



COMMONS REGISTRATION ACT 1965

Reference No. 225/U/229

In the Matter of Hales Green, Hales,
South Norfolk District, Norfolk

DECISION

This reference relates to the question of the ownership of land known as Hales Green, Hales, South Norfolk District being the land comprised in the Land Section of Register Unit No. CL 39 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 South Norfolk District Council said (their clerk's letter of 8 September 1978) that their predecessors had had correspondence successively with the Ministry of Agriculture Fisheries and Food, the Ministry of Land and Natural Resources, the Ministry of Housing and Local Government and the Department of the Environment in connection with the making of a scheme of regulations covering this Common under the Commons Act 1899, and that exhaustive inquiries over this period had failed to reveal the ownership of the land. No person claimed to be the freehold owner of the land in question and no other person 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 3 April 1979. At the hearing (1) South Norfolk District were represented by Mr B E Partridge solicitor with the Council; (2) Mr S A Herwin, on whose application the registration at Right Section Entry No. 1 was made (four goings, each representing the right to pasture one beast, ie one cow or one horse except that a mare and foal count as one beast) attended in person; and (3) Mr J M Spurgeon, on whose application the registration at Right Section Entry No. 3 was made (to graze 3 head of meat stock or cattle) was represented by his daughter Mrs P Watson (she also represented her mother Mrs B O Spurgeon and her son Mr J Watson who are both in partnership with Mr J M Spurgeon in his farm).

The land ("the Green") in this Register Unit has according to the Register map a length of a little under a mile and a variable width between about 100 and 450 yds; it is situate about $1\frac{1}{2}$ miles south-east of Loddon and a short distance west of the A146 road.

Mr Partridge produced: (a) a copy printed October 1965 of a scheme made by Loddon Rural District Council under the Commons Act 1899 for the regulation of the Green; and (b) a copy of Byelaws made on 21 October 1971 by the said Council under the said scheme and approved by the Secretary of State on 20 January 1972.

Mrs Watson and Mr Herwin said that they always thought that the Kirby Cane Estate are the owners. Mr Herwin said (in effect):- Mrs Crisp used to live at Kirkby Hall and her son Major Crisp lives there now. Over the Green there are 68 goings.



The land to the south, west, and north of the Green is part of the Estate; his farm (Green Farm) and Mr Spurgeon's farm (Orchard Farm) are on the east. The Estate has 61 goings (Mrs B A Crisp and 2 others as trustees of the Estate have registered at Rights Section Entry No. 4 a right to graze 60 horses or 60 head of cattle; there are no other subsisting registrations in the Rights Section). The Green is about 70 acres; after the war (1939-45), Major Crisp with the agreement of those entitled to graze, bulldozed about 25 acres to get rid of the scrub, ploughed it up and reseeded it and after about 2 or 3 years returned it to pasture as it now is.

Mr Herwin suggested that if the Estate are not the owners, the Green belonged to the Commoners. Mr Partridge said that when the scheme was made the Estate did not claim ownership, although subsequently ownership was claimed of a small area in the middle of the Green (hatched purple on the Register map and not now included in the registration), being OS No. 102 and shown on old maps as cottages.

Bearing in mind that the Estate have made a registration of the said right to graze 60 horses or 60 cattle and not applied to be registered as owners, I ought not I think in the absence of exceptional circumstances (which do not here exist) or very clear evidence to conclude in their absence that they are the owners. There is I think no legal reason why land over which a number of persons have rights of common (grazing rights) should not also be the owners of the land over which such rights exist, as tenants in common in shares proportionate to their rights; because since the Law of Property Act 1925 a legal Estate in land cannot be owned in undivided shares where any such common ownership exists the legal Estate is (as a general rule) in the Public Trustee see the High Court decision, re Cotherstone, Estates Gazette 1 July 1961. But in my opinion such ownership as tenants in common cannot be presumed to exist merely from the circumstance that the land is subject to rights of grazing. In my opinion the acts described by Mr Herwin as done by Major Crisp after the war are not enough to show such ownership. Accordingly in the absence of any other evidence about the ownership of the Green, I am not satisfied that any person is the owner 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 23rd day of April 1979

A. A. Barton Fuller

Commons Commissioner