COMMONS REGISTRATION ACT 1965

Reference Nos. 25/D/34 to 78 inclusive

In the Matter of Runton Half Year Lands
Runton, North Norfolk D

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and Entries 1 to 74 inclusive in the Rights Section of Register Unit No. CL.6 in the Register of Common Land maintained by the Norfolk County Council and are occasioned by:-

Objection	No.	122B	made	by	C I Gray	noted	in	the	Register	on	8 September 1970
"	"	130B	"	"	J R Bownsell	"	"	"	"	"	10 September 1970
"	"	134B	"	"	F W Mitcham	"	"	"	"	"	14 September 1970
"	"	135B	"	"	R V Jonas	"	"	"	"	"	15 September 1970
"	"	136B	"	"	W R Babbage	"	"	"	"	"	15 September 1970
"	"	137B	"	"	R G Crisp	"	"	"	"	"	15 September 1970
"	"	138B	"	"	F Bullimore	"	"	"	"	"	15 September 1970
"	"	139B	"	"	H S Steward	"	"	"	"	"	15 September 1970
"	"	147B	"	"	G J and J Finch	"	"	"	"	"	11 November 1970
"	"	146B	"	"	M H Harrison	"	"	"	"	"	11 November 1970
"	"	159B	"	"	T P W Tacon	"	"	"	"	"	11 November 1970
"	"	161B	"	"	R Matthews	"	"	"	"	"	11 November 1970
"	"	198B	"	"	M Abbs	"	"	"	"	"	11 November 1970
"	"	199B	"	"	G Clifton	"	"	"	"	"	11 November 1970
"	"	200B	"	"	D M Leake	"	"	"	"	"	11 November 1970
"	"	202B	"	"	E Porritt	"	"	"	"	"	11 November 1970
"	"	209B	"	"	A W Abbs	"	"	"	"	"	11 November 1970
"	"	207B	"	"	D T and B R Abbs	"	"	"	"	"	11 November 1970
"	"	215B	"	"	D Chidson	"	"	"	"	"	11 November 1970
"	"	218B	"	"	A J A Langley	"	"	"	"	"	11 November 1970
"	"	243B	"	"	T Jonas	"	"	"	"	"	11 November 1970
"	"	252B	"	"	A J Grand	"	"	"	"	"	11 November 1970
"	"	257B	"	"	M W Leake	"	"	"	"	"	11 November 1970
"	"	258B	"	"	G R Calley	"	"	"	"	"	11 November 1970
"	"	286B	"	"	D T Abbs	"	"	"	"	"	12 November 1970
"	"	291B	"	"	Wilson & Wilson	"	"	"	"	"	12 November 1970
"	"	299B	"	"	F A Bloomfield	"	"	"	"	"	12 November 1970
"	"	157B	"	"	S T Holliday	"	"	"	"	"	24 November 1970
"	"	71B	"	"	F A Bloomfield	"	"	"	"	"	9 September 1970
"	"	92B	"	"	E Porritt	"	"	"	"	"	7 August 1970
"	"	133B	"	"	P Moulton	"	"	"	"	"	19 September 1970
"	"	145B	"	"	M H Harrison	"	"	"	"	"	16 November 1970
"	"	158B	"	"	T P W Tacon	"	"	"	"	"	16 November 1970
"	"	201B	"	"	D M Leake	"	"	"	"	"	16 November 1970
"	"	213B	"	"	R Matthews	"	"	"	"	"	16 November 1970
"	"	214B	"	"	D T & B R Abbs	"	"	"	"	"	16 November 1970
"	"	234B	"	"	M W Leake	"	"	"	"	"	16 November 1970
"	"	242B	"	"	M Abbs	"	"	"	"	"	16 November 1970
"	"	253B	"	"	T Jonas	"	"	"	"	"	16 November 1970
"	"	285B	"	"	G Clifton	"	"	"	"	"	16 November 1970

"	"	287B	"	"	D T Abbs	"	"	"	"	"	16 November 1970
"	"	290B	"	"	Wilson & Wilson	"	"	"	"	"	16 November 1970
"	"	283B	"	"	S W Johnson	"	"	"	"	"	16 November 1970
"	"	160B	"	"	S T Holliday	"	"	"	"	"	24 November 1970

held a hearing for the purpose of inquiring into these disputes at Norwich on the 8, 19, 20, 21, 24, 25, 26, 27 and 28 November 1975 and at London on January 12, 13, 4, 15, 16, 28, 29 and 30 1976.

he hearing was attended by:-

iss Sheila Cameron and Mr Charles George, Counsel instructed by Messrs Mills & Reeve n behalf of the Runton Parish Council and all the applicants for rights.

r Clifford Joseph and Mr Ben Sawbridge, Counsel instructed by Messrs Russell Steward tevens and Hipwell on behalf of the Caravan Club of Great Britain (Mr Chidson's bjection No. 215B).

r N A C Butcher of Messrs Emmett & Tacon appeared on behalf of the Objectors:-

D T & B R Abbs	Objection 207B
S T Holliday	" 157B
F A Bloomfield	" 299B
G R Culley	" 258B
E Porritt	" 262B
D M Leake	" 200B
R Matthews	" 161B
M H Harrison	" 146B
F Bullimore	" 138B
W R Babbage	" 136B
T P W Tacon	" 159B

r Mitcham, Mr Jonas and Mr Crisp appeared in person.

unton as it is today.

he Parish of Runton lies on the coast of Norfolk between Cromer and Sherringham; t comprises two villages East Runton and West Runton. A multiplicity of maps were roduced at the hearing and in my view it is not necessary to annex any map to this ecision and in the interests of economy it is undesirable so to do.

here lie in Runton 527 acres of land which the Parish Council and the other pplicants for rights allege are "half year lands" subject to grazing rights from 1 October (old Michaelmas Day) to 6 April (old Lady Day) in every year. There also ie within the said parish tracts of land which are undisputed commons available or grazing throughout the year.

he question which I have to determine is whether, as the Parish Council and the ther applicants for rights contend, there are any subsisting grazing rights over he half year lands or whether, as the objectors contend, there are no such rights till subsisting. Mr R T Mould a chartered surveyor produced a map illustrating the ses to which the half year lands are put at the present time which showed that:-

202 acres	38% are pasture
200 "	38% " arable
61 "	12% " woodland and scrub

30	"	6%	" allotments
11	"	2%	" residential property
6	"	1%	" industrial and commercial
4	"	1%	" Sandy areas and beach

It is beyond dispute that save as regards a purported cullett flock to which I will refer in detail later in this decision there has been no exercise of the grazing rights claimed in recent times and between 1929 and 1963 no sheep have been grazed on the half year lands. In the course of the hearing I was told of three farms namely Laburnum Farm, Manor Farm and Cottage Farm. Contrary to what one would expect the owners of Laburnum Farm and Manor Farm object to the subsistence of half year rights. Cottage Farm is owned by the successors to Sir Ivison Macadam and let to a tenant farmer, who did not give evidence although Lady Macadam the widow of Sir Ivison gave evidence in support of the rights.

Except for one pony there was no evidence of any grazing on the commons available for that purpose throughout the year, one such common Incleborough Hill which used to be grazed and had water laid on for that purpose is now overgrown and a mass of gorse and bracken and Mr Hughes who became chairman of the Parish Council in 1967 stated that he wished there were some sheep as the Council were taking grass off other commons merely to get rid of it.

At an early stage in the hearing I indicated that in the absence of any grazing and in the absence of any commonable animals capable of being grazed these disputes were unrealistic. The fact of the matter is that there are numerous caravan sites on half year land licensed by the District Council for use as such during the period end of March to end of September and if the half year rights are upheld they will impede compliance with the District Council's requirements as regards hygiene and roads. It was conceded in evidence that caravan sites provide a valuable source of revenue to farmers and other owners of caravan sites. It is also the fact that since it cannot be built upon without the risk of litigation, land believed to be subject to half year rights is less valuable than other land.

The fact of the matter is that those who seek to uphold the half year rights do so not with a view to exercising to the right to graze, but in order that the rights may have the effect of restrictive covenants against the use of the half year lands for purposes inconsistent with grazing.

The Half Year Rights Claimed

These were stated by Miss Cameron to fall into three categories:

1 A right now vested in the Parish Council as trustee for the inhabitants

2 The right of a flock of sheep known as the Abbey flock to graze the half year lands, and

3 A right of shack for owners of half year lands to graze the half year lands of other owners.

Miss Cameron conceded at an early stage that she could not invite me to confirm the rights registrations of any of the 74 applicants for rights other than those of Mr Oliver (No. 10), The Norfolk Archaeological Trust (No. 52), The Parish Council (No. 49) and Sir Ivison Macadam (No. 74). I also indicated that if Miss Cameron

established that the Parish Council was a trustee for the inhabitants I would confirm that registration in a suitably modified form.

Early History

The Beeston Priory was founded about the time of the reign of King John. The original endowment was of 40 acres of land in Beeston and Runton together with certain demesne lands, rents, services, meadows, wreck of sea and fisheries. It was suppressed by Henry VIII in June 1539 and in 1540 the Crown granted a lease of the site of the priory and its possessions to John Travers and in 1545 the Crown granted the site its lordships,lands and tenements to Sir Edmund Wyndham and Giles Seafowle jointly: see The Victoria County History 1883 and Walter Rye, The History of the Hundred of North Erpingham at p.46. The Manors of Beeston and Runton were both comprised in the possessions of the Abbey in 1535.

In 1804 the Abbey Farm was in the ownership of Cremer Woodrow and in that year he sold it to Samuel Hoare. Copies of the particulars of the Estate and the agreement for sale were produced at the hearing. The particulars stated that there were "about 200 acres of Heath Ground belonging to this estate on which certain persons have a right to put their sheep and cattle from 11 October to 6 April in every year, then in the occupation of Mr Haxell, and the Abbey Farm was conveyed together with" rights of sheepwalk, hereditaments and appurtenances thereunto respectively belonging. The conveyance also referred to a foldcourse as being comprised in the sale. My impression is that even at that time any distinction between a foldcourse and a sheep-walk had ceased to have any practical significance in Runton and the words were used as referable to the same right. There was produced at the hearing a map of 1804 and a leather bound book which identified the land subject to the Abbey sheepwalk.

There was also produced at the hearing a copy of an indenture made on 5 January 1841 (together with the plan attached) made between H J Johnson and Sir Thomas Fowell Buxton whereby the land in Runton shown on the plan was acquired by Sir Thomas Buxton, such of that land as was coloured blue on the plan being subject to half year rights.

Mr Joseph submitted that the 1841 plan disclosed that land subject to half year rights had been released from these rights subsequent to 1804 but I am not convinced that this was so. The right over the Heath Ground was vested in persons other than the owner of the Abbey rights and their release could not be relevant to the entitlement of the owner of the Abbey rights to release those rights.

In 1898 Mr & Mrs Reynolds became the tenants of the Abbey Farm which was conveyed to Mrs Reynolds by Sir Samuel Hoare by a conveyance dated 31 August 1920 together.

The Fulcher Action 1899

In the year 1899 an action was commenced in the Holt County Court by Erpingham RDC against one Fulcher who had acquired some half year land and was engaged in building on that land. The RDC sued by virtue of the power conferred upon it by virtue of the Section 26 of the Local Government Act 1894, I assume at the request of the Runton Parish Council, an assumption I make because the RDC ultimately required the Parish Council to meet the costs not recovered from Fulcher.

The relief claimed in the particulars of claim was to the following effect:

1 A declaration that the inhabitants of Runton or alternatively the owners and occupiers of houses in Runton have rights of pasturing all their sheep levant et couchant in Runton on certain lands in Runton comprising about 400 acres and known as half year lands between sunrise and sunset from the 11 October to 5 April in any year such sheep being placed together in one flock, under the charge of a common shepherd, which is and has long been known as the cullett flock.

2 An injunction restraining the Defendant from inclosing or destroying or building upon the pasture or herbage on his part of the half year lands.

3 A mandatory injunction and costs.

The course this litigation took was that oral evidence, of which a press report was produced at the hearing, was heard at Holt and the case was then adjourned to London for legal argument and a transcript of the proceedings in London was also produced at the hearing. I was told that some owners of half year land were either present or represented at the hearing but Judge Willis refused to hear them on the ground that they were not parties to the action. Mr Fulcher was a newcomer to Runton, his only concern was to proceed with his building operation and at an early stage in the proceedings in London, he arrived at a compromise with the RDC whereby he was enabled to continue his building operations on payment of £10 and costs. Thereafter his only concern was to terminate the proceedings as expeditiously and cheaply as possible.

Mr Cozens Hardy who appeared for the RDC pressed Judge Willis to make a declaration stressing that it must not be by consent. Judge Willis was reluctant to make any declaration and pointed out that it would not be binding on anyone other than Fulcher, but he was ultimately prevailed upon to make the following declaration:-

> "That the inhabitants of Runton are entitled to the right of pasturing all their sheep cows horses ponies donkeys and commonable animals levant et couchant on half year lands in Runton between sunrise and sunset on every day from October 11th to 5th April in every year."

The £10 which Fulcher had agreed to pay was paid into Court to the credit of the inhabitants of Runton.

This declaration made by Judge Willis has bedevilled Runton for the last seventy-five years. It is not surprising that, in the light of the Declaration, inhabitants of Runton have believed and still believe that they have the rights set out in the Declaration. One witness at the hearing told me he "was brought up on Judge Willis". Miss Cameron in answer to a question from me did not suggest that I was bound by the decision of Judge Willis and invited me to arrive at a decision on the claim of the inhabitants on the evidence adduced and the submissions made at the hearing.

In my view, for reasons which will appear hereafter, the Fulcher action is in point of time the high water mark of the claim on behalf of the inhabitants; they could not in my view have acquired since 1900, though they may possibly have lost, any rights they then had. For this reason I shall have to consider the Fulcher action in greater detail later in this decision.

The consequences of the Fulcher action

The Fulcher action led to the Erpingham RDC making an approach to the Charity Commissioners on 13 December with a view to their

(1) appointing Trustees of moneys received and to be received by way of compensation or otherwise in respect of half year lands, and

(2) drawing up a scheme for the application of such moneys.

The history of the part played by the Charity Commission is fully set out in a very full report made by Mr G W Wallace in July 1915, a copy of which was produced at the hearing. The salient facts that emerge from this report are as follows:-

(1) "Owners of half year lands appear to have from time to time sold portions for building purposes without any claim to any part of the proceeds on behalf of the Commoners until 1898." When a claim was made against a Gas Company, no statutory committee was appointed to receive the money and £5-1-6 was paid into Barclays Bank where it remained.

(2) This was followed by the Fulcher case in 1899

(3) On the faith of the Fulcher judgment £26 compensation was obtained from a Mrs Reynolds (not Mrs Reynolds of Abbey Farm) who had built on half year land; this was paid to the Official Trustee of Charitable Funds.

(4) In January 1902 a scheme was published, to appoint Trustees and to authorise the Trustees to apply the income of the Charity to payment of a herdsman and subject thereto to any public purpose for the benefit of the inhabitants.

(5) The publication of the Scheme provoked the opposition of the three main owners of half year lands who owned between them between 650 and 700 acres.

> "They did not admit any right in the inhabitants but alleged that the rights claimed were exercisable only by the owners of the half year lands inter se or their occupiers. They therefore did not admit that they were a charity or capable of being dealt with under the Charitable Trusts Acts. They further objected that the RDC had no powers to sell or release rights of common, that the money held by the Official Trustee seemed to be the proceeds of such a sale or release and that they had given notice to the solicitors of the RDC that they would hold the Council liable for the infringement of their rights"

(6) In March 1903 the M & GNR Railway Co paid £25 as compensation for the release of rights to the trustees nominated by the RDC

(7) On 22 October 1910 the owners of almost the entirety of the half year lands made an application to the Board of Agriculture and Fisheries for a Provisional Order for their inclosure under the Inclosure Acts 1845 to 1890. Consequent-

upon the application Mr Dill held an enquiry and made a report to the Ministry dated 1 November 1912. A copy of this report was produced at the hearing. Mr Dill advised that it was not expedient to proceed further in the matter

(8) A fresh scheme was published in 1911 which met with the same objections by the owners of the half year lands as those previously expressed by them

(9) At a meeting convened at the request of Mr Wallace attended by the Rev Fitch, Rector of Beeston Regis, vice chairman of the Council, James Abbs, senior, chairman of Runton PC, Guy Davey agent for Sir Samuel Hoares executors and J T Willis, clerk of the RDC, Mr Davey maintained that any evidence given in the Fulcher action that the cullett flock had any right independently of his was erroneous. If Sir Samuel Hoare released his right, the right of the cullett flock went with it. The others agreed with Mr Davey

(10) Ultimately on 17 December 1915 the Board of Charity Commissioners made an order approving a scheme whereby the £10 paid into Court in the Fulcher action, the sun of £5-1-6 and a further sum of £67-13-3 received by way of compensation were to be paid to the Erpingham RDC and applied for the relief of the rates of the Parish of Runton

Paragraph 3 of the scheme is in the following terms:-

"3 Nothing in this scheme shall prejudicially affect any claim with respect to the ownership of the half year lands or be deemed to involve any admission by the owners of the said lands that the above mentioned rights exist."

Mr Wallace in his report and Mr Dill in his report and the representative of the Erpingham RDC at the meeting referred to above all expressed grave doubts as to the soundness of the decision in the Fulcher case.

The Cullett flock grazed up to the commencement of the present century but ceased to graze for a period of about 6 to 8 years prior to 1913 when it was reconstituted under the shepherd Jimmy Dykie. All the sheep fell ill and died within approximately one year and since the commencement of the 1914/18 war until 1963 there has been no grazing or purported grazing of a cullett flock. In 1963 the late Sir Ivison Macadam purported to reconstitute the cullett flock.

Lady Macadam, the widow of Sir Ivison, gave evidence on the subject of the 1963 flock. She said that at that time there was serious disagreement; there was an attempt to build on half year lands of the Parish. "We did not wish to abandon the rights and it was decided in consultation with others why not exercise the right. 8 sheep were available for sale by a person leaving the area. My husband paid a nominal sum and the sheep were divided among six different owners, my husband had 2, Abbs had 2, Alexander Beasy (an employee of Sir Ivison) had one. Mrs O'Hanlon had one. Except for Abbs who paid the others were given their sheep. My husband felt it would be difficult for the owners to pay. The original sheep had ear tags numbered to identify their owners. The sheep were mostly on two half year fields belonging to my husband. I have seen them on the caravan site and on the commons when my husband went out with Beasy; he was the shepherd but that was not his sole duty. The sheep were mostly on my husband's land; on one occasion I saw them round Incleborough Hill and on OS 166-9

inclusive". In answer to a question put by me Lady Macadam accepted that insofar as the sheep left Macadam land, they were doing no more than "showing the flag". Since 1963 the flock has increased. As between owners in return for maintenance, the lambs and fleeces belonged to Sir Ivison. James Abbs' sheep had triplets (of which he made no mention in his evidence). There have been seven new owners who have bought sheep and who all paid for their sheep. Ther has been no change in the arrangements. The flock now numbers 78. We had a small farm and also owned Cottage Farm, there are no sheep other than the cullett flock at the moment." James Abbs in evidence said in 1936 Sir Ivison started a small flock. He bought two sheep and left them with Sir Ivison's shepherd. They would eventually graze on both commons. He thought they would eventually become a cullett flock. He never saw them grazing. Mrs N M Leake said that she owned half a sheep, and her busband owned the other half in the reconstituted flock. They did this to continue the right and to keep land for the production of food. It was for this reason she registered rights. Miss E E Alexander said her sister acquired an original sheep and she acquired one two or three years later because she was so interested in it. She said she still owns a sheep. Miss E M Alexander confirmed her sister's evidence save that she only had half a sheep and another sister owned the other half. She hoped it was still alive but she didn't know. A Mr Mould won a sheep in a raffle.

On this evidence, I have come to the conclusion that this reconstituted, so called, cullett flock was and is a mere sham. No owner of a sheep other than Sir Ivison and his successors has received any benefit from the flock and no owner knows whether his sheep is alive or dead. In any event if the cullett rights were capable of abandonment they had in my view been abandoned by 1963 and if they were not capable of being abandoned the reconstituted flock did not serve any useful purpose.

The Abbey Flock

It has never been disputed that the Abbey Flock had half year rights over the half year lands. In 1898 Mr & Mrs Reynolds became the tenants of Abbey Farm and by a conveyance dated 31 August 1920 they acquired the freehold from Sir Samuel Hoare "and also all that sheepwalk or foldcourse (part of or belonging to the said messuage or farm called "Beeston Foldcourse". In 1956 Mrs Reynolds made a statutory declaration, paragraphs 4 and 5 were in the following terms:-

4 "Since I have been the owner of the property I have exercised the rights of the sheepmaster and during that time and also whilst my husband and I were tenants thereof on behalf of Sir Samuel Hoare I or he collected from time to time annual fees from the owners and occupiers of land in Runton and Beeston Regis subject to the before mentioned rights calculated at 2/- per acre to exempt certain portions of land as were down to roots during the period when such rights would otherwise be exercisable.

5 The Priory Farm flocks were driven over every year up to 1929. This was discontinued after 1929 as the sheep could not be taken over the roads owing to the increase in the volume of traffic making it dangerous to do so and the flocks were then sold."

Mrs Reynolds died on the 11th April 1967 having by her will dated 17 September 1962 made the following bequest:

3 I give to the Rural District Council of Erpingham in Norfolk (should I not already have given the same in my lifetime) that sheepwalk or foldcourse (part of or belonging to Priory Farm Beeston Regis) called Beeston Foldcourse and all my interest therein (except such part as may affect any land which may be vested in me beneficially at the date of my death) in fee simple.

After the death of Mrs Reynolds doubts were expressed as to whether or not the sheepwalk could be severed from the Priory Farm. Whether for this or other reasons the Erpingham RDC did not accept the bequest. The Abbey Rights have not been registered under the Act of 1965 and are no longer exercisable.

I am bound to follow the decision of Goff J as he then was, in Central Electricity Generating Board v Clwyd County Council, so far only reported in the Estates Gazette Vol. 235 to 299, and I shall therefore refuse to confirm the Entry in the Land Section unless I am able to confirm one or more of the Entries in the Rights Section.

However in case the decision of Goff J is overruled, or distinguished on an appeal in the instant case, it is right that I should say that I have come to the conclusion that the Abbey Rights had been abandoned prior to the 13 February 1967 the date of the registration of the half year lands as common land.

Miss Cameron contended that the Abbey Rights had not been abandoned.

She relied upon the passage in the judgment of Buckley LJ in Tehidy Minerals v Newman 1971 2 QB 528 at p.553:-

> abandonment of an easement or profit a prendre can only, we think, be treated as having taken place where the person entitled to it has demonstrated a fixed intention never at any time thereafter to assert the right himself or to attempt to transmit it to anyone else.

Miss Cameron relied on four matters as establishing that Mrs Reynolds never had any intention to abandon. Three of these relate to the demand for or receipt of money for not grazing and the fourth is the above-mentioned gift of the rights by her will to the Erpingham RDC.

It was established practice that the sheepmaster was entitled to a payment of 2/- per acre for land under roots, these payments being in the nature of compensation for the Abbey flock being deprived of grazing which would have been available on stubble. An account book of Mrs Reynolds was produced at the hearing showing the receipt by Mrs Reynolds of "turnip money" on a diminishing scale down to 1954. There were also produced two letters written by her on 27 November 1944 and 5 December 1949 to Mr Byworth and Mr J A Abbs respectively. In the first of these letters Mrs Reynolds said:

> "I do not understand your attitude towards my man when I sent as usual about the half year sheepwalk grazing rights. You told him you would wait till the sheep come. I wonder if you are aware that I can put sheep on your land each day from mid-October to early April...I am surprised that

you do not realise that the fact that I am retaining the Monastic Rights is an asset to the Runtons otherwise the place would be built up. I have taken my solicitor's advice about it and although at the moment it may be difficult he suggests that I might find it possible to run sheep over the land."

The letter to Mr Abbs was written in similar circumstances. In 1956 Mrs Reynolds released certain land in the ownership of Mr & Mrs Pickering in consideration of a payment to her.

Mr J A Abbs in evidence said he remembered the letter addressed to him and that he went on paying for a few years. Mr Holliday the son-in-law of Mr Byworth said he knew his father-in-law paid Mrs Reynolds, on one occasion and thereafter he refused to pay. His father-in-law always had roots.

It is also relevant to mention that evidence was given that the gates on half year land were taken down at the commencement of the open season but that they had not been taken down since 1930.

In one sense of the word "assert" Mrs Reynolds' demands for and acceptance of compensati and her statements in the above-mentioned letters could be regarded as assertions of her rights. In my view this is not the sense in which Buckley LJ used that word in the passage of his judgment quoted above. At the top of p.546 he said "grazing another man's land is at least as obtrusive an assertion of a right to do something on the land of another as for instance the use of a way". In my view if a right is not to be abandoned there must be an intention to assert the right by exercising that right. In the instant case I am satisfied that Mrs Reynolds had no such intention and I have come to the conclusion because (1) Mrs Reynolds did not graze a single sheep from 1929 down to the date of her death in 1967, 38 years approximately, (2) Mrs Reynolds' statutory declaration gave as her reason for the discontinuance of grazing the hazards of traffic, which must have increased rather than diminished over the years, (3) The bequest in her will to the Erpingham RDC and the possibility envisaged that she might give her rights to the RDC prior to her death. In my view Mrs Reynolds cannot have contemplated the grazing of an Abbey flock by the RDC. The inference which I draw is that the purpose of the gift to the RDC was that stated in her letter to Mr Byworth namely that the Monastic Rights should be held as an asset for the Runtons to prevent building.

Miss Cameron in reliance upon Wyld v Silver 1962 3 WLD 841 contended that motive for asserting the right is irrelevant. Where the right exists this is without doubt true. In the instant case I am concerned with a right to graze, not a right to receive compensation for not grazing non-existent sheep, even if there was such a right, which in my opinion there was not. Mrs Reynolds having formed the intention not to graze the Abbey flock and not having grazed the Abbey flock for 38 years did in my view abandon her rights and her motive in seeking to maintain the continued existence of the rights in order to restrict building is consistent with her intention to abandon the grazing of the Abbey flock. The right alleged is a right to graze not a restrictive covenant against building.

Mr Joseph made various submissions on the Abbey flock, the short effect of which was to endeavour to impale Miss Cameron on a fork. On the one hand he submitted that Miss Reynold's sheepwalk was not a right of common, and on the other hand he submitted that if it was a right of common, the effect of the releases executed by her was to release the whole right (Johnson v Barnes (1873) LR 8 CP 527). I do not propose to

give any decision on these submissions, which will be open to Mr Joseph on an appeal, for the reason that the Abbey rights may have been subsisting on 1 January 1926 and the half year lands may therefore be subject to the restrictions imposed by Section 194 of the LPA 1925.

Having come to the conclusion that I cannot confirm the Entry in the Land Section of the Register on the footing that the Abbey rights were subsisting at the date of registration it is, in my view, undesirable that I should express any views which bear on the question as to whether or not Section 194 has any application to the half year lands.

The claims on behalf of the inhabitants

Miss Cameron's submissions on this part of the case are that the long user imposes on me a duty to presume a lawful origin and she goes on to say that the lawful origin I must presume is either (a) a grant by the Crown to the inhabitants, thereby incorporating them or (b) a grant to unidentified trustees on behalf of inhabitants.

In my view I cannot make any such presumption. In Gardner v Hodgsons Kingston Brewery Company 1903 AC 229 Lord Lindley, after stating that the common law doctrine is that all prescription presupposes a grant and that in order that a title by prescription may be so established the enjoyment must be inconsistent with any other reasonable inference, that it has been as of right in the sense above explained, goes on to say:

> "This, I think, is the proper inference to be drawn from the authorities discussed in the Court below. If the enjoyment is equally consistent with two reasonable inferences enjoyment as of right is not established", and later "This conclusion also prevents the application to the present case of the doctrine of lost grant. For that doctrine only applies where the enjoyment cannot be otherwise reasonably accounted for".

This passage from the speech of Lord Lindley was cited by Harman LJ in Beckett (Alfred E) Ltd v Lyons 1967 Ch.449 at LL 473 and 474 where he said

> "If it be clear that the usage has long been practised under a claim of right then the Court will be astute to find a legal origin for it, but where another explanation is equally possible the principle does not prevail. Here I think toleration is a sufficient explanation."

I now turn to the evidence in order to consider whether the usages proved are consistent only with the rights claimed by the inhabitants, and I start with the press report of the evidence in the Fulcher case.

James Abbs the shepherd of the cullett flock gave evidence that he drove the flock over all half year land except that under turnips. He took sheep from anybody who had them, farmers, poor folk and all.

John Lawrence then aged 87 had put sheep on half year lands. Anyone in the Runtons could put sheep on. He only had a cottage and no land of his own. He put his sheep on whole year lands in the summer. The cullett flock was poor folk's right.

Robert Love aged 74 had been employed by Robert Ives to keep cows and colts on half year lands. A lad named Green kept poor people's cows ponies and donkeys. Anyone who occupied a house in the Parish of Runton could put in cows, ponies, horses and so on.

Mr Cutler gave evidence that his grandfather and father kept sheep on the land.

A release given to Mr Fulcher by Sir Samuel Hoare was produced. Mr Reynolds of the Abbey Farm said he thought the cullett flock should follow his but he could not say.

If one refers to the particulars of claim it will be seen that the only rights claimed were in respect of the cullett flock, notwithstanding this the declaration made by Judge Wills relates to a right to graze other animals. Then again notwithstanding that claim was made on behalf of the inhabitants or alternatively the owners and occupiers of houses in Runton; six alternative grounds on which the right is alleged to have been based were put forward of which three if accepted would establish rights in the owners and occupiers of houses and lands in Runton as distinct from the inhabitants. Paragraphs 9 and 10 of the Particulars are consistent with Miss Cameron's submissions at this hearing save only that she suggests a Royal Grant by Henry VIII after he suppressed the Priory rather than a grant by William I as pleaded in the Particulars.

The meagre evidence was to the effect that the rights claimed were either "poor folk's rights" or the rights of occupiers of houses in Runton. It should also be mentioned that Mr Abbs and Mr Lawrence spoke of resistance to the exercise of cullett rights and counter measures.

It is relevant to point out that the RDC on behalf of the inhabitants were represented by counsel, who settled a draft report on the half year lands, I assume for submission to the Erpingham RDC with a view to the institution of the Fulcher action. This report was produced at the hearing as also were cases to counsel and their opinions which were no doubt included in Mr Cozens Hardy's instructions. I do not find the opinions helpful. The instructions (at p. 42 of the Charity Commissioners file) refer to

(1) Owners and proprietors of lands in the Parish of Runton having a right to turn their great and commonable cattle and also a number of sheep called a cullett flock in the common fields and half year lands

(2) Instructions to Jeddrell refer to the sheep in the cullett flock belonging to the poor

(3) Instructions to Mr Partridge (1793) refer to the cullett flock belonging to various occupiers of land in proportion to their respective occupation, but state that cottagers and those who have any land claim a right of feeding sheep, which is now contested

(4) Instructions to Mr Forster (1779) refer to the cullett flock as comprising sheep or great cattle kept by the farmers, occupiers and the poor.

There is no suggestion in any of these early documents of the enjoyment of any rights of the inhabitants as such but the instructions to Mr Partridge do state that cottagers whose cottages once had land annexed to them continue to graze after these lands were added to the larger occupations, either from indulgence, suffrance or neglect of the land owners.

The draft report settled by Mr Cozens Hardy does state:-

"The only connection between the two flocks is that the Beeston Abbey flock had the prior right to feed the lands and the cullett was to follow".

I hope I have now dealt with all the material which was available at the time of the Fulcher case, thought not all of it was available to Judge Willis. I pause at this point in history because it is clear that any rights the subject of a grant for the benefit of the inhabitants must have been of those existing at that time. As regards subsequent grazing, I have already dealt with the cullett flock and the evidence given at the hearing as to other commonable animals was to the effect that such grazing continued down to the 1939/45 war on an ever diminishing scale, and that thereafter it has been virtually non-existent. No useful purpose will be served by my referring to this evidence in detail.

At the hearing when I was told of the payment of "turnip money" to Mrs Reynolds and that the inhabitants never claimed any part of that money and that neither the cullett flock nor indeed other animals ever claimed to graze on the turnip land, I began to wonder whether the cullett rights might not have been carved out of or dependent upon the Abbey rights.

Support for the view that the cullett flock was dependent on the Abbey flock came when Mr A H Love aged 75 said in cross-examination that "the Abbey flock had to go first. You couldn't put on nothing till they had been." Mr Love did not know what would happen if the Abbey flock did not go on. Then again Sir Samuel Hoare released some land from grazing rights in 1900 and Mrs Reynolds executed releases in favour of Mrs Simmonds and Mr Harrison in 1925 and in favour of Mr Pickering in 1956. It was not until after the registration of half year lands as common land that any claim was made on behalf of the inhabitants to graze on the lands the subject of these releases. It was also accepted that there was no right to graze on half year lands sown with corn.

I turn now to an article by Mr K J Allison in the Agricultural History Review, published by the British Agricultural History Society, Vol. 5 1957 on the "Sheep-Corn Husbandry in Norfolk in the 16th and 17th Centuries". I quote the following passages from this article:

At p. 15: "Norfolk sheep farming was predominantly the concern of the manorial lord or his lessee. The demesne flocks did not however feed solely on the demesne lands but ranged over the open-field holdings of the lord's tenants. Norfolk villages rarely contained a single manor and the open-fields and heath land of a village were divided between the flocks of two or more manorial lords. The area allotted to each was called a foldcourse...

The inclusion of both open-field and heathland within a foldcourse was essential if the flock was to have pasturage available for the whole year. The sheep fed over all the unsown arable land (which they shared with the tenants great cattle) but although this was extensive in the autumn and winter after the harvest it was severely limited during the summer months". At the foot of p. 16: "The writer of a 17th century treatise on foldcourses insisted that all land within a foldcourse should be subject to the feeding of the lord's sheep; if they did not feed on a tenant's close then the lord had released it or taken some composition for it or the close had never been anciently part of the foldcourse".

I pause here to point out that the picture painted by Mr Allison is applicable to Runton. There were commons available for grazing throughout the year and grazing available on the arable land after the harvest. The grazing rights on the arable land are those of the lord and he could release or compound for these rights.

At p. 18 Mr Allison says: "Since foldcourses were fixed in area an equally strict customary limit was placed on the size of the flocks which could be maintained". This is a possible origin of the limit of 400 on the Abbey flock. At p. 20 Mr Allison says: "The owners of the foldcourses normally gave a tenant compensation for obliging him to leave his strips fallow during any one year, compensation taking the form of demesne land offered in exchange, a temporary reduction in rent, or an increased number of animals which the tenants might put into the lord's flocks".

In the previous paragraph Mr Allison mentioned one other important aspect of cooperation between flock owner and tenants; many tenants possessed a "cullett right" which enabled them to keep a few sheep in the lord's flock and he continued at p. 21 to deal with "cullett rights" inter alia in the following terms:

> "The numbers of sheep put into a flock of individual tenants were determined by the amount of land which they owned in the open fields"
>
> and
>
> "Cullett sheep were tended throughout the year by the lord's shepherd but tenants took both the increase of lambs and the wool clip. If any cullett sheep died or were sold others could be put into the flock to replace them, but the number was never to exceed that allotted to each tenant".

Later in his article Mr Allison deals with the abuse of the foldcourse system by landlords who did much as they pleased and deprived tenants of their customary rights. At p. 24 he says cullett rights were often limited to freeholders in a village, but the petitioners wanted the privilege to be universally extended to other tenancies too and they demanded that cullett sheep should be allowed in respect of tenant's land lying in the foldcourses without any money payment.

Other relevant passages in Mr Allison's article are to be found at p. 26, "Tenants were first obliged to lay open such obstructive closes, but as piecemeal enclosure became more widespread many landlords were persuaded to tolerate closes provided gaps were made for sheep to enter when the land was unsown especially at 'shack time'" and at p. 27 he deals with turnips as a field crop saying "Even when landlords were forced to accept turnip cultivation by tenants they attempted to reconcile it with the foldcourse system" and he cites as an example the case of Mr Foxley where a landlord agreed to accept 2/- per acre for shackage lost on land sown with turnips. He goes on to say "By such means the disruption of many foldcourses was delayed until they were finally removed by the Parliamentary Enclosure Acts in the second half of the 19th Century".

In the light of the factual and historical evidence I have come to the conclusion that a possible origin of the usage of the cullett flock to graze on the half year lands of Runton was the cooperation between the owner of the foldcourse and the

owners or tenants of the half year lands. A cullett right was the right to put sheep into the lord's flock. Miss Cameron points out that in Runton there were two flocks, the lord's flock and the cullett flock, and she therefore contends that I must presume a grant for the cullett flock to graze. In my view a possible explanation of the Runton cullett flock grazing under a separate shepherd is that the Abbey flock grazed over both Beeston and Runton and it may well have been both convenient and desirable that Runton sheep should graze in Runton and Beeston sheep should graze in Beeston. This is no more than speculation on my part but I see no reason to presume that the origin of so called cullett rights in Runton differed from the origins of cullett rights elsewhere in Norfolk. Consistent with this view is the sheepmaster's receipt of turnip money without any objection or claim by the culletteers, the execution of releases by the sheepmaster and the widely held view that the cullett flock could not graze until the Abbey flock had been on. Then again if the so called cullett rights derived from the sheepmaster there is the further question as to why I should presume a grant to or for the benefit of the inhabitants. Mr Allison in his account of the sheep-corn husbandry states throughout that it was a system operated by cooperation between flockowner and landowners and tenants and, in particular, that cullett rights were related to the areas of land and the numbers of cullett sheep for each parcel of land were fixed.

It is the fact that inhabitants of Runton with no land have grazed in the cullett flock, the instructions to Mr Partridge in 1793 clearly so state, but these instructions also state that the right to graze was annexed to land and that grazing by inhabitants who did not own land was from indulgence, sufferance or neglect. This statement in 1793 is consistent with Mr Allison's history and, putting it at its lowest, discloses a possible alternative to a grant to or for the benefit of the inhabitants. The suggestion by some that cullett rights were poor folk's rights cannot be pursued in the face of the Charity Commission's failure over fifteen years to find any charitable purpose.

Miss Cameron referred me to Egerton v Harding 3WLR 437 for the proposition that I am not required to be a legal historian see p. 443 H. She says the usage of the cullett flock and of inhabitants to put sheep in that flock is established and that I must therefore presume a lawful origin leaving the mists of time to obscure the historical origin. That is no doubt an acceptable approach where the usage is proved, simplicitor, in Egerton v Harding an obligation to fence against the common, but in the instant case the precise nature of the usage is in issue and the duty imposed upon me is to ascertain whether a lost grant for the benefit of inhabitants is the only reasonable inference.

In my view one reasonable inference is that the cullett rights in Runton were as rights, if they can properly be called rights, no different from similar rights elsewhere in Norfolk and that their origin lay in cooperation between flockowner and landowners and tenants, and that insofar as inhabitants who were not landowners or tenants put sheep or excessive numbers of sheep into the cullett flock, they did so by virtue of the indulgence, sufferance or neglect of the landowners. Miss Cameron at one stage pressed me to find what the lawful origin was, in my view I am under no obligation so to do, a reasonable alternative in my view precludes a presumption of a lost grant. However if I be wrong and I have to find what the lawful origin was I would find in favour of that stated above.

For good measure I must draw attention to the possibility that the usage may not have been as of right; the evidence in the Holt County Court suggests the possibility of an element of "vi".

Finally I must deal briefly with the authorities. Miss Cameron cited four cases of presumed Crown grants:

Willingale v Maitland	1866LR 3 Eg 103
Chilton v Corporation of London	1878 7 d Div 735
Lord Rivers v Adams	1878 LR 3 Ex 361
Free Fishermen of Faversham	1887 36 ch Div 329

In each of these cases if there had been a grant it would of necessity have been a grant by the Crown. Miss Cameron invoked Henry VIII as a possible grantor by reason of his suppression of the Priory. In my view there is no ground for presuming any such grant; shortly after the suppression he leased the Priory and later sold it. The evidence referred to above indicated that Henry VIII's sole concern was to realise money and there is no evidence that he interfered in any way in the administration.

The only case of a presumed grant in favour of inhabitants is Haigh v West 1893 2 QB 19 a very different case from that under consideration. From shortly after 1774 the inhabitants in vestry assembled had let the land and received the rents and profits. There was a corporate activity and indeed the Court of Appeal while affirming the judgment at first instance held that the Parish had acquired a title by the Statute of Limitations.

I was also referred to a decision of the Chief Commons Commissioner.

In Re Halling Common, Ref 19/D/13, this again was a case of corporate activity by the Parish as was Johnson v Barnes therein referred to. In the instant case the usage was by individuals, and there was no corporate activity until the Fulcher case. No authority was cited to me in which a grant for the benefit of the inhabitants had been presumed in the absence of any corporate activity on the part of the Parish. Miss Cameron accepted that if I presumed a grant in the instant case I should be breaking fresh ground. I am relieved to find that for the reasons given above there is no necessity for me to take that bold course.

The Great Beasts. Miss Cameron invites me to presume a grant for the grazing of commonable animals other than sheep. This was not claimed in the Fulcher action and the evidence on this subject both in the Fulcher action and at this hearing is scanty. There has without doubt been some grazing but I am not satisfied that such grazing was as of right. It must be remembered that grazing was available on the whole year commons, that until 1930 the gates on the half year lands were taken down. No evidence was given at the hearing of any assertion of a right to graze great beasts on half year lands from the time when the gates ceased to be taken down. The owner of a stubble field open to the Abbey flock and in early days to the cullett flcok would have difficulty in preventing other animals coming on to his land, even if he was not prepared to tolerate them. Some ponies did, prior to the 1939/45 war, graze on the cliffs with express permission.

The evidence as to grazing of the great beasts falls far short of that which would compel me to presume a lost grant, even if I would be prepared to break fresh ground.

Shack. Miss Cameron claims that Mr Oliver, the Norfolk Archaeological Trust, the Parish Council and Sir Ivison Macadam's successors are entitled to rights of shack. At the hearing a great deal of time was spent and a great deal of learning was deployed on this topic.

In my view however there is a very short answer to this claim, namely that no evidence was given to support it. Rights of shack are the rights of several owners of land in an open field to go at large in that open field during the shack period with their cattle or great beasts, see Sir Miles Corbet's case 7 Co Rep 5a and Cheesman v Hardham 1 B 2 Ald 706. The only claimants for this right of shack who gave evidence were Lady Macadam and the Parish Council. Neither of them gave any evidence as to the areas over which they claimed to exercise rights of shack nor indeed as to ever having exercised any such right.

Miss Cameron late in the day put forward the proposition that all the owners of half year lands had rights of shack inter se over all the half year lands, and that the reconstituted cullett flock was an instance of a right of shack being exercised.

I should mention that Miss Cameron was in some difficulty owing to the evidence having been taken in Norwich before any consideration of the relevant law.

In my view in order to establish a right of shack, the claimant must prove that the land for which he claims that right is or was part of a defined open field and he must claim for a defined number of animals in respect of his portion of the open field.

It seems to me improbable and I am certainly not prepared to assume that all the half year land was open field. Even if this was possible the circumstance that the half year lands are interspersed with whole year commons seems to me to negative the possibility of one huge open field. Then again, each of the four applicants for whom claims are put forward on the basis of shack have only claimed to graze sheep. The origin of a right of shack was to enable the owners or tenants of strips to graze the beasts they required to till those strips. There was at the hearing a great deal of argument as to whether inclosure would or would not terminate a right of shack and Miss Cameron contended that in the absence of proof of a custom to inclose, a right of shack was perpetual. The turnip fields were clearly inclosures and it would be unrealistic to assume that 2/- per acre was paid in respect of these fields if owners of half year lands could shack in the turnip fields. The Parish Council itself has made many inclosures for allotments and one for a recreation ground. Had it been necessary I would hold that a custom to inclose was established.

For the reasons given above I have come to the conclusion that there are no subsisting rights of common over the half year lands and I refuse to confirm the Entry in the Land Section of the register, and all the Entries in the Rights Section.

I am conscious of the fact that I have not in this decision referred to a great deal of the evidence given at the hearing. There was evidence as to the proceedings of the Erpingham RDC and the Parish Council subsequent to 1900. Such evidence cannot in my view assist me in the search for a legal origin prior to that date. It is the fact that many of the activities of the Parish Council are inconsistent with its being a trustee for the inhabitants, but the circumstance that there have been breaches of trust would not preclude me from presuming a grant to a trustee if the evidence compelled me to take that course. Then again there was evidence as to the circumstances in which the rights came to be registered; these registrations were organised without legal advice.

The fact of the matter is that, bedevilled as they were by the Fulcher case (one witness told me he was"brought up on Judge Willis"), it was only when faced with the prospect of this hearing that those who seek to uphold rights imposed on their legal advisers the task of formulating the necessary legal justification. There was evidence of permanent structures having been built on half year lands for the purpose of licensed caravan sites and of encroachments. I was told that from time to time what I referred to at the hearing as the "environmental lobby" were in power in Runton and from time to time their opponents were in power, and there clearly was selective tolerance of activities which would have been inconsistent with the grazing rights if they were then subsisting. I am not concerned with merits and I have deliberately refrained from any unnecessary reference to the evidence in the hope that if my conclusions for the reasons given above are correct the dissensions to which the half year rights have given rise may like those rights be history and that there may henceforth be peace and goodwill among all men and women in Runton. In fairness to the Caravan Club of Great Britain and Mr Joseph, I must mention that he called as witnesses Mr Chidson, the Director General and Mr Brooks the manager of the sites department. The Caravan Club contracted to buy its site on 14 April 1961 and no evidence given on its behalf can in my view be relevant to my decision. The above mentioned witnesses did however satisfy me that the Club was anxious to be cooperative and that it was very conscious of its obligations to the community. It is indeed right that I should say that while the presence of caravans, which are licensed for the close season, is resented by some, no complaint was made of the conduct of the Club or its members. Evidence was also given that the exercise of the half year rights would be prejudicial to the farmers. However I doubt if there is any intention to exercise the rights which will only be invoked, if I am wrong in the conclusion at which I have arrived, to restrict building and caravans.

One further reason for keeping this decision as brief as possible is that there is urgency. There is a pending action in the Cromer County Court commenced in 1966 by the late Sir Ivison Macadam and George Picton Beasy against the Caravan Club, in which the Caravan Club has given an undertaking not to build roads on its site or to carry out any works of a similar nature, and there is a cross undertaking in damages which having regard to inflation may well be substantial and rising day by day. This action has awaited the decision to be given on this inquiry and in my view it is in the best interests of the parties to that action that it shall be disposed of with all convenient speed. It is a matter for comment that if the Parish Council is a trustee it was in my view a necessary party to this action.

I turn now to the cases of those objectors who appeared by Mr Butcher and those who appeared in person.

David Thomas Abbs. Miss Cameron felt able to concede his Objection No. 286B on the ground that it was an ancient inclosure.

D T Abbs and B R Abbs. Objection No. 207B.

David Thomas Abbs gave evidence he was born in 1925 and moved to West Runton in 1927. He was in the army from 1943 to 1947, went to agricultural college in 1948 and came permanently to Laburnum Farm in 1949. He gave details of his father and other members of his family farming at Laburnum Farm, which now comprises 170 acres of which 18 are leased. Most of the coast line and some other land is subject to restrictive covenants in favour of the National Trust. He started to help on the farm while at school. He had never seen any sheep on the land, no one had ever asked to graze and no one had ever asked for any money. He had never seen any animals on this land other than their own other than with permission since he could remember. He and his family had no sheep but they had cows and followers,

pigs and working horses. He did not remember any of the Laburnum animals grazing any land other than their own. He did hear of a dairy herd in a very dry time grazing the whole year commons. They had 60 dairy cows plus followers but gave up the dairy herd in 1973 because of the ill health of the cowman. He had never considered or thought he was entitled to graze any land other than the whole year commons.

He then went on to describe two caravan parks, one Laburnum Park at the extreme west and the other Wood Hill Park at the extreme east. These are licensed by the RDC for the period 20 March to 30 October but if Easter is early the date the 20 March may be advanced. There are permanent structures on these parks for toilet blocks, wash houses, shower facilities, an office and a telephone kiosk. The roads used to be gravel but this washed away; they are now tarmac.

There were no objections on account of the half year rights; there were grumbles and one neighbour objected for fear the water pressure would be unduly reduced. He further stated that if sheep were put on his land and gates taken off it would have made farming as he knew it extremely difficult. Sheep would have made the dairy herd impossible as it was TT and brusilosis tested and had to be isolated. The soil is light and extra winter grazing would have been at the expense of summer grazing. He had farmed as a tenant farmer at Cottage Farm. No animals other than his grazed on that farm while he was there nor did he seek to graze any animals on other half year land. He was never given any instructions to remove gates on half year lands.

Cross-examined he said there were always discussions that their land was half year land. He knew the name but did not know Mrs Reynolds. The tradition was one paid for roots; he knew payments were made. Charles Abbs was a member of the East Runton Abbs family. His grandfather was a tenant in 1929. Some of his land, viz OS 74, 75, 73-146, 156, 137 and 138 belongs to the Norfolk Archaeological Trust; OS 110, 115 and part of 120 belongs to Mrs V Brown. He rotates his crops and uses the land. The two caravan sites are successful and show more profit than if the land was used for farming. He has no plans to extend the sites, so to do would detract from their amenities and there are also the National Trust covenants. Mr Babbage got into trouble about his roads. The fields are wired with posts and barbed wire, some have gates and on others the wire is turned back when necessary.

Re-examined he said there was no access to the archaeological land save over his land.

Tom Abbs's last payment of turnip money was in 1948.

Sidney Charles Abbs gave evidence that he was aged 70, born in Runton and lived there until he moved to Hall Farm which is one but next to Abbey Farm. He lived at Laburnum Farm for four years while he was employed by the railway during the period 1922 to 1928. He spoke of his recollection of the 1914/18 war when army horses were stabled at Laburnum Farm. He well remembered the Abbey flock; it used to pass along the main road to the half year lands; the last time he saw it doing this was in 1916. The flock was very much smaller than it had been, about 130, half the usual number. The military traffic created problems. He knew Spuddy Shepherd well; he didn't remember the Abbey flock after 1916 but he believed Spuddy was a cowman when he went to Hall Farm in 1931 and that he had been a labourer for about four years prior to that. He saw a few donkeys and ponies on Laburnum Farm

during the half year period. Jimmy Dykie had a few donkeys and about 2 acres. People used it as a privilege. He thought they were there every day and stabled at night. They were all usable animals.

In cross examination he said that most of Laburnum Farm was half year land from West Runton Gap to the Cromer boundary. He did not know of any rights over Manor Farm. The village people believed they had a right to a cullett flock. He believed there were no sheep from West Runton in the East Runton Cullett flock. He knew Jimmy Dykie was the shepherd but he did not know him as the village shepherd. He believed the Abbey flock ceased about 1920 but they may have kept a few sheep after that; he would not doubt Mrs Reynolds's word. There were donkeys and ponies till the 30's when the motor car took over. Laburnum Farm had seven different landlords; there were about 8 small farms. There were always donkeys and ponies. There had been a cullett flock. People were allowed to put donkeys and ponies on.

The evidence of Tom Abbs and Sidney Abbs is not conflicting. In 1931 when Sidney Abbs moved to Hall Farm, Tom Abbs was aged 6.

I have dealt with the evidence of these two witnesses at some length, first because they carry the evidence given in the Fulcher case down to the present day, and secondly because it is the evidence of farmers who I would expect to be the most reliable witnesses as to grazing and in particular grazing on their own farms.

The picture these witnesses paint is that which I have indicated above, viz. The Abbey flock grazing until 1929, though probably on a diminishing scale after the 1914/18 war. Working donkeys and ponies grazed up to about 1930 when the motor car displaced working animals. The cullett flock it is common ground had not grazed between 1914 and 1963 when there was a purported reconstituted cullett flock.

No rights of grazing over Laburnum Farm have been exercised since 1929 and no claim for turnip money has been made since 1948. Permanent structures for the caravan sites were put down as a result of the 1960 Act without any complaint.

In my view if and only if the Parish Council, contrary to my view expressed above, is a trustee of rights for the inhabitants, and if the trustee could not abandon those rights, can any rights over Laburnum Farm be still subsisting.

It is, to put it no higher, arguable that if the Parish Council has at all material times been a trustee of rights for the inhabitants it could not abandon these rights: see Goulding J at p. 490 H in the case of Oakley v Weston 1975 3 WLR 478. If, contrary to my view, the Parish Council is a trustee, then if it could allow the rights to be determined by default they are, in my view, no longer subsisting.

Mr Holliday gave evidence that he has farmed Manor Farm since 1964 in succession to his father-in-law, Mr Byworth. He came there in 1958. Mr Byworth died two years ago. He had never seen any sheep grazing on Manor Farm; he didn't think the question arose until there was a controversy about the District Council wishing to put houses on the Lugger Tile allotments. His wife was born at Manor Farm and as far as he could discover sheep had never grazed on Manor Farm. He knew Mr Byworth paid turnip money and on one occasion refused to pay. He had never grazed half year land and never thought he had the right so to do. The area from Roundabout Hill

to the railway is one field and it would be a nonsense if part of it were held to be half year land. If this is held to be the case he would be wondering if he would still be there in 1977 (Mr Byworth's last payment of turnip money was in 1942).

In cross-examination he said Mr Byworth always had roots and kept a dairy herd. He had applied for permission for a caravan site but was refused and lost an appeal. He accepted that decision and had now no plans for a caravan site.

My conclusion as regards Manor Farm is the same as that stated above as regards Laburnum Farm.

Mr Bullimore gave evidence. His father owns OS 196-197 and 198, which is used as a caravan site. This land was released by Mrs Reynolds by a 1925 Deed of Release. It is now used as a caravan site with permanent structures and a tarmac road and completely fenced in.

This land could only be subject to common rights so far as rights are held by a trustee incapable of abandoning those rights.

R J Porritt gave evidence and said his father was in Spain. He had known the site since the spring of 1965. It was used as Birdland. There were a toilet block, an aviary and a tropical bird house, all permanent structures, which had been planned by their predecessor in title, G Humphrey, and they did a bit extra. There were objections on account of half year rights, but they continued to 1969 when his father reluctantly gave up. The father's house was registered as half year land. This was the last straw. Some of the land has been sold off but he still owns OS 202 and 299. Some of the old aviaries are still there. He has permission for a mobile home and a septic tank. There has been no opposition to this. If he could he would put a bungalow on the land and he wants to use the remainder of the land as a market garden. OS 202 is all fenced in with a 6 ft fox-proof fence. OS 299 has four buildings on it, two garden sheds and two large corrugated iron sheds. It is fenced on three sides and there is a hedge on the fourth side.

Some of this land is I believe the subject of a release to Mr Pickering, but in my view it is only a trustee who may have any subsisting rights, and, as I have said befor I have come to the conclusion that there is no such trustee.

Mr Culley, Mr Babbage and Mr Tacon also gave evidence. Mr Tacon, whose firm had acted for objectors other than those for whom Mr Butcher appeared, did no more than invite me to protect any objectors not represented at the hearing. In the course of the hearing I was told that Mr & Mrs Finch owned land the subject of a release and their position is the same as that of others similarly situated.

Mr Culley said he thought his land was wrongly registered and that Mr Sainty had agreed

The Parish Council was understandably reluctant to make any admissions prior to the hearing.

Mr Mitchum gave evidence that he keeps pigs on his land and cultivates it, in particular to grow vegetables for his aged parents.

Mr Jonas bought his land from Mr Fulcher in 1954 and it is fenced and had always been fenced. The Highway Authority took away some of his land and he did a deal with them and they put up a new fence and gates in 1954 to 1956.

Mr Crisp in his evidence illustrated the mischief that the belief in the continued existence of these unused rights has created. He said his land has good grazing but no one has ever wished to graze it. Ultimately he put his daughter's ponies there and wired it, but someone came and cut the wire.

This illustration lends force to Mr Butcher's submission to me when he opened his case by citing an extract from the speech of Lord Atkin in United Australia Ltd v Barclay's Bank 1941 AC 1 at p. 29 - viz:

> "Where these ghosts of the past stand in the path of justice clanking their mediaeval chains the proper course for the judge is to pass through them undeterred".

These words were spoken in a very different context. I do not lose sight of the fact that justice is not my concern and that my only concern is to ascertain what rights are still subsisting. I am however relieved to find that, if I correctly understand the relevant law, I am not compelled to find rights vested in the Parish Council as a trustee when it has never acted as such or claimed to be a trustee until this hearing. The Parish Council, as appears from its minutes, has been active to prevent use of the half year land for purposes of which it does not approve but the evidence clearly shows that it has been selective and has not been impartial.

To sum up, my conclusions are as follows:-

1 Shack. There is no evidence to support this claim. Shack rights which may well have existed at one time were vested in individuals and were in my view abandoned long before 1965.

2 The Abbey Flock. These undoubted rights have not been registered and are no longer exercisable. They were in my view abandoned at the latest in 1962 when Mrs Reynolds made her will, she not having received any turnip money since 1954. I for my part take the view that they were abandoned very much earlier.

3 The Cullett Flock. It is possible and in my view probable that the cullett rights if they could properly be described as rights, were vested in landowners and dependent upon the Abbey rights. In these circumstances there is no room for a presumption of a grant to a trustee.

4 Great Beasts. Such grazing as there was was intermittent and explicable as being attirbutable to tolerance.

I was invited by Mr Sawbridge and by Mr Butcher to make orders for costs. The Parish Council in view of the decision in the Fulcher case had no alternative but to register the land as common land and a hearing was inevitable.

The hearing took far longer than was necessary but this was in large measure attributable to the absence of any procedural rules. The issues were not defined in any way until the opening of the hearing. A great deal of time was spent on the investigation of irrelevant matters and only Mr Butcher, who was not present throughout the hearing and who relied on Mr Joseph to argue the broad principles of the case, was blameless in this regard.

The necessity to test the validity of the decision in the Fulcher case did not justify Miss Cameron's submissions based on the Abbey rights and shack, on which she failed. Save for some small amount of historical evidence put in by Mr Joseph, the evidence was complete when the hearing was resumed in London and three days argument on the claim on behalf of the inhabitants should, in my view, have been ample to deal with that point. I regard this as a generous estimate because at a very early stage I drew Miss Cameron's attention to the Kingston Brewery case and the difficulty she faced in persuading me that the lost grant for which she was contending was the only reasonable inference.

For this reason I shall order the Parish Council, the successor to Sir Ivison Macadam, the Norfolk Archaeological Trust and Mr Oliver to pay the costs of the Caravan Club of Great Britain modified so as to be limited to the hearing in London subsequent to the 14th January 1976. Mr Butcher only attended on one day in London and his attendance was necessary and I feel unable to award him any costs.

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 9th day of March 1976

C. A Settle

Commons Commissioner