



Reference No 215/D/230

COMMONS REGISTRATION ACT 1965

In the Matter of Clifford Common,
Clifford, South Herefordshire District,
Hereford and Worcester

DECISION

This dispute relates to the registration at Entry No 11 in the Rights Section of Register Unit No CL 76 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No 40 made by Captain L N Hope and noted in the Register on 7 June 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 12 January 1979. At the hearing (1) Mrs Constance Elizabeth Hope, Mr John Stobart and Mr William Robert Douglas Verdin being the executors of Captain Laurence Nugent Hope (he died 27 September 1973) were represented by Mr R C Smallwood solicitor of T A Matthews & Co, Solicitors of Hereford; and (2) Mr D V H Shackleton on whose application the registration was made, attended in person.

The land ("the Unit Land") in this Register Unit is a strip about 500 yds long bounded on the west by the River Wye (the River bed to the middle line is included in the Unit Land) and bounded on the east (for about half its length) by the strip along which formerly ran the railway from Hereford to Hay-on-Wye and Brecon. According to the Register, the Unit Land contains about $3\frac{1}{2}$ acres (inclusive of the River bed: perhaps $5\frac{1}{2}$ acres exclusive). In the Ownership Section, Captain Hope is registered as the owner of all the Unit Land.

The said registration is of the following right attached to Clifford Crossing Cottage: "Right of piscary one rod to take some trout and coarse fish in season. Right to graze one pony. Right of estovers. Right of turbary". The grounds of objection are: "I claim exclusive Rights of Fishing (piscary) as Lord of the Manor of Clifford".

In addition to the now disputed registration, there are or were 10 other registrations in the Rights Section. Those at Entry Nos 3 and 4 being of rights of grazing only (25 sheep or 8 cattle; and one horse one pony) and being undisputed became final in 1972. The others following decisions of the Chief Commons Commissioner on hearings held by him on 16 February 1978, now stand as follows: those at Entry Nos 1, 5, 6, 8 and 10 are void; that at Entry No 2 is of a right of grazing (12 cattle, 50 sheep, 8 pigs, 2 horses); right of estovers; right to fish one rod for coarse fish; those at Entry Nos 7 and 9 are: "one rod to fish for coarse fish".

Mr Shackleton in the course of his evidence produced a copy (examined 29.1.65) of a conveyance dated 14 December 1871 by which the Rt Hon G W Hunt and others conveyed to the Hereford Hay and Brecon Railway Company various pieces of land containing altogether 27 acres 1 rood. He said that he purchased Clifford Crossing Cottage in 1965 and that he obtained copy 1871 conveyance from British Railways who told him that there were rights of common attached to the land. He claimed the right of fishing now disputed under the following words in the 1871 conveyance: "Together with all buildings fixtures lands hedges ... mines minerals watercourses commons rights liberties privileges ... to the same premises or any part thereof belonging or therewith heretofore used occupied or enjoyed ...". Clifford's Crossing



Cottage and the land held therewith (about $\frac{3}{2}$ acre) is a short distance south of the Unit Land and between it and Clifford Castle.

Mrs Hope in the course of her evidence produced: (1) a conveyance dated 9 December 1920 by which the Trustees of the will of Mr Peter Coates (he died 15 September 1913) conveyed to Mr (later Captain) L N Hope (nephew of the testator and entitled under his will) the Manor and lands described in the 12 schedules thereto; the first schedule included the Manor of Clifford, Cliffords Castle and about 1,334 acres of land in Whitney Clifford and Cusop; (2) the probate dated 19 February 1974 of the will of Captain L N Hope. She said (among other things and in effect):- Her husband fished all his life and his fishing included the part of the River Wye by the Unit Land.

In my opinion the general words above quoted from the 1871 conveyance are not any evidence of the right of fishing now claimed. Before the Conveyancing Act 1881 it was the general practice to include some such words in every conveyance of land; such words are now by section 62 of the Law of Property Act 1925 (replacing section 6 of the Conveyancing Act 1881) deemed to be included in every conveyance; as to the lack of evidentiary value of these words, see *Baring v Abingdon* 1898 2 Ch 374 at page 388. So under the quoted words Mr Shackleton can only be entitled to a right of fishing if I can somehow infer that there was in 1871 such a right then belonging to the land thereby conveyed; of this I have no evidence at all. Further Mr Shackleton did not suggest that he had ever himself fished from the Unit Land.

In the absence of any evidence in support of the right, there is no reason why I should not give full effect to the general evidence of Mrs Hope about the fishing done by her husband. My decision is therefore that the right of fishing claimed was not properly registered.

Towards the end of the hearing Mr Smallwood asked leave to amend the grounds of objection so as to extend them to the rights of grazing estovers and turbary. As to this Mr Shackleton while conceding that he had never grazed a pony said that he might want to do so and also to take sticks; he agreed that on the Unit Land there was no turf which could be used as fuel.

Mr Shackleton would I think suffer hardship if I allowed the amendment because it is likely that Cliffords Cottage was before him occupied by an employee of the Railway Company who looked after the level crossing and that same employee both grazed the Unit Land and took sticks off it. It may be that evidence of some such use of the Unit Land could have been obtained if Mr Shackleton had known that it might be necessary. I am not persuaded that the executors of Captain Hope will suffer any hardship if I refuse the amendment because having regard to the grazing rights which have become finally registered (25 sheep or 8 cattle plus 12 cattle, 50 sheep etc) the value of their interest in the Unit Land would not be significantly affected by the rights claimed (1 pony plus estovers). I therefore refuse the amendment except as regards turbary.

For the reasons set out above I confirm the registration with the modification that there be deleted from column 4 the words: "Right of piscary, one rod to take salmon trout and coarse fish in season" and "Right of turbary".



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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 26th — day of February 1979

a. a. Bedin Filler

Commons Commissioner