



In the Matter of Long Grain
Moor, part in Rossendale Borough
and part in Blackburn Borough,
Lancashire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 2 and 3 in the Rights Section of Register Unit No. CL 215 in the Register of Common Land maintained by the Lancashire County Council and is occasioned by Objections Nos 328 and 370 made by Bolton County Borough Council and noted in the Register on 23 May and 3 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Preston on 24 November 1981. At the hearing (1) Northwest Water Authority as successors of Bolton County Borough Council were represented by Mr G A Hartley their Solicitor; (2) Mr Edward James Thomas on whose application the registration at Rights Section Entry No. 1 was made, attended in person; and (3) Mr James Witter of Cotes Farm, Edgworth was represented by Mr R J Medlock solicitor of Woodcock & Sons, Solicitors of Rossendale.

The land ("the Unit Land") in this Register Unit is a short distance northwest of Ramsbottom and southwest of Haslingden, and is a tract very approximately like a triangle with sides each about 1 mile long. On the Register map it appears to be divided into two pieces by a line ("the Constituency Boundary") approximately north-south and thereon marked "Co Const Bdy/Boro Const Bdy". At the hearing for the purposes of exposition the Unit Land was treated as divided into three parts: (1) the part ("the East Part") east of the Constituency Boundary, being about 4/5ths of the whole which along its south boundary adjoins the land ("the CL 42 Land") in Register Unit No. CL 42 being the northern and greater part of Holcombe Moor; (2) the part ("the Northwest Part") west of the Constituency Boundary and north of a line not far away from the words "Whowell Height" on the Register map; and (3) the part ("the Southwest Part") west of the Constituency Boundary and south of the said line.

The Land Section registration was made in consequence of the registration of rights. The 3 Rights Section registrations are summarised in the Schedule hereto. The grounds of the Objections: to the Rights Section registrations are the rights ^{that} registered do not extend to the East Part; and to the Land Section registration are "(a) the land is owned by Bolton Corporation Waterworks Department, (b) the land was not common land at the date of registration, (c) the Corporation's Waterworks Department has tenancy agreements for grazing on the land in question with specific farmers".

In support of the Objections oral evidence was given by Mr C H Mudd who was from 1940 to 1951 a member of the War Agricultural Executive Committee, who was thereafter until 1958 a director of the Great House Experimental Farm and who has ever since resided in the area. He said (in effect):- Great House Farm is owned by the Minister of Agriculture, Fisheries and Food and its buildings are to the east of the East Part, and some of its land (Musbury Park Moor) adjoins. The East Part at one time belonged to Mr O W Porrit who farmed it. In about 1935 he sold it to the Bury and District Joint Water Board. For the first two years after the war it had or should have had no stock on it because at that time that was the policy of the Water Board. Then it was let for sheep grazing for about 4 or 5 years:



that terminated in about 1950. From then "officially" there should have been no stock on it until about 1965. About that time the Bolton Corporation (then the water authority) agreed that the Ministry of Agriculture, Mr A Riley and Mr E Taylor might jointly graze it; this agreement is still in force (the Northwest Water Authority having since succeeded the Bolton Corporation). Along the southern boundary there were posts and part of a wall from which he had concluded that in Mr Porrit's time that the East Part was fenced from the CL 42 Land; being a fence along the top of the Moor (meaning the east-west watershed). Notwithstanding that this fence was no longer stock proof, he had never seen any sheep on the East Part not belonging to either the Ministry or Mr Riley or Mr Taylor; their sheep as regards the East Part were hefted, so any sheep straying from the CL 42 Land would have been turned back by those hefted. The agreement did not include cattle and on the east part he had never seen more than a very few; and never any horses. He had never seen anyone take turf from the East Part, nor was there any sign on the East Part of anybody having taken turf off it for at least a century.

Also in support of the Objections oral evidence was given by Mr Riley (one of the said tenants). He said (in effect):- Since the said grazing agreement of 15 years ago, the three of them had kept sheep so there were "quite a fair number of sheep on the land (the East Part) and they kept other sheep off ... if Mr Thomas' sheep came onto the land the other sheep would evict them". He had seen cattle there from time to time, but they probably came from the land of Mr Taylor (one of the other tenants) straying through an insecure fence; they were not under the grazing agreement supposed to graze cattle. He could not remember anyone taking turf from the land.

Mr Thomas in the course of his oral evidence said (in effect):- As there is no fence along the boundary between the East Part and the CL 42 Land, he maintained that cattle and sheep must have strayed across from time to time. He was not sure whether rights had been established by reason of that fact, and accordingly applied for the registration because he was in doubt; he also made the application because he had been requested to do so by the East Lancashire Commoners Association (local farmers who were interested in common rights), particularly by those interested in Holcombe Moor (the CL 42 Land). At first the Association thought "the Moor" was land in Register Unit Nos 42 and 93; it was only after discussions that they were inclined to include the Unit Land. He was prepared to withdraw any claim to turbarry and was agreeable to the exclusion of the Northwest Part. He agreed that if the East Part and the Northwest Part were excluded from the registration, no useful purpose would be served by leaving the southwest part registered.

Mr Medlock explained that Mr Witter's concern was to have the Northwest Part removed from the Register. In the course of his oral evidence, Mr Witter produced: (1) a conveyance dated 8 September 1925 by which Mr Robert Bolton conveyed to Mr William Seed land containing 15a. 3r. 35p known as "Howells" together with the building on it known as "Cotes"; (2) a conveyance dated 29 November 1950 by which Mr Richard Phillipson and Mr Leonard Phillipson as surviving trustees of the trust for sale declared by a conveyance dated 5 May 1937 conveyed to Phillipson Brickworks Limited pieces of land containing about 38 acres edged red on the plan thereto annexed; (3) a conveyance dated 25 April 1973 by which Joseph Pickevance Limited conveyed to James Witter first Cotes being the land comprised in the said 1925 conveyance and secondly a plot of land being that comprised in the said 1950 conveyance; and (4) an abstract of the title of Robert Bolton to land in



Edgworth which included a conveyance ("original produced and examined 8 July 1925") dated 11 November 1920 by which Edward Turner McGowan conveyed to Thomas Eddleston and William Eddleston five farms and a public house including (fourthly) the Farm known as Whowells of 142a. 9p. (including Cotes) edged green on the plan annexed.

Mr Witter said (in effect):- The east and south boundaries of the land edged green on the 1925 conveyance plan are the same as the northwest boundaries of the land edged red on the 1950 plan. The Northwest Part (of the Unit Land) is included in (being the greater part of) that edged red on the 1950 conveyance plan. After 1973 when he became the owner of both the 1925 and 1950 conveyance lands he had renewed the fence on the east side of the Northwest Part of the Unit Land; before then this fence was dilapidated; it was along the Constituency Boundary; before he renewed it it appeared to have been a post fence with one or two strands of barbed wire.

Mr Medlock pointed out that the abstracted plan of the 1911 conveyance indicated (by T marks) that the Constituency Boundary was then fenced.

As regards the East Part:-

First as to the right of grazing registered on the application of Mr Thomas:- Barons Farm and Wickenlow Farm are some distance to the southwest of the Unit Land. Mr Thomas grazed the CL 42 Land by putting his animals on the part of it near his Farms. His animals have never gone onto the East Part except by going on their own without any human direction from the CL 42 Land; they were never put on the East Part. In my opinion grazing in this way can only be a proper basis of a right of common attached to these Farms if in all relevant respects the East Part and the CL 42 Land can be regarded as one common, such that the putting of animals on any part of it can be ascribed to the whole. The boundary between the East Part and the CL42 Land has always been distinct enough to show that they were and are separate pieces of land, and it is I think irrelevant that for a number of years, the fence dividing them has been dilapidated and not stock proof. My conclusion is therefore that the East Part and the CL 42 Land have never at any now relevant time been one common.

The law recognised where two commons adjoin, the commoners of one may in certain circumstances have a right to graze the other by reason of vicinage; see Halsbury Laws of England (4th edition) volume 6 (1974) paragraphs 566 et seq. This right can be destroyed by the common being divided by a fence, and it has been said it is only an excuse for trespass, see Halsbury ib. In my view the evidence falls short of establishing any such right over the East Part; but however this may be, being only a right by reason of vicinage it is not I think registrable under the 1965 Act.

So I conclude that as regards grazing the East Part the registration at Entry No. 1 was not properly made. There was no evidence in support of (and as above-stated) some evidence against the right of turbary mentioned in this Entry, and I conclude that it too was not properly made.

Wickenlow Hill Farm (Mr Brambell) adjoins Barons Farm and Wickenlow Farm (Mr Thomas) and I have no good reason for not treating all these farms in the same way. The numerous farms mentioned at Entry No. 3 are all southeast of the Unit Lane; in the absence of any evidence about these farms supporting this registration, and there being (as above-stated) some evidence against it, I conclude that it was not properly made.



As regards the Northwest Part and the Southwest Part:- In the documents produced by Mr Witter, the Northwest Part is dealt with in a way inconsistent with it being subject to any rights of common. Mr Thomas' observations (above-stated) are against there being any rights of common over these parts attached to his Farms. In the absence of any other evidence particularly directed to these Parts, I conclude none of the rights of common registered in the Rights Section exist over them. The circumstance that neither Mr Witter nor anyone else have expressly ~~not~~ objected to the inclusion of these Parts does not prevent me from giving effect to this conclusion; see the High Court decision of re Sutton, reported in the Times Newspaper of 1 December 1981.

As regards the Land Section:-

Having for the reasons above-stated concluded that the Unit Land is not subject to any rights of common, it cannot be within paragraph (a) of the definition of "common land" in section 22 of the 1965 Act. In the absence of any evidence that it could be waste land of a manor and so be within paragraph (b) of the definition, I conclude that the Unit Land is not within the Act at all. Accordingly upon the considerations set out above I refuse to confirm the registrations at Land Section Entry No. 1 and at Rights Section Entry Nos 1, 2 and 3.

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.

SCHEDULE
(Rights Section registrations)

Entry No.	Applicant, and land to which right is attached	Right registered
1	Edward James Thomas (owner). Barons Farm and Wickenlow Farm.	Graze 180 sheep or 60 head of cattle or 60 horses; turbary.
2	Lee Bamwell (owner). Wickenlow Hill Farm.	Graze 231 sheep or 77 head of cattle; turbary.
3	John Smethurst Maxwell Barlow (pt. owner, pt. tenant), Richard Maxwell Barlow (pt. owner) Hamlets Farm, Nook Farm, Taylors Farm, Plane Tree Farm, Simons Spout Farm, Higher Redisher Farm, Loe Bank Farm, Higher Ridge Farm, Middle Ridge Farm, Lower Ridge Farm, Simons Farm, Sundial Farm, Lower Redisher Farm.	Graze 500 sheep or 100 head of cattle or 20 horses; turbary.

Dated the 27th day of January 1982

A. A. Baden Jubie

Commons Commissioner.