



COMMONS REGISTRATION ACT 1965

Reference No 40/U/2

In the Matter of Crosthwaite  
Green, Crosthwaite and Lyth,  
South Lakeland District, Cumbria

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DECISION

This reference relates to the question of the ownership of land known as Crosthwaite Green, Crosthwaite and Lyth, South Lakeland District, being the land comprised in the Land Section of Register Unit No VG. 3 in the Register of Town or Village Greens maintained by the Cumbria (formerly Westmorland) 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 some intending purchasers of the contiguous land said (letter dated 3 April 1978 from their solicitors) that their intending vendors are purporting to convey so far as they are able to do so all the estate right title and interest in the land in question. No person claimed to be the freehold owner of the land and no other 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 Kendal on 27 April 1978. At the hearing (1) Crosthwaite and Lyth Parish Council on whose application the registration was made, were represented by Mr D Park their chairman, and (2) Mr Neil Price and Mr Victor Price (the said intending vendors) and (3) Mr Keith Geoffrey Barkway (an intending purchaser) were represented by Mr M R Whiteside solicitor of Hayton & Winkley, Solicitors of Kendal.

The land ("the Unit Land") in this Register Unit is an L-shaped piece, its southeast side being the road (C4 unclassified) from Bowland Bridge to Kendal and its northeast side being the road (C61) off this road leading northwards to Crook. Adjoining or nearby on the northwest are two cottages (Hill Cottage and Rock Cottage) and the walls (there is no roof or floor) of what was a two storied building ~~which~~ at the hearing called "the Barn".

Evidence was given by Mr V Price who claimed to be the owner jointly with his brother Mr H Price of all the Unit Land and who in the course of his evidence produced: (1) an official certificate of search dated 16 February 1973 with plan attached; (2) a conveyance dated 12 November 1969 by which Mr R D Hartley ("Retired Joiner") conveyed to Messrs H and V Price "the Barn (formerly used as a joiner's shop) and the land forming the site thereof... (being part of the premises comprised in a conveyance dated... 1944...)... for the purpose of identification only more particularly delineated on the plan annexed hereto and thereon edged red"; and (3) a conveyance dated 14 August 1944 by which Mrs M Mason and Mr J Wilson as personal representatives of Mr M Mason (he died 9 September 1936) conveyed to Mr R D Hartley ("Fruit and Vegetable Dealer") and Mrs E Hartley his wife those two cottages now known as Hill Cottage and Rock Cottage and Joiners Shop with the land thereunto belonging and part of an orchard at the rear thereof...". The 1969 conveyance included these words: "TOGETHER WITH (so far as the Vendor can lawfully grant the same) ALL THAT



the estate right title and interest of the Vendor of and in the land used as a timber yard and situate between the premises hereby conveyed and the Highways on the East and North sides thereof". The 1944 conveyance included these words:- "Secondly All the estate right title and interest of the Vendor of...(then as in the 1969 conveyance)...".

Although Mr V Price at the beginning of his evidence said "yes" to the question "is the land...owned by you?", later he said: "the reason why I thought the greensward and outcrop passed under the conveyance was that it (the conveyed land) was burnt out joiner's shop and it was our intention to convert into a dwelling house and it was also our intention to reduce the level of this slate outcrop to enhance the dwelling and approach". He described the Unit Land and said as regards the price he did not (in 1969 when he and his brother purchased) place any value on it "as it was so rough; it would have been very costly to level out to our satisfaction". In the course of his evidence, he made it clear that he did not know the land before 1969 and that as regards its appearance and possibilities he much relied on the judgment of his brother (unable to be present at the hearing) who dealt with this aspect of their business.

Mr Barkaway who is an architect gave a detailed and helpful description of the Unit Land as it now is and explained how the building regulations might apply if the Barn was reconstructed; however he had only known the Unit Land for 3 or 4 months and he did not suggest that he could throw any light on its ownership.

Mr Park who is 67 years old has lived all his life in the Parish, been a member of the Parish Council since 1954 and been their chairman since 1964 (or 1962) said (in effect):- The Unit Land was no one's land; nobody had ever established ownership before to his knowledge. Over the years for those who occupied Hill Cottage and Rock Cottage their right of access was always • Crosswaite Green. One of the occupiers was a joiner and when timber was delivered he had to remove it from off the Green as soon as possible otherwise the residents would soon tell him to do so. At one time a haulage contractor parked his lorries continuously on the Green. There was at one time a small hut there used by a cobbler, but to the best of his knowledge he never paid rent to anyone for it. Children and inhabitants within the Parish could go over the Green at any time without any objection by anyone. The Green is always thought of as everybody's (meaning as nobody's!). Of the sawpit (the OS map shows a small open rectangle near the east corner of the Barn), he had no personal knowledge; it "depends what you mean by a sawpit", he believed at one time this (sawing) took place.

Mr Thomas who has been a member of the Parish Council since 1964 said: In 1977 there had been a meeting to agree the boundary between the Green and the land of Messrs Price, but the result was indeterminate. He thought the Unit Land and the land between it and the River Gilpin had at one time all been open green land and that the Unit Land is all that is left; the nearby farm is known as "Green Farm".

On the day after the hearing I inspected the Unit Land. I felt (with Mr Thomas) some doubt as to the line of the boundary of the Unit Land as registered between the east corner of the Barn and the west corner of the cottages, and it seemed to me that the area ("the Low Level Area") described in the Schedule hereto is in relation to the conveyances of importance. The present appearance of the part of the Unit Land in front of the Barn is as follows: As regards the Low Level Area as set out in the Schedule hereto, the door therein mentioned providing access to the ground floor of the Barn; thence at the top of the rock wall, a ramp providing access to the first floor (now non-existent) of the



Barn; thence garden and other land apparently belonging to the Cottages. I observed that the plans on the 1944 and 1969 conveyances were not correct in that the front wall of the Barn was not as thereon delineated a straight line but has a double right-angled bend as mentioned in the Schedule and also that the edges of the garden and other lands belonging to the Cottages were not as therein delineated two straight lines but somewhat curved, and I infer from the present appearance of the buildings and these lands that the conveyance plans in these two respects were never correct. I also had difficulty in determining the various maps apparently provided by the County Council indicating the extent of the Unit Land and its boundary along or near the Barn in that these maps show a piece ("the Excluded Piece") approximately square near the east corner of the Barn as part of the Low Level Area of which I could find no trace on the ground and it was not clear from such maps what parts if any of the Low Level Area and of the said ramp were included in the Unit Land.

I disregard Mr Price's statements about ownership, and as to his understanding of the effect of the conveyances, as being in law altogether inadmissible on the question of ownership. However Mr Whiteside contended (as he was entitled to do) that quite apart from anything Mr Price had said, the conveyances showed the ownership claimed in that I could from them properly infer that the Unit Land was used a timber yard by the successive owners and occupiers of the Cottages and the Barn and that accordingly a possessory title was established.

To determine whether those responsible for the conveyances were asserting that the Unit Land (meaning all the Unit Land) was then being or had then been used as a timber yard, I must consider the surrounding circumstances when the conveyances were made as far as I can infer them from the information given me at the hearing and the present appearance of the land. As to this:- (a) The present appearance is against all (or substantially all) the Unit Land having ever been so used; much of it provides necessary access to the Cottages and the ramp; much of it is grass land steeply sloping down and open to the adjoining road; and much of it is stone outcrop; although the Unit Land might conceivably have been used as a timber yard if the Cottages and the Barn had been occupied by a timber merchant, for a joiner occupying the Cottages and Barn, the area is too varied and large to be appropriate. (b) But the present appearance is consistent with the Low Level Area having been used as a timber yard, its shape, size and position being obviously convenient for this purpose for anyone using the Barn as a joiner's shop. (c) As I understood Mr Park he was saying in effect that the Unit Land had never been used as a timber yard. On this point he was somewhat brief but he was not asked by Mr Whiteside to expand what he said, rightly I think because it was obvious from his general attitude that he considered that the Unit Land had never been appropriated for the private use of the occupiers of the Barn at all. (d) Mr Park was not questioned at all as to the possible use of part of the Unit Land as a timber yard and I think it likely that if questioned particularly about the Low Level Area he would have said that he would not have noticed whether it had been so used. I have no note or recollection of Mr Price or anyone else at the hearing saying where the cobbler's hut was or of identifying it with the Excluded Piece above mentioned. (e) There was no sign of a sawpit that I could see, although the end of the stone outcrop (with some arranged stones) could have been so used; another possible use of this end would be to unload any goods from the back of a cart or lorry.

In considering the words "used as a timber yard" in the conveyances, I note that in the context although they might be an assertion that all the land between the Barn and the highway was so used, *or grammatically* they might as well be an assertion that there was some land between the Barn and the highway which was so used, that is no more than an assertion that part of the land in front of the Barn was so used.



Balancing the conflicting considerations outlined above, my conclusion is neither all nor any substantial part of the Unit Land was ever used as a timber yard, and I therefore reject the claim of Messrs Price as the owners of the Unit Land generally although I consider I should for their benefit record my views as to the ownership of the Low Level Area.

Interpreting the County Council maps put before me as best I can, I conclude that the land registered under the 1965 Act does not include any of the Low Level Area or any of the garden or other land apparently belonging to the Cottages which are surrounded by a low stone wall beginning at the west side of the ramp. Because on this reference I have no jurisdiction to determine the extent of the registered land, I consider that I ought to give Messrs Price the benefit of the conclusion I have reached as regards the Low Level Area. Although nobody at the hearing dealt particularly with the Low Level Area, and although it may be that its appearance has not always been as it now is, it seemed to me when I looked at it, so probably that it was used as a timber yard that I conclude that I ought to give effect to Mr Whiteside's contention at least as regards it. I am therefore satisfied that Messrs Price are the owners of the Low Level Area and I shall accordingly under section 8(2) of the Act of 1965 direct the Cumbria County Council as registration authority to register Mr Neil Price of Lunebank, Church Brow, Halton, Lancaster and Mr Victor Price of 54 Broadway, Morecambe as the owners of so much (if any) of the Low Level Area (as defined in the Schedule to this decision) as may be part of the land comprised in this Register Unit.

There was no evidence that anyone other than Messrs Price could be the owner of the Unit Land, and I am therefore not satisfied that any person (except as aforesaid) is the owner of it, and I shall accordingly in pursuance of section 8(3) of the Act of 1965 direct the Cumbria County Council as registration authority to register Crosthwaite and Lyth Parish Council as the owner.

As I have in this decision been somewhat critical of the plans annexed to the said conveyances and the plans prepared by the County Council, I record for the benefit of those concerned that my criticisms must not be regarded as reflecting on them at all because they could not ever have any reason to suppose that a plan of any greater accuracy than those prepared by them would be necessary for the purpose of this hearing. However I suggest in consideration of the County Council that they correct their existing plan under regulation 36 of the Commons Registrations (General) Regulations 1966 so as to make it clear whether the registration does or does not include the Low Level Area and any other of the parts of the Unit Land which are particularly mentioned in this decision and about which some precision may have been thought by those concerned to be expedient.

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.

#### SCHEDULE (The Low Level Area)

1 The northwest side from the north corner of this Area:- The corner of the Barn. The wall of the Barn (including a door) for about 4 paces to where the wall takes a right angled bend. The wall of the Barn northwest-southeast for about 1 pace, to where this wall takes another right angled bend. The wall of the Barn (including a door and a window) for about 6 paces.



2 The southwest side from the west corner of this Area:- A nearly straight line being a wall of rock about 8 feet high for a distance of about  $3\frac{1}{2}$  paces.

3 The southeast side from the south corner of this Area:- A nearly straight line being for a short distance the lower end of steps leading upwards out of the Area and then an outcrop of rock with the line at its west end continued with arranged stone, stopping at or near the end of the outcrop, altogether about 10 paces.

4 The northeast side of the Area:- No particular physical features there being easy access to the Area from the outside. I define this side as being a straight line of about 6 paces joining the corner of the Barn to the corner of the above mentioned outcrop as continued with the arranged stones.

Dated this 26<sup>th</sup> day of June — 1978

a. a. Baden Fuller

Commons Commissioner