



In the Matter of Neasham Village Green,
Neasham, Darlington District, Durham

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") hereinafter defined of the land known as Neasham Village Green, Neasham, Darlington District being the land comprised in the Land Section of Register Unit No. VG48 in the Register of Town or Village Greens maintained by the Durham County Council. The said land ("the Unit Land") is a strip the southeast side of which (about $\frac{1}{3}$ rd of a mile long) adjoins and is open to the River Tees, the southwest side of which (about $\frac{1}{3}$ rd of a mile long) adjoins → Kent Beck; the Unit Land is nowhere more or much more than 250 yards wide and in many places much narrower, particularly at its east end (about 30 yards). In the Ownership Section of the said Register Unit at Entry Nos. 1, 2 and 3, (1) Mr Cecil Cooper, (2) Mr George Fyfe Angus, and (3) Miss Dorothy Mackay are respectively registered as owners of the parts ("the Cooper, Angus and Mackay Parts") of the Unit Land as on the Register map (1) lie between A-B and C-D and between E-F and G-H, (2) lie between C-D and E-F, and (3) between the Kent Beck and the line J-K; the parts (1) and (2) together comprise about $\frac{1}{2}$ of a mile of the length of the Unit Land situated near to its east end; part (3) is at the southwest end being all by the Kent Beck. Another part ("the Land Registry Part") is registered at HM Land Registry under Title No. DU49456, is about 150 yards long and about 30 yards wide and is situated near the middle of the Unit Land about $\frac{1}{2}$ a mile from Kent Beck. The Referred Part is the part of the Unit Land which is exclusive of the Cooper, Angus and Mackay Parts and of the Land Registry Part and 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 (1) Neasham Parish Council said (their Clerk's letter of 19 October 1985) they would be pleased to lay claim to the ownership of the land; (2) the Council of the Borough of Darlington (their Solicitor's letter of 18 December 1985) said they had no wish to contest the claim of the Parish Council; and (3) Mr William Willans and Mrs Audrey Willans as owners of No. 34 Teesway, Neasham claimed (their Solicitor's letter of 22 January 1986) ownership under a conveyance dated 29 November 1985 of the part of the Unit Land between the back garden of No. 34 Teesway and the River, being about 20 yards wide and adjoining or near to the east side of the Cooper/Angus Parts. No other person claimed to be the freehold owner of the Referred Part or 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 Durham on 5 February 1986. At the hearing: (1) Neasham Parish Council were represented by Mr N A Miller their chairman (present also were Mr S Seymour their Clerk and Mrs D Taylor one of their members); (2) Mr William Willans attended in person on his own behalf and as representing his wife Mrs Audrey Willans; (3) Vaux Group plc. were represented by Mr A Brown, one of their Estate Managers; and (4) Mr Redvers Clarke attended in person on his own behalf and as representing his wife Mrs Ann Clarke.



In support of his ownership claim Mr W Willans gave oral evidence in the course of which he produced or referred to the documents specified in Part I of the Schedule hereto. He said (in effect):- No. 34 Teesway (the dwellinghouse) used to be No. 22; it was built on the site of 3 old cottages. There are no plans on the deeds (meaning those before the 1985 conveyance to him and his wife). When they acquired the property "we" were told by Mrs Wood who is the daughter of Mr and Mrs I'Anson and this was confirmed by Mr I'Anson, that the River was the south boundary of the property. They had notice of the hearing from the Parish Council. The property (house and garden) is delineated on the Register map as part of OS No. 222 containing 3.713 acres (the part of the Unit Land west of JK is OS 220 containing 2.846 acres).

Mr Alan Brown in support of the claim of Vaux plc. to own the part of the Unit Land between the River Tees and the south boundary fence of the land held with the Fox & Hounds Hotel (garden and yard) on the north produced or referred to the document specified in Part II of the Schedule hereto. He said (in effect):- That the claim was made by virtue of the documents he produced and submitted and that they showed that the southern boundary of the Hotel land was the River.

Mr Redvers Clarke in support of his claim to be the owner of the part of the Unit Land between the River Tees on the south and his land (next to the Fox & Hounds Hotel land) on the north produced the documents specified in Part III of the Schedule hereto. He said (in effect):- He believed that he and Mrs Clark were registered at HM Land Registry as owners of the land edged red on the plan RC/1. The ferry no longer goes; he thought it used to go from a point near the southwest corner of their land.

Mr Miller who has lived in the Parish since 1935 and went to school in the village said (in effect):- The embankment which runs the whole length of the Unit Land was built about 13 years ago; before it was built floods from the River between October and May used to enter the houses in the village; the building was approved at a Parish Meeting; the embankment was built as far away from the River as was possible. Since the building of the embankment, the Darlington District Council (after they had succeeded the former Rural District Council) mowed the grass on the Unit Land, except the parts by Mr Clarke's and to the southwest (comparatively narrow and/or steep).

On 10 April 1986 I inspected the Unit Land in the presence of: (1) the said Mr Miller and Mrs Taylor as representing the Parish Council and (2) for part of it, Mr N Capstick solicitor of Hawkins Snaith, Ross & Capstick, Solicitors of Darlington as representing Mr and Mrs Clarke. At the beginning of the inspection, Mr Capstick said his clients claimed to own the part of the Unit Land between the garden of his house "Boathouse" (No. 26) and the River, so with him I considered the Register map (WW/3 and Vaux/3) and the Land Registry plan (RC/1) in relation to the now existing southeast fence of the garden of Boathouse, while doing this we could see the part of the Unit Land southwest of the Fox & Hounds nearby on the southwest and the arrangement of the Garden House (No. 26A) nearby on the northeast. Next I saw the central part of the Unit Land which adjoins the main street noticing the well walled and roofed building about \longrightarrow 20 feet long by 10 feet wide which was said to contain apparatus belonging to the River Authority and by them usable when need be to allow water which had flooded int



the village over the embankment to escape through the embankment (to the River). Next I saw part of the Unit Land between No. 34 Teesway (Mr Willians) and the River. Afterwards (by myself) I walked the whole length of the Unit Land.

I do not know under what title Messrs Cooper, Angus and MacKay applied to be registered as owners of the Cooper, Angus and MacKay parts. Consequentially on section 7 of the Commons Registration Act 1925, in the absence of any objection, the registrations made on their application became final; under the Act such finality could result without any independent person considering the title. In these proceedings under section 8 of the Act I am required to say whether I am "satisfied that any person is the owner" before I direct an ownership registration. So registrations resulting from the applications of Messrs Cooper, Angus and MacKay are not judicial decisions which I am obliged to follow in respect of any part of the Unit Land similar to the Cooper and Angus parts. I have no reason to suppose that these registrations were not properly made; I merely record now that I am not concerned with their propriety at all and as regards Vaux Group plc and Messrs Willians, and Clarke such registrations are in my opinion neither for nor against their claims.

In favour of the claim of Vaux Group plc I have the 1919 indenture in the parcels of which the land thereby conveyed is described as "bounded ... on the South partly by the River Tees ...". There is a rebuttable presumption that a conveyance of land bounded by a river is the middle line of the river: However against either the middle line or the northern edge of the River Tees being the boundary I have: (a) a plan (Vaux/4) produced by Mr Brown which shows "Boundary Fence" some distance from the River approximately in the position of the nearby north boundary of the Unit Land as shown on the Register map (2) the present appearance of the fence: substantial and in itself a boundary; and (3) the land claimed is included in this registration of a Town or Village Green: The central part of the Unit Land which adjoins the main street is apparently a village green not only within the popular meaning of these words but also within the section 22 definition of the 1965 Act. Perhaps before such registration became final, objection might have been successfully made to the boundary of such obvious village green being drawn so as to include the comparatively narrow and rough strip behind the Fox & Hounds and behind the dwellinghouses nearby on the southwest; no such objection was made, and the strip is now finally included in the registration which is by section 10 of the Act "conclusive evidence of the matters registered". In considering the evidentiary value of the description in the 1919 indenture, I must not disregard everything that has happened since. Balancing as best I can the 1919 indenture as being for the ownership claimed against the appearance of the nearby Unit Land, including the embankment recently erected along it and its final registration as part of a Town or Village green as being for ownership separate from that of the Fox & Hounds, I am not satisfied that Vaux Group plc are the owners of this part, even assuming (likely but not proved) that they succeeded to all the property of Warwicks Brewery Company Limited. So no useful purpose would be served by my giving Vaux Group plc an opportunity of proving such succession.

The claim of Mr and Mrs Willans is to the part of the Unit Land behind No. 34 Teesway. Their paper title to the house and the garden to the south of it commences with the conveyance (WW/2) dated 26 September 1960 by which there was conveyed



to F G I'Anson land described as "the sites of three messuages or cottages (which have been demolished) all which said property is comprised and described in a conveyance" dated 6 March 1929 made by R W Cresswell-Ward to S R Lord. The extent of the land so conveyed is evidenced by and only by, the February 1929 declaration (WW/2) made by R H Black whose description includes the words "bounded on the south by vacant land adjoining the River Tees belonging to the said Rowland Ward Cresswell-Ward". I identified the vacant land so referred to as being or including the part of the Unit Land now claimed by Mr and Mrs Willans; so the 1960 conveyance and the 1929 declaration although providing some evidence that such part now belongs to some successor in title of R W Cresswell-Ward if he could be found, are evidence against F G I'Anson ever having been such successor. The subsequent paper title comprises the 1972 conveyance (WW/1) by F G I'Anson to himself and his wife and the 1985 conveyance (WW/1) by them to Mr and Mrs Willans. The 1985 conveyance plan does include the part of the Unit Land as claimed by Mr and Mrs Willans right down to the present bank of the River. Apart from this plan and Mr Willans' statement of what he was told by Mrs Wood I have no evidence (documentary or otherwise) supporting his ownership claim. At the time when the 1985 conveyance was made and this conversation was held, the Unit Land had been finally registered as a town or village green; for part of a village green about 20 yards wide to belong to the owner of the garden backing on it would be extra ordinary; it is contrary ~~over~~ ^{to} 1929 declaration; I do not know why Mrs Wood or her parents thought they could properly convey it. The relevant words in section 8 of the Commons Registration Act 1965 are "Commons Commissioner ... satisfied that any person is the owner of the land"; I consider that the information I have about ownership of this part of the Unit Land unsatisfactory, and I am therefore not satisfied that Mr and Mrs Willans are the owners of any part of the Unit Land.

As to the claim of Mr and Mrs Clarke:- On my inspection it was clear that the southeast boundary to the land edged red on the Land Registry DU50955 plan (RC/1) is not the same line as the now existing fence which separates the now existing garden occupied with the Boathouse (No. 26) from the rest of the Unit Land. Although the southwest corners of these two lines are not far from each other, the northeast corner of the edged red line is some distance north of the northeast corner of the esaid existing fence. It was also clear that the boundary of the nearby Unit Land as drawn on the Register map corresponds closely with the edged red line on the Land Registry plan. So I infer that the edged red line on the Land Registry plan (or the plan on which it was based and which had been made by someone who had seen the land) represents a boundary visible and obvious when the plan was prepared and that since that time there has been an encroachment on what was then or has since become the Unit Land. The claim of Messrs Clark to be the owners of the part of the Unit Land between the now existing fence and the edge of the River Tees was not supported at all by any evidence (documentary or otherwise) and I reject it. Their claim to be the owners of the encroachment was not supported by the Land Registry plan or any other document produced; it may be that by long possession of the encroachment they could acquire ownership; on my inspection it seemed to me to have been recent and I have no evidence that it was otherwise. Accordingly I am not satisfied that Mr and Mrs Clarke are the owners of any part of the Unit Land.



- 5 -

There was at the hearing some discussion as to the locality of the part of the Unit Land the title to which had been registered at HM Land Registry under title No. DU49456: This part appears to be located behind dwellinghouse No. 26A adjoining on the northeast the Boathouse owned by Mr and Mrs Clarke. The garden of No. 26A does not appear distinct from the adjoining part of the Unit Land, the boundary being difficult to deduce merely by inspection. The boundary of the Unit Land as drawn on the Register map seems to be a continuation of the edged red line above mentioned in connection with the claims of Mr and Mrs Clarke and to go very near to the corner of the house No. 26A, apparently erected after the making of the OS map on which the Register map is based. Because at the hearing doubts were expressed about this part of the Unit Land, I record what appeared at my inspection.

I am not concerned to give a decision or express any opinion as to the consequences of any encroachments there may have been onto the Unit Land which have been made by those now occupying No. 26 or No. 26A or any other lands adjoining.

The site of the said building containing apparatus of the Authority concerned with the River Tees is clearly marked on the Land Registry DU50995 plan (not as included in any registration but among many other buildings thereon marked as showing the locality). On appearance alone I infer that the Authority may have somehow become the owner of this part of the Unit Land before erecting the building. I consider therefore that I should not finalise this decision as regards this building without giving the authority an opportunity of claiming ownership of it. Accordingly I give to any authority concerned with the River Tees to apply that this hearing be adjourned so that evidence of their ownership of it may be given; such applications should be made within THREE MONTHS from the day on which this decision is sent out (or such extended time as a Commons Commissioner may allow) and should in the first instance be made by letter to the Clerk of the Commons Commissioners in London (a copy of such letter to be sent to the Clerk of the Parish Council for their information): If as a result of such an application an adjourned hearing is held, notice of it will be given only to ~~Durham~~ County Council as registration authority, to the Clerk of the Parish Council and to such other persons as made by letter inform the Clerk of the Commons Commissioners that they would like to have it.

In the absence of any evidence of ownership claimed as aforesaid and subject to any second decision which may be made by a Commons Commissioner consequently on an adjourned hearing, I am not satisfied that any person is the owner of the Referred Part and I shall accordingly direct the Durham County Council as registration authority, to register Neasham Parish Council as the owner of the Referred Part under section 8(3) 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.



SCHEDULE
(Documents produced or referred to)

Part I: by Mr W Willans

- WW/1 29 November 1985 Conveyance by Frank Graham I'Anson and Nancy I'Anson to William Willans and Audrey Willans of "First ... land ... at Neasham ... described ... in a conveyance dated 26 September 1960 ... together with the dwellinghouse ... formerly ... Number 22 Teesway but now known as Number 34 Teesway ... and Secondly ... all which said property First and Secondly described in ... delineated on the plan attached hereto and coloured round with red and blue.
- WW/2 1985 Epitome of title relating to No. 34 Teesway, including:-
- 9 February 1929 Statutory declaration by Robert Harold Black:- Agent and rent collector; well acquainted with three cottages ... at Neasham ... contracted to be sold by Rowland Ward Cresswell-Ward ... to Sidney Riley Lord ... the description of which is as follows: "ALL ... cottages ... bounded ... on the south by vacant land adjoining the River Tees belonging to the said Rowland Ward Cresswell-Ward ..."; part of OS (1897) No: 222; RWC-W tenant for life ... for past 12 years and upward collected the rent.
- 26 September 1960 Conveyance by National Provincial Bank Limited (personal representative of Sydney Riley Lord (he died 5 November 1959)) being directed by beneficiaries (the Misses E S Riley-Lord and P H Riley-Lord) to Frank Graham I'Anson (donee) of ALL ... land ... being the sites of two ... cottages (which have been demolished) ... comprised and described in a conveyance dated 6 March 1929 by Rowland Ward Cresswell-Ward and others to the Testator (Sydney Riley Lord).



- 23 March 1972 Conveyance by Frank Graham I'Anson to himself and his wife Annie Elizabeth I'Anson of First land as described in a conveyance of 26 September 1960 and Secondly land as described in a conveyance of 27 July 1964.
- WW/3 -- Copy of Register map marked by witness to identify land.
- Part II: by Mr A Brown
- Vaux/1 14 August 1919 Conveyance by Rowland Ward Cresswell-Ward with the concurrence of trustees to Warwick Brewery Company Limited of "ALL ... dwellinghouse used as a public house known by the sign of the Fox & Hounds with yard ... and ALL ... garden containing ... 26 perches ... and also ... garden formerly the site of a cottage containing 26 perches and occupied by Thomas Bell as tenant all of which premises wherein before described are bounded on the south partly by the River Tees and partly by a garden and land belonging to John Harrison as the same premises are conveyed by an indenture dated 21 August 1877".
- Vaux/2 ? Original document produced and handed back.
- Vaux/3 -- Copy Register map marked by witness to indicate premises as now occupied with hotel.
- Vaux/4 -- Map showing edged red premises occupied with public house showing boundary fence occupied land 106' 0" long.

Part III: by Mr R Clarke

- RC/1 4 February 1986 Letter (with attached plan) from Hawkins Snaith Ross & Capstick, Solicitors of Darlington to the Commons Registration Commissioner on behalf of Mr and Mrs Clarke of the Boathouse. Our clients purchased this property (land adjoining the Boathouse) on 9 June 1983 and were registered as owners of land edged red on plan under Title No. DU50995 ... "Our client also understands that they own a right or interest in the river



bank adjoining the said property and all rights of ferry and passing on the River Tees. When their purchase was registered ... their right or interest in the river bank was not registered at the same time ..."

RC/2 --

Conveyance by Christopher Nichols to Edward Partridge and Rosalind Frances Partridge of (land edged red on plan (same as RC/1 plan)).

Dated this 30th — day of June 1986

A. A. Baden Fuller

Commons Commissioner