



In the Matter of Scout Moor and Turf Moor,  
Rochdale and Rossendale

DECISION

(1) These disputes relate to the registrations at Entry No. 1 in the Land Section and Entries Nos. 1 to 8 in the Rights Section of Register Unit No. CL 175 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by a number of Objections. The Objections are:-

- No. 150 made by Mr J Whitaker noted in the Register on 29 January 1971.
- No. 190 made by Messrs B and J Ovendon noted in the Register on 7 July 1971
- No. 253 made by West Pennine Water Board noted in the Register on 17 March 1972
- No. 322 made by Bolton County Borough Council noted in the Register on 23 May 1972
- No. 368 made by Bolton County Borough Council noted in the Register on 3 July 1972
- No. 164 made by Messrs B and J Ovendon noted in the Register on 7 July 1971.

I held a hearing for the purpose of inquiring into the disputes at Preston on 8 December 1981. The hearing was attended by Mr R Medlock, Solicitor, appearing on behalf of Largs Limited (successor to Mr Whitaker); Mr B Ovendon in person; Mr J Prytherch, Solicitor of and representing North West Water Authority (successor Authority to Bolton Corporation Waterworks Department and West Pennine Water Board); and Mr R Ormrod in person.

The land comprised in this Register Unit CL 175 ("the Unit land") was registered as common land pursuant to an application to register rights. Mr Ovendon was the applicant to register Rights Entries Nos. 1 to 7 and Mr Ormrod the applicant to register Entry No. 8.

(2) Objections Nos. 150, 190, 253 and 322 are to the Land registration (and consequentially to the rights). No. 190 was not now maintained and I need not consider it. The remaining three Objections are to different parts of the Unit land, Nos. 150 and 253 to sections of Turf Moor, the southern part of the Unit land, and No. 322 to Scout Moor, the northern part. Collectively the three Objections affect virtually the whole of the Unit land, other than a relatively small area ~~at the east~~ <sup>at the east</sup> ~~southern end~~. Objection No. 368 is an express Objection to the rights in relation to Scout Moor, and No. 164 is an Objection to Mr Ormrod's Entry No. 8.

On the east of the Unit land are six other registered units. The eastern boundary of the Unit land forms the western boundaries of CL 94 and CL 174: adjoining CL 94 is CL 99, and adjoining CL 94 and CL 174 is CL 162 which itself adjoins CL 173 and CL 163. Disputes concerning these six units were before me at the hearing: over all of them Mr Ovendon had registered seven rights similar to Entries Nos. 1 to 7 in the Rights Register of the Unit land (CL 175). The rights registered are grazing rights for sheep and cattle, claimed to be attached to seven different farms, the numbers of animals varying for each farm, the totals amounting to 3750 sheep and 185 cattle. In the case of each farm the right is registered over the Unit land and Units Nos. CL 94, 99, 162, 174, 163 (part) and 173 (part).

Largs Ltd. has a freehold title registered under the Land Registration Acts to a substantial part ("Largs land") of the Turf Moor area - the part to which Objection No. 150 relates - and the Water Authority, I understand, owns the remainder of the Unit land (to which Objection Nos. 253 and 322 relate) other than the small area ~~at the southern end~~ referred to above, <sup>which is owned by Largs.</sup>



(3) Mr Ovendon gave evidence and was cross-examined by Mr Medlock and Mr Prytherch. He said that the seven farms lie around the area of the commons and are close together, mainly to the south of Register Units CL 177 and CL 162, and that while they don't adjoin the Unit land they are not far away. The farms were acquired by the Ovendons about the beginning of the last war - in the years 1940 to 1943, and were all farmed by them at the time of registration. Originally there were sheep and cattle on all the farms, which grazed regularly on the commons in the summer. In total there were some 3000 sheep grazing from the farms on all the commons, and for the purposes of registration under the 1965 Act the total was allocated among the farms on the basis of the estimated capacity of each farm. He agreed that the sheep were not driven on to the Unit land for the purpose of grazing but they found their way from one common to another, including the Unit land, and grazed; he had seen them on the Unit land many a time. He had shepherds to move the animals.

In the last 12 years grazing of sheep on the Unit land had ceased: for 8 or 10 years the number of their sheep has been reduced to some 350, plus lambs, which graze on an area of land lying to the west of and not part of the Unit land, and which have been tended by Mr Holt along with his own sheep. This area ("the Water Board Area") has been rented from the Water Board for some 20 to 30 years, on which the sheep had also grazed.

(4) Entry No. 8, registered by Mr Ormrod, is a right to graze 25 sheep over the part of the Unit land lying north of the line A-B on the Register Map, and attached to Gincroft Farm, which lies about half a mile to the west of the Unit land. He went to Gincroft in 1944: he never owned sheep but grazed cattle on the Unit land from 1944 to the late 1960's. He was told that he should register a right to graze 25 sheep which would be equivalent to about 8 cattle. In cross-examination he said that he put 8 to 12 cattle on Scout Moor - they went from his farm around the land to the north of Scout Moor, and then in any direction to graze, including on to the Unit land from the east. Quarrying and dumping of waste material by Mr Whitaker had spoilt the grazing. He had never seen anything like 3000 sheep over these moors.

(5) Mr Medlock called two witnesses. Mr John Whitaker, the agent for Largs Ltd., said that Largs had quarrying and mineral rights over the part (Scout Moor) of the Unit land lying to the north of Largs land. These had been granted by the Water Board and Largs pays a rent to the Board for occupation of the Scout Moor part. This part is sublet by Largs to a Mr Holt, who is a tenant of Scouts Barn, a property belonging to Largs, and situated on Largs land. Mr Holt has grazing rights over Largs land, as well as over the Scout Moor part, granted by Largs: these rights Mr Whitaker described as 'exclusive', but I saw no documentary evidence of the grant and I think the word 'exclusive' used by Mr Whitaker meant no more than that is what the parties understood the rights to be. Mr Whitaker also said that hand gliding and shooting took place over the Unit land.

Mr T H Holt, giving evidence, said that he had been the tenant of Scouts Barn since 1963, and his father was tenant before him from 1940. They had grazing rights on Scout Moor and Turf Moor, rent being paid to Mr Whitaker, and the rights, as they understood, were exclusive to them. For ten years there have been 800 ewes of theirs on the land and before that perhaps 600 to 700. They are born and bred on the moors and live on it. He has been on the moors regularly for 25 years and has never known other animals on them apart from a few sheep. He had not seen



Ovendon sheep, except possibly strays, or Ormrod's cattle on the land. In the past 8 or 10 years he had tended Mr Ovendon's sheep grazing on the land on the west of the Unit land.

(6) Mr Prytherch called two witnesses, Mr Ian Harris, Assistant Engineer and Mr L H Roberts, Legal Assistant; the evidence of both related to the letting of land to Mr Whitaker but was not I think otherwise material.

In his submissions Mr Prytherch explained the Water Authority's general policy as regards grazing rights over their land and referred me to a Conveyance of 23 April 1923 of a piece of land to the then Water Board which lies at the southern end, and included a section, of the Unit land; in this Conveyance was a covenant by the Water Board to fence off the land conveyed from the Vendor's adjoining land. It does not seem to me that this is of much significance in relation to the question of the grazing rights which are in issue.

Mr Medlock analysed the evidence and submitted that the rights claimed had not been established. He also pointed out that in Largs's Land Certificate these rights were not registered: common rights, however, are not registrable under the Land Registration Acts (see Section 1(1) of the 1965 Act).

Neither Mr Ovendon nor Mr Ormrod made any final submissions.

#### Conclusions

(a) It appears that this Unit and the six other Units mentioned above are adjoining moors which, physically, form a continuous stretch of moorland, not separated by natural or constructed boundaries, and that their division into separate units was for the purposes of registration under the 1965 Act rather than in accordance with defined boundaries. I accept Mr Ovendon's evidence, which on this point was not seriously challenged, that, as from the time in the early 1940's when the seven farms were acquired by him, sheep were grazed from the farms over substantially the whole of this area of moorland to the number of some 3000.

Registration of rights under the 1965 Act involved the specifying of the land to which the rights were claimed to be attached and, as Mr Ovendon told me, for this purpose he allocated the total number of sheep to each of the seven farms proportionately to the respective capacities of the farms. The registration of the right as exercisable over the Unit land and over other register units can give rise to problems (see the Decision of the Chief Commissioner in the matter of Pickup Bank Height, Ref. 220/D/234), but the factual situation of rights claimed over an area which for purposes of registration is divided into several units the registration of the rights as exercisable over all the units collectively is at least in accordance with the facts.

If the evidence establishes that some 3000 sheep were regularly grazed from the farms over the whole area of what are now separate units - in circumstances which support the acquisition of the right by prescription, the fact that the area is for the purpose of registration divided into several units does not in my view involve the claimant in establishing that 3000 sheep were regularly grazed over each of the newly erected units.



On the evidence the only basis on which the rights claimed by Mr Ovendon could be established is acquisition by prescription. He did not formulate any propositions as to this: I am satisfied on his evidence as to the fact of grazing but there remains for consideration the period during which such grazing took place. It commenced in the early 1940's and on Mr Ovendon's evidence there has been no grazing on the Unit land since 1970: in my view this does not suffice to found a claim under the Prescription Act 1832 for which a 30 year period is required. But it is still possible to base a claim on prescription at common law, and in particular on the doctrine of the lost modern grant (see *Tehida Minerals Ltd v Norman* 1971 2QB 528) for which purpose a period of some 20 years may suffice. I have to take into account the evidence given by Mr Holt who said he had been on the moors regularly for 25 years ie. since 1956 and had not known Ovendon sheep, except strays, on Mr Whitaker's land. This evidence is negative, in the sense that Mr Holt could only speak of periods when he was on the land and not of other times: and further what Mr Holt described as 'strays' might well be described by Mr Ovendon as some of his sheep grazing on the land in accordance with their custom. Mr Ovendon said that his sheep had ceased to graze on the Unit land since 1970: before that I think the number had probably dwindled after he had also grazed his sheep on the Water Board Area. But taking the evidence as a whole I am satisfied that there had been grazing of his sheep on the Unit land for upwards of 20 years since the early 1940's and that this right has been established. As to the grazing of cattle Mr Ovendon's evidence went no further than that they had sheep and cattle on the farms originally: he said nothing else as to cattle and in my opinion no right to graze cattle has been established. Accordingly I confirm the registrations at Entries Nos. 1 to 7 modified by deleting the references to grazing of cattle.

(b) Mr Ormrod's claimed right is only over the Unit land and not over other registered Units. Again his evidence was not seriously challenged - he was cross-examined as to the access route for his cattle on to Scout Moor and answered the questions satisfactorily. Mr Holt said that he had not seen the cattle on Mr Whitaker's land, but again this evidence is only negative in the sense mentioned in (a) above. Mr Ovendon's Objection (No. 164) is to Mr Ormrod's registered right to graze sheep and he did not object to cattle. I find on the evidence that Mr Ormrod grazed at least 8 cattle on the Unit land from 1944 to the late 1960's, and I confirm his registration modified by substituting "8 cattle" for "25 sheep".

(c) Consequentially on the confirmation (with modifications) of the registrations in the Rights Section, I confirm the registration in the Land Section.

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

19 February

1982

*L. J. Morris Smith*

Commons Commissioner