



COMMONS REGISTRATION ACT 1965

Reference Nos:- Cumbria
262/D/261 and 262;
Lancashire 220/D/136 to 148
inclusive

In the Matter of (1) Arnside Marsh,
Arnside, South Lakeland District,
Cumbria, (2) part of Silverdale Salt
Marsh and (3) another part of
Silverdale Salt Marsh, both in
Silverdale, Lancaster City, Lancashire

DECISION

These disputes relate to the registrations summarised in Part I of the Schedule hereto of Register Unit No. CL 118 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) County Council, and of Register Unit Nos. CL 130 and CL 154 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by the Objections specified in Part II of the said Schedule.

I held a hearing for the purpose of inquiring into these disputes at Kendal on 18 November 1980. In a memorandum prepared by me shortly afterwards I set out the names of the persons who then attended or were represented and summarised my decision, which was to the effect that conditionally upon certain events which did not happen I refused to confirm the registrations which were the subject of these disputes, and that otherwise the proceedings stood adjourned. A copy of this memorandum was sent to the solicitors concerned and to Cumbria and Lancashire County Councils under cover of letters dated 29 January 1981.

I held the adjourned hearing at Morecambe on 2 July 1981. At this hearing (1) Brigadier Charles Edward Tryon-Wilson on whose application as owner and Mr Gilpin Bland and Mr John Bland on whose application as tenant the registrations at CL 118 Rights Section Entry No. 4, at CL 130 Rights Section Entry No. 2 and at CL 154 Rights Section Entry No. 1 were made and one of whom (Brigadier Tryon-Wilson) made CL 130 Objection Nos. 459 and 460 and CL 154 Objection No. 458, were represented by Mr M Gillibrand solicitor of Oglethorpe Sturton & Gillibrand, Solicitors of Lancaster as agents for Powell & Sykes Solicitors of Kendal; (2) the Royal Society for the Preservation of Birds as successors of Messrs Geoffrey Curzon Harris and Richard Gallienne Swainson who were not only Objectors as mentioned in the Schedule hereto but also registered as owner at CL 118 Ownership Section Entry No. 1 (whole), CL 130 Ownership Section Entry No. 1 (part) and CL 154 Ownership Section Entry No. 1 (whole), were also represented by Mr M Gillibrand his firm acting as agents for Bailey Shaw & Gillett, Solicitors of 5 Berners Street, London; (3) Mr T B Bright as successor under a deed of gift of Mrs Catherine Helen Vazeille Bright on whose application the registration at CL 130 Rights Section Entry No. 1 was made was also represented by Mr M Gillibrand his firm as regards him being principals; and (4) Mr Frank William Burrow and Mr Frederick Michael Burrow as executors of Mr Walter Septimus Burrow on whose application the registration at CL 130 Rights Section Entry No. 3 and at CL 154 Rights Section Entry No. 2 were made, was represented by Mr D E Smith solicitor of Bannister Bates & Son, Solicitors of Morecambe.



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At the hearing after some discussion it was suggested and agreed by Mr Gillibrand and Mr Smith that my decision should be, and accordingly is as follows:- I refuse to confirm all the Land Section and Rights Section registrations now in dispute and summarised in the Schedule hereto conditionally upon no application being made to a Commons Commissioner before the expiration of six months from the date of the hearing (ie before 2 January 1982) to the Clerk of the Commons Commissioners at London that all or any of these proceedings be adjourned such application to be made by any one or more of the persons above recorded as having been represented at the 1981 hearing or their successors in title; and upon the same condition I give no decision as to the dispute about the registration at CL 154 Ownership Section No. 1; if such an application for an adjournment is made so that the said condition is not fulfilled, these proceedings (or the part of them to which the said application for an adjournment relates) will stand adjourned to a day and place to be fixed by a Commons Commissioner. I am not now giving any decision about the said Ownership Section Registration because if the registration in the CL 154 Land Section and Rights Section are not confirmed, the said Ownership Section Registration will be cancelled pursuant to Section 6(3) of the 1965 Act; I have not overlooked the letter of 17 February 1978 from Fraere Cholmeley & Co by which they as solicitors for the Duchy of Lancaster withdraw the Duchy's Objection. I record that at the hearing Mr Gillibrand and Mr Smith agreed that the said six month period should not be extendable.

These cases were originally listed for hearing with the cases relating to Register Units Lancashire Nos. CL 160, CL 264 and CL 273 there being registrations in the Rights Section and in the Ownership Section made upon the application of Mr W S Burrow and Messrs Harris and Swainson respectively similar to those made on their application in relation to the Register Units with which I am now dealing (CL 130 and CL 154); as a result of a letter dated 16 June 1981 from Lancashire County Council to the Commons Commissioners these CL 160, CL 254 and CL 273 cases were withdrawn from the list. Register Units Nos. CL 160 and CL 264 were particularly mentioned in the letter, and having looked at the files relating thereto and notwithstanding anything I said, ~~the~~ said 1979 memorandum and having regard particularly to an agreement and compromise dated 3 June 1981 a copy of which has been sent to the Commons Commissioners I have no reason for thinking that such withdrawal was convenient and proper. I record for the benefits of Messrs F W and F M Burrow that it is stated in the said June 1981 letter that Mr Burrow is not a party to the deed of compromise and that it is understood that he is prepared to withdraw his claim over both CL 160 and CL 264 south of the channel drain in Leighton Moss. If this statement is correct it might save Messrs Burrow and possibly others from trouble and expense if they or their solicitors wrote a letter to the Clerk of the Commons Commissioners as soon as possible stating that they as personal representatives of Mr W S Burrow have agreed to a Commons Commissioner refusing to confirm registration at CL 160 Rights Section Entry No. 3 and at CL 264 Rights Section Entry No. 2 and if it be the case agree to a Commons Commissioner refusing to confirm the Land Section registrations in these Register Units in whole or in part as he may think fit with reference to them Messrs Burrow; it would be convenient if any such letter specified the date of the death of Mr W S Burrow and particularised the probate granted to his executor.



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As regards withdrawal from the list ^{of} the case relating to Register Unit No. CL 273 this appears to have been (as I said at the July 1981 hearing) a mistake; ~~its~~ ^{this} Register Unit was not mentioned in the said June 1981 letter. I understood from Mr Gillibrand and Mr Smith that they were agreeable to my treating the CL 273 case as if it had not been withdrawn from the list and giving a decision in all relevant respects the same as that which I am now giving in relation to Register Unit Nos. CL 130 and CL 154. I am now precluded from doing this because notice of the said withdrawal was sent to Lancashire County Council, Lancaster City Council, Silverdale Parish Council and Warton Parish Council in letters dated 25 June 1981 from the Clerk of the Commons Commissioners. If either Messrs F W and F M Burrow as successors of Mr W S Burrow or the Royal Society for the Preservation of Birds as successor of Messrs D C Harris and R G Swainson (they seem to be the only persons concerned) can persuade all these Councils ~~as said~~ (within a reasonable time) letters to the Clerk of the Commons Commissioners saying that notwithstanding the said letters of 25 June 1981 they agree ^{that} the matter of Salt Marsh Silverdale and Warton Register Unit No. CL 273 shall be treated as properly listed for hearing at Morecambe on 2 July 1981 and that they would not have been represented had the said letters had not been sent, I will give a decision about this Register Unit which will be the same (changing those things which ought to be changed) as that I now give in relation to Register Unit Nos. CL 130 and CL 154.

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.

SCHEDULE

Part I; disputed registrations

Entry No.	Applicant	Rights Register
(Unit No. CL 118, Cumbria: Arnside Marsh)		
Land Section No. 1, (amended at No. 2)	C E Tryon-Wilson, G Bland and J Bland in consequence of application for rights registration, as below	----
Rights Section No. 4 (replacing No. 1 and amended at No. 5)	C E Tryon-Wilson, G Bland and J Bland	Graze 500 sheep, piscary, turbary and estovers; attached to Arnside Tower Farm.
(Unit No. CL 130 Lancs: pt Silverdale Marsh)		
Land Section No. 1	C H V Bright in consequence of application for rights registration, see below	----

* Note :- Letters are being sent by the Clerk of the Commons Commissioners to these Councils suggesting they might so agree.



- Rights Section No. 1 C H V Bright
Graze 100 sheep all year and 20 cattle during May, June and July; attached to Bank House Farm.
- Rights Section No. 2 C E Tryon-Wilson, G Bland and J Bland
Graze 500 sheep, cut and take turf, estovers and piscary; attached to Arnside Tower Farm; over part of Unit Land and whole of CL 154.
- Rights Section No. 3 W S Burrow
Graze 320 sheep and followers; attached to Gibraltar Farm; over whole of Unit Land, whole of CL 273, part of CL 154, part of CL 160, and part of CL 264.
- (Unit No. CL 154 Lancs: another part of Silverdale Marsh)
- Land Section No. 1 C E Tryon-Wilson, G Bland and J Bland in consequence of application for rights registration, see below

- Rights Section No. 1 C E Tryon-Wilson, G Bland and J Bland
Graze 500 sheep, cut and take turf, estovers and piscary; attached to Arnside Tower Farm; over whole of Unit Land and over part of CL 130.
- Rights Section No. 2 W S Burrow
Graze 320 sheep and followers; attached to Gibraltar Farm; over part of Unit Land, part of CL 160, whole of CL 130, whole of CL 273 and part of CL 264.

TURN OVER



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Part II: Objections

No.	Objector	Noted in Register
(Unit No. CL 118; Cumbria)		
No. 2/151 (to Land Section No. 1)	G C Harris and R G Swainson	19 June 1972
(Unit No. CL 130; Lancs)		
No. 048 (to Rights Section No. 1)	G C Harris and R G Swainson	4 December 1970
No. 296 (to Rights Section No. 3)	Ditto	5 May 1972
No. 308 (to Land Section No. 1)	Ditto	5 May 1972
No. 389 (to Rights Section No. 2)	Ditto	18 July 1972
No. 459 (to Rights Section No. 3)	C E Tryon-Wilson	31 July 1972
No. 460 (to Rights Section No. 1)	Ditto	31 July 1972
(Unit No. CL 154; Lancs)		
No. 299 (to Land Section No. 1)	G C Harris and R G Swainson	5 May 1972
No. 305 (to Rights Section No. 2)	Ditto	5 May 1972
No. 388 (to Rights Section No. 1)	Ditto	18 July 1972
No. 458 (to Rights Section No. 2)	C E Tryon-Wilson	31 July 1972
No. 482 (to Ownership Section No. 1)	Duchy of Lancaster	4 August 1972

Dated 16th — day of September 1981

A. A. Baker Fuller