



COMMONS REGISTRATION ACT 1965

Reference Nos. 20/n/66  
20/D/67  
20/D/68

In the Matter of Nethermire,  
Kirkby Ireleth, South Lakeland District,  
Cumbria.

DECISION.

These disputes relate to the registrations at Entry (D/66) No.3, (D/67) No.6, and (D/68) No.7 in the Rights section of Register Unit No. CL.54 in the Register of Common Land maintained by the Cumbria County Council and are occasioned by Objection No. 464, Objection No. 463 and Objection No.465 respectively all made by Mr. John Edgar Barton and noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Kendal on 5 March 1975.

At the hearing (1) Mr. Jack Ellwood and Mrs. Amy Ellwood, on whose application Entry No.3 was made, were present and were represented by Mr. E. Satterthwaite, solicitor of Thomas Butler & Son, Solicitors of Broughton in Furness; (2) Mr. Walter Dixon Knipe, on whose application Entry No. 6 was made, was present but not professionally represented; (3) Mr. George Wilson on whose application Entry No.7 was made, was present and was represented by Mr. Satterthwaite; and (5) Mr. J.E. Barton (Mr. Barton junior was present) was represented by Mr. B.J. Cubin, solicitor of W.C. Kendall & Fischer, solicitors of Ulverston. Mr. John Knight and Mrs. Dorothy Knight, on whose application Entry No 4 was made (this entry not being disputed has become final), were also represented by Mr. Satterthwaite.

The land ("the Unit Land) comprised in this Register Unit contains (according to the Register) about 8.741 hectares (11.212 acres), and is a little more than 250 yards west of the A595 road between Soutergate and Broughton on the north and Ireleth, Dalton and Barrow on the south. About half a mile west of the Unit Land is the railway between Barrow and Millom and a little beyond the railway the seashore (the Puddon Sands).

The Unit Land was registered as common land on the application of the Kirkby Ireleth Commoners's Association and this registration being undisputed has become final. There are six Entries in the Rights section as summarised in the schedule hereto; the line CD therein mentioned runs east and west and divides the Unit Land into approximately equal parts. In the Ownership section, Mr. J.E. Barton is registered as owner of the part of the Unit Land, enclosed with the line AB, and this registration being undisputed has become final; the line AB encloses the north east part (being about a sixth) of the part of the Unit Land north of the line CD

Mr. Cubin said that Mr. Barton in fact owned all the Unit Land north of the line CD.

21.595



-2-

The grounds stated in the Objection to Entry No.3 (Mr. & Mrs Ellwood) are: "That the right should comprise fewer sheep or cattle and should be limited to the right to graze 10 sheep or 2 head of cattle from 10th October in one year to 5th April in the following year. These numbers are considered reasonable in view of the other persons having like rights". The grounds stated in the Objection to Entry No.6 (Mr. Knipe) and to Entry No.7 (Mr. Wilson) are (in both cases); "That the right does not exist at all".

Mr. Wilson in the course of his evidence produced a conveyance dated 21 December 1957 by which Bank House Farm, consisting of a farm house, farm buildings, and land containing about 40.554 acres was conveyed to him "TOGETHER ALSO with the right of turning into the several closes or inclosures of land called the Nethermires situate lying and being in the said Parish at the proper times and seasons of the year as heretofore enjoyed with the said Farm...

He said (in effect):- In 1967 he sold off most of the land purchased under the 1957 conveyance; the right of common mentioned in the conveyance was not included in the 1967 sale; there was no mention of it in the conditions of sale. From 1935 until his 1957 purchase he was the tenant of Bank House Farm and had enjoyed the rights of common mentioned in the 1957 conveyance. In answer to questions by Mr. Cubin, he insisted: "the right is written into my deeds;" and that he still had it, because he had not sold it. As a result of questions by me, Mr. Wilson explained:- While farming Bank House Farm before 1967, he had sheep on Kirkby Moor (a moor about 4 miles long and between 1 and  $\frac{1}{2}$  a mile wide; numerous persons have grazing rights over this moor; the part nearest Bank House Farm and the Unit Land is called Bank House Moor, being an area which at some points is more than 1000 feet above sea level). His maternal grandfather was tenant of Bank House Farm in 1907 and he (Mr. Wilson; he is now 64 years old) became tenant in 1935 after his grandfather's death. Both he and his grandfather grazed sheep on Kirkby Moor (a flock was included in the tenancy but they had sheep of their own). The Moor is not suitable in winter for gimmer hogs (lambs born in the spring become gimmer sheep in November); accordingly they used to winter these animals on Bank House Farm and on the Unit Land. Of the three pieces of land to which the rights mentioned in Entry No.7 are attached; he had sold the piece northwest of Soutergate without any right of common attached to it; on the triangular piece is Bank House and this he still owns (his daughter occupies as his tenant); and the third piece is a lane with a stream beside it. In answer to further questions by Mr. Cubin he said:- When selling Bank House Farm (meaning the farmed part of the land he purchased in 1957) he at the time sold Ghyll End Farm; he included in the sale the rights over Kirkby Moor attached to Ghyll End Farm, but did not include the rights over Kirkby Moor attached to Bank End Farm or any rights over Nethermire; the tenant of the land — bought the heaved sheep on Kirkby Moor privately from him (Mr. Wilson).

Mr. Ellwood in the course of his evidence produced a copy of a conveyance dated 31 December 1966 by which he and his wife became entitled first to Pear Tree Farm containing about 28.110 acres with sheep grazing rights over Kirkby Moor, secondly to a field containing about 5.074 acres with which I am not concerned, and thirdly to four pieces containing about 13.185 acres. Of these four pieces,



-3-

about

three (containing/11.726 acres) are the part of the Unit Land south of the line CD. Such three pieces were expressed to be conveyed subject to "such rights of winter pasturage therein between the 10th day of October and 5th day of April in each year as may be enjoyed by the adjoining and adjacent owners as appurtenant to the property occupied by them".

Mr. Ellwood said (in effect):-He considered 40 sheep and 20 head of cattle (the number of animals he claimed to be entitled to graze over the whole of the Unit Land) to be a reasonable number. Because he owns part of the Unit Land, it is reasonable that he should be entitled to graze more than the others. He would if he could buy out the rights of Mr. Barton. On my drawing his attention to the expression "gates" in the Entry Nos. 1,2, 5 and 6 in the Register, he said that he did not understand the word; the expression 10 gates (used with reference to grazing) meant nothing to him. He conceded that Mr. Knight (Entry No.4) had rights over the Unit Land because Mr. Knight bought Bailiff Ground (meaning part of the land so called and now being farmed), but he did not concede that Mr. Knipe (Entry No.6) had any rights.

Mr. Knipe in the course of his evidence produced a copy of the conveyance dated 7 November 1966 by which he and his wife had acquired from Mr. A.J.E. Cooper a dwelling house and land now known as Bailiff Ground which they now occupy and which together contains a little less than 1 acre and a nearby Y shaped piece of land which appears to be or to have been a rough lane by the side of <sup>a stream</sup> leading from what is or was the farm yard to the nearby fields, and which contains (as I estimate from the Supplemental Register map) about 1/4 of an acre; (2) an advertisement (press cutting) of an auction on 1 December 1890 of two estates (apparently adjoining and both known as Bailiff Ground) containing the words: "Enjoyed with the estates is an unlimited right of pasturage from 10th October to the 5th April in six meadows situate near thereto and called Nether Mire"; and (3) an advertisement (broad sheet) of an auction on 13 March 1898 of Bailiff Ground in two lots (7 being 11a.2r.35p., and 8 being 1a.0r.33p) containing the words "Enjoyed with Lots 7 and 8 is an unlimited right of pasturage from 10th October to 5th April in six meadows situate near thereto and called Nether Mire".

The 1966 conveyance did not expressly convey any rights over the Unit Land. Mr. Knipe said (in effect):-The lands which before 1966 were known as Bailiff Ground contained between 20 and 30 acres and included a farm house and outbuildings. In 1966 these lands were split into 4 separate units; Mr. Knight bought the bulk of the lands, Mr. Metcalfe bought two fields of about 4 acres, and he (Mr. Knipe) and his wife bought the farmhouse, some outbuildings and the adjoining paddock and also about 120 yards of lane with some wasteland, a total of just over 1 acre. He said he had seen the Tithe Award which showed Bailiff Ground as two tenements and that his land was part of one of them. He contended that the rights over the Unit Land attached to Bailiff Ground were of considerable antiquity, and that as he now had part of Bailiff Ground he was entitled at least to a rateable part.

Mr. Satterthwaite produced a copy conveyance dated 30th March 1967 by which Mr. A.J.E. Cooper conveyed to Mr. J and Mrs. D. Knight six fields containing about 17.294 acres, "TOGETHER ALSO WITH so far as the vendor can lawfully grant the same the unlimited rights of pasturage from the Tenth day of October in each year to the Fifth day of April in each following year in six meadows... called Nethermire". The fields so conveyed were the bulk of the land before 1966 called Bailiff Ground.



No evidence on behalf of Mr. Barton was offered.

Those who gave evidence at the hearing all (expressly or impliedly) assumed that the Unit Land now is and from a time long before anyone now living can remember always has been, subject to grazing rights from 10th October to 5th April, that such rights if not now, were at any rate originally, attached to the nearby farms, that the origin of such rights is unknown, and that the number of animals which could be grazed in respect of any one right (except so far as it might be inferred from the undisputed Entries in the Rights Section) is also unknown.

With these assumptions in mind, I inspected the Unit Land with a view to deducing enough of the local history to enable me to determine these disputes. The Unit Land is enclosed on its east south and west sides (for the most part) by Pear Tree Beck. From the northwest corner and from a point near the northend of the east side lead off two tracks between hedges one to somewhere between the Unit Land and the Railway, and the other to the A59 road. These tracks appear to have been little used in recent years, being either overgrown, or very uneven. Nevertheless looking from the Unit Land at Bank House Moor, I have no difficulty in imagining that it might from time immemorial have been grazed by local farmers as Mr. Wilson described he and his grandfather had done.

The Unit Land must have been altered (as regards grazing for the better) as a result of the building of the Railway and of the better maintenance of Pear Tree Beck. Before the Railway, and possibly also before the A59 road was used for motor traffic, the Unit Land, instead of being as now inaccessible and deserted, would (so I infer from the hedges and tracks) have been regularly used by persons going to it along these tracks. I infer that these tracks led to buildings near the Unit Land of which there are now no remains.

I realise that some local historians may know the conclusions set out in the previous paragraph to be incorrect. But if I am to determine the disputes otherwise than by lot, I must as best I can deduce the history. I conclude that at one time the Unit Land was in relation to the surrounding farms more centrally situated and more important than now, and that each such farm (with the lands held with it) had over the Unit Land rights of herbage consistent with Mr. Wilson's description, and that (there being no reason for saying otherwise) all such rights were equal. Notwithstanding Mr. Ellwood's ignorance of the word "gate" I think many in this locality if not now, would in past years have understood its meaning. I conclude that the Unit Land has always been (and therefore still is) a gated pasture from 10 October to 5 April, on the basis that each of the surrounding farms which had grazing rights was entitled to the same number of gates as each of the others.

Any occupier of Pear Tree Farm who was minded to graze the Unit Land in excess of the gates attached thereto would, because the farm adjoins the Unit Land, have no difficulty in doing this; it maybe some have actually done so. But I do not from this, or from the circumstance that the ownership of part of the Unit Land and a grazing right over the remaining part went with the Farm, infer that this grazing right was or should be greater than <sup>that</sup> attached to any other farm. I conclude that the gates attached to Pear Tree Farm are the same as those attached to each of the other farms.



Having looked at the triangular Bank House piece owned by Mr. Wilson, and walked up his lane, for these lands, as they now are, to have the same number of gates as the others would be excessive and unrealistic. But in and before 1957 it would have been appropriate for Bank House Farm as then known to have the same number of gates as the other farms. There is no reason in law why Mr. Wilson should not have retained these gates when he sold off the greater part of the land then so known. None of the other Entries can be ascribed to the gates in 1957 attached to Bank House Farm, and I conclude that Mr. Wilson still owns them.

Before 1966, it would have been appropriate for all the lands then known as Bailiff Ground to have the same number of gates as each of the other farms. The difference in the appearance and area of the lands in the 1966 division taken by Mr. & Mrs Knight and of the lands taken by Mr. & Mrs Knipe, indicates that it would be reasonable for Mr. & Mrs Knight, and unreasonable for Mr. & Mrs Knipe to have these gates; the conveyance to the former expressly includes rights over the Unit Land, and the conveyance to the latter mentions such rights not at all. Rights attached to the land of Mr. & Mrs Knight have been registered, and being undisputed have become final. I conclude that these gates never passed to Mr & Mrs Knipe, and accordingly the registration at Entry No.6 should not have been made.

Because some of the Entries in the Rights Section being undisputed have become final I cannot as regards all the entries give effect to my conclusions in all respects. The nearest I can do is to measure the gates which I consider to be applicable to Entries Nos 3 and 7 with which I am concerned, by reference to Entries Nos 1,2 and 5 which have become final and which are consistent with the conclusions I have reached.

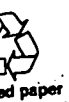
For the reasons set out above, I confirm the registrations at Entry Nos 3 and 7 in the Rights Section with the modification that in each case for the words in column 4 there shall be substituted the words; "To graze 10 sheep or 2 head of cattle or 2 horses or sheep, cattle and horses together to a limit of 10 gates, each horse or head of cattle counting as 5 gates and each sheep as 1 gate, from 10th October in one year to 5th April in the following year, both dates inclusive over the whole of the land comprised in this register unit", and with the further modification as regards the said entry No. 7 that of the three pieces of land edged red on the supplemental map mentioned in column 5, that northwest of Soutergate shall be removed from the map; and I refuse to confirm Entry No.6 in the Rights Section.

At the hearing it was agreed that I should make no order as to costs.

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 High Court.

SCHEDULE.

Entry No.	Applicant.	Right.	Attached Land
(1)	Clara Mason	10 sheep or 2 cattle or 2 horses or sheep cattle or horses together for 10 gates (horse or cattle each = 5 gates and 1 sheep = 1 gate); from 10 October to 5 April; over whole.	Cross Beck Final





-6-

(2)	Bridget Kendal Gibbs	ditto	Lane Head Farm	Final
(3)	Jack and Amy Ellwood	40 sheep or 20 cattle from 10 October to 5 April over part north of CD	Pear Tree Farm	Provisiona
(4)	John and Dorothy Knight	10 cattle and 24 sheep from 10 October to 5 April over whole.	part of <sup>Ground</sup> Bailiff Farm	Final
(5)	Margaret Shepherd	as at Entry No. (1) and (2) above.	Merebeck Farm	Final
(6)	Walter Dixon Knipe	Ditto	Bailiff Ground as shown on map	Provision
(7)	George Wilson	10 sheep, 3 cattle and 2 horses from 10 Oct to 5 April over whole	Bank House	Provision

Dated this 1stday of August 1975a. a. Baden Fuller

Commons Commissioner