



COMMONS REGISTRATION ACT 1965

Reference No.  
225/U/265

In the Matter of the piece of land called  
Eaton Common containing 18.6 acres or  
thereabouts in the City of Norwich

#### DECISION

This reference relates to the question of the ownership of land known as Eaton Common in the City of Norwich being the land comprised in the Land Section of Register Unit No. CL.1 in the Register of Common Land maintained by the Norfolk County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

#### The Register

Eaton Common was registered as common land in 1967 by Norfolk County Council without any application. That registration being undisputed became final on 1st October 1970. There are 3 entries in the Rights Section of the Register, all made by the same person Miss Doris Fitt, each relating to a single head of cattle, and all of which became final on 1st October 1970. There are no entries in the Ownership Section of the Register.

#### Public Rights

The common being in an urban district the public have rights of access for air and exercise under Section 193 of the Law of Property Act, 1925.

#### Previous Ownership Inquiry

There was an inquiry into the question of the ownership of the common before Mr Commissioner Baden Fuller on 12th June 1973 at Norwich. At that time it was suggested that the Dean and Chapter of the Cathedral were Lords of the Manor, but a letter was produced at the hearing from the Clerk of the Dean and Chapter that they made no claim to be Lords of the Manor nor to ownership of any part of the Common. In his Decision dated 22nd June 1973 Mr Commissioner Baden Fuller concluded that in the absence of any evidence that any person was owner of the common it would be subject to protection under Section 9 of the 1965 Act.

#### Application under 1989 Act

On 28th September 1990 British Railways Board gave Notice of Objection under the Common Land (Rectification of Registers) Act 1989 to the inclusion on the Register of the dwellinghouse Eaton Crossing Cottage and the garden enjoyed therewith. By a Decision dated 31st January 1991 given without a hearing the then Chief Commons Commissioner Peter Langdon-Davies directed Norfolk County Council as Registration Authority to exclude from the Register under Section 1(4) of the 1989 Act the dwellinghouse and that part of the land to which the Objection related which lay to the



South of the railway. I note in passing that the title of British Railways Board to the land commenced with a Conveyance dated 8th April 1846 between the Dean and Chapter of the Cathedral and the Norfolk Railway Company.

### The Present Reference

The present reference was occasioned by a claim by Mrs Maria Vinall to a possessory title to field O.S. No.8921 having an area of 0.92 hectares. This field is bounded by the railway to the north and by the Crossing Cottage land to the west.

### First Hearing before me

I held a hearing to inquire into the question of the ownership of the common at Norwich on 22nd March 1995. Although the claim by Mrs Vinall was to a comparatively small part of the common I am required by the 1965 Act to inquire into the question of ownership of the whole of the common.

### Attendance at First Hearing

The hearing on 22nd March 1995 was attended by Mr J Richardson of Norfolk County Council the Registration Authority Mr Phillip Mason of Counsel representing the Norwich City Council Mrs M Vinall and Mr I A Torode. I was informed that the Rights holder, Miss Fitt, had died several years ago, and that her successors as Rights holders were unknown. It was said that the cottages to which the Rights were attached no longer exist.

### Mrs Vinall's Evidence

At the first hearing before me Mrs Vinall gave evidence in support of her claim to a possessory title to O.S.No.8921 and in this she was supported by the evidence of Mr Torode. I shall summarize that evidence later in this Decision. In her evidence Mrs Vinall said that since 1979 she had rented two other fields forming part of the Common (O.S.No.7188 and O.S. No.7920) which belonged to Mr David Gurney or a Gurney family trust, and that a third person rented field O.S.0221 from the Gurneys. Although no claim to any of these fields had ever been recorded by the Registration Authority I felt that I had no alternative but to adjourn the hearing to ascertain whether any of these persons wished to join in the proceedings to claim ownership of any parts of the Common.

### Claim by Gurloque Trust

Mrs Vinall told me that Francis Horner Chartered Surveyors of Norwich acted as Agents for the fields she rented, and accordingly immediately after the first hearing the Clerk to the Commons Commissioners wrote to this firm asking whether their client wished to be joined in the proceedings. In reply Horners claimed that O.S.7118 and O.S. 7920 were the property of their clients, the Trustees of the Gurloque Settlement. They also stated that they believed that other parts of the Common might



belong to Mr A J Gurney, whose Agents were Bidwells Chartered Surveyors of Norwich.

Claim by A.J.Gurney and Mrs Dannatt

In reply to a letter from the Clerk to the Commons Commissioners Bidwells made claim on behalf of Mr A J Gurney and his daughter Mrs Philippa Dannatt to ownership of fields O.S. No. 0221 and O.S. No. 9913 and also to part of O.S. No. 0006.

Claim by Miss Whitear

On 31st March 1995 the Commons Commissioners received a letter dated 29th March from Miss Lyn Whitear "giving formal notice of my counterclaim for the land adjacent to Eaton Railway Cottage".

Second Hearing

I held a hearing to inquire into these claims at Norwich on 11th October 1995.

Attendance at Second Hearing

The second hearing was attended by Mr J Richardson of Norfolk County Council the Registration Authority Mr David Johnson Assistant Director (Legal) of Norwich City Council Mr R Bramley of Francis Horner Chartered Surveyors on behalf of the Trustees of the Gurlogue Settlement assisted by Miss S Blois Mr Michael Falcon of Bidwells Chartered Surveyors on behalf of Mr A J Gurney and Mrs P Dannatt Miss Lyn Whitear assisted by Mr A J Bell Mr A J Gurney in person Mrs M Vinall and Mr I A Torode.

O.S. Nos 7118 and 7920

A. Documentary Title.

Mr Bramley produced to me the following documents:

1. Lease dated 17th June 1921 between (1) John Henry Gurney and (2) Charles Brock and William Brock with indorsed Agreement dated 7th December 1936 between (1) Quintin Edward Gurney and (2) Charles Brock and William Brock
2. Conveyance (by way of gift) dated 2nd March 1965 between (1) Richard Quintin Gurney and (2) David Quintin Gurney
3. Conveyance (by way of settlement) dated 24th June 1971 between (1) David Quintin Gurney and (2) David Aclogue and David Quintin Gurney.

The Lease of 1921 was of Keswick Mill with houses and land delineated on the plan attached thereto from year to year. The plan included O.S.7 comprising 1.268 acres. This more or less corresponds with O.S. 7118 and 7920 on the more recent Ordnance Map, although the combined acreage of these fields is slightly less. O.S.7 is then shown on plan B to the Conveyance of 1965



as included in the property thereby conveyed (see the First Schedule thereto, sixthly conveyed). The same property is included in the land conveyed by the Conveyance of 1971.

### B. Oral Evidence

Mr Bramley said that his firm's knowledge extended back to before 1945. The grazing rights over these fields had been let to the level-crossing keeper Mr Starling since 1963. On his death his Widow, Mrs Starling, had continued to pay rent, £20 a year. No rights had been exercised by anybody but the Starlings. Mr A J Gurney said that he was the brother of Richard Q. Gurney. The Brocks ran a working Mill until 1955. The rent book showed Mr Brock paying rent to R Q Gurney until 1954. A Tenancy Agreement with Mr Starling was entered into by R.Q.Gurney in 1963.

### C. Conclusion

Although none of the documents produced to me was a Conveyance on Sale or other good root of title I am satisfied on this evidence and in the absence of any conflicting claim that David Aclogue and David Quintin Gurney are the owners of O.S.Nos 7118 and 7920.

### O.S. Nos 0221 and 9913

#### A. Documentary Title

Mr Michael Falcon produced to me at the hearing the following documents:-

1. Copy Lease dated 17th June 1921 (the same document as that produced by Mr Bramley)
2. Copy Conveyance dated 18th October 1946 between (1) Quintin Edward Gurney and (2) Archibald James Gurney
3. Deed of Gift dated 31st August 1984 between (1) Archibald James Gurney and (2) Philippa Margaret Dannatt.

O.S. 9913 comprising 1.93 acres was formerly O.S.3 comprising 1.934 acres. O.S.0221 comprising 3.33 acres was formerly O.S.9 comprising 3.67 acres. Both these fields were included on the plan to the Lease of 1921. The Conveyance of 1946 includes in its Schedule O.S.3 comprising 1.815 acres but parts only of O.S.No.9 adding up to about 2 acres, and on the plan this field is bisected so that the southern part only is included. By the Deed of Gift of 1984 however the whole of O.S.0221 and 9913 are purported to be conveyed.

#### B. Statutory Declaration

Subsequent to the hearing Mr Falcon sent to the Commons Commissioners a copy Statutory Declaration dated 9th November 1984 by Archibald James Gurney. He declared (inter alia) that from the date of the 1946 Conveyance until 31st August 1984 he was in full and undisturbed possession and enjoyment of the rents and profits of the whole of O.S. 0221 without any claim adverse



to his title.

### C. Conclusion

On this evidence and in the absence of any conflicting claim I am satisfied that Mrs Dannatt is the owner of O.S. Nos. 0221 and 9913.

### O.S. No. 0006

None of the documents produced to me substantiated a claim to any part of this area and I therefore make no decision concerning it.

### Mrs Vinall's Claim to O.S. No.8921

Mrs Vinall's claim to field O.S.8921 ("the field") was supported by her Affidavit sworn on 15th November 1994 with two Exhibits being statements by Dorothy Starling and Rosalie Bond, and by her own oral evidence and that of Mr I A Torode at the first hearing.

### Mrs Vinall's Affidavit

In her Affidavit Mrs Vinall said (inter alia) as follows:-

"5. Since 1979 down to the date hereof I have used the field (edged red) as pasture for my horses and also as a pasture for a donkey which Mr Starling gave to me. In or about 1987 I erected a field shelter or open shed to afford protection for my horses. There was already a shelter on the field which was derelict and I demolished this.

6. In addition to erecting the field shelter referred to during the period of my occupancy I have repaired and maintained the fences around the field and I have also kept the drainage dyke running along the northern boundary clear and unobstructed to ensure good drainage of the field.

7. By way of further maintenance I have regularly mown the field twice a year and have kept it free of thistles and other unwanted wild weeds.

8. In recent months I have made it my business to keep so called 'Hippies' and 'New Age Travellers' from coming on to the field and occupying it.

9. During the whole of the period of my occupation of the field I have done so without the payment of rent nor have I been approached by any other person suggesting that I make payment of any kind for my use of the field. My occupation of the field has been without licence permission or consent of any other person".



### Exhibited Statements

In her Statement exhibited to Mrs Vinall's Affidavit Mrs Starling, who said that she had lived at Eaton Railway Cottage for 44 years until September 1994, stated that for the past 16 years Mrs Vinall had grazed her horses on the field, always keeping it tidy and in good condition.

In her Statement dated 24th October 1994 exhibited to Mrs Vinall's Affidavit Mrs Rosalie Bond stated that Mrs Vinall had, to her certain knowledge, grazed her horses on the field for the past 16 years.

### Oral Evidence

Mrs Vinall said that Mr Starling had died in May 1994. He was an employee of British Rail, and had rented fields O.S.7118 and 7920 from the Gurneys since the 1940s - these two fields were known as The Pykles.

The Hippies or Travellers sent out Scouts. She and Mr Torode had put a chain and padlock on the gate to the field. Mr Torode had confronted the Scouts, who came in old cars.

Mr Mason on behalf of the City Council confirmed that Travellers had attempted to get on the field, and that Mr Torode had confronted them. He said that the City was in process of making a Scheme of Management of the Common under the Commons Act, 1899. There was actual use by the public of their rights of access for recreation.

Mrs Vinall said that she had known the people who occupied the field before 1979. They took the fences away with them when they left. She replaced the fences in 1979. The fences were not barbed wire. She had no objection to children playing or people picnicing on the field. Mr Richardson on behalf of the County Council said that it would welcome a Scheme of Management of the common, but no steps had been taken so far.

### Legal requirements for a possessory title

Put very briefly to establish a title to land by adverse possession under the Limitation Acts, the claimant must provide compelling evidence of his intention to exclude the true owner.

In the present case inquiries by the Commons Commissioners over a period in excess of 20 years failed to establish who is "the true owner". For well over the statutory 12 year period of limitation the true owner, whoever he may be, has done nothing to object to the enclosure grazing and maintenance of the field by a third party. In addition the local authorities in whose protection the field has been throughout this period under Section 9 of the 1965 Act have done nothing to require the removal of the fences and other unauthorised erections which have been put on the field. In these circumstances, although the evidence tendered by Mrs Vinall might not have been sufficient



in a case contested by "the true owners", I reach the conclusion that in the complete absence of any claim by any person to be the true owner Mrs Vinall's evidence is sufficient to establish a possessory title to the field.

#### Miss Whitear's Counterclaim to O.S.8291

The case concerning the field has been complicated by the intervention of Miss Whitear. Her claim is that it was Mr Starling, the occupier of Eaton Crossing Cottage, who put up and replaced the fences round the field and that Mrs Vinall only used the field with Mr Starling's permission. British Railways Board (who formerly owned the Cottage) sold it to Mr & Mrs Starling and Miss Whitear's brother Paul Whitear on 26th March 1992. Miss Whitear states that when Mr Starling died in 1994 and Mrs Starling was rehoused in sheltered accommodation, she bought the Cottage from her brother. No documents proving this were produced to me, but I will accept it for present purposes.

#### Family Dispute

Miss Whitear is the daughter of Robert Whitear, who married Mr & Mrs Starling's daughter Jane. There is a matrimonial dispute between Jane and Robert, the details of which I do not propose to get involved with. One consequence of this is however that some animosity exists between Miss Whitear and Mrs Starling, and this affects Mrs Vinall as a long-standing friend of Mrs Starling. I mention this because when I pointed out to Miss Whitear that the result of her intervention might be to destroy Mrs Vinall's claim without establishing any title herself, she said that whether or not she had any claim herself she wished to oppose Mrs Vinall's claim.

#### Miss Whitear's Case

Miss Whitear was able to stay for only part of the second hearing. Mr Bell addressed me on her behalf, which I gave leave for him to do. Mr Bell produced 15 photographs, 4 Affidavits and an unsworn Statement.

#### Miss Whitear's Evidence

The Affidavits and the Statement do not contain much evidence directly relevant to a claim by Miss Whitear to a possessory title to the field.

Paul Whitear says (inter alia)

"On several occasions I helped Geoff Starling to put up or repair the fence around the common paddock whenever asked."

Robert Whitear says (inter alia)

"Geoff often asked me to help him with various general building/fencing matters, and in addition to physically helping him do the work I supplied wood, such as rafters, for the fencing and at some point I gave him a large metal gate for use on one



of the paddocks. Even now some of the wood making up the fence of the common paddock is from roof rafters that I supplied."

Richard Fawcett says (inter alia)

"When I first moved here Mr and Mrs Martin were using the common paddock adjoining the cottage garden. The Martins had installed the first boundary fence of the paddock before I moved there but they left during 1981. Mr Starling took over the paddock then and subsequently improved and replaced the paddock fencing.

Sheila Martin says (inter alia) that they had the use of the field until 1981, but when they left Mr Starling took over the field.

Miss Whitear's own Affidavit consists almost entirely of hearsay (what other people have told her). Even so, one of the Statements she makes is admissible being adverse to her own case "During the last month I stopped to have a conversation with a gentleman I know as Paul who rents common land further down the lane past the cottage, Paul stated that (amongst other points), Maria had been on that paddock for 12 years and as such should be able to claim it."

#### Mrs Vinall's Reply

In reply to the allegations that it was Mr Starling who did the fencing, Mrs Vinall explained that she could not do it on her own and that Mr Starling worked with her. She paid for the materials.

#### Conclusions on Miss Whitear's Case

My first conclusion on Miss Whitear's case is that the evidence submitted on her behalf would not have been sufficient to have enabled Mr Starling during his lifetime to have established a possessory title to the field. There is in addition a legal hurdle in the way of Miss Whitear establishing a claim as successor to Mr Starling. Mr Starling was, as I understand it, a tenant of British Rail in respect of the Crossing Cottage and the land which went with it. The general rule is that if a tenant encroaches on land adjoining that comprised in his tenancy the encroachment enures for the benefit of the landlord. Accordingly after the second hearing I caused the Clerk to the Commons Commissioners to write to the Solicitor to British Railways Board to inquire whether the Board would wish to intervene in these proceedings, either to claim a possessory title on its own behalf or to support the claim of either of the disputing claimants.

By letter dated 29th January 1996 (received on 7th February 1996) the Solicitor to British Railways Board replied (after two reminders):

"I think it safe to proceed on the basis that the Board, as ex-landlord, has no interest in claiming title to the fee simple





in the land on which Mr Starling encroached prior to the sale in 1992".

#### Opposing Claims to O.S.8921

In these circumstances and on the evidence as a whole I reach the conclusion that as between the opposing claims of Mrs Vinall and Miss Whitear Mrs Vinall's claim succeeds and Miss Whitear's fails.

#### Conclusions

A. On the evidence before me and for the reasons stated above I am satisfied that:-

(1) David Aclogue and David Quintin Gurney are the owners of O.S.Nos.7118 and 7920

(2) Philippa Margaret Dannatt is the owner of O.S.Nos. 0221 and 9913

(3) Maria Vinall is the owner of O.S.No. 8921

and I shall direct Norfolk County Council accordingly.

B. I am not satisfied that any person is the owner of the remainder of the land comprised in this Register Unit and it will accordingly remain subject to protection under Section 9 of the Act of 1965.

#### Caution

I should make it clear that nothing in this Decision in any way affects the status of any part of the land referred to above as Common Land nor such rights of access for air and access as the public may have thereover pursuant to Section 193 of the Law of Property Act, 1925.

#### Appeal

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 16<sup>th</sup> day of February 1996

Chief Commons Commissioner