



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

DECISION

These disputes relate to the registrations at Entry Nos 1 to 11 (inclusive) in the Rights section of Register Unit No CL 68 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No 4 made by Mr G Morgan-Jones and noted in the Register on 24 October 1969 and by Objection Nos 268 to 278 (inclusive), all 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 15 and 16 February 1978. The hearing was attended by Mr S L Beaumont, solicitor, on behalf of Mr A B Dawe, Mrs M T Morgan, Mr V E Winter, the successor in title of Mr M C Dawe, Mr J E Hull, Mr W G Pitt, Mrs M F Langford, Mr J B Povey, Mr D J Hyett, the successor in title of Mr C J R Friend, and Ms D M J Bradley, the applicants for the registrations at Entry Nos 1, 2, 3, 4, 5, 6, 8, 10 and 11 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 7 and 9.

A part of the land comprised in the Register Unit is bounded on the west by the River Wye. Immediately to the south of this land is the land comprised in Register Unit CL 87, also bounded on the west by the river. There is no physical boundary between the two areas, but they are divided by the boundary between the parish of Stretton Sugwas to the north and the parish of Breinton to the south. The land to the south, which is not in the same ownership, is subject to thirteen registrations of rights of estovers and piscary (some of them on the application of applicants in this case) which have become final because they were not disputed.

Mr Beaumont contended that since there was no impediment to passage between the two areas it should be assumed that the same rights existed all along the bank of the river. I find myself unable to accept this contention or even to regard the existence of the rights over the land to the south as having any relevance to the matters the subject of these disputes.

The land comprised in Register Unit CL 68 has had a somewhat unusual conveyancing history. It was formerly situate in the parish of Eaton Bishop and part of the episcopal estates of the Bishops of Hereford. It was sold by the Bishop of Hereford on 31 October 1813 as part of an estate known as Sugwas Court. By a conveyance dated 29 April 1860 the estate, together with the manor of Eaton Bishop, was sold to a member of the Ingham family, in which family it continued until it was purchased by the Objector in 1960. The Objector had previously been the tenant, and the land comprised in the Register Unit was included in his tenancy, as it had been included in previous tenancies back to 1904 and possibly earlier. Nevertheless, on 19 November 1908 the Ecclesiastical Commissioners for England granted a 99-year lease to the Eaton Bishop Parish Council of the soil of the commons and waste and open lands of the manor of Eaton Bishop, the schedule to which set out twelve parcels on the Tithe Map for the parish with a total area of 59a. Or. 25p., two of which, having a total area of 1a. 1r. 35p., consisted of



the land comprised in this Register Unit. The lease was expressed to be for the purpose and to the intent that the demised premises should become and be open spaces under the control of the Parish Council within the meaning of section 8(1) of the Local Government Act 1894. A rent of 5/- a year was reserved. This rent, converted to 25p., is still paid by the Parish Council to the Church Commissioners.

In order to appreciate what bearing, if any, this lease has on the present proceedings it is necessary to consider also the other relevant facts relating to the land comprised in the Register Unit. In the tithe apportionment made in 1840 the land is described as "Waste". In the schedule to the 1860 conveyance it is described as "Plantation". It appears that the land was planted with larches, which were felled about 1926 or 1927 when they reached commercial maturity. After that the woodland regenerated and remained quite good woodland until many of the trees were killed by Dutch elm disease. Until the larches were felled the plantation was fenced against the road, but the fence has not been repaired since the felling. The fishing and shooting rights were excluded from the Objector's tenancy. It does not appear that the Parish Council has ever been in possession of this part of the premises described in the schedule to the lease of 1908, and there is no reference to it in the Parish Council minutes.

I am left in no doubt that the land in question was once part of the waste of the manor of Eaton Bishop and that it was still waste land in 1840. By 1860, however, it had been converted into a larch plantation. In my view, the correct explanation of the lease of 1908 is that what remained of the Bishop of Hereford's estates after the sale in 1813 passed to the Ecclesiastical Commissioners under the nineteenth century legislation relating to episcopal estates, and that those responsible for drafting the lease were using some episcopal terrier which had become out-of-date when the Sugwas Court estate was conveyed away. The error would, no doubt, have come to light had the Parish Council ever attempted to take possession of the land. This was never done, and the successive owners of the land remained in ignorance of the lease until it was produced at the hearing.

I therefore attach no importance to the lease, and I turn to the evidence upon which Mr Beaumont relied in support of his clients' claims that they had acquired rights of common either by prescription under the Prescription Act 1832 or by lost modern grant.

The registration at Entry No 1 is of a right of estovers and a right of piscary attached to River Bank. Mr Beaumont called no evidence in support of this registration.

The registration at Entry No 2 is of a right of estovers and a right of piscary 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 had never fished, but had taken very small amounts of wood. 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 Commons Registration Act 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 4 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 and a right of piscary attached to Wadworth Cottage. Mr Winter has owned this property only since 1973. He does not fish, but he has collected fallen timber sporadically on the land comprised in the Register Unit. 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 and a right of piscary attached to The Bay Tree. Mr Beaumont called no evidence in support of this registration.

The registration at Entry No 5 is of a right of estovers and a right of piscary attached to Weir View. Mr Pitt has lived in this house for the last 19 years. He has taken pea and bean sticks and old wood from the land in question, and he has engaged in coarse fishing. Mr Pitt also said that he had previously lived in a house on the opposite side of the road and that he had fished and 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.

The registration at Entry No 6 is of a right for one rod to fish for salmon, trout, and coarse fish in the River Wye attached to Eaton View. Mrs Langford gave evidence regarding fishing by her children, but said in cross-examination that such fishing had been from the land comprised in Register Unit No CL 87.

The registration at Entry No 8 is of a right of estovers and a right of piscary attached to Beech Croft. Mr Beaumont called no evidence in support of this registration.

The registration at Entry No 10 is of a right of estovers, a right of turbary, a right of pannage, a right of piscary and a right for one rod to fish for salmon, trout and coarse fish in season attached to Weir View. Mr Hyett bought Weir View in 1970. Since then he and his sons and friends have engaged in some fishing from the land comprised in the Register Unit. He has also collected odd pieces of driftwood and dead wood for firewood, but he has never cut turves and never kept pigs. He had 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.

The registration at Entry No 11 is of a right of estovers, a right of piscary, and a right for one rod to fish for salmon, trout, and coarse fish in season attached to Pomeroy. Mr Beaumont called no evidence in support of this registration.

None of the registrations was supported by evidence covering a sufficient period before the making of Objection No 4 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 ever since the 1908 lease and possibly back to 1840. 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 and fishing rights were excluded from the tenancy, and from 1929 until 1960 they were let to a Capt Mumford.



Capt Mumford employed his gardener and his chauffeur to look after the shooting and fishing. 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. - Evidence was given by other witnesses who remembered what happened during Capt Mumford's time. Mr W E Philpots, whose father was gardener to Capt Mumford, used to play on the land as a child, and he never saw any villagers fishing from this land, although he saw them fishing further down the river on the land comprised in Register Unit No CL 87. Mr W Lewis, now aged 80, never saw people other than the sporting tenant fishing from the land comprised in Register Unit No CL 68. Mr W T Jones, whose father worked for the tenant of Sugwas Farm, never saw villagers fishing or carrying out any other activities on the land, and he remembered Mr E Wood, the bailiff, turning people off. Similar evidence was given by Mr T C Davies, aged 80, and Mr D R Jones, former employers of Capt Mumford.

While it is likely that there was some occasional trespass by villagers for the purpose of taking wood and fish, 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. Mr A Davies, who came to live in Breinton in 1906 said that "practically all the village" used to fish. There cannot, as a matter of law, have been a right of common for "practically all the village", but this evidence tends to show that such fishing as there was was not done in the exercise of rights attached to particular properties, but if any thought at all was given to the matter, in the mistaken belief that people living in the village were entitled to fish in the river.

For these reasons I refuse to confirm any of 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