



COMMONS REGISTRATION ACT  
1965

Reference No. 271/U/30

In the Matter of land part of Eglwseg  
Mountain, Llangollen

DECISION

This reference relates to the question of the ownership of the land known as part of Eglwseg Mountain Llangollen being the land comprised in the Land Section of Register Unit No. CL.259 in the Register of Common Land maintained by the Clwyd 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 David Wyn Roberts and Shelagh Mary Roberts claimed to be the freehold owners of the land in question and Mr R Bailey 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 Llangollen on 14th July 1987.

Mr and Mrs Roberts were represented by Mr David Crawford, Solicitor, of Longueville & Co, Oswestry.

This case has a prolonged history. The first hearing before a Commons Commissioner inquiring into the ownership of the land comprised in this register unit was held at Llangollen on 6th December 1977, when no person claimed ownership and no one claimed to have information as to its ownership: see the decision of the late Mr Commissioner Settle dated 13th January 1978. Subsequently a claim was made by Michael James Rogers, and as a result a second hearing was held at Chester on 12th May 1983, when Mr E Price-Morris, Solicitor, asked for an adjournment. Arrangements were made for the hearing to be continued in London on the 11th January 1984, but owing to lack of evidence, the application was not proceeded with: see the decision of the former Chief Commons Commissioner G D Squibb dated 16th January 1984. In the meantime Mr Rogers had died, but the cudgels were taken up by his Widow, Irene Alice Harriet Rogers. A further hearing was fixed to take place at Mold on 27th March 1985 but at the request of Messrs. Gamlens (acting for Mrs Rogers) this was transferred to London to be heard on 3rd April 1985. Again, at Gamlens' request this hearing did not take place, as they had no further evidence to offer. In June 1985 Gamlens submitted further evidence, and arrangements were put in train for a hearing in London. Unfortunately Mrs Rogers died on 12th December 1985, before this had been fixed.

Mr Crawford submitted to me the original of a Conveyance dated 10th November 1986 between (1) R G Stubblefield and P G Eaton and (2) Mr and Mrs Roberts. Messrs. Stubblefield and Eaton were the Executors of Mrs Rogers and the Conveyance was a conveyance on sale made by them in that capacity. The parcels clause described the property thereby conveyed simply as a piece or parcel of land containing 57 acres 1 rood and 32 perches as the same was by way of identification only edged red on the plan annexed thereto, without any other description of any sort. The plan annexed was a copy of the register map in respect of this register unit, but the land edged red thereon included not only the whole of the register unit but also the irregularly shaped parcel adjoining it to the north. This was a piece of woodland which was not included in the register unit, no doubt because it was unsuitable for grazing.



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Mr Crawford then submitted an Epitome of Mrs Rogers' title, supported by the original deeds, or in the case of Probates by Office copies. The title commenced with a Disentailing Deed and Resettlement dated 20th March 1896. The whole of the subsequent title depends on the description of the property comprised in this deed, and a most careful examination of it is required.

This description is contained in the Schedule to that deed, and commences, firstly, with a message or tenement and farm called Plas yn Pentre. After various details of this property with which we are not concerned, the first described property concludes as follows:

"Together with the enclosure made in respect of the said farm and land situate on Trevor Hill in the said parish of Llangollen containing 57 acres 1 rood and 32 perches or thereabouts and now in the occupation of the said Thomas Hughes and which is described in the said will as the enclosure on Trevor issa." The will referred to was that of Thomas Rogers made on 6th May 1866.

The Disentailing Deed was followed by a Mortgage dated 1st May 1896 containing a very similar description of the property comprised therein. After that the title consisted of 6 Probates and an Assent dated 3rd September 1984 in favour of Mrs Rogers. Perusing these instruments, I was satisfied that whatever the property was which passed under the description in the Disentailing Deed which I have set out above, that property was now vested in Mr and Mrs Roberts.

On this evidence Mr Crawford submitted that the whole of the unit land was vested in his clients. In support of the paper title he tendered the oral evidence of Mr Bailey, who was born in 1917 and had farmed Plas yn Pentre for 40 years.

Before he did so, I pointed out to Mr Crawford that he still had a considerable number of difficulties to overcome:-

- (1) Although the Disentailing Deed bears a very large plan, the unit land is not shown on it. Examination of the deed itself provides the explanation that the plan delineates the Plas yn Pentre estate, with the exception of the 57 acre enclosure. It was suggested that this was because such enclosure was some distance away from the rest of the property. Nevertheless the title is without any plan to assist in the identification of the enclosure with the unit land.
- (2) The area of the unit land was shown in the Land Section of the register as 83.485 acres or thereabouts. This did not correspond with the 57 acres 1 rood and 32 perches of the enclosure comprised in the Disentailing Deed.
- (3) The Conveyance of 10th November 1986 purported to convey to Mr and Mrs Roberts the whole of the unit land and the parcel of woodland to the north. At a rough estimate, the area of woodland was about a quarter the size of the unit land, and so amounted to about 20 acres. The area of the unit land plus the woodland probably exceeded 100 acres.
- (4) The Disentailing Deed described the 57 acres as situate on Trevor Hill. None of the maps or plans before me showed any hill of that name.



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(5) The only other description contained in that deed was that the enclosure had been described in a will of 1866 as " the enclosure on Trevor issa". The interpreter explained that "issa" means lower and that the corresponding word "uchaf" means upper. It seemed curious to me that an enclosure near the top of a mountain should be described as being on "lower" Trevor.

I allowed Mr Crawford a little time to consider these problems. I also gave leave for him to refer if he wished, to the Affidavits previously submitted by Mrs Rogers in support of her claim; these being admissible on the ground that she was dead.

After consideration, Mr Crawford reduced Mr and Mrs Roberts' claim to seek ownership of part only of the unit land. He produced a deed bearing a copy of the large scale Ordnance Survey Map 1912 Edition. This showed the unit land as comprising O.S. No. 502: 47.440 acres and O.S. No.295: 36.045 acres, together totalling 83.485 acres (precisely co-inciding with the area of the unit land shown in the land section of the register). This also co-incides with the final paragraph of Mrs Rogers' Affidavit sworn on the 31st May 1983, where she says:- "The Common Registration affects 36.045 acres of my land and 47.44 acres of an adjoining owners land. 22.059 acres of my land is not subject to common rights." (This later parcel is the woodland referred to above). Accordingly Mr Crawford reduced his clients' claim to seek registration as owners of only the 36.045 acres of O. S. 295.

Mr Bailey gave evidence. He said that he had never heard of any land being described as Trevor Hill. He said that the two parcels of the unit land comprised in O. S. 295 and 502 were divided by an old stone wall no longer sheep proof. He said that there was no fence between O. S.295 and the woodland, and that he always understood that the whole of this land was unsold at the time of the auction of the Plas yn Pentre estate which took place in 1919. He confirmed that the name R Bailey which was stamped on the Copy of the Auction Particulars relating to that sale which was Exhibit J W M C 5 to the Affidavit of Mr J W M Chadwick sworn on the 14th November 1984 was his name. He had sent this document to Mr Chadwick's firm and it had not been returned. Those Auction Particulars include "about 58 acres of Hill Land", but the exhibited copy contains no further information in respect thereof.

After being allowed further time Mr Crawford returned with some further old maps he had been able to obtain locally. These were copies of the 1912 Edition of the Ordnance Survey sheets XXXIV 12 and XXXIV 16, on which had been marked the tithe districts. On these maps the districts of Trevor Issa and Trevor Ucha were shown. He also produced map XXXIV SE showing the contours. This shows the unit land to be above the 1,000 ft contour - the highest level shown. But to my surprise the map showed that the major part of the tithe district of Trevor Issa (or lower Trevor) was over 1,000 ft, whereas the whole of the tithe district of Trevor Ucha (or upper Trevor) was below 300 ft.



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On this evidence I was satisfied that Mr Crawford had overcome all the hurdles which stood in the way of his clients' claim, to the extent that is of the 36.045 acres of the unit land to which they had reduced their claim.

Accordingly I shall direct the Clwyd County Council as registration authority to register David Wyn Roberts and Shelagh Mary Roberts as the owners of that part of the register unit comprising 36.045 acres being O.S.No. 295 on the 1912 Edition of the Ordnance Survey Map Denbighshire Sheet XXXIV 12 under section 8(2) of the Act of 1965.

The remainder of the register unit will remain subject to protection under section 9 of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioner 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

10<sup>th</sup>

day of

August

1987

A handwritten signature in cursive script, appearing to read 'M. R. Roberts', with a horizontal line underneath.

Commons Commissioner