



Reference Nos 262/U/336
262/U/337

In the Matter of (1) East House,
and (2) Brumstone, Embleton and
District Parish, Allerdale District,
Cumbria

DECISION

These references relate to the question of the ownership of (1) land irregularly shaped having a length of about 200 yards from southwest to northeast, a very varying width averaging perhaps about 30 yards, and being on the south side of, and having a frontage of about 75 yards to the road from Wythop Mill to Routenbeck and situated a short distance south of East House, and (2) land approximately triangular with sides about 80 yards long, being on either side of Wythop Beck in the registration described as known as Brunstone and situated about $\frac{1}{4}$ of a mile west of Kelswick Farm and a little to the south of the land first above described, and both in (or nearly all in) Embleton and District Parish, Allerdale District, and being the lands comprised in the Land Section of Register Unit (1) No. CL374 and (2) No. CL375 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) 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 (1) Mr C Leathes in his letters of 1 December 1980 and 15 and 23 April 1981 said (in effect) that he owns the CL374 land (and ? the CL375 land or part of it), that he had had no proper notice of the registrations and they should not have been made; and (2) the Hon W R F Vane claimed (his Agents' letter of 21 November 1980) ownership of the CL375 land. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Keswick on 27 April 1981. At the hearing (1) Mr C Leathes attended in person; (2) the Hon W R F Vane was represented by Mr C J F Vane of counsel instructed by Trower Still & Keeling, Solicitors of London; and (3) Embleton and District Parish Council as successors of Embleton Parish Council on whose application the Land Section and Rights Section registrations were made, were represented by Mr O W Todhunter their clerk.

Mr Leathes produced a letter dated 24 February 1981 from the Parish Council saying that they did not foresee any extraction of materials from the CL374 land, and said that in view of this letter he withdraws any objection he might have to the registrations. As to ownership, he said (in effect):- The CL374 land is part of a tract of about 25 acres extending from the said Wythop Mill - Routenbeck Road on the north, from there rising up (the lower part of Sale Fell) and then going down to the Wythop Beck (the south boundary of the said tract). This tract had been in the ownership of his family for many years, it having descended to him in about 1962 under a settlement made by his mother (he was her only child), and having been originally purchased in about 1830 by his great grandfather Thomas Leathes; the parcels of the indenture under which he acquired it were by reference to the OS map 1st edition and included this tract. It, with other land, had always been let, the present tenant being Mr R I Graham who held it with other land at Wythop Moss at a yearly rent of £200 under a written agreement made in 1975 by reference to an annexed plan which included the tract. He had known the land all his life (66 years). The CL364 land (at the northwest corner of the tract) is on its west side separated from the rest by a cart track; it appears as a flat area at "the top of the Fell"; there is on it no sign of it ever having been a sand quarry.



Mr C J F Vane who claimed to be the owner of the part of the CL375 land south of the Beck in the course of his evidence produced the documents listed in the Schedule hereto. Of the part so claimed he said (in effect):- It is a wood, the dominating feature of which is a number of silver firs up to 80 feet high interspersed among them are a number of hardwoods (beech and sycamore) and young firs.

The 1950 vesting deed shows the part so claimed as OS No. 122 containing 1.645 acres. Mr Waugh who was the tenant at Eskine Farm from 1953 to 1980 said it was his understanding that the land was owned by the Wythop Estate. The title is regularly deduced by the documents produced, and on this evidence I am satisfied that Mr Vane is the owner of the part of the CL375 land south of the Beck.

As to the ^{ca}374 land and the part of the CL375 land north of the Beck:- As a general rule I would not be satisfied as to the ownership of a person claimed under title deed which were not produced either at or subsequent to the hearing. Mr Leathes said his deeds were in Wokingham in Berkshire, and so I could I suppose adjourn the proceedings to London to enable him to produce them there. However I can't think ~~frank~~ this case exceptionally because: (1) Mr Todhunter said that Mr Leathes was locally reputed to be the owners of the lands he claimed; (2) Lord Inglewood who happened to be present at the hearing and who owned the adjoining Wythop Estate before 1974 said that he had some time understood that Mr Leathes owned part of the CL375 land north of the Beck; and (3) Mr Leathes being a solicitor ~~was~~ qualified to summarise the contents of his own title deeds and I think no useful purpose would be served by his summary being checked in the office of the Commons Commissioners. So in these circumstances, I am satisfied the Mr Leathes is the owner of the part of the CL375 land and the whole of the CL374 land claimed by him.

Accordingly for the reasons above stated I shall pursuant to section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register the Hon William Richard Fletcher Vane of Hutton-le-Forest, Penrith as the owner of the part of the land in Register Unit No. CL375 which is south of Wythop Beck and to register Mr Cyril Leathes of 3 Starmead Drive, Wokingham, Surrey as the owner of the whole of the land in Register Unit No. CL374 and of the part of the land in Register Unit No. CL375 north of Wythop Beck.

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 by Mr Vane)

18 August 1950

Vesting deed by which Baron Inglewood (then and therein called William Morgan Fletcher Vane) in consideration of his marriage on 28 July 1949 declared that he held lands containing about 3517.763 acres in the parish of Wythop as described in the Schedule and delineated on the plan were held by him on the trust therein mentioned, the trustees being Messrs H J N Vane, W H Clark, J M Stevens, and P Prince.



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| 21 July 1965 | House of Lords memorandum recording Mr H J N Vane succeeded as Lord Barnard. |
| 14 December 1965 | Deed of declaration recording retirement of Mr W H Clark as trustee. |
| 27 October 1973 | Certificate of death of Mr J M Stevens. |
| 15 January 1974 | Conveyance and deed of discharge by which the land described in the 1950 vesting deed was conveyed to Mr W R F Vane. |
| 27 April 1981 | Statement by Mr Thomas Miller Waugh of Primrose Cottage, Embleton. |

Dated the 18th day of May 1981.

a. a. Baden Fuller

Commons Commissioner