



COMMONS REGISTRATION ACT 1965

Reference Nos 231/U/2
231/U/3
231/U/6
231/U/7
231/U/8

In the Matter of (1) Travelly Well,
(2) Bettwys Pool, (3) Rhiwgantine Turbary,
(4) Trebodier Turbary, and (5) Trebodier
Turbary, all in Bettwys-y-Crwyn, South
Shropshire District, Salop

DECISION

These five references relate to the question of the ownership of lands:- (1) known as Travelly Well containing about 0.14 acres, (2) Bettwys Pool containing about 0.24 acres, (3) Rhiwgantine Turbary containing about 24 acres, 24 perches, (4) Trebodier Turbary containing about 15 acres, 3 roods, 19 perches (situate northeast of the road from Bettwys-y-Crwyn to the Anchor Inn) and (5) Trebodier Turbary containing about 10 acres, 3 perches (situate on the southeast side of the said road and opposite to such last mentioned Turbary), all in Bettwys-y-Crwyn South Shropshire District and being the lands comprised in the Land Section of Register Unit (1) No. CL64, (2) No. CL65, (3) No. CL69, (4) No. CL70 and (5) No. CL71 in the Register of Common Land maintained by the Salop 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 any 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 lands at Shrewsbury on 20 June 1978. At the hearing the following attended in person: (1) Mr David Roy Hamer of Hilltop Farm, Codheridge, Worcester, (2) Mr John Carey Hamer of 5 Malvern Road, St John, Worcester, (3) Mr John Herbert Roberts of Travelly, Beguildy, Knighton, Powys, and (4) Mr Roger Thomas Maughfling of The Old Vicarage, Bettwys-y-Crwyn. Mr D R Hamer and Mr J C Hamer (they are brothers) said that they represented their brother Mr Bernard Dennis Hamer of Trebodier Farm, Beguildy, Knighton, Powys.

As regards the two Turbaries (CL69 and CL70) both northeast of the said road, and together containing about 40 acres 3 perches:- In the Rights Section had been registered (1) on the application of the Parish Council on behalf of the inhabitants of Trebodier a right of turbary in gross, and (2) on the application of the executors of Mr T C Hamer deceased a right attached to Trebodier Farm to graze 1,200 sheep and 30 cattle.

As regards these lands (CL69 and CL70), Mr D R Hamer said (in effect):- He had known them since 1933 (he was born in 1928); they were grass, heather and bog. Trebodier Farm which is a short distance south of the lands, is now owned by his brothers and himself as successors of his father Mr T C Hamer who acquired the Farm under a conveyance dated 21 February 1936. The lands had always been grazed



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from the Farm; additionally they used to take fern and rushes for thatching (now no longer), and have taken and still take fern and rushes for cattle bedding.

In the Schedule to the 1936 conveyance (produced) the lands are included with the other lands of the Farm thereby expressed to be conveyed as part of plots 544 and 1128, both described as "Sheep Walks" and containing 118.498 acres and 36.838 acres, but the Farm is expressed to be conveyed "SUBJECT...to the right of Turbary for the inhabitants of the parish of Bettwys for fuel on about 40 acres and 3 perches of Hill land being part of Numbers 544 and 1128 aforesaid and over which said Hill land there is a right of herbage or grazing only".

The relevant words in the 1936 conveyance are "right of herbage or grazing only". In my opinion the conveyance is not evidence that Mr T C Hamer acquired under it any greater right such as the right of ownership claimed. The conveyance by limiting the right conveyed to herbage or grazing indicates that the parties thought that the ownership was in someone else; in my opinion the use made of the land as described by Mr D C Hamer can be ascribed to the right of grazing so conveyed and is not large enough to establish a possessory title to the land itself against the true owner. My conclusion is therefore that neither Mr T C Hamer nor his successors in title are owners of these lands.

In the absence of any evidence that any other person could be the owner of these lands, I am not satisfied that any person is the owner, and that (the CL69 and CL70) lands will remain subject to protection under section 9 of the Act of 1965.

As regards the Turbary (CL71) southwest of the said road (opposite the CL70 land) and containing about 10 acres 7 perches:- In the Rights Section has been registered on the application of the Parish Council on behalf of the inhabitants of Trebodier a right of common of turbary in gross. No one present at the hearing claimed ownership. In the absence of any evidence, I am not satisfied that any person is the owner of this land, and it (the CL71 land) will therefore remain subject to protection under section 9 of the Act of 1965.

As regards the Travelly Well strip (CL64), about half a mile southsoutheast of CL71 land and containing 0.14 acres, Mr Roberts said (in effect):- The well is fed by a spring concreted in. He owned adjoining lands: Lower Travelly, Travelly Bugle, Upper Travelly, and Middle Travelly. Some of the water is now run from the well to a reservoir on the other side of the hedge which feeds the buildings on his lands. In the absence of any evidence of ownership of this land, I am not satisfied that any person is the owner and it (the CL64 land) will remain subject to protection under section 9 of the Act of 1965.

As regards the Pool (CL65) in the village of Bettwys-y-Crwyn, and a short distance southwest of St Mary's Church and containing 0.24 acres, (the registered land comprises a small part of the water area of the Pool and a strip joining this part to the public road on the south):- Mr R T Maughfling in the course of his evidence produced a copy of a conveyance dated 26 November 1963 by which Col. Rt. Hon. E R H Earl of Powys conveyed to Mr F W Treadwell land described as "woodland rough and pool" containing 6.327 acres delineated on the plan annexed; the plan shows that the land so conveyed included the said water area but does not include the strip. Mr Maughfling said that in July 1975 he bought the Old Vicarage (shown on the Register map as "Vicarage") together with the Bettwys Pool and the other lands described in the 1963 conveyance.



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In the foregoing circumstances, I adjourned the proceedings so far as they related to the Pool (CL65) to London to enable Mr Maughfling to produce his title deeds.

I held the adjourned hearing at London on 27 July 1978. At this hearing Mr and Mrs Maughfling were represented by Mr S J Harper solicitor of White & Leonard, Solicitors of 4 St Bryde Street, London EC4.

Mr Harper produced the said 1963 conveyance and a conveyance dated 1 July 1975 by which Mr F W and Mrs D M Treadwell conveyed to Mr R T and Mrs M J Maughfling first The Vicarage grounds, fields and rough pasture containing altogether 4.950 acres and secondly the land comprised in the 1963 conveyance containing 6.327 acres.

On the evidence summarised above, I am satisfied that Mr and Mrs Maughfling are the owners of the part of the Pool (CL65) included in the two conveyances, and I shall therefore direct the Staffordshire County Council as registration authority to register Mr Roger Thomas Maughfling and Mrs Mary Jacqueline Maughfling both of The Old Vicarage, Bettwys-y-Crwyn, Craven Arms, Salop as the owners of the part of the land in this Register Unit which is on the Register map marked as part of OS No. 1507.

Mr Harper said that although the said strip (the track on the public road to the water area) was not included in either conveyance, Mr and Mrs Maughfling were prepared to accept the responsibility for maintaining it if it was vested in them, and suggested that I should so vest it because it is not being looked after at all at present. I have no jurisdiction under the 1965 Act to vest land registered under it in a person merely because it is or might be expedient for such person to own it; on references such as these my power is limited to saying whether I am or am not satisfied as to ownership. On the evidence before me I am not satisfied that Mr and Mrs Maughfling or any other person is the owner of this part of the CL65 land (the part on the Register map shown as OS 1507) and it will therefore remain subject to protection under section 9 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 23rd day of August - 1978.

A. A. Baker

Commons Commissioner.