



COMMONS REGISTRATION ACT 1965

Reference No 221/U/15

In the Matter of The Wether, Enderby,
Blaby District, Leicestershire

DECISION

This reference relates to the question of the ownership of land known (or in the Register said to be known) as The Wether, Enderby, Blaby District being the land comprised in the Land Section of Register Unit No CL. 84 in the Register of Common Land maintained by the Leicestershire 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 National Westminster Bank Limited as executors of J E Cox deceased claimed an interest in the land in question. No person claimed to be the freehold owner of all the land and no other person claimed to have information as to its ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the land at Leicester on 20 July 1976 and 19 April 1977. At the hearings National Westminster Bank Limited ("the Bank") as executor of Mr John Edward Cox ("the Testator" ; he died 19 May 1963) were represented by Mr D H Lloyd solicitor of Cox Lloyd & Co Solicitors of Nuneaton. Before the 1977 hearing Mr A W Capers, chairman of Enderby Parish Council, sent me a letter giving information about "Ratby Meadows - The Wether" as set out in the First Schedule hereto.

At the 1977 hearing oral evidence was given by Mr N Pearson who is a trust officer of the Bank, by Mr C B Harrison who is the tenant of Grove Farm, and by Mr R Green, of Whittle Attenborough & Peach, Chartered Surveyors, Auctioneers and Estate Agents of Leicester. Mr Pearson produced: (1) the probate dated 16 July 1963 of the Testator's will, (2) a conveyance dated 10 October 1921 by which Mr John Thomas Cox conveyed to the Testator the land described in the Second Schedule hereto; (3) a conveyance dated 18 March 1942 by which Mr S Smith and Mr F W Cox as trustees under a vesting deed dated 20 December 1941 (made so it seems pursuant to a settlement arising under the will of Mr Thomas Cox who died 27 August 1917) conveyed to the Testator the right described as in the Third Schedule hereto; and (4) replies dated 30 June 1941 made by the solicitors acting for Mr Thomas Cox's Trustees to requisitions on title made on behalf of the Testator (in anticipation so it seems of the 1942 conveyance). After this evidence had been given in support of the Bank's ownership claim to the south part of the land (about $\frac{3}{4}$ of the whole), Mr John Edward Cox (a son of the Testator) produced a typewritten statement (set out in the Fourth Schedule hereto) which he had found among the Testator's papers and which might (from its appearance) have been about the time of his 1921 purchase; he also gave me (orally) some information about the sales described in this statement.

On the day after the hearing I inspected the land.



The land ("the Unit Land") on the Register map marked "CL. 84" with a green verge line contains (according to the Register) 12.84 acres. Its north, west and south boundaries are straight lines, being hedges or ditches; its east boundary is an irregular line being the west bank of the River Soar. It is all grass land, generally very flat (a meadow); seasonally, the River floods over it, so the is good for grazing or mowing. To a person walking over the land there is no apparent reason why it should be in more than one ownership or should be divisible into parts for historical or any other purposes; it appears to be part of the farm land (on the west side of the River) which surrounds it.

Mr Harrison said (in effect):- He knew the Unit Land as Ratby Meadow. It is surrounded by Grove Farm. For about the last 35 years he had rented the grazing of part; the Testator approached him, said he had bought about 8 acres of the Meadow, and they agreed a rent; ever since he (Mr Harrison) had for the part ("The 8 Acres") paid rent at first to the Testator himself and after his death to Mr Green his agent (assuming that Mrs Cox had become the owner). Mr Harrison marked on my copy of the Register map The 8 Acres as pointed out by the Testator; so marked it comprised all the Unit Land except a strip of about 17 yards wide (about 1 acre) along the south boundary (Mr Harrison did not know this strip by name so we called it "the X Strip") and except also an area of about 3 acres at the north end which he knew as "The Wether".

The Tithe Award and map shows the Unit Land as "Ratby Meadow", divided into 5 parts, being (Plan) Nos 476, 477, 478, 479 and 480 respectively named "Acres", "Boots", "The Wether", "The Seven Swaths" and "The Wigston Road", and having respective quantities of 8a 2r 19p, 1a Or 6p, 1a 2r 11p, 1a Or 28p, and 0a 1r 19p (making altogether 12a 3r 33p). On the Tithe map numbers 476 and 477 (Acres and Boots) are each shown as divided into 8 approximately equal strips, but in the Schedule to the Award they are shown as held in 10 shares being 6 1/14th shares and 4 2/14th shares. Comparing the division in the Tithe Award with that given orally by Mr Harrison: (1) 476 Acres, (2) 479 and 480 The Seven Swaths and The Wigston Road, (3) 477 and 478 Boots and The Wether in the Tithe Award correspond (a little more or less) with (1) The 8 Acres, (2) The X Strip and (3) The Wether given by Mr Harrison.

Notwithstanding in the Register the Unit Land is described as being known as "The Wether" and that the oral and written evidence suggests that it is better known as Ratby Meadow and that The Wether applies only to part, I shall in this decision assume (as seems likely from the general appearance of the Unit Land) that the registration under the 1965 Act comprises the Unit Land, that is the land verged green on the Register map.

As I understood Mr Harrison, he had not before the hearing seen the Tithe Award or the conveyances produced by Mr Pearson and knew nothing of the Boots as being land north of The Wether and nothing of the Seven Swaths and the Wigston Road. However both he and Mr Jackson frequently attended the annual sales such as are mentioned in the statement found amongst the Testator's papers; up to the present time (and for many years before, as far as they can remember) these sales had



been organised (so they said) by Mr Capers; a five shilling piece is handed round, and any person who has subscribed a shilling could while the piece was in his hand bid for the year's grazing of The Wether; the amount of the bid was distributed amongst the old persons of Enderby. At or after the sale, Mr Harrison paid the successful bidder the amount of his bid and then considered himself entitled for the year to mow or graze The Wether as he pleased. Agriculturally, it was impracticable to make any distinction between the X Strip and the rest; so in the result for the last 35 years Mr Harrison has (subject to his paying rent to the Testator and to paying the successful bidder at the annual auction) always grazed or mown the Unit Land as he pleased. He said it is not necessary to treat the land chemically because the River flood conveniently does what is necessary; however he had chain harrowed and rolled it from time to time.

By the 1965 Act, I am required to say whether I am "satisfied that any person is the owner of the land", see section 8(2); and if I am not satisfied and no person is registered under the Act as owner, the land will vest "as Parliament may hereafter determine", see section 1(3). From some points of view the evidence written and oral given at the hearing is unsatisfying, because much of it is inconsistent and conflicting; nevertheless from it this much I think emerges: the land has for many years been treated in documents and in fact as being partly in ordinary (private and individual) ownership and partly subject to some sort of perpetual trust. In my opinion I ought if I can to presume some legal ownership position which accords with this state of affairs.

As regards ordinary ownership:- Nobody apart from the Bank as executor of the Testator and Mr Harrison as his and their tenant claimed either as successor of the various owners of the 1/14th share mentioned in the Tithe Award or otherwise. Mr Capers mentions as a possible owner the late Lady Cooper Rawson, but I have no claim from her executors or any information about her. Neither Mr Harrison nor Mr Green had heard of any other claimant.

As regards a perpetual trust:- The only perpetual trust recognised by law which could be relevant here is a charitable trust. The House of Lords decided that a trust for the inhabitants of a locality is a charitable trust, *Goodman v Saltash* (1882) 7 AC 633. Although at the time of *John of Gaunt* the law relating to charitable trusts applicable to land had not been developed, I conclude that his traditional gift and the recent practice by which it has been administered shows that the land so far as it can be regarded as subject to a perpetual trust is in the ownership of the trustees of a trust for the benefit of the inhabitants of Enderby.

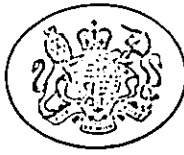
The only indication in the Tithe Award as to how the Unit Land can be divided between ordinary and charitable ownership are:- All the Unit Land except The Wether is treated as in ordinary ownership. The Wether is said to be owned "Part of Meadow the crop of which is sold for an annual feast". And the remarks column contains the following (apparently applicable to the whole of the Unit Land): "The Parishioners of Enderby have a right of turning out cattle from the 12th of August to the 31st of December".



Mr Harrison always approached the Unit Land from Grove Farm, that is from the north. I approached it by Ratby Meadow Lane (leading off the A46 road); where the made up part of this Lane ends, it turns into a track. From the various hedges it is easy to trace the possible former continuation of the Lane as far as the Unit Land; it now appears to be used very little if at all. The Wigston Road can be imagined as a continuation of the Lane to the River edge at a point opposite to one of the Locks in the Canal (on the other side of the River). Nobody suggested at the hearing to what the Wigston Road could ever have led or why the Duke of Rutland (who is named in the Tithe Award as the owner) could possibly have ever wanted it. Bearing in mind that the Seven Swaths were expressly conveyed to the Testator, I conclude that the X Strip described by him to Mr Harrison notwithstanding the width he gave to it, was really intended by the Testator to refer to The Wigston Road. This strip is so small (1 rood 19 perches) that I conclude that I ought to treat it as being in the same ownership as the land immediately to the north.

In the absence of evidence that those who attended the annual auction did so as owners in succession to the individuals named as owners in the Tithe Award, I conclude that I ought to treat The Wether then dealt with as being now wholly subject to a charitable trust. Somehow I must reconcile the divisions assumed by Mr Harrison with that assumed by the person who prepared the Tithe Award. On the Unit Land, are now visible 5 stones, apparently intended as boundary stones (there may be others which I did not see). Mr Harrison said that as he first remembered, the stones were much more numerous, there being three lines of them, one by the west boundary (all removed when the ditch was enlarged) and two other lines approximately parallel with the west boundary across the middle and near the River. I assume these stones marked the strips delineated on the Tithe Award. In my view I ought to presume that in some way the practice for the last 35 years as described to me at the hearing had some sort of legal origin; accordingly I presume that under some arrangement now forgotten the land in the Tithe Award described as the Boots and The Wether, being the same as the land described by Mr Harrison as The Wether is now the only part of the Unit Land which is subject to a charitable trust and that the remainder of the Unit Land is now in ordinary ownership and that the dividing line is a line parallel with the south boundary of the Unit Land, roughly where Mr Harrison drew it on my copy of the Register map being a line which as near as possible passes through the two of the boundary stones which are nearest the River where it flows along the north boundary of the Unit Land.

As to the part in ordinary ownership:- The Testator and the Bank by their tenant have been in sole possession for 35 years. Their paper title under the 1921 and 1942 conveyances extends only to shares of or to rights over this part. The only possible other owners about which I have any information are the successors in title of the persons in the Tithe Award said to have 1/14th shares. There are legal difficulties in the owner of any share acquiring by possession a title under the Limitation Act 1939 against the other owners, if under the Law of Property Act 1925 he has become a trustee for them, see re Landi 1939 1 Ch 828 and re Milking Pail 1940 1 Ch 996; these cases are I think inapplicable because neither the Testator nor the Bank have ever been the trustees for these other possible owners. I conclude therefore that the Bank now have a good possessory title under the Limitation Act 1939 to all this part. Alternatively I think I ought to presume that they have acquired all outstanding interests in this part from their long possession and the absence of any contrary claim following the public advertisement of these proceedings.



I have no evidence as to who are the present trustees of the charitable trust which I have found exists. However no trust can fail for lack of trustees, and if trustees are needed or if any question arises as to the administration of these trusts, appropriate proceedings can be taken under the general law relating to charities. As far as I know, there is now no need for any such appointment or proceedings. I can direct an ownership registration of the trustees of an identifiable trust, notwithstanding that the trustees cannot be named or found or none may ever have been appointed.

For the above-reasons I am satisfied that the Bank and the Trustees of the above mentioned charitable trusts are the owners of the Unit Land as above set out, and I shall accordingly direct Leicestershire County Council as registration authority under section 8(2) of the Act of 1965 to register (1) National Westminster Bank Limited whose local office (as regards the John Edward Cox Estate) is 5th Floor, Newland House, 49 Mount Street, Nottingham as the owner of the part of the land north of the ~~specified~~ line (hereinafter defined) and the Trustees of the charitable trust for the benefit of the inhabitants of Enderby which may be presumed to have been established by the traditional acts of John of Gaunt and the recent practice as set out in this decision) by which such tradition has been perpetuated. And I define the dividing line as the straight line which is parallel with the south boundary of the land comprised in this Register Unit and which passes through or as nearly as possible passes through two of the ancient boundary stones (at least 5 are now plainly visibly to anyone walking on the land), being the 2 stones nearest the River where it forms the north boundary of the land, each being between 30 and 35 paces (approximately) south of the River bank and each being about 100 paces or a little more from ^{each} other.

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.

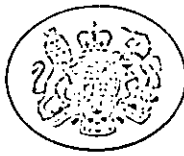
FIRST SCHEDULE
(Mr A W Capers' Statement)

The following information could be of help. John of Gaunt - Duke of Lancaster, Earl of Leicester while travelling from Ashby de la Zouche came to Ratby when the men there were celebrating a feast called Ramsdale which was annually held to celebrate the mowing of the meadow by that name. This happened between 1350 and 1399 I should say from research about 1370.

John of Gaunt and his party enjoyed themselves so much that he promised to reward the men of Ratby if they appeared before him in Leicester on a certain day. Fourteen men held him to his word, and the Duke gave them a meadow in the Parish of Enderby called ever after RATBY MEADOW.

The shape of this meadow is attached.

You will see that he kept up the reference to RAM by naming the different parts as the Ewes- Wether - and Boots. The Ewes were each $\frac{1}{2}$ acre while the boots were 3 sq poles approx. The wether was 2 acres.



The Articles laid down the following rules- The meadow was to be closed on Valentine's Day i.e. all cattle were to be removed and the meadow was set for mowing. The grass was to be cut and carried off by Ramsdale - 12th August each year wet or fine.

The rights of use were vested in the owners of the rights. Each year the right owners drew lots for the particular strip of $\frac{1}{2}$ acre and 3 sq poles. On Whit-monday each year the right owners were to visit Enderby to see the meadow and then adjourn to a selected hostelry and sell the grass from the Wether which had to be so cut and carried by 12th August. The money obtained was to be used to defray the cost of a feast, after drinking the health of John of Gaunt. Only owners were entitled to take part in the feast, though anyone could purchase the grass. On the stroke of midnight 11th August the meadow reverted to its original use of the owners - grazing.

The heirs of the late Mr Jack Cox owns 7, 8 or nine rights. The late Lady Cooper Rawson owns one strip and I have not been able to find out the other owners. I have personally seen the deeds of the strips of the late Mr Jack Cox.

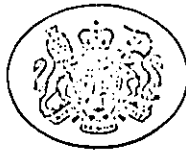
It is difficult to maintain the claim that this Wether is 'Common' and I believe that if anyone has a right to ownership then the heirs of the late Mr Jack Cox are the only ones who could in anyway substantiate this, while not being able to prove freehold rights. (The men of Ratby sold off their rights to local grazers and farmers from time to time and nobody in Ratby had a right later than 1800.)

The custom has through the years been varied and mixed up with other charities and I believe that this is the cause of the claim for registration of Common land.

note: The attached plan shows Ratby Meadow in three parts: "14 strips each $\frac{1}{2}$ acre EWES", "2 acres WETHER", and "14 small strips each 3 sq poles"

SECOND SCHEDULE
(Conveyance 10 October 1921)

"ALL That piece or parcel of land or ground with its appurtenances lying and being within the Lordship and Liberties of Enderby in the County of Leicester in a certain part there called "the Ratby Meadow" containing by estimation or commonly reputed to be half an acre or thereabouts be the same more or less AND ALSO ALL that piece or parcel of Meadow ground lying and being in the said Ratby Meadow containing half an acre or thereabouts be the same more or less Together with the rights members and appurtenances thereto belonging or accepted or reputed or known as part parcel, or member thereof and which two said pieces of land and meadow ground above described were formerly in the occupation of Alice Lawrence then of John Watson afterwards of Edward Frost and then of Joseph Lemon."



THIRD SCHEDULE

Conveyance 18 March 1942

"ALL THAT the right privilege or profit of taking the grass cropping and produce from Old Valentine Day to Old Lammas Day in every year of and in Seven swarths of land and of and in Seven shares each formerly stated to contain half an acre but now estimated to contain TWO ROODS EIGHTEEN PERCHES or thereabouts taken by lot in a certain Meadow called Ratby Meadow in the Parish of Enderby aforesaid now or late in the occupation of Millicent Emily Proudman or her tenants And also all other (if any) the estate and interest to which Thomas Cox was entitled at the date of his death mentioned in the Schedule hereto of and in the said Seven swarths of land and of and in Seven half-acre pieces of land (now estimated each to contain Two roods eighteen perches) part of the said meadow known as Ratby Meadow"

FOURTH SCHEDULE

(Statement found amongst Testator's papers)

Ye Olde Ancient Feast in Memory of John of Gaunt, Duke of Lancaster
Earl of Leicester

THE SALE OF THE WETHER IN THE FIELD CALLED RATBY MEADOWHISTORY

About 1390 John of Gaunt was travelling to Leicester Castle accompanied by his servant, and when passing through the village of Ratby they saw the men there enjoying themselves in celebration that all the hay had been mown. They were playing games and making merry. They alighted and entered into the fun.

He was told that the Feast was called RAMSDALE. (Aug. 12th?) Before he left he promised the men of Ratby, that if they met him in Leicester on a day fixed by him, he would give to each man:-

- 1 A Ewe to their Ram (Wife to the Ram)
- 2 A Wether (Son of a Ewe and Ram) whose grassy fleece should when sold make them a splendid repast.

14 men decided to test the Duke and duly appeared at the appointed place on the day named. Every one saw the joke, but only the 14 attended on the day.

The Duke met them and informed them that if they kept the ARTICLES as set out, he would give a parcel of land in the Parish of Enderby, near the Old Church of St John, Leicestershire, in Aldeby, adjoining the



River Soar. To each man he gave a piece about $\frac{1}{2}$ acre for his own private use, and a small piece about 5 yards wide and 50 yards long which he called the BOOTS, as they would require them when it was wet. He likewise gave them a piece about 2 acres for their general use, which said he was to be called the WETHER, and the River would wash the Wether's breech in wet weather.

The grass crop was to be sold at Whitsuntide each year and the money obtained was to be used to defray the cost of a Splendid Repast.

ARTICLES:

Two of the owners appointed for the year were to be called the CATERERS. These two were to go to Leicester on the Sale Day, and select

When the bones had been picked clean, they were to be put in a dish and served up for dinner. Two large pies were to be provided for the wives of the Caterers. They were to provide the others with a silken lace with silver tags at each end. These were to ride to Enderby partake of a drink and bread and meat and then proceed to the Meadow, where they were to take a sod of earth and a few blades of grass, which tied with the lace were to be worn in the hat.

They were then to ride to Leicester, throw the sods to the populace at the High Cross, and proceed to the Church of St Mary, and hear a sermon preached for the men of the Hospital founded by Henry Earl of Lancaster. The Vicar was to be given a gift, in return for him reading the Articles. They were to then go to the selected Inn, drink a Toast in Brandy to the Immortal Memory of John of Gaunt and eat of the Dinner washed down with beer as long as the money lasted.

NOTES:

The Custom was carried out for several hundred years. The men of Ratby held the Sale on Whit Monday to prevent the men of Enderby attending. During the past 150 years the Meadow has been owned by Enderby people, and the ceremony has been varied.

This may be because the Feast and Charity has become mixed with another such Feast connected with some Fields in Enderby, the rent of which was to go to the Wyggeston Hospital.

The Riders have on many occasions had to swim their horses through the meadow because of the Floods.

SALE:

This in recent years has been held on Whit Monday at the Nag's Head Inn, at 12 noon. A Silver five shilling bit is passed round and no bid can be made unless the coin is in the hand. The Sale is complete when a bidder receives the coin again without another bid being made.



The Bidders sit round the table, and MUST pay a shilling before the Sale commences. This is to show they are genuine bidders. The buyer gets this shilling returned to him.

After the Sale a TOAST is drunk to the Immortal Memory of John of Gaunt.

Instead of inviting the men of the Hospital to attend, £1 is handed to the men of the Hospital.

RECORDS:

The earliest record of the Feast is 1821 when the Caterers arranged the Meal at the White Lion in Leicester.

It was first held in Enderby in 1859 at the Nag's Head, when the Caterer was Henry Marston. The Grass was sold on that occasion for £9-0-0. It was not held in Enderby again until 1895. In 1904 it was held at the New Inn, Enderby, and continued there for the next 4 years. It has been held at the Dog and Gun four times and the Plough Inn once. The last time it was held at the New Inn was in 1915. Since that date it has been held at the Nag's Head.

The Candle holder which we are using today is over 100 years old and was given to Mr Capers by Mrs J West, whose family for nearly 100 years kept the New Inn. It was used when the sale took place at that Inn.

Each bidder should have a Church Warden Pipe, and these were to be smoked during the business.

In 1840 it fetched £11, when Mr Grewcock bought it.

In 1920 it was sold to Mr J Cox for £15-15-0.

Details of Feast of 1857

| | | | |
|----------------|----------|--------------------------|----------|
| Sale of Wether | £9 2 6 | Enderby. 17 lunches | 17 0 |
| 17 persons | 17 0 | 20 qts Ale | 10 0 |
| From 1856 | 4 3½ | Tobacco | 1 0 |
| | | Purchaser | 1 0 |
| | | Hire of horse and Porter | 1 0 |
| | | <u>White Lion.</u> | |
| | | 17 Dinners | 2 2 6 |
| | | Ale, Soda & Ginger | 5 7 |
| | | 6 Bots. Brandy | 2 8 0 |
| | | 10 Men from Hospital | 10 0 |
| | | Ale and Tobacco | 6 10 |
| | | Hostler's Tob. & ale | 1 6 |
| | | Hay and Corn | 4 0 |
| | | Tea | 10 0 |
| | | 3 Bots of Brandy | 1 4 0 |
| | | Toll | 2 4½ |
| | | Tip Servants | 3 0 |
| | | Hostler's Tobacco | 2 6 |
| | | Purchase of the Book | 5 9 |
| | | In Hand | 7 9 |
| | <hr/> | | <hr/> |
| | £10 3 9½ | | £10 3 9½ |



Note: Appended is a plan which shows the strip "The Wigston Road", 14 strips "the EWES each $\frac{1}{2}$ an acre", THE WETHER and 14 strips "The BOOTS".

Dated this 12th day of May _____ 1977

a. a. Baden Fuller

Commons Commissioner