



## COMMONS REGISTRATION ACT 1965

Reference No. 15/U/66  
15/U/67  
15/U/571

In the Matters of (1) Ballsgate Common  
(2) Yatton Hill and (3) Yatton Marsh  
all in Aymestrey, Leominster & Wigmore R.D.  
Herefordshire

DECISION

These references relate to the question of the ownership of lands known as (1) Ballsgate Common (2) Yatton Hill and (3) Yatton Marsh, all in Aymestrey, Leominster and Wigmore Rural District being the lands comprised in the Land Section of Register Unit (1) No. CL.134 (2) No. CL.143 and (3) No. CL.151 respectively in the Register of Common Land maintained by the Herefordshire 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 these references no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Hereford on 11 December 1973. At the hearing (1) Mrs. K. V. Gardner (2) Mr. G. Withnall (3) Mr. B. W. Sutherland and (4) Mrs. A. F. Richards were all represented by Mr. W. D. Turton solicitor of Lloyd and Son Solicitors of Leominster. He agreed that all these references should be heard together.

According to the Register the extent of these lands is as follows:- Ballsgate Common (CL.134) about 19 acres, Yatton Hill (CL.143) about 93 acres and Yatton Marsh (CL.151) about 2 acres (in two pieces). In the Rights Section applicable to Ballsgate Common (CL.134) 8 rights as attached to various cottages farms and lands have been registered for grazing altogether 450 sheep, 32 cattle and 2 horses and for taking (3 farms) bracken for litter. In the Rights Section applicable to Yatton Hill (CL.143) 7 rights as attached to various houses, farms and lands have been registered for grazing altogether 720 sheep, for taking (4 farms) bracken for litter, for taking (2 farms) wood for fences and (5 pieces of land) turbarry and for cutting firewood and fern. In the Rights Section applicable to Yatton Marsh (CL.151), 6 rights as attached to various houses and farms have been registered for grazing altogether 24 cattle..

Mr. Turton said that Mrs. Gardner claimed to be the owner of all these lands, that Mr. Withnall and Mr. Sutherland were trustees of part of the Gardner Settled Estate, and as such entitled to rights of common (duly registered) over all these lands (CL.134, CL.143 and CL.151), that Mrs. Richards was entitled to rights of common (duly registered) over Yatton Hill (CL.143) and Yatton Marsh (CL.151) and that Mr. Withnall, Mr. Sutherland and Mrs. Richards did not object to Mrs. Gardner being registered as the owner.



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Mr. Turton who has resided in the district and been a partner of Lloyd and Son since 1 January 1967, gave evidence. His firm have for many years acted for the Yatton Court Estate (about 2,500 acres). The Estate is owned by Mrs. Gardner and by trustees of Settlements made by her and administered (notwithstanding the divided ownership) as one Estate.

Mr. Turton's firm holds the Documents of title relating to the Estate; they show that the Estate came to the Ward family from the Woodhouse family; a settlement dated 16 September 1861 is the earliest document relating particularly to the Manor of Yatton. Mr. Turton produced: (1) a Mortgage dated 22 February 1911 and made by Mr. T. B. Ward, (2) an abstract of the letters of administration granted to his estate (he died intestate on 2 November 1930), and (3) an Assent dated 24 August 1931. The 1911 Mortgage comprised First hereditaments in Aymestrey, Yatton, Ballsgate, Lower Lye and Wigmore described in the First Schedule (being, Mr. Turton said, apart from sales and settlements since made, the Yatton Court Estate as now administered) and "Secondly All those shooting and manorial rights and all other the rights and interest which the said Thomas Bryan Ward has power to convey over or in respect of the hereditaments described in the Second Schedule hereunder written". This Schedule (headed "Shooting and Manorial Rights") included (by reference to numbers not coloured on the plan):-

Ballsgate Common	19. - . 30
* * *	
Yatton Hill Common and part of Leinthall Common	93. 3. 0
Yatton Marsh	. 3. 29
Do. and Pound	1. -. 25

The letters of administration were granted to Mrs. Gardner as the niece of the deceased. By the 1931 Assent Mrs. Gardner assented to the vesting in herself of "All That the Manor or reputed Manor or Lordship or reputed Lordship of Yatton ... with its rights members and appurtenances AND All and Singular the lands ... in .. Aymestrey, Wigmore, Yatton, Lucton and elsewhere ... commonly called the Yatton Court Estate".

From the County Record Office was produced a manuscript booklet (40 numbered pages) entitled "An Index to The Map of The Manor or Lordship and Township of Yatton and other parts of Aymestrey parish In The County of Hereford. P(?) Meredith Jones. 1765". Page 39 (so far as relevant) is as follows:-

The Commons in Yetton Township	A	R	P
Yettons Hill	98.	-.	-.
The Marsh exclusive of Roads	2.	2.	30
The Common below London Inn called The Slang	4.	-.	-.
Balls Gate Common and the Nucklas	79.	-.	-.
Total	181.	2.	30.



Miss S. Hubbard, Senior Assistant to the County Archivist said that the "Index" was one of a lot of documents given about 4 years ago to the County by the British Records Association (being the only document in the lot relating to what is now the Yatton Court Estate; the lot did not include the "Map"), and that the other documents related to other property of the Woodhouse family.

Mr. Turton said that by local repute Mrs. Gardner is regarded as owner of all these lands.

As regards Yatton Hill (CL.143):- This 93 acres is a U shaped hill side facing west and north, largely scrub gorse and bracken. Yatton Court is near (outside) the south west boundary; Leinthall Common adjoins on the north and north east; Croft Ambrey (an ancient hill fort, owned by the National Trust) at the top of the hill adjoins on the east. Mr. Turton produced a copy of a letter dated 11 June 1898 from Mr. Ward beginning "Dear Dunne" about the boundary between Leinthall Common and Yatton Hill, in which Mr. Ward referred to "new clamps or plantations ... planted by my father ..." on Yatton Hill, obviously assuming that he (Mr. Ward) was then the owner; Mr. Turton made the copy in 1970 from an original letter produced in the course of a discussion about a boundary by the solicitors acting for Captain Dunne (the grandson of the recipient of the 1891 letter). The Shooting on Yatton Hill (CL.143) is let by the Estate Office. On 12 December I walked up the north part of Yatton Hill to Croft Ambrey; the view is splendid; in parts there are trees, but Yatton Hill (so far as I could see from where I walked) was for the most part covered in bracken, a rich golden brown, glowing in the winter sunshine, and strikingly beautiful.

As regards Ballsgate Common (CL.134):- This 19 acres (some miles west of Yatton Hill) is for the most part a steep hill side, sloping up from the north side of the River Arrow Valley. At one place it comes down to the road which runs along the Valley; but for the most part it is some distance and not easily accessible from the road. There is much scrub and bracken, but it is regularly grazed (as might be expected from the rights registered as above mentioned). There are a number of inclosures on the south and south west sides not included in the registered land, which appear to have been taken from what may at some time have been part of the Common, for the purpose of the cottages and buildings accessible from the road. Mr. Turton produced a deed dated November 1971, by which after reciting that Mrs. Gardner was the owner of the Common Land known as Ballsgate Common, it was witnessed that she granted to Mr. R. C. Gore permission to lay a pipe across it for the benefit of nearby buildings (Sunnybank); the pipe was (he said) laid pursuant to this grant.

As regards Yatton Marsh (CL.151):- This 2 acres (comprising a piece on the east 1.157 acres and a piece on the west .934 acres) is roadside waste by the road leading into the Village from Leinthall Earls; it is east of the Village and not far from the north west corner (the lowest part) of Yatton Hill (CL.143). On the west piece there are willows and vegetation commonly found on waste land liable to frequent flooding; it is not used (or apparently usable) in any way. The east piece although a little better, is very rough.



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Mr. Turton submitted that quite apart from the above mentioned matters relating to Yatton Hill (CL.143) and to Ballsgate Common (CL.134) particularly, Mrs. Gardner is owner of all the lands, because (i) she owns the Lordship of the Manor and (ii) the lands are part or are reputed to be part of the Manor. As to (i), the 1911 Mortgage, although it did not expressly include the Lordship it did expressly include the "Manorial Rights" (only possible if Mr. Ward then owned the Lordship) and the 1931 Assent expressly included the Lordship. As to (ii), the 1783 Index and the Second Schedule to the 1911 Mortgage treated these lands as being part of the Manor; there was no evidence (he had been unable to trace any Inclosure Award) that they had ceased to be such. He referred me to Halsbury, Laws of England (3rd edition) volume 5 page 348 as showing that the lord of any manor owns all soil within the manor.

In my opinion the submissions made by Mr. Turton as above stated are on the evidence given, well founded. Although the proved act of ownership by Mrs. Gardner relating to Ballsgate Common does not amount to much, and no act of ownership relating to Yatton Marsh was proved, these lands are such that (apart in the case of Ballsgate Common from grazing and taking bracken by the owners of common rights), acts of ownership are unlikely. All these lands are dealt with together in the 1765 Index and the 1911 Mortgage. Notwithstanding their very different appearance Ballsgate Common (CL.134) and Yatton Marsh (CL.151) are I think just as much part of the waste land of the Manor as Yatton Hill (CL.143). The registration on the application of Mrs. Gardner as owner, of a right of common over these lands attached to Yatton Court/Brinshope Farm does not I think preclude me from accepting her claim to own these lands; although a person cannot in strict law have a right of common over lands he owns, he can in respect of one property owned by him have a quasi right of common over other property owned by him, see Musgrave v Inclosure 1874 L.R. 9. Q.B. 163; further the Rights Section although a register of rights of common is not a register of ownership of rights of common. Accordingly I am satisfied that Mrs. Gardner is the owner of the lands and I shall accordingly direct the Herefordshire County Council, as registration authority, to register Mrs. Kathleen Valdex Gardner of Yatton Court, Aymestrey, Leominster, Herefordshire as the owner of the lands under section 8(2) of the Act of 1965.

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

1<sup>st</sup>

day of February

1974.

A. A. Bailan Fuller

Commons Commissioner