



COMMONS REGISTRATION ACT 1965

Reference Nos. 220/D/70-76  
220/D/90-93  
220/D/101-105

In the Matter of (1) the Salt Marsh,  
(2) land surrounded by the said  
Salt Marsh, and (3) another Salt Marsh,  
all in Overton, Lancaster City,  
Lancashire.

DECISION

These disputes relate to the registrations summarised in Part I of the First Schedule hereto of Register Unit Nos. CL212, CL151, and CL238 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by the Objections (including those deemed by conflicts) specified in Part II of the said Schedule.

I held a hearing for the purpose of inquiring into these disputes at Lancaster on 24 November 1976. The attendances were as set out in Part I of the Second Schedule hereto. With the consent of those present or represented and without hearing any evidence I adjourned the proceedings.

I held the adjourned hearing at Lancaster on 4 May 1977. The attendances were as set out in Part II of the said Schedule. Mr Bibby by arrangement with the other solicitors mentioned in Part I of the said Schedule on behalf of those they represented applied for the proceedings to be adjourned. The Reverend C E Belamy said that as a local historian he had a good many documents relating to the Parish and he wished to raise the question of lawful seisin of the marshes; he had no objection to the postponement of the hearing. Mr Pearson said he was objecting to the registration of the Parish of Overton, that he had deeds which went with his property, but did not object to an adjournment of the proceedings. Mr T J Smith also did not object. Mr Bibby said that all parties on the Register had since November 1976 negotiated about the proceedings, that if the negotiations were unsuccessful the hearing would be likely to take 5 days that there was a definite possibility of a compromise solution, although these negotiations had not included the other persons present at the hearing not represented by solicitors as it had not been realised before the hearing that they might be concerned. He suggested that the consent of such persons to a compromise was not necessary. In these circumstances without hearing any evidence I adjourned the proceedings.

I have a letter dated 11 November 1977 to the Commons Commissioners from Lancashire County Council, saying that they had been in correspondence with Mr S Pearson who had supplied certain evidence which might have a bearing on the disputes. With the letter were enclosed (1) a letter from Mr Pearson in which he summarised the basis of his contention that all the land is common land and is owned by the Parish Council; (2) a transcript of the judgment of Sir Edward Mosley Attorney of the Duchy of Lancaster dated 20 November 1619 in a dispute over the enclosure of the Marshlands at Overton which confirms that they were vested in the tenants of the copyhold lands of the Manor of Overton; and (3) an acknowledgement and declaration dated 13 February 1632 certain persons held the Manor of Overton together with all rights (including common rights) in trust for the tenants of Overton; (4) and (5) further letters from Mr Pearson dated 1 August and 13 September 1977 setting out further evidence (the later letter traced the origins of the Manor of Overton to Saxon times).



I also have a letter dated 23 September 1977 from Mr Bellamy to the Commons Commissioners saying that the foreshore commons at Overton are and have been from time immemorial waste lands belonging to the Manor of Overton as is clearly shown in documents in his possession and that the enclosed sheets of information which had come into his possession presented he believed "a concerted attempt to circumvent justice". He enclosed extracts from legal advice given on 30 June and 15 July 1977, an order made on 20 November 1619 by the Chancellor and the Council of the Court of the Duchy of Lancaster and an indenture made 13 February 1632 and also two statements made on 23 September 1977 by Mr T J Smith and Mr S Pearson.

In letters dated 7 November 1979 the solicitors concerned with these proceedings were asked by the Clerk of the Commons Commissioners whether any progress had been made towards any compromise discussions. In reply to this letter I have letters dated 9 November 1979 from Ratcliff & Bibby and 12 November 1979, 15 October 1980 and 14 May 1981 from Oglethorpe, Sturton & Gillibrand.

At the 1981 hearing neither Mr Gillibrand nor Mr Clarke were prepared with any evidence or able to agree what any final decision in these proceedings should be; both favoured, or at least did not object to the proceedings being adjourned. In my opinion it is not in the public interest that proceedings relating to disputed registrations under the 1965 Act should remain undisposed of indefinitely; nor is it in the public interest that a Commons Commissioner should if it can be avoided hold local inquiries which are wholly unproductive. Regulation 31 of the Commons Commissioners Regulations 1971, empowers a Commissioner to give a decision without a hearing in accordance with terms which have been agreed; where persons named on the Register have (as I understand has happened in this case) been succeeded by others, it may be difficult without considerable expense, or impossible, to proceed under regulation 31; and it may be undesirable to dispose under the regulation of disputes in which the public may be interested.

As regards the private (as distinct from the public) aspect of these proceedings:- There is nothing on the Register to indicate that those who made applications for registrations or made objections are concerned otherwise than with their private rights or providing any reason why I should not act in accordance with what they may have agreed amongst themselves. I understood from Mr Gillibrand that the negotiations now in progress are on the basis that when agreement is reached all the registrations should be avoided. In these circumstances on this aspect of the matter it is I think just unless persons concerned reach agreement within a reasonable time (and it is now nearly 5 years since they started negotiations) that all the registrations should be avoided.

As regards the public (as distinct from the private) aspect of these proceedings:- The 1965 Act contemplates that the public may have an interest in registrations made under it; regulation 19 of the said 1971 Regulations provides that concerned authorities (meaning local authorities including the Parish Council) shall be entitled to be heard at the hearing of a dispute as to the registration of any land as common land. No such entitlement is conferred on persons such as Mr Bellamy, Mr Pearson or Mr Smith, although at a hearing the Commissioner may if he thinks fit take their evidence if they are present, see regulation 23(5); none of these persons were present at the 1981 hearing. In my opinion Overton Parish Council who were then represented sufficiently for the purpose of these proceedings represent any public interest there may be; but I accept Mr Gillibrand's contention that if the Parish Council wish to claim that any of the registrations should in the public interest be confirmed they should make this clear to those who have a private interest for or against the



registrations as soon as possible. Having regard to these considerations I now make the decision hereinafter set out which will not for six months become final, contemplating that during such 6 months those who were represented before me at the 1977 hearing will have to decide whether they want a further hearing and decide also what decision they will ask the Commons Commissioner then to give.

Accordingly my decision is as follows:- I refuse to confirm all the Land Section and Rights Section registrations now in dispute and summarised in the First 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 Commons Commissioners that all or any of these proceedings as regards the whole or any part be adjourned, such application to be made by any one or more persons who were represented at the 1981 hearing or their successors in title (it may be by letter of the Clerk of the Commissioners); and upon the same condition I give no decision as to the disputes about the Ownership Section registrations. If such an application for an adjournment is made so that the said condition is not fulfilled, then 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 registrations because if the registrations in the Land Section and in the Rights Section are not confirmed, the said Ownership Section registrations will be cancelled pursuant to Section 6(3) of the 1965 Act. And I repeat, what I said at the hearing, that if a person who applies for an adjournment is not at the adjourned hearing ready with evidence to support a final decision by the Commons Commissioner he (or they) may be at some risk as to costs.

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 six 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.

FIRST SCHEDULE  
Part I: Disputed Registrations

| Entry No                | Applicant and Land to which right is attached  | Rights Registered   |
|-------------------------|--|---|
|                         | (Unit No. CL212: a Salt Marsh extending for just under 1½ miles from Sunderland point along the west coast and being about ½ of a mile wide) |   |
| Land Section<br>No. 1   | Chris Hargreaves in consequence of his application for rights  | —   |
| Rights Section<br>No. 1 | Chris Hargreaves<br>Sunderland Brows Farm  | To graze 40 head of cattle.<br>Over whole of Unit Lane and over CL151.  |
| Rights Section<br>No. 2 | Mary Taylor<br>Meadow Farm   | To graze 10 sheep and 30 head of cattle; ; to take sand and gravel.<br>Over part of Unit Land south of GH and north of EF, and over mo southerly parcel of CL238. |



|                            |                              |   |
|----------------------------|------------------------------|---|
| Rights Section<br>No. 3    | Mary Taylor<br>Hawthorn Farm | To graze 50 sheep and 40 head<br>of cattle; turbarry; to take sand<br>and gravel.<br>Over part of Unit Land south<br>of IJ and north of CK. |
| Ownership Section<br>No. 1 | Linda Hargreaves             | Of part of Unit Land west of<br>AB, west of CD and south of EF.   |
| Ownership Section<br>No. 2 | Peter Thompson<br>Gilchrist  | Of part of Unit Land, north of<br>EF and south of GH.   |
| Ownership Section<br>No. 3 | Mary Taylor                  | Of part of Unit Land north of<br>GH, east of CD, south of CK and<br>north of IJ.  |
| Ownership Section<br>No. 4 | Linda Hargreaves             | Of whole of Unit Land except<br>west of AB and CD and south of EF.  |

(Unit No. CL151: a Salt Marsh a little under 200 yards long and 100 yards wide, completely surrounded by the CL212 Lane)

|                            |   |   |
|----------------------------|---|---|
| Land Section<br>No. 1      | Francis James Baxter<br>in consequence of his<br>application for rights | —   |
| Rights Section<br>No. 1    | Francis James Baxter<br>New Middleton Brows<br>Farm                     | To graze 9 head of cattle or<br>9 sheep over the Unit Land.                   |
| No. 2                      | Chris Hargreaves<br>Sunderland Brows Farm                               | To graze 40 head of cattle.<br>Over the Unit Land and over<br>whole of CL212. |
| Ownership Section<br>No. 1 | Mary Taylor   | Of Unit Land.   |
| Ownership Section<br>No. 2 | Linda Hargreaves  | Of Unit Land.   |

(Unit No. CL238: (1) a strip about 150 yards long from east to west and nowhere more than about 30 yards wide south of and adjoining CL212; (2) an area about 600 yards long from north to south and with an average width of about 150 yards, a short distance north of Sunderland point and along the west bank of the River Lune estuary; and (3) a nearly circular area having a diameter of about 50 yards very near the north end of the last mentioned area)

|                       |  |   |
|-----------------------|--|---|
| Land Section<br>No. 1 | Mary Taylor<br>in consequence of her<br>application for rights | — |
|-----------------------|--|---|



Rights Section  
No. 1

Mary Taylor  
Meadow Farm

To graze 40 sheep and 30 head of cattle; turbarry; to take sand and gravel. Over part of Unit (Areas Nos. 2 & 3 supra) north of AB and over part of CL211.\*

Rights Section  
No. 2

Mary Taylor  
Meadow Farm

To graze 40 sheep and 30 head of cattle; turbarry; and to take sand and gravel. Over part of Unit Land (strip No. 1 supra) and part of CL212 south of GH and north of EF.

Ownership Section  
No. 1

Mary Taylor\*\*

Of the part of Unit Land south of CD.

- \* Note: After a hearing at Lancaster on 24 November 1976 in a decision dated 30 November 1976, I refused to confirm the Land Section and the Rights Section registrations of Register Unit CL211 (therein called: Lades Marsh), Reference 220/D/94-100.
- \*\* Note: The registration in the CL238 Ownership Section is not disputed, although it will under Section 6 of the 1965 Act be cancelled if confirmation of the Land Section registration is refused.

#### Part II: Objections

| No.   | Objector                 | Noted in Register |
|---|--------------------------|-------------------|
|   | (Unit No. CL212)         |                   |
| 38 (to Land Section No. 1)                                | Linda Hargreaves         | 4 December 1970   |
| 38 (treated as also to Rights Section Nos. 1, 2, 3 and 4) | Ditto                    | Ditto             |
| 62 (to Ownership Section No. 4)                           | Peter Thompson Gilchrist | 29 January 1971   |
| Conflict with Ownership Section No. 2                     | Occasioned by OS No. 4   | —                 |
| Conflict with Ownership Section No. 4                     | Occasioned by OS No. 2   | —                 |
| Conflict with Ownership Section No. 3                     | Occasioned by OS No. 4   | —                 |
| Conflict with Ownership Section No. 4                     | Occasioned by OS No. 3   | —                 |



## (Unit No. CL151)

|   |                  |                 |
|---|------------------|-----------------|
| 39 (to Land Section<br>No. 1)                           | Linda Hargreaves | 4 December 1970 |
| 39 (treated as also<br>to Rights Section<br>Nos. 1 & 2) | Ditto            | Ditto           |
| Conflict with<br>Ownership Section<br>No. 1             | By OS No. 2      | —               |
| Conflict with<br>Ownership Section<br>No. 2             | By OS No. 1      | —               |

## (Unit No. CL238)

|  |                  |                 |
|--|------------------|-----------------|
| 40 (to Land Section<br>No. 1)                                  | Linda Hargreaves | 4 December 1970 |
| 40 (treated as also<br>to Rights Section<br>Nos. 1 & 2)        | Ditto            | Ditto           |
| 477 (to Rights Section<br>Entry No. 1)                         | Richard Long     | 4 August 1972   |
| 480 (to Land Section<br>No. 1)                                 | Ditto            | Ditto           |
| 480 (treated as also<br>to Rights Section<br>Entry Nos. 1 & 2) | Ditto            | Ditto           |

## SECOND SCHEDULE

## Part I: Hearing on 24 November 1976

(1) The Attorney-General for the Duchy of Lancaster was represented by Miss S Cameron of Counsel; (2) Miss Linda Hargreaves was represented by Mr W George of Counsel instructed by Ratcliffe & Bibby, Solicitors of Carnforth; (3) Mr S Thorpe Long and Mr David Long were represented by Mr I Leeming of Counsel instructed by Clarkson Whittaker & Shellcross, Solicitors of Morecambe & Heysham; (4) Mrs Mary Taylor was represented by Mr R A C Kirston of Counsel instructed by Holden & Wilsons, Solicitors of Lancaster; (5) Mr Christopher Hargreaves was represented by Mr R M N Gillibrand, Solicitor of Oglethorpe Sturton & Gillibrand Solicitors of Lancaster; (6) Mr J L Le Gillchrist & Mr F T Gillchrist were represented by Mr R G Swainson of Swainson Son & Reynolds, Solicitors of Lancaster; and (7) Mr F J Baxter was represented by Mr I Leeming of Counsel instructed by Bannist Bates & Son of Morecambe & Heysham.



## Part II: Hearing on 4 May 1977

Miss Linda Hargreaves was represented by Mr J Lewis Bibby, solicitors of Ratcliff & Bibby, Solicitors of Carnforth.

Overton Parish Council <sup>were</sup> ~~were~~ represented by their Chairman Mr William Mashiter. Also present was the Reverend C E Bellamy, Vicar of the Parish of Overton, Mr S Pearson of No. 36 Main Street, Overton and Mr T J Smith of No. 3 First Terrace, Sunderland.

## Part III: Hearing on 2 July 1981

Mr M Gillibrand, solicitor of Oglethorpe, Sturton & Gillibrand, Solicitors of Lancaster represented: (1) The Duchy of Lancaster, his firm acting for them as agent for Frere Cholmley, Solicitors of London; (2) Miss Linda Hargreaves, his firm acting for her as principals; (3) Mr Frederick Clarkson, successor ~~and~~ title as regards part of the interest of Mr Richard Long who is himself successor of Mrs Mary Taylor his firm acting for him as agents for Nicholls & Smith ~~and~~ Solicitors of Longbridge near Preston; (4) Mr David Thomas Hargreaves a successor of the other part of the interest of Mrs Mary Taylor and also a successor to Mr Francis Baxter, his firm acting in his case as principals; (5) ~~Mr~~ Mr Chris Hargreaves (his firm acting for him as principals); (6) ~~Mr~~ Mr Frederick Baxter, his firm acting for him as agents for Bannister Bates & Son, Solicitors of Morecambe & Heysham; & (7) ~~Mr~~ Mr J Le Gilchrist & Mr P T Gilchrist, his firm acting as agents for Swainson Son & Reynolds, Solicitors of Lancaster.

Overton Parish Council were represented by Mr D G S Clarke, one of their members.

Lancashire County Council as registration authority were represented by Mrs Cunliffe

Dated the 6<sup>th</sup> — day of October — 1981.

a. a. Baker *Baker*

Commons Commissioner