



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/476

In the Matter of Wedholme Flow,
Kirkbride, Allerdale D

DECISION

This reference relates to the question of the ownership of land known as Wedholme Flow being the land comprised in the Land Section of Register Unit No. CL 313 in the Register of Common Land maintained by the Cumbria 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 a number of persons claimed ownership of various parts of the land in question ("the Unit land").

I held a hearing for the purpose of inquiring into the question of the ownership of the Unit land at Keswick on 23 March 1982. At the hearing there were the following appearances: (the references to numbered claimants are to claimants so numbered in the Schedule to this decision).

- (1) Mr G Hetherington, Chairman of and representing Newton Arlosh Parish Council
- (2) Mr J B Irving, representing Kirkbride Parish Council
- (3) Mr P W Pickles of the firm of Hough Halton and Soal, Solicitors, representing claimants No. 1
- (4) Mr S J Winter, of the firm of Robinson, Turner and Hughes, Solicitors, representing claimant No. 2
- (5) Mr F Lee, Secretary of and representing Claimant No. 3
- (6) Mr J.F Moffat, of the firm of Beaty and Company, Solicitors, representing Claimants Nos. 4 to 12, Mr J E Graham and Mr M J Graham
- (7) Mr B S Holmes, of the firm of Hetherington Ritson and Company, Solicitors, representing Claimants Nos. 22 to 25 and Mr Cleminson Abbott
- (8) Mr J Mawson, of the firm of Cartmel, Mawson and Main, Solicitors, representing Claimants Nos. 13 to 17
- (9) Mr G F Ritson, of the firm of Hetherington Ritson and Company, Solicitors, representing Claimants Nos. 18 to 21, Mr J G Hodgson and Mr D McNeill
- (10) Mr A R Nobbs, of the firm of Oglethorpe and Hough, Solicitors, representing Mrs D H Barron

The Unit land comprises an area of some 78 acres: the northern part includes two sections of moss or peat which were the subject of Inclosure Awards of 1814 and 1816, by which they were allotted to individuals in numbered strips. The two Parish Councils, while not claiming ownership, submitted



memoranda from which it appears that the two sections were separate from the Wedholme Flow Common land and should not have been included in the registration. However, the registration of the Unit land, including the two sections, as common land became final in 1981 and I have no jurisdiction to make any amendment to the area of Unit land which is registered. It was also pointed out in the memoranda that the allotments by the Awards of separate parcels to individual owners were made over 160 years ago and that proof of modern ownership is often impracticable. I appreciate that this is so but on this inquiry I can only deal with claims to ownership which are in fact submitted and on the evidence adduced in support of them: as regards parcels for which a claim is not made or, if made, is unsuccessful, no finding of ownership is made and no owner is registered.

A considerable number of the claims made were based on documentary evidence on which I am satisfied that the claim was established. It is, I think, unnecessary and would add to the length and complexity of this Decision to give details of the numerous documents involved, and in these cases I have set out in Part I of the Schedule to this decision particulars of the persons found to be owners, the parcels of the land owned and short particulars of the documents supporting their claims. Other claims require different consideration and these are discussed below: as regards such of these claims as succeeded, particulars of the owners and parcels of land to which ownership was established are set out in Part II of the Schedule.

I proceed now to consider the claims not dealt with in Part I of the schedule.

Claims by Mr F W Phillips

Mr Phillips, for whom Mr B S Holmes appeared, claims ownership of three pieces of the unit land; as to two of these, I am satisfied as to his ownership by the documentary evidence, and he is included as No. 22 in Part I of the Schedule where the two pieces are identified. The third piece ("the Green piece") is coloured green on the plan marked "BSH" attached hereto, and the claim is based on a Conveyance of 2nd February 1965 by which the personal representatives of Joseph Threlkeld conveyed to Mr Phillips a farm and land known as Low Eskrigg, itemised in the Schedule to the Conveyance, "together with such shares in Wedholme Moss and such rights of way thereto over OS No. 446 as the Vendors have". Mr Phillips gave evidence and said that the Green piece was some 4 or 5 acres in area and he understood that it represented the shares in Wedholme Moss referred to in the conveyance. He said that he did not take anything from the Green piece but that he shot over it and no one else did. I am not able to identify the Green piece with "such shares in Wedholme Moss" as the 1965 Vendors had, and indeed it appears from the language used that the Vendors did not commit themselves to identifying what those shares were; nor on Mr Phillips's evidence do I consider that his claim can be based on a squatters title. In the result I am not satisfied that he is the owner of the Green piece.



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Claims by Mrs D H Barron and Mr J G Hodgson

These claims, which in part conflict, relate to two strips of land situate in the N.W. area of the Unit land, an area which I understand was the subject of the Newton Arlish Inclosure Award of 1814. The two strips are shown on a plan produced by Mr Nobbs, appearing on behalf of Mrs Barron: one of the strips is marked 'Robert Waite 6.3.3' and the other 'Jonathan Skelton 8.1.4', the figures relating to the respective acreages. The former ("the Waite strip") was No. 138 on the Award, allotted to Waite, and the latter ("the Skelton strip") No. 130.

Mr Nobbs told me that his client had no modern title deeds relating to the strips, which had devolved under general devises of real property and assents containing no specific descriptions. Mrs Barron, giving evidence, said that she was now the owner of Orchard House Farm, Newton Arlosh, which is about 1 mile from the strips, and that her grandfather used to cut peat on the strips and her father to shoot over them. Mrs D G Barnes, Mrs Barron's mother, stated in evidence that her father in law (Mrs Barron's grandfather) and her husband used to dig peat from before 1939 until 1961 when her husband died: and since then her son-in-law had shot over them. Her father in law had died in 1956 and left all his property after her husband's death to Mrs Barron.

Mr Hodgson's claim is to the part of the Unit land coloured yellow on the plan Mr Ritson produced and this yellow piece comprised the Skelton strip and an adjoining strip ("the Kirkbride strip") which, it appears, is the westernmost strip on the Kirkbride award of 1816. Mr Hodgson's title is derived from a Conveyance to him dated 12 February 1971 of a property known as Shaw Hill Farm, of some 173 acres which is itemised in a Schedule to the Conveyance ("the 1971 Conveyance"). The vendors were Thomas and William Gate and earlier documents relating to their title have been produced. It is clear from those documents and ultimately a Conveyance to them dated 2 February 1933 of the Shaw Hill property that the title included the yellow piece, the Skelton strip being described in the Schedule to the Conveyance as OS 490 Pt. Moss Share area 8.1.4 and the Kirkbride strip as OS 457 pt. Moss Share area 9.0.10. These descriptions continue in subsequent documents, including the 1971 Conveyance, though in the latter the areas are slightly larger.

Evidence was given by Mrs J G Hodgson who said that since the purchase in 1971 they had occupied and used the yellow piece from which they cut peat: at the time of the purchase there was a fence across the northern section of the piece which was like a field: she had not seen Mrs Barron or members of her family on the piece or using it.

The evidence of Mrs Hodgson on the one hand and Mrs Barron and Mrs Barnes on the other to some extent conflicted. I think all three were truthfully saying what they believed to be the use made of the Skelton strip. Mr Nobbs submitted that Mrs Barron had a superior title by adverse possession: but, in my opinion, Mr Hodgson's claim based on the documents of title and acts of user prevails and being satisfied that he is the owner of the yellow strip I shall direct the Cumberland County Council as registration authority to register him accordingly. (Schedule Part II No. 2)

As regards the Waite strip, as to which Mrs Barron was the only claimant, I think that her evidence and that of Mrs Barnes as to acts of ownership since before 1939 sufficiently establishes ownership and I shall direct the County Council to register Mrs Barron as the owner of that strip. (Schedule Part II No. 3)



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Claim by Estate of Joseph Wills

This claim is by the surviving personal representatives of Joseph Wills, for whom Mr Mawson appeared. It is a claim to a strip which is marked Joseph Wills on a plan of the Shaw Hill Estate and which adjoins the western boundary of the Skelton Strip (see p. 3). By a Conveyance dated 8 February 1856 there was conveyed to John Wills property which included a "Moss Share". Mr Mawson told me that this property passed to George Wills under a general devise in the Will of John. George died in 1873 and by his will left the property by the description of his "estate at Angerton" to Joseph Wills.

Joseph Wills died on 24 January 1946 and probate of his will was granted on 14 June 1946 to his son Joseph Twentyman Wills and three daughters. The survivors of the four executors are two of the daughters Ethel M Wills and Mrs Elizabeth Kimber who, as personal representatives of Joseph Wills, are the present claimants.

Evidence was given by Mr Anthony J Wills the son of Joseph Twentyman Wills. He identified the strip on the Shaw Hill Estate plan and said that his father had since at least 1960 occupied the strip as part of the family farm and cut peat from it and that since his father's death in 1973 he had continued to do so. On the evidence I am satisfied that the claimants are the owners of the strip. (Schedule Part II No. 1).

Other Claims

- (1) Mr James E Graham and Mr Michael J Graham, who were represented by Mr Moffatt, each claimed ownership of part of the area hatched red on the plan attached to this decision and marked M. A Conveyance of 1962 to J E Graham included part O.S. No. 243 (the hatched red area) but it is not possible to identify which part. Mr M J Graham claims 6 acres, part of O.S. No. 243, but again it is not possible to identify the 6 acres claimed. In these circumstances I am not able, in either case, to find ownership established of a specific part of the Unit land.
- (2) A claim by Mr Donald McNeil, for whom Mr Ritson appeared, was not pursued since it emerged that the title under which he claimed was leasehold, not freehold.
- (3) Mr Cleminson Abbott claimed ownership of two strips of the Unit land coloured purple on plan "BSE". Mr Holmes, who appeared on behalf of the Claimant, produced an Assent in his favour dated 27 September 1968 and made by the personal representative of Fanny Abbott. The Assent comprised a farm and land known as Black Horse Farm, the parcels of which were itemised in a Schedule and included Mossland of 4 acres, with a Tithe Number 409. It is not possible to identify the two strips as comprised in the Assent. Giving evidence Mrs Winder, a niece of Mr Abbott, said that the two pieces were Nos. 120 and 127 on the Kirkbride Inclosure Award of 1816, that they belong to her uncle's two farms - Black Horse and Lowther, and that she and her uncle walk over them.

On this evidence I am not satisfied that the claim to ownership by Mr Abbott has been made out.



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The two parts of the Schedule contain particulars of the cases in which I am satisfied as to ownership, and I shall direct the Cumbria County Council as registration authority to register, under Section 8 (2) of the Act of 1965, the claimants named in column 1 of the Schedule as owners of the respective parts of the Unit Land indicated, opposite their names, in Column 2. As to those parts of the Unit Land of which ownership has not been established, they will remain subject to protection under Section 9 of the Act of 1965.

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

26 July

1982

L. J. Morris Smith

Commons Commissioner

NOTE: The plans referred to in the Schedule may be inspected at the offices of the Cumbria County Council during normal office hours.

OWNER (a)

SCHEDULE
PART I
LAND OWNED

TITLE DEEDS

- | | | |
|---|--|---|
| 1. John B. Paisley, Brian Paisley, Alan Paisley, Keith Paisley, Colin Paisley, of Oulton House Wigton Cumbria | strip coloured Green on attached plan marked "p" | conveyance 26/11/76 (1) Leonard Gate (2) J B, B, A, K, C, Paisley |
| 2. David Gunson Quayle and Gwendoline Quayle of Moor dyke Farm Alkton Wigton | areas coloured Yellow and Yellow hatched Green on attached plan marked "q" | conveyance 30/3/1956 (1) Earl of Lonsdale (2) A J G Lewis and others (3) W J and E Little: Conveyance 30/11/1972 (1) W J and E M Little (2) D G and C Quayle |
| 3. Cumberland Moss Litter Industry Ltd of Fison House Princes St, Ipswich | areas edged Red on attached plan marked "A" | conveyance 21/8/1957 (1) H & L Engelen (2) Cumberland MLI Ltd: Conveyance 18/2/19 (1) M C Nicholson (2) Cumberland MLI Ltd |
| 4. Stanley Armstrong, Pear Tree Farm Newton Arlosh Cumbria | strip coloured ^{edged} Green and arrowed "a" on attached plan marked "m" | conveyance 20/12/60 (1) Albert W Dixon (2) S Armstrong: Statutory Declaration 2/4/1982 by S Armstrong |
| 5. Hetty Fyrth, The Joiners Arms Newton Arlosh Cumbria and Brenda Jean Fyrth, Fell View, Newton Arlosh | strip edged Red and arrowed "b" on plan "m" | Assent 18/1/1936 in favour of William S Marshall: Conveyance 7/7/1978 (1) William S Marshall (2) J E and Hetty Fyrth Deed of Gift 9/9/1979 (1) Hetty Fyrth (2) Brenda J Fyrth |
| 6. John W Roper & Esther Roper of Knowe Hill, Kirkbride, Cumbria | strip edged Blue and arrowed "c" on plan "m" | conveyance 30/4/1964 (1) James W Rae (2) John W and E Roper: Statutory Declaration 23/5/1982 by J W Roper |
| 7. John W Roper, Esther Roper of Knowe Hill, Kirkbride and Joseph K Roper of Knowe Hill | piece of land hatched Blue and arrowed "d" on plan "m" | conveyance 25/4/1956 (1) T W Johnston, J M Johnston, E M Johnston (2) J W Roper, E Roper and J K Roper. |
| 8. George Anderson Byers and Catherine Byers of Dockray Bank Wigton Cumbria | strip hatched Green and arrowed "e" on plan M | conveyance 8/11/1957 (1) Joseph Addison Byers (2) J A Byers and George Anderson Byers (3) Catherine Byers (4) G A Byers |



9. ~~Isabella~~ Reed and John Joseph Reed of Mosside House Farm Holme East Waver Cumbria

Strip coloured Blue and arrowed "f" on plan "M"

Conveyance 15/11/1965 (1) E E Jennings and M B Macés (2) John Reed, J Reed and J J Reed

10. James Robert Burfield of Selby House Saltcoats, Kirkbride Cumbria

(1) strip coloured Green and arrowed "g" on plan "M" (1) strip coloured Yellow and arrowed "h" on plan "M"

(1) Conveyance 16/12/1943 (1) Margaret H Hayton (2) Charles E Burfield: Deed of Gift 30/7/1979 (1) C E Burfield (2) J R Burfield (1) Conveyance 2/2/1962 (1) John Goves (2) J R Burfield: Statutory Declaration 2/4/1982 by J R Burfield

11. James Edison Graham of Broom Park, Kirkbride

Strips coloured Purple and Red and arrowed "j" on plan "M"

Conveyance 1/9/1943 (1) David Frying (2) George Whealleans: Conveyance 5/1/1970 (1) G Whealleans (2) J E Graham

12. William Bell and Eileen Bell (jointly) of Saltcoats Kirkbride

Strip edged Purple and arrowed "k" on plan "M"

Conveyance 2/2/1943 (1) Henry Brough (2) William Thomas Barnes: Assent 31/12/1962 Personal Representative of W T Barnes to Eileen M Barnes: Conveyance 2/2/1974 (1) Eileen M Bell (2) William Bell: Statutory Declaration 14/5/1982 by J E Graham

13. John Brown (senior) of Orchard House Kirkbride

The three strips numbered 138, 139 and 140 on the attached plan marked "Plan B" ("the B Plan")

Examined Abstract of Title of H J D Yardley: Conveyance 28/6/1963 (1) H J D Yardley (2) John Brown

14. John Brown (junior) of Tow Hill Kirkbride

The three strips numbered 122, 124, and 146 on the B Plan

Conveyance 17/2/1932 (1) J L Hodgson (2) John Brown: Assent 5/4/1947 in favours of Thomas Brown by P R of John Brown: Conveyance 20/10/1978 (1) E G Hargreaves (P R of Thomas Brown) (2) John Brown: Statutory Declaration 22/3/1982 of John B

15. Elizabeth Esther Kimber of Whitting Irthington, Carlisle and Ethel Mary Wills of 124 Brook Lane Chester

The land edged Red on attached plan marked exhibit "E E K 2"

Conveyance 11/11/1909 (1) Ann Bannerman and Liz Roddam (2) Joseph Wills: Assent 5/4/1947 by P. Rs of Joseph Wills in favour of E E and E M Wills: Statutory Declaration 22/3/1982 of E E Kimber

16. George Hetherington and Allison Patricia Hetherington of Middle Farm Newton Arlosh Kirkbride

The land edged Red on Plan marked "G H I" ^{attached} and identified as "G HETHERINGTON"

Indenture 20/3/1920 (1) Capital & Counties Bank and others (2) Thomas Barnes: Conveyance 15/5/19 (1) Thomas Barnes (2) G and A P Hetherington: Statutory Declaration 22/3/1982 of George Hetherington



17 Lancelot Mitchell Hill
of Newton Holme Farm Kirkbride

Land edged Red on attached
plan marked "L M H"

15 Glenville Forrester Ritson of
39 High Street Wigton and
Douglas Arthur Gibson of
Southwaite Lodge Southwaite
Cumbria (~~Westlly~~)

Strip coloured Yellow on
attached ^{plan} marked "Mr J Barnes"

14 William McKie of Lawrenceholme
Oulton near Wigton

A. pieces of land edged
Yellow and arrowed "
Lawrenceholme" on attached
plan marked "Mr W McKie (1)"

B. Piece of land edged Yellow
and arrowed "Dixons Land"
on plan "Mr W McKie (1)"

C. Pieces of land ^{edged} coloured
Yellow on attached plan
marked "Mr W McKie (2)"

20 James McKie of Wedholme Hill
Oulton nr Wigton

Pieces of land edged
Yellow on attached plan
marked "Mr J McKie"

Conveyance 31/12/1936 (1) W Leathers (2)
J M Hewitt (3) Jos. Harrison; Conveyance
15/2/1951 (1) Jos. Harrison (2) D and E B
Ireland; Conveyance 8/5/1959 (1) D and E B
Ireland (2) L M Hill; Statutory Declaration
15/4/1932

Will dated 22/3/1924 of John Wood Barnes;
Probate dated 12/8/1925; Statutory Declaration
of Thomas Gate dated 17/6/1969; Probate of
of John Barnes granted 25/2/81 to G F Ritson
and D A Gibson

A. Examined Abstract of Title; Conveyance
2/2/1948 (1) Ethel M Wilks and others (2)
Thomas F McKie; Deed of Gift dated 17/1/1972
(1) Thomas F McKie (2) William McKie

B. Conveyance dated 12/3/1915 (1) Robert M
Dixon and others (2) J Jefferson (3) Robert
Dixon and another (4) Daniel Dixon; Assent
dated 25/10/1961 by Personal Representative
D. Dixon in favour of John Dixon; Conveyance
dated 17/8/1973 (1) John Dixon (2) William
McKie

C. Conveyance dated 19/6/1956 (1) F G C Abdy
and Gladys M Little (2) Thomas F McKie; Assent
dated 11/12/1978 (1) Personal Representative
of T F McKie (2) William McKie and others (3)
William McKie and others; Conveyance dated 12
1978 (1) James McKie and others (2) James Mc
and others (3) William McKie

Conveyance dated 12/5/1961 (1) Margaret Litt
(2) J McKie; Deed of Ratification dated 12/10
(1) Wilfred Jordan (2) J McKie; Conveyance da
8/6/1962 (1) William L Walker (2) J McKie



21. Madeleine Susan Briggs
of 34 Waterleat Close
Pailinton Devon

Pieces of land edged
Yellow on attached plan
marked "Mrs M S Briggs"

22. Frederick William Phillips
of The Grassings, Kirkbride,
Cumbria

Pieces of land coloured
pink and blue on
attached plan marked
"BSH" *and both hatched red*



23. Doris Mary Burns of Black
House Farm, Kirkbride,
Cumbria

Piece of land coloured
yellow on plan "BSH"

Kathleen Gladys Johnston of
the Blacksmiths Sandholes
Hethersgill Kirklington,
Cumbria and Cynthia Fox
of Corbett House, Oulton,
Wigton, Cumbria

The piece coloured purple
and arrowed 'Hardy' on
plan "BSH"

25. John Wilson Carruthers and
Shirley Carruthers of
Shaw House Farm, Kirkbride,
Cumbria

The piece coloured brown
and arrowed 'Carruthers'
on plan "BSH"

Vesting Assent dated 9/12/1946 by Personal
Representative of Mary Susanna Nicholson
in favour of Maurice Charles Nicholson
Assent dated 18/11/1973 by Personal
Representative of Maurice C Nicholson
in favour of M S Briggs (then M S Hewitson)

Deed of Partition dated 30/6/1926 (1) F G C
Abbott, G M McKie and Ruby M Morris (2), (3),
(4) F G C Abbott and/or Ruby M Morris: Deed
of Gift 19/3/1963 (1) Ruby M Phillips (2)
F W Phillips and Marion Clark: Conveyance (1)
Marla Clark (2) Marion Clark and F W Phillips
(3) F W Phillips

Deed of Partition dated 30/6/1926 as above:
Assent 27/9/1968 by Personal Representative
of Fanny Abbott in favour of Doris Mary Burns
Conveyance dated 11/4/1933 (1) Joseph S Graham
(2) Annie E Hardy: Grant of Administration
dated 14/7/1981 of estate of Annie E Hardy to
K G Johnston and C Fox

Conveyance dated 26/4/1924 (1) Geo. Nedham (2)
Ecclesiastic Commissioners (3) Patrons of the
Benefice of Kirkbride (4) Robert W Stovey
Assent dated 16/11/1964 in favour of John
Stovey conveyance dated 27/1/1969 (1) John
Stovey (2) Frederick Norman, Mary Norman and
Shirley Carruthers.
Deed of Gift dated 27/2/1981 (1) Frederick and
Mary Norman (2) F and M Norman and S Carruthers
and (3) John W and Shirley Carruthers

SCHEDULEPART IIOWNER(S)LAND OWNED

- | | |
|---|---|
| 1. Elizabeth Esther Kimber of
Whitrigg, Irthington, Carlisle
and Ethel Mary Wills of
124 Brook Lane, Chester | Strip marked 'Joseph Wills' on
attached plan marked 'SH' |
| 2. John Geoffrey Hodgson of Shaw
Hill Farm, Kirkbride, Cumbria | Strips edged yellow on attached
plan marked "J G Hodgson" |
| 3. Daphne Hannah Barron of
Fell View, Bassenthwaite | Strip marked 'Robert Waite' on
attached plan marked 'DHB'. |

