



COMMONS REGISTRATION ACT 1965

Reference Nos. 20/D/13 to 63 incl.
220/D/20 to 33 incl.

In the Matter of (1) part of the bed of the River Ribble and the River Hodder in Billington, Dinckley, Clayton-le-Dale, of Osbaldston, Bowland with Leagram, Aighton Bailey and Chaigley, Little Mitton, Dutton and Ribchester; and (2) half bed of the River Hodder between Hodder Foot and Stakes Farm, Bashall Eaves and Great Mitton and Bowland Forest Lower; both in Ribble Valley District, Lancashire

SECOND DECISION

This decision is supplemental to a decision ("my April 1980 decision") dated 14 April 1980 relating to 65 disputes about the registrations at Entry No. 1 in the Land Section and in the Rights Section of Register Units No. CL 274 and No. CL 642 in the Register of Common Land formerly maintained by the West Riding County Council and now maintained by the Lancashire County Council, and given after a hearing at Preston on 13 December 1979 (in my April 1980 decision mistakenly stated to have been on 13 December 1975).

My April 1980 decision was to the effect: (a) upon the considerations therein set out and with the agreement therein mentioned I refused to confirm the said registrations if before 13 December 1980 a letter was received in the office of the Commons Commissioners written on behalf of the Trustees for Roman Catholic Purposes Registered ("TRCPR") requesting that the registrations be withdrawn; (b) if such a letter was so received, I would make a Second Decision under which my conditional refusal to confirm would become final; and (c) if no such letter was received the proceedings would be adjourned to a place and date to be fixed by a Commons Commissioner.

Since my April 1980 decision, 7 letters have been received from Oswald Goodier & Co solicitors for TRCPR dated 12 November 1980, 19 January, 23 April, 22 October 1981, 7 April 1982 and 10 March, 20 June and 12 July 1983; and 1 letter dated 4 November 1981 from Foysters solicitors (or agents for solicitors) for Objectors as mentioned in my April 1980 decision.

No letter such as was therein specified was received before 13 December 1980, so I am now considering whether I should fix a place and date for an adjourned hearing.

In my opinion I am not by my 1980 decision or by the agreement made by those present at the December 1979 hearing, obliged to hold a further hearing (necessarily involving some public expenditure for the cost not only of the time of a Commons Commissioner but also of incidental matters) unless I am satisfied that such a hearing would serve a useful purpose, and I can therefore either (i) now give a decision unconditionally refusing to confirm the registrations; or (ii) now give a decision refusing such confirmation conditionally on no person applying within a time limit for a public hearing and satisfying within such time



limit or later a Commons Commissioner that a public hearing would serve a useful purpose: or (iii) at once fix a date and place for an adjourned public hearing.

In favour of (i) or (ii), I have the said letters of Oswald Goodier & Co letters in which they describe the progress of the deed of compromise mentioned in my April 1980 decision as then contemplated, say (their June 1983 letter) that it has been signed by all parties and request (their July 1983 letter) for TRCPR that the registrations both in the Land Section and in the Rights Section of these Register Units "be withdrawn". Further the right registered in the Rights Section, being a right in gross of common of piscary over (reading the CL 274 AND CL 642 registrations together) a stretch of more than 5 miles of the bed of the Riber Ribble and a stretch of about the same length of the River Hodder, is of a right which if not owned by TRCPR in "common" with anyone, is open to legal objection as not being a "right of common" within the meaning of the Commons Registration Act 1965; at least unless the description of it in the Register is qualified or explained in some way. The Land Section registration was made in consequence of the application by TRCPR for the registration of a right and I have no note or recollection of it ever being suggested that the Land Section registration could be supported if the Rights Section registration was not properly made.

But against (1), I have the following paragraph in the July 1983 letter:-

"This application for withdrawal of the registrations is subject to the Lancashire County Council simultaneously withdrawing the registration by themselves or by the former West Riding of Yorkshire County Council, which were in respect of the registration of the rivers as a common, and subject also to the withdrawal or cancellation of all objections."

The County Council have no power to withdraw a registration; I have no evidence that any Objections have been withdrawn by the Objectors, and having regard to the number of the Objections it is unlikely that withdrawals by all will be received in the office of the Commons Commissioners within a reasonable time. I have no jurisdiction to cancel Objections. My jurisdiction is limited to either refusing to confirm or confirming with or without modification registrations which have been referred to me and to making certain orders about costs. If I refuse to confirm a registration and the resulting avoidance "has become final" within section 6 of the 1965 Act, the County Council will in due course receive from a Commons Commissioner notice of such finality, and will then become under an obligation to "cancel the registration", see sub-section (2); in the result every Objection will have wholly or partially succeeded, and although each will have then become an historic document of no present interest, it will never have been cancelled.

I am now concerned to determine whether a further public hearing will serve any useful purpose. From the information now before me I infer that if I held such a hearing TRCPR would not then produce any evidence in support of the registrations made on or as the result of their applications; in my view the circumstance that their withdrawal in the July 1983 letter is expressed to be "subject" as in the above quoted paragraph, is irrelevant.

The said paragraph was I suppose intended to safeguard TRCPR should their withdrawal earlier in the letter not result in a position as near as may be, as if the registrations had never been made, and therefore provides a good reason for my adopting course (ii). Upon the considerations set out in my April 1980 decision and above, my decision now is that for the last 3 paragraphs (bottom of page 3 and top of page 4) of my April 1980 decision there shall be substituted:-



(a) I refuse to confirm any of the registrations disputed in these proceedings and I do not think fit to make any order as to costs, but this paragraph of my decision shall have effect only as hereinafter provided.

(b) The preceding paragraph shall not have effect until the expiration of three months after a copy of this decision has been sent to the persons under the Commons Commissioners Regulations 1971 entitled to receive it and shall not then have effect if before the expiration of the said three months (i) any person applies to a Commons Commissioner for a public hearing, and (ii) upon such application a Commons Commissioner either before such expiration or afterwards directs such a public hearing to be held.

(c) If no such application is made, or if having been made the Commons Commissioner decides against any public hearing, my decision as at paragraph (a) above will in both its parts at the expiration of the said three months take effect, and will be followed as soon as practicable by a notice to the County Council in pursuance of section 6(2) of the 1965 Act that all the registrations have become void.

(d) Any application for a public hearing as aforesaid should be in writing (it may be by letter) sent to the Clerk of the Commons Commissioners in London and should state what order the applicant considers the Commons Commissioner should make at the public hearing asked for and summarise the evidence (listing any documents which will be relied on) which he will then adduce; a copy of such application should be sent by the applicant to all persons who would be concerned to resist the order sought and to the County Council for their information as registration authority.

(e) 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 19th — day of September 1983

C. A. Baden Fuller

Commons Commissioner