COMMONS REGISTRATION ACT 1965

Reference Nos. 34/D/15
34/D/16

In the Matter of Shottisham Poor's Common
or the Bowling Green, Shottisham, East Suffolk.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.1 in the Register of Common Land maintained by the East Suffolk County Council and is occasioned by Objection No.90 made by the Trustees of Sir Robert Adeane's and Lady Kathleen Hamet Adeane's Voluntary Settlement dated 30th March 1965 of the Bawdsey Estate, Suffolk, and by Objection No.91 made by Col.Sir Robert Adeane, and both noted in the Register on 30th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Ipswich on 4th May 1973. The hearing was attended by Mr. R.E. Barker, solicitor, for the Shottisham Parish Council, the applicant for the registration, by Mr. W.J. Church, solicitor, for the County Council, and by Mr. Watkins, of Messrs.Steward Villiamy & Watkins, the agents for the Objectors.

The earliest evidence regarding the land in question was a map of the manors of Shottisham and Alderton dated 1631. On this map the land in question forms part of a larger area described as "Common of the Manor of Shottisham". After this there is a blank until the tithe apportionment of 1840, which shows the land with its present boundaries described as "The Common", in the occupation of "The Poor" and with the name of "The Bowling Green", the state of cultivation being described as "Sheep Course".

While too much must not be made of the names of pieces of land in these proceedings, it is not without interest to observe that in addition to its connotation in relation to the game of bowls, the Oxford English Dictionary describes the word "bowling" as a variant of "bolling". "Bolling" is stated to be "a pollard (tree)" and this is supported by an extract from a survey of a manor in Essex, dated 1697,: "Bowlings, which ye tenant hath liberty to cropp for fireing". The name "Bowling Green" is therefore consistent with there having been at some time a right of common of estovers.

Mr. Barker based his case upon a claim to a right of common of estovers of a somewhat different kind, namely a right to take bracken for litter and gorze for firing.

Evidence was given by Mr. Ernest Collins, the Chairman of the Shottisham Parish Council. Mr. Collins, who is aged 66, was born in Shottisham, and so was his mother. He said that when he was young this land belonged to Sir Cuthbert Quilter, who was the lord of the manor, but Sir Cuthbert owned only two or three houses in the village, the cottages, including that rented by Mr. Collins's father, belonging to someone else. Mr. Collins said that he used to cut bracken for litter for the family pig and gorze for the oven in which the family bread was baked in those days. He said that "everybody in the village did this", but since he also said that every cottage kept a pig

and had a bread-oven, his evidence is consistent with the taking of bracken and gorze from this land by the occupiers of cottages and not by parishioners as such. Mr. Collins said that this was done openly, the bracken being left to dry before being taken home by those who had cut it. He said that he could remember this being done 60 years ago. He said that gorze was last taken in the late 1920's and that he had seen bracken cut as recently as two years ago, but not at all frequently since just after World War II.

Similar evidence, but with less particularity, was contained in four affidavits, all the deponents being aged 70 or over.

Mr. L.V. Saunders, Sir Robert Adeane's farm manager, gave evidence that since he started work on the Shottisham Estate in 1960 he had never seen anyone cutting bracken, the only bracken cutting being cutting in swathes in connection with the shooting.

Mr. Watkins argued that if there ever were rights of common over this land they had been abandoned, and he relied upon the non-exercise of the rights in recent years as being evidence of abandonment.

In considering the evidence I have in mind that the evidence in the affidavits was in somewhat general terms and was not tested by cross-examination. It was, however, consistent with Mr. Collins's oral evidence, which leaves me in no doubt that Mr. Collins and his father before him took bracken and gorze from this land as of right, and not by permission, as far back as Mr. Collins can remember. This is something which could have had a legal origin by custom, prescription or grant. As was held in Earl De le Warr v. Miles (1880), 17 Ch.D.535, it is immaterial on what ground Mr. Collins rested his claim. He is not a lawyer, and he and his father may well have thought that a right which was being exercised by virtue of the occupancy of their cottage was being exercised by virtue of inhabitancy in the village of Shottisham. In many cases the taking of estovers by villagers is capable of being explained by the good-natured acquiescence of their landlord, but that is not so here, for the cottages and the land in question have been in different ownership throughout the whole period of living memory.

For these reasons I am satisfied that the taking of bracken and gorze of which Mr. Collins spoke must be attributed to a right of common of estovers attached to the cottage in which he and his father lived.

I now turn to consider whether this right has been abandoned. The mere non-exercise of a right of common does not in itself operate to extinguish the right, though it may be evidence from which an abandonment of the right can be inferred. The reason given by Mr. Collins for his no longer taking the bracken was that it is easier these days to get straw for pig litter, while the taking of gorze ceased because people no longer bake at home. There is, however, no reason why the changed circumstances which caused Mr. Collins to cease to want the bracken and gorze should not again change. Mr. Collins has taken the bracken and gorze when he has wanted it and, in my view, he has never formed the intention of abandoning his right to take them as often as he chose to do so: cf. Carr v. Foster (1842), 3 Q.B.581,588.

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 25th day of June 1973

Chief Commons Commissioner