



In the Matter of Breinton Common (part),
Stretton Sugwas and Breinton,
Hereford and Worcester, (No 1)

DECISION

These disputes relate to the registrations at Entry Nos 1 - 13 (inclusive) in the Rights section of Register Unit No CL 131 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No 3 made by Mr G Morgan-Jones and noted in the Register on 24 October 1969, and Objections Nos 279 to 291 (inclusive) also made by Mr Morgan-Jones and all noted in the Register on 16 September 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 16 February 1978. The hearing was attended by Mr S L Beaumont, solicitor, on behalf of Mr A B Dawe, Mrs M J Morgan, Mr V E Winter, the successor in title of Mr M C Dawe, Mr J E Hull, Mr W G Pitt, Mr F C Dawe, M/s M F Langford, Mr J B Povey, Mr G H A Davies, Ms D M J Bradley, and Mr D J Hyett, the successor in title of Mr C J R Friend, the applicants for the registrations at Entry Nos 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, and 13 respectively, and by Mr D M Halpern, solicitor, on behalf of the Objector. There was no appearance by or on behalf of Mr J D Price or Mr J L Sterckx, the applicants for the registrations at Entry Nos 8 and 10.

The registration at Entry No 7 is of a right of piscary and the registrations at Entry Nos 1 to 5 and 8 to 12 each include such a right. Since there is no water on or adjoining the land comprised in the Register Unit, it is only necessary for me to consider the evidence upon which Mr Beaumont relied in support of his clients' claims that they had acquired the other rights included in the registrations either by prescription under the Prescription Act 1832 or by lost modern grant over the area marked A on the Register Map. It was agreed that there were no rights over the area marked B, while the Objection did not relate to the area marked C, on the map.

The registration at Entry No 1 is of a right of estovers attached to River Bank. Mr A B Dawe has lived at River Bank for the last ten years, during which time he has collected firewood, bean sticks, and peasticks on the land comprised in the Register Unit and has never been stopped from so doing. Mr Dawe said that Mr Eric Payne, his predecessor at River Bank, had collected wood, but that he did so as a resident in the village.

The registration at Entry No 2 is of a right of estovers attached to Heron Hill. Mr P A Morgan, the husband of the applicant, gave evidence that they had lived at Heron Hill since 1963, when it was built. Mr Morgan said that he and his wife had taken very small amounts of wood from the land the subject of the Objection. In considering this and the other registrations it has, of course, to be borne in mind that by virtue of section 16(2) of the Act of 1965 an objection to the registration of a right of common is to be deemed to be such a suit or action as is referred to in section 4 of the Act of 1832. Since Objection No 3 was dated 1 November 1968, Mr Morgan's evidence related, in effect, to a period of only five years.

The registration at Entry No 3 is of a right of estovers attached to Wadworth Cottage. Mr Winter has owned this property only since 1973. He has collected fallen timber for going without being challenged. His predecessor in title



purchased the property about 1968, and before that it was occupied by old employees of the owners of the Sugwas Court Estate and ex-servicemen.

The registration at Entry No 4 is of a right of estovers attached to The Bay Tree. Mr J E Hull has lived at The Bay Tree for the last sixteen years, during which time he has collected peasticks and firewood on the land comprised in the Register Unit. He also used to collect beansticks, but he now uses canes instead. No one has ever challenged Mr Hull when he has been so engaged.

The registration at Entry No 5 is of a right of estovers attached to Weir View Cottage. Mr Pitt has lived in this house for the last 19 years. He has taken pea and bean sticks and old wood from the area marked "A" on the Register Map. Mr Pitt also said that he had previously lived in a house on the opposite side of the road and that he had taken wood from the land for the last 50 years. The evidence as to what he did when living in another house can, however, have no relevance to the consideration of whether rights of common have become attached to Weir View Cottage.

The registration at Entry No 6 is of a right of estovers attached to Wye View. Mr Frank Dawe has lived at Wye View for 41 years, coming there when he was 27. He said that when he first came a lot of old men would tell him that if ever he wanted bansticks or peasticks he could go on to the land comprised in the Register Unit: their fathers had done so before them and he could too, so he did.

The Registration at Entry No 9 is of a right of estovers attached to Beechcroft. Mr Povey bought Beechcroft in 1965. It was then a new house. He has never had any occasion to collect wood or sticks from the land comprised in the Register Unit. He said that he thought that it was land you could walk on and generally enjoy the amenities.

The registrations at Entry Nos 11 and 12 are of rights of estovers attached to Bowerwood and Pomeroy. Mr Beaumont called no evidence in support of either of the registrations.

The registration at Entry No 13 is of a right of estovers, a right of turbary and a right of pannage attached to Weir View. Mr Hyett bought Weir View in 1970. Since then he has collected odd pieces of driftwood and dead wood for firewood, but he has never cut turves and never kept pigs. He has no knowledge of what any previous owners of his property did, but he said that when he purchased he relied on a statement as to common rights contained in the particulars of sale, but the particulars said no more than that common rights had been claimed "for Breinton Common which comprises mainly areas of woodland including about half a mile of salmon and trout fishing rights in the famed River Wye." This carefully phrased statement was perfectly accurate, but it was not a representation that any such rights actually existed, and it is certainly not evidence of the existence of such rights.

With the exception of that at Entry No 6, none of the registrations was supported by evidence covering a sufficient period before the making of Objection No 3 to enable me to find that any of the applicants had acquired a right by prescription. However, Mr Beaumont invited me to infer that the state of affairs of which the witnesses spoke had existed from a much earlier period. I find myself unable to draw such an inference, which was contradicted by the evidence adduced by Mr Halpern.

The land comprised in the Register Unit was let as part of Sugwas Farm until the



Objector purchased it in 1960. The shooting rights were excluded from the tenancy and from 1929 until 1960 they were let to a Capt Mumford. Capt Mumford employed his gardner and his chauffeur to look after the shooting. Miss M R Mumford, his daughter, said that her father challenged anyone whom he saw on the land and that when she was a child he took proceedings in trespass.

While it is likely that there was some occasional trespass by villagers for the purpose of taking wood and sticks, I am satisfied that this was never acquiesced in by the owner or tenant of the land, so that no right by prescription was acquired by the owners of any of the houses referred to in the registrations, none of whom according to Mr Pitt, ever talked of "who owned what" until the advent of commons registration.

I have therefore come to the conclusion that no rights have been established over the area marked A on the Register Map. Since it will follow that area A will be excluded from the Register Unit, as also will the area marked B, and since the Objection does not relate to the area marked C, the technically correct manner in which to give effect to my decision is to confirm the registrations.

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

25th

day of

April

1978

CHIEF COMMONS COMMISSIONER