



COMMONS REGISTRATION ACT 1965

Reference No.20/U/29

In the Matter of Three pieces of land on  
the river bank and around the former post  
office in Wennington, Lunesdale R.D.,  
Lancashire.

DECISION

This reference relates to the question of the ownership of three pieces of land on the river bank and around the former post office in Wennington, Lunesdale Rural District, being the land comprised in the Land Section of Register Unit No.C.L.36 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 Mr. R.H. Middleton and Mr. A.R. Nelson below mentioned claimed to be the freehold owner of part of the land in question, no other person claimed to be the owner or to have any 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 the 8th June 1972.

At the hearing claims of ownership were made:- (i) by Wennington Parish Council ("the Council"; represented by Mr. Gillibrand of Oglethorpe Sturton & Gillibrand, solicitors of Lancaster); (ii) Mr. Robert Hodgson Middleton of Stone Steps, Wennington (represented by Mr. D.H. Kyle of Greenwood Kyle & Goad, solicitors of Kirby Lonsdale); (iii) by Mr. Arthur Robert Nelson of Rose Cottage Wennington (also represented by Mr. D.H. Kyle); (iv) by Mr. Lawrence Middleton and his wife Mrs. Stella Middleton both of Smithy House, Wennington (also represented by Mr. D.H. Kyle and (v) by Mr. Albert William Taylor of Yew Trees, Wennington (in person).

The land in this Register Unit consists of:- (i) a piece ("the River piece") on the north side of and adjoining the River Wenning; (ii) a piece ("the East piece") on the east side of the garden of the dwelling house "Stone Steps" and (iii) a piece ("the U piece") described in more detail below.

This hearing was listed to come on after the hearing (reference 20/U/21) relating to land which adjoins the River piece, which is known as Wennington Waste and which is Register Unit C.L.36. Mr. Gillibrand, Mr. Kyle and Mr. Taylor were present throughout the 20/U/21 hearing and it was agreed that the evidence given at that hearing should be treated as given at this hearing.

This decision should be read with my decision of even date upon the 20/U/21 hearing.

The River piece is part of No.226 on the Tithe Map mentioned in my even date decision. The East piece is part of No.257 and the U piece part of Nos.110 and 241 on the Tithe Map, which numbers are in the schedule annexed to the Award respectively described as "Road way between Lancaster and Bentham", "Road" and "Waste".



At this hearing nobody other than the Council and Mr. Taylor claimed ownership of the River piece. There is no relevant difference between the River piece and the land dealt with in my even date decision. For the reasons given in such decision, I reject the claim of Mr. Taylor and conclude that the Council is the owner of the River piece.

At the hearing nobody other than the Council claimed ownership of the East piece. For the reasons given in my even date decision, I conclude that the Council is the owner of the East piece.

The U piece consists of (i) and (ii) two pieces of land described in Part One and Part Two of the Appendix hereto which form the southern limb of the U; (iii) a piece of land described in Part Three of the Appendix hereto which forms the northern limb of the U; (iv) a vehicular track which leads from the public highway on the south to the Part Three piece; and (v) a triangular piece of grass land (on which there is now a Post Office pole) between the track and the Part Two piece.

The U piece surrounds on the north, west and south, the west half of an oval piece of land which now comprises four or five dwelling houses and their gardens including "Stone Steps", "Rose Cottage" and "Smithy House" respectively occupied by Mr. R.H. Middleton, Mr. Nelson and Mr. L and Mrs. S. Middleton. The land on the north of the east part of this oval piece of land now consists of part of Yew Trees Farm occupied by Mr. Taylor. On the Tithe Map the oval piece of land is shown as bounded on the north throughout its whole length by "Waste" (No.241). From this I infer either that the Award map was in 1840 inaccurate or that the occupiers of Yew Trees Farm have since 1840 encroached on the waste.

Mr. R.H. Middleton and Mr. Nelson claimed the Part One piece and the Part Two piece respectively. On their behalf evidence was given by Mr. R.H. Middleton who had lived in "Stone Steps" for the last 27 years and by Mr. Kyle. They produced documents of title relating to "Stone Steps" (formerly Post Office Cottage) and "Rose Cottage" from which I am satisfied that Mr. R.H. Middleton and Mr. Nelson are respectively the owners of these houses (and the gardens and yards at the side and the back). The two pieces of land are for the most part cobbled so as to appear to belong to the houses on which they front. Mr. R.H. Middleton and Mr. Nelson and their predecessors have treated the two pieces as so belonging: they have used them for parking motor cars, kept them weeded and tidy and some eight years ago had lifted and reset the cobbles at their own expense. The Award is not, I think, cogent evidence of the exact line of the boundary between "Stone Steps" and "Rose Cottage" and the "Waste" (No.241) and the "Road" (No.110) marked on it, because the valuer would not be concerned to delineate such boundary with accuracy; the porch of "Stone Steps" had been there since Mr. Middleton lived there; it is not shown on the Tithe Map so that either such map is inaccurate or there has been an encroachment. The ownership claim of Mr. Middleton and Mr. Kyle was not challenged by the Council who were (having regard to my even date decision) concerned to dispute it. I think, therefore, that I can give full effect to the evidence outlined above and properly conclude that the Part One piece and the Part Two piece respectively form part of the houses now owned and occupied by Mr. R.H. Middleton and Mr. Nelson.



I have not overlooked that this conclusion may inconveniently leave the Council owner of a narrow strip of land which consists of gravel and tarmac and which lies between the Part One and Part Two pieces and the metalled carriageway. Notwithstanding this inconvenience I cannot, I think, on the evidence properly conclude that Mr. R.H. Middleton and Mr. Nelson are owners of this strip.

The Part Three piece was claimed both by Mr. Taylor as part of Yew Trees Farm and by Mr. L. and Mrs. S. Middleton as part of Smithy House. This piece is a cul-de-sac open at its west end (from which the vehicular track passes across the east end of the U piece to the metalled carriageway) and closed at its east end by an iron fence with a kissing gate leading into Yew Trees Farm. The main use of the vehicular track after it enters the Part Three piece is to provide vehicular access to Smithy House, but it was conceded on behalf of Mr. L. and Mrs. S. Middleton that Mr. Taylor or the owner or occupier of Yew Trees Farm has a right of way across the track through the kissing gate into the farmyard (through the gate into the field (numbered 227 on the Register Map) on the north.

Mr. L. Middleton in his evidence produced documents of title from which I am satisfied that he and his wife are the owners of Smithy House. He described the Part Three piece; he had gravelled the part used as a vehicular track (this on the south side abuts on the wall of his house); he had tidied up (keeping down the nettles and cutting the grass) the verge (about four feet wide) which lies between the track and the hedge on the northern side of the Part Three piece. He had used part of the Part Three piece for stacking wood and generally used it (subject to the rights of way above mentioned) as his own: the piece was not used by the public as a highway because there was no way through to beyond Yew Trees Farm.

Mr. Taylor in his evidence said that since 1923 he and his predecessors as occupiers of Yew Trees Farm had always claimed the Part Three piece and he claimed it now because he had paid tithe on it and taken the grass off it. He did not produce any documents of title relating to Yew Trees Farm, although he did state that he had bought it at the auction mentioned in my even date decision. On being cross-examined about the tithe he said he had paid it all off five or six years since by a lump sum payment relating to the whole of Yew Trees Farm but he had not got the receipt with him; he agreed that Mr. Middleton had put gravel on the Part Three piece and that he had put in a soak-away there; any wood stored there belonged to Mrs. Marlyn, who lived in a dwelling house further to the west. Mr. Harding was called by Mr. Taylor in support of his case, but the mowing of grass which he described related not to the Part Three piece but to the part of the U piece further away from the kissing gate fronting on the land of Mrs. Marlyn.

The claims of Mr. Taylor and Mr. L. and Mrs. S. Middleton are in effect by them against the Council, because for the reasons given in my even date them decision, I would apart from the evidence above described find to be the owner. As regards the claim of Mr. Taylor, I consider his evidence to be unreliable: I am not satisfied he ever paid tithe in respect of the Part Three piece, which according to the 1840 award was not tithable; as regards the use made of the Part Three piece I prefer the evidence of Mr. Middleton: the encroachment by the occupiers of Yew Trees Farm, in my view extended no further than the



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iron fence and the kissing gate. I accept the evidence of Mr. L. Middleton; there having been one nearby encroachment on the Waste since 1840, I can, I think, treat the Award as having an evidentiary value less cogent in relation to the Part Three piece than I gave it in my decision of even date in relation to the land I was there considering. The ownership claim of Mr. L. and Mrs. S. Middleton was not challenged by the Council; I think, therefore that I can give full effect to his evidence as outlined above and properly conclude that the Part Three piece forms part of Smithy House now owned and occupied by him and his wife.

For these reasons I am satisfied that Mr. R.H. Middleton, Mr. Nelson, Mr. L. and Mrs. S. Middleton and the Council are each owners as stated above of part of the land comprised in this Register Unit and I shall accordingly direct the Lancashire County Council, as registration authority, to register

- (i) Robert Hodgson Middleton of Stone Steps, Wennington as the owner of the land described in Part One of the Appendix hereto;
- (ii) Arthur <sup>Robert</sup> Nelson of Rose Cottage, Wennington as the owner of the land described in Part Two of the Appendix hereto;
- (iii) Lawrence Middleton and his wife Stella Middleton of Smithy House, Wennington as owners of the land described in Part Three of the Appendix hereto; and
- (iv) Wennington Parish Council as the owner of the remaining land comprised in this Register Unit.

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.

#### APPENDIX

##### Part One: Mr. R.H. Middleton

A piece of land for the most part now cobbled and being rectangular in shape, bounded on the north by the south wall of the dwelling house now known as "Stone Steps" and formerly known as Post Office Cottage, which wall is marked by a green line on the Register map, bounded on the south by a straight line parallel with the said wall and distant about 5 feet from it, being as near as may be the south edge of the land now cobbled, bounded on the east by a straight line at right-angles to the last mentioned line and passing through the south-west corner of the stone building situate next to the entrance way to the garden of Stone Steps, being the entrance way between such building and the stone steps to the east side of the said dwelling house, and bounded on the west by a straight line passing through the middle of and in line with the party or dividing wall between the said dwelling house and the adjoining dwelling house known as "Rose Cottage" and including in the



land now being described the porch of the said dwelling house Stone Steps (so far as such porch is comprised in the Register Unit).

Part Two: Mr. A.R. Nelson

A piece of land for the most part cobbled and in the shape of an "L" (a) of which the eastern limb of the "L" is bounded on the north by the south wall of the dwelling house "Rose Cottage", which wall is marked with a green line on the Register map, bounded on the south by a straight line parallel with the said wall and distant about 5 feet from it, being as near as may be to the south edge of the land now cobbled and bounded on the east by a straight line passing through the middle of and in line with the party or dividing wall between the said dwelling house and the adjoining dwelling house "Stone Steps"; and (b) of which the northern limb of the "L" is bounded on the east by the west wall of the dwelling house "Rose Cottage" which wall is marked by a green line on the Register map, bounded on the west by a straight line parallel with the said wall and distant about 5 feet from it, being as near as may be on the east edge of the land now cobbled and bounded on the north by a straight line at right-angles to the said wall and passing through the south side of the entrance way into the yard or garden at the back of the dwelling house "Rose Cottage".

Part Three: Mr. L. and Mrs. S. Middleton

A piece of land for the most part consisting of road and grass verge and being the north-east end of the "U" piece (as defined in this decision) bounded on the north, east and south by a line coloured green on the Register map and bounded on the west by a line at right-angles to the northern wall of the dwelling house known as "Smithy House" and passing through the centre of the dividing or party wall between such dwelling house and the dwelling house next to it on the west side.

a. a. Baden Fuller.

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

Commons Commissioner