



In the Matter of Guinness Common, Guinness,
Glanford B

DECISION

This reference relates to the question of the ownership of land known as Guinness Common being the land comprised in the Land Section of Register Unit No. CL 84 in the Register of Common Land maintained by the Humberside County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference various claims were made to ownership of the land in question ("the Unit land").

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Hull on 9 February 1982.

At the hearing there appeared in person (1) Mr Joseph Waters Wall (2) Mr John Nutt Wall (3) Mrs P G West; and Mr R J Kemp, Articled Clerk of the firm of Hett, Stubbs and Kemp, appeared on behalf of J Wharton (Shipping) Ltd ("Whartons"). Mrs P G West was representing her husband's mother, Mrs Edith Annie West. Each of the claimants (Joseph Wall, Whartons, John Wall, and Mrs Edith West) was, as I understood it, claiming an undivided share, measured in fractions of 1/7th in the Unit land which is approximately 48.49 acres in area. There was no competition or conflict between the several claims and I will consider each separately.

(1) Joseph Wall. By a Conveyance dated 3 September 1920 ("the 1920 Conveyance") there was conveyed to a purchaser James Empson property which included "all those horse, sheep and cattle gates or right of common of pasturage for horses, sheep and cattle upon ... Gunhouse Common containing by estimation 49 acres and 7 perches or thereabouts ... the said right being (as is believed) equivalent to one seventh part of the whole of the commonable rights of the nature aforesaid to which the said common is subject or the ground or soil of the said common being considered as divided among the persons entitled to such rights of common as aforesaid to the separate quantity of 7 acres and 1 perch of ground or thereabouts. And also all such ground or soil (if any) of and in the said common as is vested in (the Vendor) in right of the said horse, sheep and cattle gates or other commonable rights ..."

Following the death of James Empson in 1941 his personal representative by a Conveyance dated 29 April 1963 conveyed to Joseph Waters Wall and William Wall as joint tenants property in Guinness together with "the common rights in Guinness Common referred to in the (1920 Conveyance)".

Giving evidence Mr Joseph Wall told me that the property purchased in 1963 was now called Common Farm; that they had grazed cattle in the Unit land since 1963. The Unit land was fenced, with access for cattle through a gate at the SW corner near Common Farm. Part of the fence had been put up by them on the NE boundary to keep cattle from going out - other fencing had been erected by the Drainage Board. He had done some maintenance in the way of clearing away rubbish and putting down fertiliser.

(2) Whartons. Mr Kemp produced two documents. The first was a Deed of Partition dated 7 February 1954 Between Henry Wall and John Housham, by which certain properties which the two parties held as beneficial tenants in common were partitioned.



Under this Deed a number of farm properties (now known as Grove Farm) of some 150 acres were conveyed to John Housham: these properties were described in Part 2 of the Second Schedule to the Deed and the various items there described under the heading 'Farm formerly occupied by Mr William Hirst' included one 'Common right 1/7th of 48.501 acres' with a reference to OS. Map and Tithe Plan numbers which it appears comprised the Unit land.

The second document was a Conveyance dated 20 July 1957 by the trustees of John Housham's will whereby the properties vested in John Housham by the Deed of Partition were conveyed to Whartons. The properties were described in the First Schedule and had a total acreage of some 146 acres and the relevant item, after reference to OS. and Tithe Map numbers, was described as 'The Common (Common right - one seventh of 48.501 acres)' with an acreage of 7.000. From the plan attached to this Conveyance, the Common referred to was clearly the Unit land.

There was no evidence as to user of the Unit land by Whartons.

(3) Mr John Nutt Wall. By a Conveyance dated 6 May 1921 ("the 1921 Conveyance") properties comprised in the Partition Deed referred to above were conveyed to Henry Wall and John Housham in fee simple as tenants in common, and under the Partition Deed part of those properties (now known as Manor Farm) were conveyed to Henry Wall. The 1921 properties included common rights over two sevenths of 48.5 acres of the Unit land, and the part conveyed to Henry Wall by the Partition Deed included, by the same description as that quoted in (2) above, common right 1/7th of 48.501 acres.

Henry Wall died in 1959 and by an Assent dated 31 December 1960 his personal representatives assented to the vesting in Mr John Nutt Wall of properties which included the farmhouse with buildings and pieces of land known as Manor Farm and containing altogether 147 a. 1r 5p, being properties conveyed to Henry Wall by the Deed of Partition.

(4) Mrs Edith Annie West. By a Conveyance dated 11 April 1918 there were conveyed to George W West first a farm property (now known as White Hall Farm) and secondly "so far as the Vendor has power to grant a right of stinted common of pasture appendant or belonging or appertaining to (White Hall Farm) in the common lands in Gunness ... and all other (if any) estate right title privileges members interests vested in the Vendor in to of or upon the said common lands in respect of (White Hall Farm)". The common lands were delineated on a plan attached to the Conveyance and included the Unit land.

George W West died in 1932 and by a Conveyance dated 1 June 1944 his Executors conveyed White Hall Farm to Mrs Edith Annie West: the property was stated to be 66.9 acres, and the various pieces making up this acreage were set out in a Schedule, but there was no reference to the Unit land or to rights over it.

I have also seen a Conveyance dated 28 May 1925 to George W West of property called Campbells Farm and Closes and a Deed of Confirmation and Release dated 30 November 1959 executed by beneficiaries under George W West's will relating to Campbells Farm and Close and White Hall Farm, but neither Deed contained anything relevant to ownership of the Unit land.

White Hall Farm lies to the west of the Unit land and adjoins part of its western boundary, and Mrs P G West, the wife of George W West's grandson, told me that her



husband grazed cattle intermittently on the Unit land.

Conclusions

None of the claimants claimed ownership of the whole of the Unit land, or to a physically identifiable area forming part of the Unit land but, as mentioned above, all were claiming undivided shares, measured in fractions of 1/7th, in the land. The references in the 1920 and 1921 Conveyances and in the Deed of Partition to common rights linked to 1/7ths of the acreage of the Unit land are not, I think, easy to interpret. The claims by Whartons and Mr John N Wall are based on the 1921 ^{and} Conveyances and the Deed of Partition and the language of those ~~two~~ Deeds, whilst clearly relating to rights of common, does not in my view contain anything which can properly be construed as comprising ownership of a share in the Unit land itself. As regards Mr Joseph Wall's claim, the wording of the 1920 Conveyance is more elaborate and, whilst again clearly comprising common rights, goes on to refer to (1) the ground or soil being considered as divided among the persons entitled to the rights of common and (2) such ground or soil (if any) as is vested in the Vendor in right of the commonable rights. But these additional references do not, without more, furnish satisfactory evidence of ownership of a share in the land: the first is only a reference to what is "considered" (? by whom) to be the division of the land, and the second leaves uncertain what (if any) further interest in the land was vested in the Vendor by virtue of the commonable rights. As regards Mrs West's title deeds, following the specific reference to a right of common of pasture, there is added "all other (if any) estate right etc. vested in the Vendor" in the Unit land: and again this addition leaves uncertain what (if any) that other interest was.

In the result, I find that none of the claimants has established a claim to ownership of undivided shares in the Unit land, or to other interests which separately or collectively constitute ownership of the Unit land or any physical portion of it: I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated

29 April

1982

L. J. Morris Smith

Commons Commissioner