

IN CHANCERY.

SMITH v. BAYNES.

PARTICULARS & CONDITIONS OF SALE
OF
FREEHOLD AND CUSTOMARY
FREEHOLD PROPERTY,

SITUATE IN THE

TOWNSHIPS OF AUSTWICK AND LAWKLAND,

WITH FEIZOR in the PARISH of CLAPHAM, in the WEST RIDING of the COUNTY of YORK,

CONTAINING IN THE WHOLE ABOUT

40 ACRES AND 32 PERCHES,

AND OF SHEEPGAITS ON OXENBER, IN ~~THE SAID PARISH,~~

Which will (pursuant to an order of the Court of Chancery made in the above Cause),

Be Sold by Auction,

BY

MR. JOHN COATES,

(The Person appointed by the Master of the Rolls, the Judge to whose Court the above Cause is attached) at the

COCK INN, IN AUSTWICK, AFORESAID,

ON SATURDAY, THE 20th DAY OF APRIL, 1872,

AT 5 O'CLOCK IN THE AFTERNOON PUNCTUALLY,

IN THE FOLLOWING LOTS, AND SUBJECT TO THE FOLLOWING CONDITIONS.

The several Tenants will show the respective Lots.

Printed Particulars (with Plans) and Conditions of Sale may be had gratis of Mr. WILLIAM HARTLEY, Solicitor, Settle; of Mr. JOHN HARTLEY, Land Surveyor, Clapham; of Messrs. C. G. THOMPSON & GRAHAM, Solicitors, Kendal; of Messrs. RIDSDALE CRADDOCK & RIDSDALE, 5, Gray's Inn Square, London, W.C.; of Messrs. NICHOLSON, NICOL & SON, Solicitors, 48, Lime Street, City, E.C.; of Messrs. SHARPE & ULLITHORNE, Solicitors, Field Court, Gray's Inn; and at the "Cock Inn" aforesaid.

PARTICULARS.

No. on the Plan.	DESCRIPTION.	Cultivation.	Quantities in Statute Measure.
			A R. P.
	LOT 1.		
	In the Township of Austwick, now or late in the Occupation of Robert Stockdale, as yearly tenant thereof.		
489 } 491 } 492 }	House, Shop, Warehouse, Garden, &c.	0 0 28
	LOT 2.		
	In the Township of Austwick, now or late in the Occupations of John Harling and John Calverley, as yearly tenants thereof.		
486 487	Barn, Road, Watering Place, &c, Joiner's Shop and Yard	0 0 33 0 0 6
			0 0 39
	LOT 3.		
	In the Township of Austwick, now or late in the Occupation of John Harling, William Speddy, Robert Banks, and John Turner, as yearly tenants thereof.		
479 480 & 481 482 483	Barn and Yard Cottages and Garden Shoemaker's Shop Shopkeeper's Croft Meadow	0 0 8 0 0 31 0 0 1 2 1 13
			2 2 13
	LOT 4.		
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant thereof.		
621	Weshow	Pasture	1 3 23
	LOT 5.		
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant.		
606	Big Bank	Meadow	0 3 3
	LOT 6.		
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant thereof.		
626 } 627 }	High and Low Adcock Miredale	Meadow	5 0 22
	LOT 7.		
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant thereof.		
363	Whitelands	Meadow	1 3 6
	LOT 8.		
	In the Township of Lawkland with Feizor, now or late in the Occupation of John Harling, as yearly tenant thereof.		
985 987	Moss and Stoney Causeway Part of Mantle Springs	Meadow Pasture	8 2 11 3 2 24
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant thereof.		
988	Part of Mantle Springs	Pasture	2 2 36
	LOT 9.		14 3 31
	In the Township of Austwick, now or late in the Occupation of John Harling, as yearly tenant thereof.		
994	Steel Lands	Meadow	2 3 6
	LOT 10.		
	In the Township of Lawkland with Feizor, now or late in the Occupation of G. Procter, as under tenant to John Harling, as yearly tenant thereof.		
1033 1034	Croft and Barn Croft in Bottom	Pasture Pasture	4 0 10 0 1 24
			4 1 31

No. on Tithe Plan.	DESCRIPTION.	Cultivation.	Quantities in Statute Measure.		
			A.	R.	P.
	LOT 11.				
	In the Township of Lawkland with Feizor, now or late in the Occupation of G. Procter, as under tenant to John Harling, as yearly tenant thereof.				
1161	Dale on Lawkland Moss	Meadow	0	2	0
	LOT 12.				
	In the Township of Lawkland with Feizor, now or late in the Occupation of G. Procter, as under tenant of John Harling, as yearly tenant thereof.				
1166	Dale on Lawkland Moss	Meadow	0	3	17
	LOT 13.				
	In the Township of Lawkland with Feizor, now or late in the Occupation of G. Procter, as under tenant to John Harling, as yearly tenant thereof.				
1185	Barries	Meadow	4	0	10
	LOT 14.				
	In the Township of Austwick, in the Occupation of John Harling.				
	Four Sheep Gaites on Oxenber...			

- Lots 1, 5, and 10—Are Customaryhold of the Manor of Austwick, and held under payment and performance, to the Lord thereof, of the yearly ancient rent of 2s. 9d., the yearly new rent of 1s. 2d., and the yearly Darcy rent of 7d., and the other dues, duties, suits, and services.
- Lots 2 and 3—Are Customaryhold of the Manor of Austwick aforesaid, and held under payment and performance to the Lord thereof, of the yearly ancient rent of 5½d., the yearly new rent of 1s. 2d., the yearly Darcy rent of 1½d., the yearly twelve pence per Noble rent of 1s. 2d., and other dues, duties, suits, and services; and are also subject to the payment of ¼ yearly to the Rector of Clapham, being a modus in lieu of Tithe Hay.
- Lot 4, and part of Lot 6—Are Customaryhold of the Manor of Austwick aforesaid, and held under payment and performance to the Lord thereof, of the apportioned yearly ancient rent of 9¼d., and the apportioned yearly new rent of 1s. 4d., and other dues, duties, suits, and services.
- Further part of Lot 6—Is Customaryhold of the Manor of Austwick aforesaid, and held under payment and performance to the Lord thereof of the apportioned yearly ancient rent of 3d., and the apportioned yearly Darcy rent of 1s. 2d., and other dues, duties, suits, and services, and the remainder of the last-mentioned Lot is partly Freehold, and partly Customaryhold, the Customaryhold portion being held of the Manor of Austwick aforesaid, under payment and performance to the Lord thereof of the yearly ancient rent of 3d., and other dues, duties, suits, and services.
- Lot 7—Is Customaryhold of the Manor of Austwick aforesaid, and held under payment and performance to the Lord thereof of the apportioned yearly ancient rent of 7d., and other dues, duties, suits, and services.
- Lot 9—Is Customaryhold of the Manor of Austwick aforesaid, and held under payment and performance to the Lord thereof of the yearly ancient rent of 3½d., and the yearly Darcy rent of 1d., and other dues, duties, suits, and services.
- Lots 8, 11, 12, 13, and 14—Are Customaryhold of the said Manor of Austwick, and of the Manor of Lawkland with Feizor, in the County of York. As to such parts thereof as are within the said Manor of Austwick, under payment and performance to the Lord thereof of the yearly ancient rent of 5s., and other dues, duties, suits, and services; and as to such parts thereof as are within the said Manor of Lawkland with Feizor, under payment and performance to the Lord thereof of the yearly ancient rent of 5s. 0½d., and the yearly new rent of 1¼d., and other dues, duties, suits, and services.

The several Lots are sold subject to the rights of the Lords of the said respective Manors of Austwick and Lawkland with Feizor, and subject to all existing rights of way, and other easements, and to all tithe, land tax, and other outgoings, and also to the existing tenancies and tenant rights.

The Vendors will convey all such Estate and Interest (if any) as they have in the Rectorial Tithes or tenths issuing, or arising from, or out of each Lot, of the premises or the rents charge in lieu thereof, and also all such share and interest (if any) as they have in the trust moneys now vested in Trustees, for procuring new and renewed leases of the said Tithes, Tenths, or Rents Charge.

CONDITIONS OF SALE.

- 1.—No person is to advance less than £5, or such other sum as the Auctioneer may fix at the time of sale, at any bidding.
- 2.—The sale of each Lot is subject to a reserved price which has been fixed by the Judge to whose Court this Cause is attached, and subject to the right of the Vendors to bid up to such reserved price.
- 3.—Each Purchaser is at the time of sale to subscribe his name and address to his bidding in the Bidding Book, and the Abstract or statement of Title, and all written notices, and communications, and summonses, are to be deemed duly delivered to and served upon the Purchaser, by being left for him at such address, unless or until he is represented by a Solicitor.
- 4.—Each Purchaser is at the time of sale to pay a deposit of £10 ^{per cent} on the amount of his purchase money to Mr. William Hartley, the person appointed by the said Judge to receive the same.
- 5.—The Chief Clerk of the said Judge will, after the sale, proceed to certify the result; and Monday, the 29th day of April, 1872, at 12 of the clock at noon, is appointed as the time at which the Purchasers may, if they think fit, attend by their Solicitors at the chambers of the said Judge, in the Rolls Yard, Chancery Lane, London, in the County of Middlesex, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the Purchasers.
- 6.—The Vendors are, within 7 days after such certificate has become binding, to deliver to each Purchaser, whose purchase money shall amount to £50 or upwards, or his Solicitor, an Abstract of the Title to the Lot or Lots purchased by him, subject to the stipulations contained in these Conditions. And to each Purchaser whose purchase money shall not amount to £50, a short statement of the Title to the Lot or Lots purchased by him, subject to the stipulations contained in these Conditions; but such last mentioned Purchaser shall be entitled (if he requires it) to a full Abstract, in lieu of such statement, at his own expense. And each Purchaser is, within 21 days after the actual delivery of the Abstract or Statement, to deliver at the Office of Mr. William Hartley, Solicitor, at Settle, in the County of York, a statement in writing of his objections and requisitions (if any) to or on the Abstract or Statement, or the Title as deduced by such Abstract or Statement. And upon the expiration of such last mentioned time (and in this respect time is to be deemed of the essence of the contract), the Title is to be considered as approved of and accepted by such Purchaser, subject only to such objections and requisitions (if any).
- 7.—The Title shall commence as to Lot 9 with an Indenture of Bargain, and Sale, and Surrender, dated the 18th day of February, 1796. As to Lots 2 and 3, with an Indenture of Bargain, and Sale and Surrender, dated the 15th February, 1804. As to Lot 7, with an Indenture of Bargain, and Sale and Surrender, dated the 14th of February, 1815. As to Lot 4 and part of Lot 6, with an Indenture of Bargain, and Sale, dated the 16th of February, 1831. As to further part of Lot 6, with an Indenture of Bargain, and Sale and Surrender, dated the 14th of February, 1832. As to Lots 1, 5, and 10, with an Indenture of Bargain, and Sale and Surrender, dated the 13th of February, 1835. As to the remainder of Lot 6, with Indentures of Lease and Release Bargain, and Sale and Surrender, dated the 3rd and 4th of June, 1840. And as to Lots 8, 11, 12, 13, and 14, with an Indenture dated the 14th day of January, 1856. And no Purchaser shall investigate or make any objection or requisition in respect of the prior titles to the said Lots respectively, whether such prior Titles appear by recital, statement, covenant for production, or otherwise, or do not appear at all.
- 8.—It is believed, and shall be assumed, that the several Lots are respectively of the tenures in that behalf stated in the Particulars, and that no part of any Lot is of leasehold tenure, notwithstanding that in the said Indenture of the 14th of February, 1815, relating to Lot 7, mention is made of a term of 500 years, for the residue of which it was then thought possible that part of that Lot might be holden; and notwithstanding that in the said Indenture of the 14th of January, 1856, being a mortgage of all the Lots, some part or parts of the premises therein comprised are treated as being possibly "of the nature of leasehold or customary tenure;" and the Vendors shall not be required to show as regards any Lot stated in the Particulars to be of both freehold and customary tenure, what part or how much of the premises comprised therein is of either of such tenures; or as regards Lots 8, 11, 12, 13, and 14, what part or how much of any of such Lots is holden of the Manor of Austwick, or what part or how much thereof is holden of the Manor of Lawkland.
- 9.—As regards Lots 1, 5, and 10, all Legacies charged thereon by the Will dated the 31st of January, 1834, of George Clapham, who appears to have died in that year, are believed, and shall be assumed, to have long since been paid in full.
- 10.—As regards Lots 2, 3, 4, 6, 7, and 9, the admittance on the 23rd of May, 1834, of William Baynes, the Testator in the Cause, who was then found by the Homage to be the eldest son and customary heir of Richard Jackson Baynes, shall be accepted as sufficient evidence that the said Richard Jackson Baynes died intestate previously to the date of that admittance, leaving the said William Baynes his customary heir; and the Purchaser of Lot 7 shall assume the said Richard Jackson Baynes to have been identical with Richard Baynes named in the said Indenture of the 14th of February, 1815, being the root of Title to that Lot.
- 11.—Lots 8, 11, 12, 13, and 14, are believed to be subject, as to such parts thereof as are holden of the Manor of Austwick, to rents amounting in all to 5s.; and as to such parts thereof as are holden of the Manor of Lawkland, to rents amounting in all to 5s. 1½d.; and inasmuch as the parts holden of such Manors respectively cannot be distinguished, each of such Lots will, as between the Vendors and Purchaser, be sold subject to the whole of such rents without apportionment.
- 12.—As regards every two or more Lots appearing by the Particulars to be sold subject to an entire rent, the apportionment (if any) of such rent shall be obtained by and at the expense of the Purchaser requiring the same, and the delay or neglect to make any such apportionment shall not defer the completion of the purchase.
- 13.—Every Purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the Vendors as the title to such property, upon the evidence afforded by a comparison of the descriptions in the Particulars and muniments, and a Declaration that the purchased property has been enjoyed according to the Title for the last 20 years, or since the date of the Instrument hereinbefore stipulated as the root of Title, if within that period.

14.—Every former owner of any part of the property whose Widow (if any) would have been entitled to Dower, Customary Dower, or Freebench, and is not mentioned in the Title, is believed, and shall be assumed to have been unmarried when he died or ceased to be such owner.

15.—Every entry on or copy of Court Roll and other Instrument dated 20 years or upwards prior to the day of sale, shall be deemed sufficient evidence of any birth, death, intestacy, heirship, matter of pedigree, fact, matter, or thing recited or noticed therein; and all facts or matters proved or certified in the said Cause shall be deemed thereby conclusively proved.

16.—It appears by an Affidavit sworn and filed in this Cause on the 31st of October, 1871, by Mr. William Hartley, of Settle, in the County of York (the Vendors' Solicitor), that the Testator was entitled to the Tithes of Corn, Grain, Hay, Wool, Calves, Lambs, and other titheable matters arising from the lands now offered for sale, or some of them, under a Lease granted by a former Bishop of Chester, for the lives of three persons, of whom one Foster, lately in Australia, and of very advanced age, was the survivor; and further, that the Testator was at the time of his death, and that his Estate was still at the date of the said Affidavit entitled to some share or proportion of a fund originally subscribed by many of the then owners of Tithes arising from lands in the Parish of Clapham, for procuring renewed leases of the said Tithes, and amounting with accumulations at the date of the Affidavit to £5,273 17s. 3d. Consols, and £2,029 8s. 5d. New 3 per Cents. The Vendors have not, nor shall they be required to procure, any evidence or information as to these matters, except what is contained in the said Affidavit. But every Purchaser shall be entitled to such exemption (if any) from tithe, and to such a share or proportion (if any) of the said fund as the Vendors may be entitled to in respect of the property purchased by such Purchaser.

17.—All examined, attested, office, or other copies or extracts of or from Court Rolls, Deeds, Wills, proceedings in the suit, and other documents; and all Certificates, Declarations, and other evidence to prove pedigrees, identity of persons or of parcels, or otherwise, which are not in the possession of the Vendors, whether required for the purpose of verifying the Abstract or Statement, or of being delivered to the Purchaser, or for any other purpose, shall be procured, made, and obtained by and at the expense of the Purchaser requiring the same. The Purchaser shall bear the expense of the production of all Deeds and other evidences not in the Vendors' possession; and of the examination of all Court Rolls, deeds, and other evidences; and of all journeys which may be necessary for the purpose of such examination; and also the expense of registering any Instruments he may require to have registered, and which are capable of registration.

18.—Each Purchaser is, under an Order for that purpose, to be obtained by him, or, in case of his neglect, by the Vendors, at the cost of the Purchaser, upon application at the Chambers of the said Judge, to pay the amount of his purchase money (after deducting the amount paid as a deposit) into the Bank of England, with the privity of the Accountant General of this Court, to the credit of this Cause, *Smith v. Baynes*, 1862, S. 126, to an account to be entitled, "Proceeds of Sale of Testator's Real Estates," on or before the 24th day of June, 1872; and if the same is not so paid then, the Purchaser is to pay interest on his purchase money, at the rate of £5 per cent. per annum, from the said 24th day of June, 1872, to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the Purchaser is to be entitled to possession or to the rents and profits as from the said 24th day of June, 1872, down to which time all outgoings are to be paid by the Vendors. And for the purpose of this condition, such current rents and profits, and such outgoings, shall be apportioned, if the circumstances so require.

19.—Each Purchaser, on payment of the amount of his purchase money as aforesaid, shall be entitled to a Conveyance, Surrender, or other proper assurance of the Lot or Lots purchased by him, such assurance to be prepared by and at the expense of the Purchaser. And no such assurance shall contain any Covenant for Title other than several Covenants by the conveying parties, that they have done no act to incur. And no Purchaser shall require the concurrence in the assurance of any person, having only an equitable interest bound by the Order for Sale.

20.—Such of the muniments of Title in the possession of the Vendors as relate exclusively to any of the Lots will, upon completion of the sale of the Lot or Lots to which the same relate, be delivered over to the Purchaser of the Lot; or, as the case may be, the Purchaser for the largest amount in money of the Lots to which the same relates; but every Purchaser to whom any muniments relating to other Lots, or another Lot, shall be so delivered, shall, if required in that behalf, enter into a Covenant for the production of all or any of the same muniments with the Purchasers or Purchaser of such other Lots or Lot, any such Covenant to be determinable upon the muniments to which the same relates being parted with to any person or persons entering into a like Covenant with the person or persons then entitled to the benefit of the original Covenant; and every such original Covenant to be prepared by and at the expense of the Covenantee. In the meantime, and until the completion of the sale of the Lot or Lots to which the same relate, the Vendors will retain such muniments, and will produce the same to and at the expense of the several Purchasers, but will not enter into any interim Covenant.

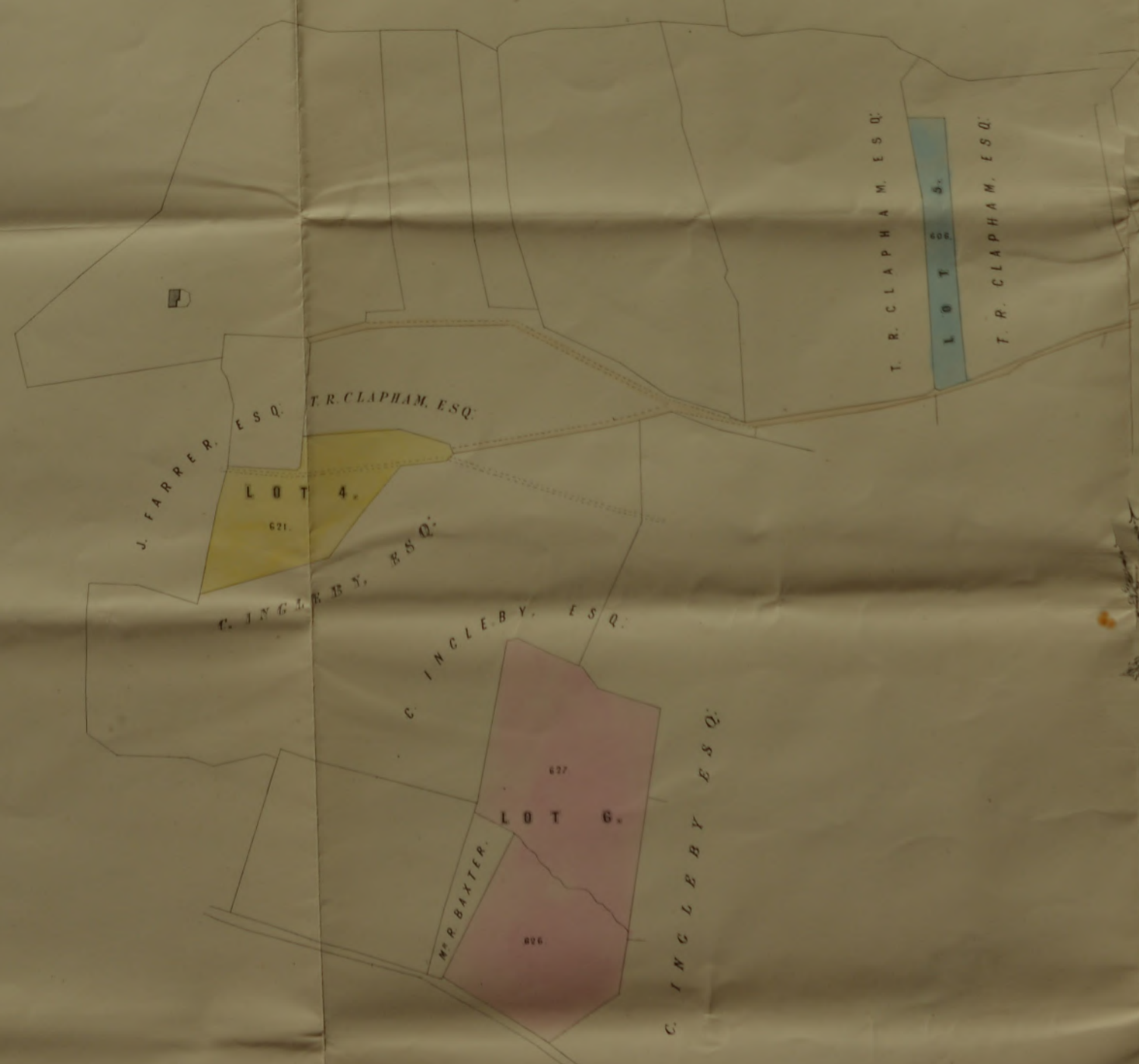
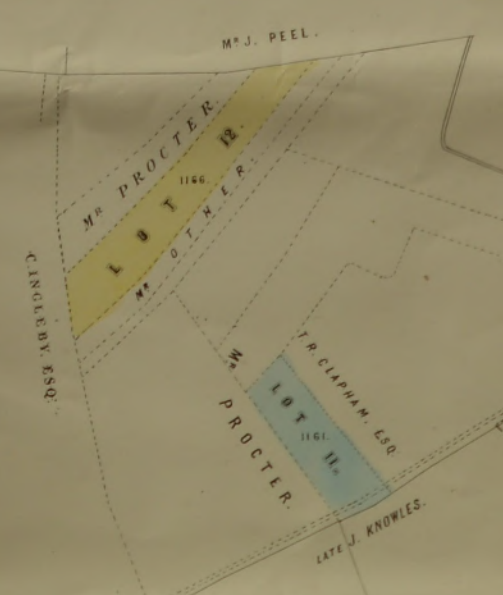
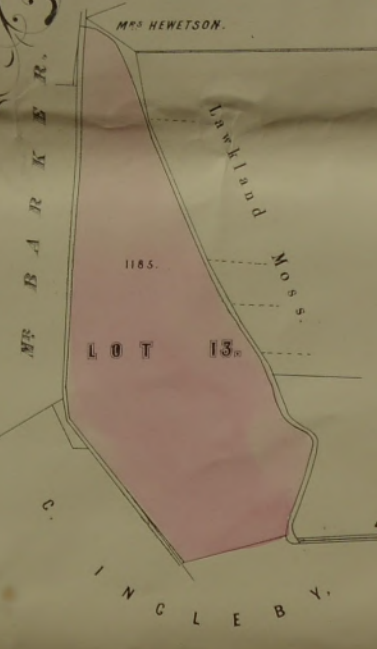
21.—If any Purchaser shall make any objection or requisition which the Vendors may be unable to remove or comply with, such Purchaser may, notwithstanding any intermediate negotiation, be discharged from being Purchaser by an order of the said Judge, upon such terms as the Judge shall direct.

22.—If any error or misstatement shall appear to have been made in the above Particulars, such error or misstatement is not to annul the sale, or entitle any Purchaser to be discharged from his purchase; but a compensation is to be made to or by the Purchaser (as the case may be), and the amount of such compensation is to be settled by the said Judge at Chambers.

LASTLY.—If any Purchaser shall not pay his purchase money at the time above specified, or at any other time which may be specified in any Order for that purpose, and in all other respects perform the Conditions, an Order may be made by the said Judge, upon application at Chambers, for the re-sale of the Lot purchased by such Purchaser, and for payment by the Purchaser of the deficiency (if any) in the price which may be obtained upon such re-sale, and of all costs and expenses occasioned by such default.

Plan of Property
in the Townships of
AUSTWICK AND HAWKLAND,
IN THE
PARISH OF CLAPHAM,
AND
County of York,
AS SET OUT IN LOTS FOR SALE BY AUCTION.

1872.



Scale for plans

