



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/11 and 12

In the Matter of Westhope Common
and Upper Hill, Canon Pyon and Hope
under Dinmore, Leominster D

DECISION

These disputes relate to the registrations at Entry Nos land 2 in the Ownership Section of Register Unit No CL. 33 in the Register of Common Land maintained by the former Hereford County Council and are occasioned by Objection No 451 made by D H Legge and noted in the Register on 17 January 1972 and Objection No 360 made by L Legge and noted in the Register on 2 November 1971.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 10 May 1977. The hearing was attended by Mr P H Treadgold in person and Mr Senior and Mr Turton both of Messrs Lloyd & Son on behalf of Mr D H Legge and Mr L Legge respectively. Mr S L Beaumont of Messrs Beaumont Smith and Davies asked leave to appear on behalf of the Parish Council and some commoners.

The Objectors had no information as to the ownership of the land in question and put Mr Treadgold to the proof of his title.

Part of the land in question was the subject of a conveyance dated 30 July 1968 whereby the Personal Representatives of T H Griffiths conveyed the land identified in the schedule and the plan annexed thereto (hereinafter referred to as "the Griffiths land") to Mr Treadgold in consideration of a sum of £25. On this sale Mr Howells-Davies of Messrs T A Matthews & Co acted for both Vendor and Purchaser; the abstract of title produced at the hearing by Mr Treadgold did not establish that the legal estate in "the Griffiths land" was vested in the personal representatives of T H Griffiths and in these circumstances I took the view that in fairness to both Mr Treadgold and Mr Howells-Davies I should give to Mr Howells-Davies the opportunity to explain how the said conveyance of 30 July 1968 came to be executed. I am indebted to Mr Howells-Davies for having come to the hearing and he explained that he was well aware that the paper title was defective and that for this reason he obtained a statutory declaration dated 17 July 1968 from Mrs D B Griffiths the widow of the late T H Griffiths in which she declared that during the last 30 years she had resided at Fullbridge, Westhope and that during the whole of that period "the Griffiths land" had formed part of Fullbridge Westhope and that her late husband was in full free and undisturbed possession thereof subject only to the rights of common affecting the same. Mr Howells-Davies accepted that Mr Treadgold's title if any must be a possessory title based on this statutory declaration. It was accepted on all sides that Mrs D B Griffiths was a lady of great age in failing health and that a useful purpose would be served by endeavouring to obtain oral evidence from her.



Mrs Violet May Legge of Broomwell Farm which adjoins the common on the east gave evidence and she said that her grandfather lived at Winsley Farm about a mile away from the common and that she had known the common all her life. Mr Davis and before him Mr Patrick and her husband had grazed the common as also had her sister and brother in law. She had never seen Mr Griffiths on the common. The Ministry cultivated part of the common in the war. Electricity cables and telephone wires cross the common and she was under the impression that the Church Commissioners granted the wayleaves. She had never seen Mr Griffiths on the common and never seen M D Griffiths and never had any contact with Mr Griffiths. Cross-examined by Mr Treadgold she agreed that he had made a road. She was not surprised that he was in receipt of the money for the wayleaves. The wire crossed the common from Beech Farm to Broomwell.

Mrs Eileen Lily Legge of New House Farm a sister of Violet May Legge, said New House Farm was about a mile from the common and she confirmed her sister's evidence. She had never seen Mr Griffiths on the common.

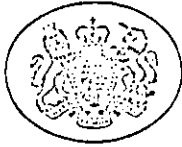
David John Leddington of Hill Lodge Farm, Upper Hill said he had lived there since 1956, that he is a commoner but has not turned out in recent years. He had never seen Mr Griffiths. He spoke of a decision by a meeting of the commoners to erect a fence, Mr Treadgold being present at that meeting. Cross-examined by Mr Treadgold he agreed that the fence which was in fact erected was on the Upper Hill side and was to stop animals going on to the road; it was half a mile from the land in dispute and was a good idea. He said he knew Pinks Bank was owned by Mr Griffiths.

Evelyn Agatha Law of Pigeon House, Upper Hill said she had lived there all her life and remembered going on the common. She knew Mr Griffiths by sight but had no contact with him and she knew Mrs Griffiths. She said "we always turned on the common". She never knew Mr Griffiths do anything about the common. Her brother was a tenant of Griffiths of Ashcroft; he paid rent to Mr Griffiths and farmed there and she expected that he grazed the common.

Weighing the evidence of these four witnesses against the statutory declaration of Mrs Griffiths I am not satisfied that Mr Griffiths had a possessory title and as regards that part of the land in question which is the Griffiths land I must refuse to confirm the registration.

As regards the remainder of the land in question Mr Treadgold relied upon a document which he produced signed by Lord Hereford on 21 April 1977 whereby Lord Hereford agreed to transfer that land to Mr Treadgold and undertook to ratify that document by signing or executing any deed or document necessary to effect the said transfer. The said document clearly does not vest the legal estate in Mr Treadgold and I must therefore refuse to confirm the registration as regards the part of the land in question owned by Lord Hereford.

In refusing to confirm the Registration I bear in mind that there will have to be another reference under section 8 of the Act of 1965 and my refusal is without prejudice to any claims Mr Treadgold may put forward on that reference. If Mr Treadgold obtains a conveyance by Lord Hereford of the land which Lord Hereford has agreed to transfer and produces that conveyance at the unclaimed land reference, that conveyance will be persuasive evidence that Mr Treadgold will then be the owner of that land.



As regards the Griffiths land, the above-mentioned abstract of title commences with a conveyance dated 5 November 1918 whereby Ashcroft comprising 2.823 acres was conveyed to Thomas Henry Griffiths senior and also there were conveyed "all these pieces or parcels of unenclosed land on Westhope Hill and all other lands and hereditaments (if any) which were conveyed to Henry Griffiths dec'd by an indenture of 20 August 1869. Not only was the conveyance of 20 August 1869 not available at the hearing but the title of T H Griffiths' personal representatives is defective in that a conveyance dated 31 December 1937 and an assent dated 7 January 1938 conveyed and vested Ashcroft in T H Griffiths but did not convey or vest the unenclosed lands referred to in the conveyance of 5 November 1918. Mr Treadgold in the closing stages of the hearing produced a copy of a map he had seen in the Hereford archives which did indicate that the Griffiths land was at some time owned by a Mr Griffiths. Then again Mr Treadgold produced a copy letter dated 18 May 1967 written by Messrs Cluttons on behalf of the Church Commissioners to Mr Griffiths in which they refer to an extract from Mr Griffiths records which satisfied them that the land allotted to the Dean and Chapter under the Enclosure Award of 1878 was subsequently bought by Mr Griffiths' grandfather. It seems probable that it was subsequent to this letter that the Church Commissioners ceased to receive the rent for wayleaves current, by being received by Mr Treadgold.

It is possible, and I put it no higher, that further research in the archives, and among the documents in the possession of Mrs Griffiths and enquiries made from the Church Commissioners will disclose that the Vendors to Mr Treadgold can perfect their title to the land which they agreed to sell to Mr Treadgold and if this is possible they will of course be bound so to do. The results of these further researches and enquiries, if made, can be given in evidence at the hearing of the unclaimed land reference.

I repeat that on the evidence available to me at the hearing I have no alternative but to refuse to confirm the registration but I do so without prejudice to any claim by Mr Treadgold which he may make on the unclaimed land reference, based on evidence not available to me.

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 20th day of June 1977

Y A Little

Commons Commissioner