



In the Matter of Holcombe Moor
(part), Rossendale Borough,
Lancashire

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and at Entry Nos 9 and 17 in the Rights Section of Register Unit No. CL 93 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by Objection No. 43 made by the Secretary of State for Defence and noted in the Register on 4 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Preston on 24 November 1981. At the hearing the Secretary of State for Defence was represented by Mr F Barlow of counsel instructed by Hodgson & Sons, Solicitors of Preston as agents for the Treasury Solicitor.

The land ("the Unit Land") in this Register Unit is nearly everywhere a little more than $\frac{1}{2}$ a mile wide from east to west and has an average length of a little under 1 mile from north to south. It is about 2 miles northwest of Ramsbottom. It includes near its northwest corner Bull Hill (1,372 feet). On its west, north and east sides it is bounded by other parts of Holcombe Moor which parts are comprised in Register Unit No. CL 42. The Land Section registration was made on the application of the Hon Ralph John Assheton. The registrations in the Rights Section are (No. 9) of a right attached to Cronkshaw Fold Farm to graze 50 cattle and 250 sheep made on the application of Mr Colin Mitchell, and (No. 17) of a right attached to Hamlets Farm and 12 other Farms all situated a short distance to the southeast of the Unit Land to graze 500 sheep or 100 cattle or 20 horses and a right of turbary made on the application of Mr John Smethurst Maxwell Barlow, and Mr Richard Maxwell Barlow.

I have a letter dated 21 October 1981 from Foysters Solicitors of Manchester saying that their client (meaning I suppose Mr R J Assheton for whom they acted in his said application) accepted the said Objection.

Mr R Barnes of the Estates Surveyor's Department in the Northwest Regional Headquarters (Old Trafford, Manchester) of the Property Services Agency in the course of his oral evidence produced: (1) a conveyance dated 22 October 1913 by which the Rt Hon F J Earl of Wharnccliffe and another as trustees of debenture stock and at the request of The Clitheroe Estate Company Limited conveyed the Unit Land (with certain mines and minerals to the south) to The Territorial Force Association of the County of Lancaster ("the TFA") subject to a lease dated 18 December 1899 by which certain premises were demised for 26 years from 25 March 1899 and subject to the rights of grazing vested in the copyhold tenants of the Manor of Tottington; (2) a conveyance dated 9 December 1913 by which the Rt Hon W Lord Crawshaw and another conveyed to the TFA the Unit Land (and the said mines and minerals) for the residue then unexpired of the said term of 26 years granted by the said 1899 lease; (3) an agreement dated 19 April 1916 by which Austin Townsend Porritt and 4 others as the Statutory Committee appointed pursuant to the Lands Clauses Consolidation Act 1845 to treat for the extinction of all commonable and other rights over the Unit Land in consideration of £620 then paid by the TFA released and granted to them all commonable rights which they and all other persons interested had over the Unit Land; (4) a deed poll dated



25 April 1916 by which the TFA in execution of the power for this purpose by the Land Clauses Acts given to it declared that the Unit Land was vested in them discharged from all commonable and other rights; (5) a release dated 10 July 1912 by which Mr Oliver Yates released all sporting rights over the Unit Land; (6) a conveyance dated 10 December 1969 by which the Territorial Auxiliary and Volunteer Reserve Association for Lancashire Cheshire and the Isle of Man conveyed to the Secretary of State for Defence (among other lands) the land comprised in the said 1913 conveyance (7) Bye-laws dated 1980 made by the Secretary of State for the War Department for the Danger area situate at Holcombe Moor; and (8) a notice dated 16 February 1972 of proposed bye-laws for Holcombe Ranges (which came into operation on 19 November 1973).

Mr Barnes said (in effect):- The Unit Land is used as part of a rifle range having, so he understood from the said documents he produced been bought in 1913 for this purpose. The targets are at a lower level to the south. The Unit Land is not fenced. In 1959 the War Department Land Agent granted a licence to Mr Thomas Edmondson to graze sheep over the Unit Land; but apart from this it was not the policy of the Ministry to allow any other unauthorised use of it.

Mr Richard Hilditch of Harcles Hill Farm on whose application the registration at Entry No. 3 in the CL 42 Rights Section register of a right of grazing had been made, said that his stock put out to graze on the CL 42 Land often went over the Unit Land; his stock can't read maps!

Mr Barlow contended (rightly I think) that the documents produced showed that all the immemorial rights of grazing whichever existed over the Unit Land had been extinguished under the Lands Clauses Consolidation Act 1945 and that accordingly the registrations at the Rights Section Entry Nos 9 and 17 can only have been properly made if such rights could be established by use as of right for at least 20 years. Of any such use there was no evidence; the CL 42 Rights Section registrations made on the application of Mr Mitchell and Messrs Barlow are not evidence of the existence of any rights over the Unit Land, notwithstanding that there was no fence between it and the CL 42 Land.

For the above reasons I conclude that the now disputed Rights Section registrations were not properly made. As regards the Land Section registration, not only was there no evidence that it could be supported in the absence of any validly made Rights Section registrations but also I have the said acceptance by Mr Assheton of the Objection. Accordingly I refuse to confirm the Land Section registration at Entry No. 1 and the Rights Section registrations at Entry Nos 9 and 17.

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 27th — day of January — 1982.

A. A. Baden Fuller