidavit also refers to animals and geese grazed by other inhabitants and he was when he made his affidavit clearly concerned to prove grazing on the whole year lands. He makes no mention of any exercise of a right of estovers. Mr Love produced no documentary evidence and even if I felt able to regard his entry of Apple Tree Cottage as an application for rights appurtenant to Apple Tree Cottage, which I do not, his evidence is inadequate to establish any rights acquired by prescription.

Miss Cameron produced an unsworn statement by G L Bullen of 29 Burton Close, East Runton which she undertook to have sworn. Mr Bullen in his Entry No 17 gave his address as The Springles, Top Common, East Runton of which he said he was the owner and claimed to graze 1 pony, 2 geese, 6 ducks and one goat and a right of estovers over only some parts of the whole year commons. Mr Bullen's statement is to the effect that



he has kept geese since the early 1950's starting with two and having at one time as many as twenty-five and recently eighteen to twenty. He makes no mention of ever having grazed the pony or the goat or of having exercised rights of estovers. He states that he and his wife came to East Runton in 1949; he does not state when he came to or left Springles. On this evidence I do not feel justified in confirming Entry No 17 with any modifications.

Mr C M Leake at Entry No 12 gave his address as Pond Cottage, East Runton of which he was the owner and he claimed to graze 3 goats, 1 donkey and 8 ducks and a right of estovers over all the whole year commons. He swore an affidavit on 10 January 1977 that his grandfather and father also lived at East Runton and kept ponies. When I enquired whether his grandfather and father lived at Pond Cottage I was informed that they lived at Cutty Sark, the address of Nora May Leake the applicant for rights under Entry No 13, whereupon Miss Cameron invited me to confirm Entry No 13 and not Entry No 12. Mr Love in his affidavit referred to goats kept by him from time to time and the grazing by Mrs Fisher, Mrs Bonny's father, Miss Alice Abbs, Mrs Brown and Mr and Mrs Jonas. It is clear that Mr Leake's mind when he swore his affidavit was not directed to proving rights appurtenant to either Pond Cottage or Cutty Sark, and on this evidence I find myself unable to confirm either of these Entries with modifications.

Finally I come to Entry No 51 made by Elizabeth Mary Steward who gave an address in Bury St Edmunds but she is the only applicant who has claimed rights appurtenant to her property Keepers Cottage, Abbs Common, Runton; she claims the right to graze 2 ponies or 2 donkeys, 1 goat, 12 chickens and 6 geese.

There was no evidence in support of her claim but Miss Cameron told me that either she or her instructing solicitor had been in communication with her on the telephone and that she would swear an affidavit to the following effect:-

"That she bought Keepers Cottage not long before the Registration, that a local gamekeeper had lived there and she had been told that he kept a pony on the common."

Now in the light of this limited evidence she came to make a statutory declaration in support of her claim must be a matter for conjecture but her evidence when she swears her affidavit is not only hearsay but far too vague to support a claim by prescription.

I am satisfied that in this case all the applications for rights were organised by either the Parish Council or the Runton Ratepayers Association without legal advice I am also satisfied that the claims put forward on behalf of individual applicants at the hearing were a last minute endeavour by the Parish Council to procure the confirmation of some rights. Support for this view is to be found in the substance of the evidence set out above, the very late approach to Mrs Steward and the letter from the District Council in which it confirms its desire to have rights registered, thereby giving rise to the inference that there had been a previous approach to that Council.

In these circumstances I would in my view be doing less than justice if I confirmed some Entries by reason of some evidence being available at the hearing and refused



to confirm some other Entries in respect of which equally good or possibly better evidence might have been available. In my view the interests of the inhabitants of Runton will be best served by the District Council exercising its powers of management conferred upon it under the Scheme made under the Commons Act 1899 and authorising such grazing as it thinks fit impartially without regard to any Entries in the Register.

To sum up:-

- (1) I confirm the Entry in the Land Section modified as aforesaid
- (2) I am of opinion that on the true construction of the Act of 1965 and the Regulations made thereunder I have jurisdiction to modify or to refuse to confirm all or any of the Entries in the Rights Section
- (3) In the exercise of that jurisdiction I refuse to confirm all the Entries in the Rights Section.

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 23 day of February 1977

J. A. Little

Commons Commissioner