



Reference No. 262/U/593

In the Matter of Nether Mire,  
Kirkby Ireleth, South Lakeland  
District, Cumbria

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") of land known as Nether Mire, Kirkby Ireleth, South Lakeland District, being the land comprised in the Land Section of Register Unit No. CL54 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) County Council. At Entry No. 1 in the Ownership Section Mr John Edgar Barton of Gargreave Farm is registered as owner of the part of the said land enclosed within the line A-B on the Register map (being about 1/6th or less of the whole at the northeast corner), and such registration being undisputed became final on 1 August 1972. The Referred Part is the remaining part of the said land, of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

In a letter dated 15 October 1975 to the County Council, Solicitors for Mr John Edgar Barton claimed ownership of the land in this unit not registered in his name. Following upon public notice of this reference: (1) in letters dated 14 September 1987 and 6 January 1988, Solicitors for Mr Edgar Fisher Barton (son of Mr J E Barton) claimed he is the owner of the part of the said land north of the line C-D (marked on the Register map, such part being about half of the whole); and (2) in a letter dated 17 September 1987, Solicitors for Mrs Ellwood of Pear Tree Farm claimed she is the owner of part of the said land. No other person claimed to be the freehold owner of the Referred Part or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the Referred Part at Ulverston on 19 January 1988. At the hearing: (1) Mr Edgar Fisher Barton was represented by Mr J Hargreaves, solicitor of W C Kendall and Fisher, Solicitors of Ulverston, (2) Mrs Amy Ellwood was represented by Mr M S Graham solicitor of Townsend Livingston (formerly Ian MacI Livingston & Co) Solicitors of Ulverston, and (3) Cumbria County Council as registration authority were represented by Mrs F Harrison.

The land ("the Unit Land") in this Register Unit contains according to the Register 8.471 hectares (21.599 acres) and is situated by Pear Tree Beck a short distance west of the A595 road and between it and the railway. There are 6 registrations in the Rights Section each of a right from 10 October to 5 April to graze sheep cattle and horses to a limit of 10 gates (each sheep counting as 1 gate and each horse or head of cattle counting as 5 gates).

Mrs Amy Ellwood in the course of her oral evidence produced the conveyance specified in Part I of the Schedule hereto; the part of the Unit Land south of the line C-D is the same as OS Nos. 1243, 1312 and 1337 edged yellow on the plan attached to the said conveyance (total area 11.726 acres); she said (in effect):- She and her husband purchased Pear Tree Farm under the 1966 conveyance (AE/1). He died 14 March 1976. The parts ("the Ellwood Parts") of the Unit Land south of the line C-D are good pasture land, meadow, no rubbish. They had always (since their purchase) grazed the Ellwood Parts themselves. It is subject to rights of common (as above mentioned) but nobody other than themselves had (since their purchase) grazed on the Ellwood Parts except for the years before her husband's death, Mr Wilson (from Bank House) had put down two horses (during the October to April period).



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Mr Edgar Fisher Barton in the course of his oral evidence produced the documents specified in Part II of the Schedule hereto and said (in effect):- Mr Joseph Barton who died in 1926 and who is mentioned in the 1934 conveyance (EFB/3) was his grandfather; Mr John Edgar Barton specified in the two 1934 conveyances (EFB/2 and 3) was his father; Mrs Kathleen Mary Wilkinson specified in the 1984 probate and the 1986 assent (EFB/5 and 6) is his sister. The extent of Gargreave Farm as purchased by his father under the February 1934 conveyance was (and still is) as outlined in red by him on the map (EFB/1); mostly east of the A595 road but part on the west side extends up to the north half of the east boundary of the Unit Land. Of the parts ("the Barton Parts") of which he now claimed to be the owner, OS No. 1242 is included in the February 1934 conveyance with the rest of the farm; OS No. 1338 (the other of the Barton Parts) was bought separately; it was part of Headgate Farm owned by Mr Dare which he had in 1934 and which has since been split up. OS No. 1248 (the parts within the line A-B on the Register map) was acquired by his father separately; it was then part of Pear Tree Farm but being practically surrounded by Gargreave Farm it was a convenient purchase. The Barton Parts are good agricultural grazing land similar to the Ellwood Parts described by Mrs Ellwood.

Mr Graham called attention to the manorial matters specified in the February 1934 conveyance and suggested that historically the Unit Land was originally strip land (grazed or cultivated severally until October 10 and then thrown open until 5 April).

On the evidence above summarised I am satisfied that Mrs Amy Ellwood and Mr Edgar Fisher Barton are respectively the owners of the Ellwood Parts and the Barton Parts and I shall accordingly pursuant to section 8(2) of the Act of 1965 direct Cumbria County Council as registration authority: (1) to register Mrs Amy Ellwood of Pear Tree Farm, Kirkby in Furness as the owner of the part of the land in this register unit south of the line C-D on the Register map; and (2) to register Mr Edgar Fisher Barton of Gargreave Farm, Kirkby in Furness as the owner of the part of the said land comprised in this Register Unit whis is both (a) north of the line C-D on the Register map and (b) west, southwest or south of the line A-B on such map.

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.

TURN OVER



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SCHEDULE  
(Documents produced)

Part I: by Mrs A Ellwood

- AE/1            31 December 1966            Conveyance by John James Cartmel to Jack Ellwood and Amy Ellwood of first Pear Tree Farm containing 28.110 acres edged red on annexed plan, secondly .... OS 1318 ... 5.074 acres, Thirdly four enclosures OS Nos. 1243, 1312, 1337 and 1410 containing 1.558, 4.197, 5.971 and 1.459 (total 13.185) acres edged yellow on plan.
- AE/2            14 December 1972            Probate of will of Jack Ellwood who died 14 March 1976 granted to Amy Ellwood as sole executrix.

Part II: by Mr E F Barton

- EFB/1            --                                Copy (uncoloured) Register map showing OS Nos. 1241, 1242 and 1338 (all north of the line C-D) and 1241 being within the line A-B.
- EFB/2            31 August 1934                Conveyance (original much damaged apparently having got very wet) by John Thomas Dare to John Edgar Barton of close of land called Nethermire situate near Headgate Farm and containing 6.080 acres and Nos. 1338 on OS map.
- EFB/3            9 February 1934                Conveyance by Hannah Jane Barton as personal representative of Joseph Barton (he died 12 December 1926) and with the benefit of a compensation agreement dated 1 December 1933 on the extinguishment of the manorial incidents saved by the Law of Property Act 1922 conveyed to John Edgar Barton, Gargreave Farm consisting of Farm house, buildings cottages ... etc. containing about 115 acres particularly described in the First Schedule thereto (such Schedule included "1242 (OS No.), Nethermire (Description), 4.048 (acreage).
- EFB/4            --                                --
- EFB/5            11 September 1984              Probate of Will of John Edgar Barton (he died 27 April 1984) granted to Edgar Fisher Barton and Kathleen Mary Wilkinson as executors.

TURN OVER



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EFB/6 1 October 1986

Assent by J E Barton and K M Wilkinson as such personal representatives in favour of John Edgar Barton of First Gargreave Farm as vested in the Testator by conveyance of 9 February 1934, Secondly close called Nether Myre containing 6.080 acres numbered 1338 on OS map ...

Dated this 23rd \_\_\_\_\_ day of February \_\_\_\_\_ 1988

*A. A. Baden Fuller*

Commons Commissioner