



COMMONS REGISTRATION ACT 1965

Reference No.268/D/12

In the Matter of Flaxton Village Green and  
Common Land, Flaxton, North Yorkshire (No.1).

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.CL 54 in the Register of Common Land maintained by the former North Riding County Council and is occasioned by Objection No.0202 made by Bass Ltd and noted in the Register on 23rd September 1970.

I held a hearing for the purpose of inquiring into the dispute at Malton on 11th February 1975. The hearing was attended by Mr A.R.Tunnah, the Clerk of the Flaxton Parish Council, the applicant for the registration, and by Mr L.Lennox, solicitor, on behalf of the Objector.

The land comprised in the Register Unit includes a long strip of land on the north-east side of the main street of the village of Flaxton. This strip is bounded by the road on the south-west and on the north-east it is divided from the houses by a footpath. The Objection relates to only a small portion of this strip in front of the Blacksmiths' Arms public house.

The registration is supported by the admitted rights of nineteen people to graze one or more cows on the land between 13th May and 13th October. It is admitted that these rights formerly extended over the whole of the land comprised in the Register Unit. The only question in dispute is whether those rights have been extinguished in relation to the land in front of the Blacksmiths' Arms.

There was no evidence as to the origin of the rights of pasture, but Mr Tunnah produced minute books going back to 1840, from which it appears that the exercise of the rights has been controlled, as it is at the present time, by two pasture-masters. The minute books contain two references to the land in front of the Blacksmiths' Arms. In 1929 the pasture-masters gave leave to erect a sign-post on the payment of a shilling a year, and in 1931 they allowed Mr T.W.Piercy to erect a petrol pump on the payment of two shillings a year. The sign and the pump were erected on the part of the land next to the road.

Mr Piercy, who died in 1965, was one of the pasture-masters. He installed the petrol pump for the purposes of his haulage business. He later installed another petrol pump, though there is no reference to this in the minute book.

About the time when the pumps were installed there were deep ruts in the land in front of the Blacksmiths' Arms, no doubt caused by Mr Piercy's vehicles. At the request of the Parish Council the ruts were filled with hard-core. This was later covered with a tar-macadam surface, which is still there. The petrol pumps were removed in 1967 and the tank was filled with concrete. The



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area formerly occupied by the tank is now grassed over and is surrounded by a concrete kerb. There is no reference to either the hard-core or the tar-macadam in the minute books.

It has obviously been physically impossible for cattle to graze on the major part of the land in front of the Blacksmiths' Arms since the hard-core and the tar-macadam were put down, though cattle have been able to pass over it when moving from the grass on one side to the other without having to make a detour onto the road.

Mr Lennox contended that the right of grazing had been extinguished by the impossibility of exercising it. In the alternative he contended that by their concurrence in the removal of the grass and the non-user of their grazing right for over 20 years the right-holders must be taken to have abandoned their rights of grazing over the land now covered with tar-macadam.

I am not prepared on the evidence before me to hold that there has been either an extinguishment or an abandonment of the pre-existing right of grazing over this small piece of land in front of the Blacksmiths' Arms. This piece of land forms an integral part of the long strip of land between the roadway and the footpath. Most of this strip is covered with grass, but in addition to the area of tar-macadam in front of the Blacksmiths' Arms, there are other small areas on which there is no grass, these areas being used for access between the houses and the road. In my view, the rights of grazing extend over the whole length of the strip, notwithstanding that there are portions of it on which no grass grows. As Patteson J. put it in Peardon v Underhill (1850), 16 Q.B.120, at p.125:

"Common of pasture in a waste extends to every spot on which there is food for the cattle, and also to every spot across which the cattle may wander in search of food, though there be none of the spot itself; but common of turbary from its nature can only extend to grounds producing fuel."

In so far as this passage in Patteson J.'s judgment relates to common of pasture it is an obiter dictum, for the case before him related to common of turbary, but I conceive it to be my duty to follow such a definite expression of opinion by so eminent a judge at a time when rights of common were much more frequently before the courts than they have been in more recent times.

For these reasons I confirm the registration.

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 6th day of March 1975

Chief Commons Commissioner