



In the Matter of The Intack, Kirkby
Ireleth, South Lakeland District,
Cumbria

DECISION.

This reference relates to the question of the ownership of land known as The Intack, Kirkby, Ireleth, South Lakeland District, being the land comprised in the Land Section of Register Unit No. CL.207 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 Mr. Jack Ellwood and Mrs. Amy Ellwood and their solicitors and the solicitors for their vendors (the Executors of Rowland Livesey) wrote either claiming or giving information about the ownership of this land, and Mr. R. Wearing wrote saying that he is the trustee in the estate to the Exors. of the late John Wearing who was the owner. No other person claimed to be the freehold owner of the land in question 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 land at Kendal on 5 March 1975. At the hearing (1) Mr and Mrs Ellwood were represented by Mr. E. Satterthwaite solicitor of Thomas Butler & Son, Solicitors of Broughton in Furness; (2) Mr. Ralph Wearing attended in person; and (3) Kirkby Ireleth Commoners Association were represented by Mr. W.D. Knipe their secretary.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) about 1.367 hectares (3.37 acres). Two rights attached to (1) Wellwood Farm and (2) Far Houses Farm to graze cattle (in each case two head) have been registered in the Rights Section on the application of (1) Mr. John Livesey as sole surviving executor of Rowland Livesey, and (2) Mr Ralph Wearing respectively.

Mr. J. Ellwood in the course of his evidence produced a conveyance dated 4 July 1969 by which Mr. J. Lovesey as surviving personal representative of Rowland Livesey (he died 4 March 1966) conveyed to him (Mr. J. Ellwood) and his wife (Mrs. A. Ellwood) Wellwood Farm (about 78½ acres) together with (among other property) "ALL THAT one undivided fourth part or share of and in all an inclosure called Intack adjoining the property last described and numbered 256 on the said Ordnance Survey plan...". The Unit Land is so numbered on the Register map.

Mr. Wearing who is 67 years of age, in the course of his evidence produced a conveyance dated 11 August 1920 by which the Executors of John Ashburner (he died on 21 December 1971) and his mortgagees conveyed to Mr. John Wearing the freehold estate known as Far Houses (about 56½ acres) "And also (among other property) ... all that one third part of one half part of and in all that close or enclosure



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of land called Intack adjoining the lastly described premises containing by admeasurement three acres one rood five perches or thereabouts..."; Ease Meadows are "the lastly described premises". Mr. Wearing said (in effect):- Mr. John Wearing was his father; he died in 1941. He and his brother are the executors and trustees of the will which they had proved. He had lived at Hill Farm (next to Far-Houses) since he was five years old. He is now the tenant, his father from 1912 was tenant before he bought it. He remembered his father buying Far Houses. He and his father have grazed the Unit Land. The other share in the Unit Land is now owned by Mr. Isaac Stephenson.

The evidence outlined above shows that on 31 December 1925, immediately before the commencement of the Law of Property Act 1925, the Unit Land was then held in undivided shares with in the meaning of paragraph 1 of Part IV of the First Schedule, so that by the operation of the Act the legal estate in fee simple then vested in the persons specified in the said Part IV on the statutory trusts for sale in the Act mentioned. On being informed that Mr. Stephenson would be likely to co-operate in the making of any appointment of new trustees which might be practicable, I said at the hearing that I would delay giving my decision for three months so that those concerned could consider whether they could send to me an appointment of new trustees and such evidence as might be appropriate to show that the appointment so made was effective.

I have received no such appointment, although Mr. Wearing has sent me a copy of his father's will dated 10th December 1940 and the probate granted to his brother Mr. John Henry Wearing and himself, and solicitors acting for Mr. I. Stephenson of Tenterbank Farm, Grizeby, Kirkby in Furness have sent me a conveyance dated 16 November 1949 by which a farm called Tenterbank containing about 78.964 acres was conveyed as "more particularly described in the schedule hereto"; the schedule lists numerous O.S. map (1913 edition) numbers (their acreage totalling "78.964") and including at the end "256 Undivided Right" (without any mention of acreage). I can identify "256" with the Unit Land, but I cannot from the conveyance determine whether the "Undivided Right" comprises the whole or only some of the 7/12th parts not included in the 1920 and 1939 conveyances. It may be that the advantage of making an effective appointment would be disproportionate to the trouble and the expense involved; so I must give my decision on the information I have.

On the evidence outlined above, it is likely that on 31 December 1925 the legal estate in the Unit Land under the 1925 Act vested either in accordance with sub-paragraph (2) or in accordance with sub-paragraph (4) of the said paragraph 1 of Part IV of the First Schedule, but I cannot say which. However I am satisfied that the legal estate (which is the only estate in the Unit Land with which I am under the 1925 Act concerned) must certainly be in the trustees of the statutory trusts, and because no trust can fail for want of a trustee, I shall under section 8 (2) of the 1925 Act direct the Cumbria County Council to register as the owner of the Unit Land the Trustee or Trustees of the statutory trusts for sale which under the transitional provisions of the Law of Property Act 1925 applicable to land held immediately before the commencement of the Act in undivided shares became applicable to this land by reason of Mr. John Wearing (now deceased) of Hill House Farm, Kirkby Ireleth being then entitled under a conveyance dated 11 August 1920 to one third of one half thereof.



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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 this 9th —

day of July —

1975

a. a. Baden Fuller

Commons Commissioner