



In the Matter of Pickup Bank Height and
land adjacent to Windy Bank, Yate and
Pickup Bank, Lancashire.

DECISION

This dispute relates to the registrations at Entry Nos 6 and 9 in the Rights section of Register Unit No. CL 9 in the Register of Common Land maintained by the Lancashire County Council and is occasioned by Objection No. 369 made by the former Bolton County Borough Council, as water undertakers, and noted in the Register on 3 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Preston on 29 January 1981. The hearing was attended by Mr D G Watson, solicitor, on behalf of Mr R E Baldwin, the applicant for both registrations, and by Mr G Hartley, solicitor, on behalf of the North West Water Authority, the successor authority of the former Bolton County Borough Council.

Each of the registrations is of a right to graze cows over the whole of the land comprised in this and Register Unit No. CL 139. It is accepted that there is attached to each of Mr Baldwin's farms a right to graze cows over the whole of the land comprised in this Register Unit.

This case is an example in its simplest form of the procedural difficulties which have been caused by registrations made in this form.

The registration of the land comprised in Register Unit No. CL 9 was made on 5 April 1967 in consequence of an application made by the former Fylde Water Board on 16 March 1967. Mr Baldwin's applications numbered 534 and 536 were received by the Registration Authority on 7 August 1968, and, since the land over which he claimed to have rights was a larger area than that comprised in Register Unit No. CL 9, the Registration Authority registered the land not comprised in Register Unit No. 9 in a new Register Unit No. CL 139 and marked each application with the numbers of both Register Units in the manner indicated on Form 9 in Schedule 1 to the Commons Registration (General) Regulations 1966 (S.I. 1966 No. 1471). Thus far the steps taken were in accordance with the Regulations, but the Registration Authority then went on to register the rights claimed by Mr Baldwin in each Register Unit, stating in Register Unit No. 9 that the rights were exercisable "over the whole of the land comprised in this and register unit No. CL 139" and in Register Unit No. CL 139 that the rights were exercisable "over the whole of the land comprised in this and register unit No. CL 9".

It is easy to see why the registrations were made in this manner. Entry No. 6 is a right to graze 10 cows and Entry No. 9 is a right to graze 20 cows. Mr Baldwin was not claiming to be entitled to put 10 and 20 cows on to each Register Unit, but to put 10 and 20 cows onto an area of land comprising the whole of the two Register Units, and the form of the registrations was, no doubt, designed to make this clear. Unfortunately, however, the 1966 Regulations were not drafted in a manner which enables it to be made clear that a single right is exercisable over land comprised in more than one register unit.

The Regulations are drafted on the basis that each register unit is to be self-contained. A registration authority, when registering any land, was required by reg. 10(2) to enter the particulars on a fresh register sheet in Form 2 and to place register sheets in Forms 3 (Rights) and 4 (Ownership) immediately



below it, such register sheets then constituting a register unit by virtue of reg. 10 (3).

When making a registration, the registration authority was required by reg. 10 (2) to follow as closely as possible such of the Model Entries 4 to 12 in Part I of Schedule 2 as might be applicable, with such variations and adaptations as the circumstances might require.

The Model Entries applicable to the registration of a right of common are Nos. 7, 8 and 9. The particulars of the land over which the right is exercisable are either the whole of the land comprised in the register unit (Nos. 8 and 9) or a part of that land (No. 7). Thus, no provision is made for recording that the right extends to land comprised in some other register unit. Furthermore, in so far as they refer to areas of land all the other Model Entries and the Standard Entries in Part II of Schedule 2 specify either the whole or part of the land comprised in the register unit.

I have therefore come to the conclusion that the reference to Register Unit No. CL 139 in Register Unit No. CL 9 was not authorised by reg. 10(2) and has no legal effect. This reference must be regarded as surplusage. Surplusage is defined in Jacob's New Law Dictionary (10th ed. 1782) as "a superfluity or addition more than needful". Such words in a document are to be rejected as surplus, repugnant and void, for the document is complete without them: see 2 Hawkins's Pleas of the Crown 623, s.10: I can appreciate that it may serve a useful purpose in indicating that a right exercisable over the land comprised in Register Unit No. CL X is also registered in respect of the land comprised in Register Unit No. CL Y and Register Unit No. CL Z, but any right there may be in respect of the land comprised in Register Units Nos. CL Y and CL Z must be sought in those Register Units and is not conferred, reinforced, or in any way affected by the entry in Register Unit No. CL X.

Turning back to the facts relating to Register Units Nos. CL 9 and CL 139, there was no objection relating to the registrations at Entry Nos. 6 and 9 in Register Unit No. CL 9. Objection No. 369 was expressed to be in respect of the registrations at Entry Nos. 1 and 2 in Register Unit No. CL 139. The dispute occasioned by this Objection was the subject of reference No. 220/D/230. At the same time the Registration Authority made the present reference because Register Unit No. CL 139 is mentioned in Entry Nos. 6 and 9 in Register Unit No. CL 9. There being no objection to the parts of the registrations at Entry Nos. 6 and 9 which had any legal effect, there was no dispute to be referred to a Commons Commissioner under s.5(6) of the Commons Registration Act 1965. Technically, therefore, this reference is a nullity, and I could refuse to give a decision upon it. However, I cannot shut my eyes to the fact that as Register Unit No. CL 9 now stands Entries Nos. 6 and 9 in the Rights section are still marked "Registration provisional", as all such entries had to be marked when they were made. It seems that when Objection No. 369 was received by the Registration Authority it was properly regarded as relating solely to the entries in Register Unit No. CL 139, for it was noted in that Register Unit in accordance with reg. 6(4) of the Commons Registration (Objections and Maps) Regulations 1968 (S.I. 1968 No. 989) on 3 July 1972 and was not noted in Register Unit No. CL 9. Nevertheless, this view seems to have been changed by 9 August 1972, when Entries Nos. 6 and 9 were unmentioned in Entry No. 11, which recorded that the registrations at Entry Nos. 2 to 5 and 7 and 8, being undisputed, had become final on 1 August 1972 (Entry No. 1 became final at another time: see Entry No. 10). It seems doubtful whether these mistakes in the registration process fall within reg. 30



of the 1966 Regulations relating to errors and omissions, and I have come to that conclusion that I ought to give a decision which will enable the Registration Authority to correct Register Unit No. CL 9.

For these reasons I confirm the registrations, but since in my decision in In the Matter of Jackson Height, Oswaldtwistle, and Pike Low, Haslingden (1981), Ref. Nos 220/D/229 - 230 I have refused to confirm the registrations at Entry Nos 1 and 2 in the Rights section of Register Unit No. CL 139, any utility which the reference to that Register Unit may have had has ceased to exist, my confirmation of the registrations the subject of this reference is with the following modifications, namely, the deletion in each case of "and" and "No. CL 139."

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.

Asquith

Dated this

11th

day of

February

1981

Chief Commons Commissioner