



COMMONS REGISTRATION ACT 1965

Reference No.20/U/21

In the Matter of Wennington Waste,  
Wennington, Lunesdale R.D., Lancashire

DECISION

This reference relates to the question of the ownership of land known as Wennington Waste, Wennington, Lunesdale Rural District, being the land comprised in the Land Section of Register Unit No.C.L.7 in the Register of Common Land maintained by the Lancashire 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 no person claimed to be the freehold owner of the land in question and no person claimed 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 Preston on 8th June 1972.

At the hearing claims of ownership were made (i) by Mrs. F.M. Saunders, Mr. C.J.H. Saunders and Mr. E.S. Temple ("the Executors"; they were represented by Mr. C.G.C. Nickel of Swainson Son & Reynolds, solicitors of Lancaster); (ii) by Wennington Parish Council ("the Council"; they were represented by Mr. J.L. Gillibrand of Cglethorpe Sturton & Gillibrand, solicitors of Lancaster) and (iii) by Mr. A.W. Taylor (he appeared in person).

The land in this Register Unit consists of two long and narrow strips separated by the River Wenning, which here runs approximately from east to west. The greater part of the northern strip fronts on its north side on a road being one of the public highways from the Village of Wennington which is nearby on the west. Across the northern strip a track runs from the road to the River; on its way it crosses by a bridge a small stream; the track is convenient for watering cattle and for collecting gravel from the bed of the River. The southern strip is for the most part trees and rough scrub; by reason of the nearby railway line it is somewhat inaccessible and no witness suggested that it had or could be used for grazing. The northern strip is scrub and trees similar to but less rough than the southern strip; there is some grass there but (as stated below) there was some conflict as to the extent to which it had been used for grazing. The strips are an amenity providing a view from the road and a place (although in parts rough) to walk over. There is a seat in the middle of the northern strip. Both strips include the River bank, and are therefore of value for fishing.

The Executors are the personal representatives of Mr. W.M. Saunders who died on the 25th January 1957. They claimed that he was the lord of the manor of Wennington, that the land was part of the manorial waste and that the soil was therefore vested in him and had devolved on the Executors under the probate of his will granted to them on the 8th January 1958.

On behalf of the Council, evidence was given by Mr. E. Atkinson: he is their Chairman, he was born in 1910 and has lived in Moss House (near the



land) for the last 50 years. The Council was formed in 1961. He described the land in detail. Mr. Gillibrand in giving evidence on behalf of the Council produced an Award (with map annexed; "the Tithe Map") apparently approved on the 17th December 1850 by the Tithe Commissioners. The Award was in the custody of the Vicar of Melling. By the Award, the valuer apportioned "the Rent Charge in Lieu of Tithe in the Township of Wennington in the Parish of Melling". On the evidence I was able to identify the southern strip with No.226 and the northern strip with the whole of No.214, part (the "215 piece") of No.215 and part of No.239 on the Tithe Map. In the schedule to the Award Nos.214, 226 and 239 are respectively described as "Waste", "Wood and waste" and "Waste" and are grouped with a number of other numbers described either similarly or as "Road" or "River", totalling 33a. 3r. 9p. In the schedule under the heading "Land Owners" and "Occupiers" all this group of numbers are marked "Township of Wennington" and "Themselves" respectively; they are all treated as not tithable. In the schedule there are numerous numbers grouped together under the ownership of "Saunders W.A.F." with a total area of 283a. or. 35p. of which 281a. 1r. 35p. marked in the occupation of "Himself" and the remainder 1a. 7r. Op. in four separate occupations (I assume of his tenants). No.215 is included amongst other tithable lands not in the ownership either of "the Township" or "Saunders W.A.F."

Mr. Temple, one of the Executors, in his evidence on their behalf said:- Mr. W.M. Saunders was the eldest lineal male descendant in the direct line of Mr. W.A.F. Saunders who became entitled to the lordship of the manor of Wennington, to Wennington Hall and much land in the neighbourhood under an indenture dated 23rd February 1842 held by the Executors. Mr. W.M. Saunders succeeded to the "Wennington Hall Estate" about the beginning of the 1914-1918 war, he himself having lived first at Cravens Farm and later at Wenning Cottage (both of which are near to the land). Mr. W.M. Saunders since Mr. Temple knew him, had always been the lord of the manor. The Estate was advertised for sale by public auction in 23 lots on the 28th July 1961 (it then included land additional to that comprised in the indenture of 23rd February 1842); lot 9 was "the Lordship of the Manor of Wennington ... said to carry the sole entitlement to the River Wenning Fishing and coloured pink on the plan"; the pink colour included the land in this Register Unit. Lot 9 was withdrawn from the sale before the auction but the other lots were sold. Mr. W.M. Saunders fished the River himself as also had Mr. Temple (who was his son-in-law) and Mrs. F.M. Saunders (his widow); and the Executors had received rent for the fishing. Mr. Temple in 1967 applied for the registration under the Act of this land as common land because he had always known it as "Wennington Waste" and assumed in the circumstances above summarised that it was manorial waste. Until the hearing before me, he knew nothing of the 1850 Award.

By the indenture of the 23rd February 1842 (produced to me by Mr. Temple) the hereditaments expressed to be conveyed included the manor or lordship of Wenning, the mansion house, Wennington Hall (disposed of before the death of Mr. W.M. Saunders by him or one of his predecessors), other hereditaments in the township of Wennington having an area of 289a. 1r. 37p. and various other hereditaments and "together with pastures ... wastes, waste grounds, ... commons, fishings, ... whatsoever to the said manor ... respectively belonging or in anywise appertaining or held or occupied and enjoyed therewith ..."



-3-

Mr. A.W. Taylor who is 63 years of age has lived since about 1923 in Wennington at Yew Trees (a farm near the land). He and his father were successively tenants of Mr. W.M. Saunders (for whom his father worked) until 1961 when he became the owner (having bought the farm from the Executors at the auction). In his evidence he said that since 1923 he and his father successively had grazed the northern strip; Mr. W.M. Saunders had said that they could. In cross-examination he said that he had taken cows down to water them at the River and described how he had on the northern strip pegged 14 cows for about one week in the summer every year, this being all the grass there is. He said his purpose was to keep the grass down; it looked tidier.

On behalf of the Executors Mr. E. Harding who had lived in the Village for 50 years and is a retired game keeper also gave evidence. He had been employed by Mr. W.M. Saunders and Mrs. F.M. Saunders to look after the River for them. He regarded parishioners as having rights to graze which rights were only exercised by Mr. Taylor because he was the only one who had any stock nearby.

Mr. Atkinson on being recalled said:- Although he passed over the land three or four times a week he had never seen any cattle grazing there and that the Council had mown with a mechanical mower the bit of grass near the seat. Mr. W.M. Saunders was chairman of the Parish Meeting as well as lord of the manor; most of the inhabitants of the Village were either his tenants or worked for him, so nobody would object to anything being done on the land which he permitted.

Evidence on behalf of the Council was also given by Mr. J.R. Holt who had been chairman from 1961 for about 5 years. He had never seen any cattle of Mr. Taylor's on the land, although because the land was sloping they may have been out of sight. The right to fish in the River had been a matter of local controversy, there being some who claimed that the Executors had in 1961 no right as against the parishioners to include the fishing in the auction.

The evidence of Mr. Taylor was I think unreliable. Considering (perhaps with good reason on common sense grounds) that he ought to have some rights over the land and finding that ownership was ~~not~~ in issue, he had, I think, somehow convinced himself that he had over the years pegged his cattle in the way he described to me. Although it is possible or even probable that he from time to time drove his cattle over the track to water them at the River and allowed them to wander around to get such grass as there was, he failed to convince me that they had been pegged, or otherwise grazed in any now significant way. If he had pegged them, Mr. Atkinson and Mr. Holt (whose evidence I accept) would I think have seen them. Even if they had been so pegged, I would not, I think, necessarily have been satisfied that Mr. Taylor had taken possession of the land or done anything else upon which I ought to be satisfied that he was the owner. But being on his evidence and the evidence given by other witnesses unable to form any conclusion as to the extent of the use he made of the land for cattle or otherwise, I am not able to consider whether I should ascribe what he did either to some right vested in him as owner of Yew Trees to water his cattle (an easement with which I am not concerned) or to some right as such owner to graze his cattle (a right which may have become void because he failed to register it under the 1965 Act) or to a right of ownership or to some other right. Accordingly I reject the ownership claim by Mr. Taylor.



The circumstance that the registration under the Act as Common Land has become final and that the definition in the Act of "common land" includes "waste of a manor" does not, I think, create any presumption in favour of the Executors that the land is waste land of the manor of Wennington so as to support their ownership claim. I must, I think, deal with such claim without regard to what the issues might have been if I was hearing a dispute arising out of an objection to such registration.

From the evidence of Mr. Temple, which on this point was confirmed by other witnesses, I conclude that Mr. W.M. Saunders was owner in possession of the manor of Wennington. But I cannot, I think, conclude that the Executors as his successors in title are the owners of the land unless either it was included in the 1842 indenture as "waste belonging or appertaining" or they have somehow without any conveyance (none other than the 1842 indenture was suggested) become owners.

It was at the commencement of the hearing agreed that my decision would not affect any claims the Executors and the Council might have against each other in respect of the fishing in the River. But I cannot, I think, in considering the evidence given before me disregard the concern of Mr. W.M. Saunders and the Executors for the fishing. Accordingly, although they may have fished and received rent for the fishing as of right, I regard these activities (whatever their evidentiary value may be in support of a claim to a right for the purpose of fishing to walk over or stand on the River bank) as having little evidentiary value in support of the Executors' ownership claim. I regard similarly the activities of Mr. Harding: he was, I think, primarily concerned with protecting the fishing rights which he believed his employers had.

Although the erection of a seat and the mowing of grass by the Council supports their claim a little, my general view is that the evidence of recent events considered by itself is inconclusive as to the land belonging or appertaining to the manor or as to it being in the ownership either of the Executors or the Council. Such being my view, I can, I think, treat the 1850 Award as decisive.

I read the Award as showing that the valuer then thought that the land he described as owned by "the Township" was vested in the churchwardens and overseers of the township of Wennington, as appointed under section 21 of the Poor Relief Act 1662. As such they would have been entitled to hold land under sections 12 and 17 of the Poor Relief Act 1819. They would have been the proper officers to hold land for the Township (which having regard to the 1662 Act is in this respect in the same position as a parish) even although the land was not held or acquired for "Poor" purposes, see Haigh v. West 1893 2 Q.B.19 and compare Wylde v. Silver 1963 1 Ch.243.

In 1850 Mr. W.A.F. Saunders must, I think, have been an important land owner in the Township. Quite apart from the Schedule he is particularly mentioned in the Award in relation to an annual sum instead of "tithes of hay .... etc." arising from Wennington Hall of which he was then the owner. That the valuer would have described land as owned by the Township without it somehow coming to the attention of Mr. W.A.F. Saunders or those representing him is, I think, unlikely. I infer therefore that he in 1850 was agreeable to the land being treated as not being part of the waste



-5-

appertaining to the manor and that he would only have been so agreeable if it did not belong or appertain to the manor eight years before, when the 1842 indenture was made.

I conclude therefore that the Council has disproved the ownership of Mr. W.A.F. Saunders in 1850 and of the Executors now and proved that in 1850 the land was owned by the Churchwardens and Overseers of the Township of Wennington.

In my opinion the Council are, as they claimed before me, successors in title of the Churchwardens and Overseers under the Overseers Order 1927, and the Local Government Act 1894. By section 5 of the Interpretation Act 1888, now replaced by the definition in section 68 (4) of the Rating Act 1925, having regard to the section of the 1662 Act above quoted, the Township of Wennington is "parish" within the meaning of the 1894 Act and the 1925 Act.

For these reasons I am satisfied that the Wennington Parish Council is the owner of the land and I shall accordingly direct the Lancashire County Council, as registration authority, to register Wennington Parish Council as the owner of the land.

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.

a a Bain Filer

Dated this 2<sup>nd</sup> day of August 1972

Commons Commissioner