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COMMONS REGISTRATION ACT 1965

Reference No. 20/U/81

In the Matter of Longton Out Marsh, Little Hoole and Longton, South Ribble District, Lancashire.

DECISION

This reference relates to the question of the ownership of land known as Longton Out Marsh, Little Hoole and Longton, South Ribble District being the land comprised in the Land Section of Register Unit No. CL.100 in the Register of Common Land maintained by the Lancashire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (i) Mr. Henry Slinger (ii) the Messrs. Hesketh below mentioned and (iii) Lancashire River Authority claimed ownership of parts of the land in question. No other person claimed to be the freehold owner of the land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Preston on 21 February 1974. At the hearing (i) Mr. Slinger was represented by Mr. D.A.S. Houghton, solicitor of Houghton, Craven, Plant & Co., Solicitors of Preston, (ii) Mr. Henry Hesketh senior and his four children, Mr. Henry Hesketh, Mr. William Ashton Hesketh, Mr. Jo nathan Hesketh and Mrs. Ann Banks were represented by Mr. W.M. Balmer, solicitor of Hodgson & Sons, Solicitor of Preston, (iii) Lancashire Rivers Authority were represented by Mr. H. Holmes, their clerk and solicitor, and (iv) Longton Parish Council were represented by Mr. H. Bennett their chairman. Present also was Mrs. M. Peacock, a past chairman of the Parish Council.

Evidence was given by the above mentioned Mr. Holmes, Mr. Slinger, Mr. H. Hesketh junior, Mr. W.A. Hesketh, Mrs. Peacock and Mr. Bennett. On the day after the hearing, I inspected the land in the presence of Mr. Hesketh, Mr. Slinger and Mr. Bennett.

The land ("the Unit Land") comprised in this Register Unit which contains (according to the Register) 37.878 hectares (about 93.6 acres), is a strip (roughly crescent shaped) about one mile long (a little more if a narrow tongue at the north end be included) and in part (the middle) about 300 yards wide. It is low lying grass land, the south part of which is about 300 yards from the River Asland or Douglas, not far from where this River flows into the tidal part of the River Ribble. At most high tides, the Unit Land is flooded, by a mixture of water coming in from the sea and water held back in the River, a mixture not salt enough to stop the grass growing on the Unit Land. Longton Brook forms the north boundary of the Unit Land and Tarra Carr Gutter crosses the Unit Land near its south end; there are numerous small drain

(natural ditches) which carry the flood water (and any rain water) to Longton Brook and the River Douglas. The land ("the Corporation Land") between the west boundary of the Unit Land (mostly marked by a low bank) and Longton Brook and the River Douglas, and other lands adjoining the Corporation Land on the northwest bouded by the River Douglas and the River Ribble, are (so it was said) owned by the Preston Corporation who aquired these lands when the two Rivers were confined between training walls. Within the Unit Land and near (for the most part adjoining) its east boundary, there is a bank (the New Sea Cop) in good repair and high enough to keep the flood water off the fields adjoining on the east; in this bank there is a sluice through which passes the Tarra Carr Gutter. Vehicular access from Longton Village to the Unit Land is easily obtainable by the road which runs by the Dolphin Public House, and possibly less easily at one or two other places. There is a public footpath on the top of the North Sea Cop (easily approachable at its north end from Longton Village); for those who walk for fresh air, exercise and a pleasing view, this must be very attractive. When the floods recede, it is possible to walk over much of the grass land between the New Sea Cop and the west boundary of the Unit Land; but in places the drains are too wide or the land is too soft for this to be possible; a stranger walking about too soon after high tide might find himself in serious difficulties. That the grazing for cattle on the Unit Land is of value was proved at the hearing and was obvious on my inspection.

The Rights Section of this Register Unit contains three entries of rights held in gross to graze cattle over the whole of the Unit Land, and such registrations being undisputed became final on 1 August 1972. These entries were made on the application of (1) Mr. H. Hesketh (2) Mr. H. Hesketh the younger, Messrs. W.A. & J. Hesketh and Mrs. Banks, and (3) Mr. Slinger, being respectively to graze (1) 89 head of cattle (2) 6 head of cattle, and (3) 97 head of cattle. Entry No.3 includes (unique in this respect) the words "from the 1st May to 25th December."

Mr. Houghton put in a written statement of his client's case (saying among other things in effect):- He relied on the Longton Marsh Act 1759 (33 Geo.2 cap xxiii) and the Award dated 27 December 1821 made under it, particularly the following words in such Award: "We do hereby award order and direct that the open and unenclosed Land and the Waste Ground situated and being on the outside of the said New Sea Cop and delineated and laid down as such upon the said Map or Plan marked with the letter A and lying between the said New Sea Cop and the said Rivers Ribble and Asland shall from henceforth until we shall award order and direct to the contrary be held and enjoyed, as a Stinted Pasture by the several person or persons to whom an allotment or allotments are hereinbefore made in two hundred and one parts shares or proportions and two fourths one eighth and one thirty second part of another share and proportion in the several proportions parts or shares hereinafter mentioned and set forth that is to say We do allot and award to ... (and there then follows a series of names and a series of parts or shares against each name, of which the first (as follows) is typical ... "Sir Thomas Dalrymple Hesketh twenty eight parts or shares and one fourth one sixteenth and one thirty second part of another part or share ... AND we do award and direct that the owner and occupiers of the

said parts shares or proportions of the said lands so to be occupied as a Stinted or limited pasture be at liberty to have their Cattle and other Goods thereupon in proportion to the Allotments made to them respectively upon and after the fourteenth day of May yearly and that they continue thereon until the twenty-fifth day of December then next following when the same are yearly to be taken off and the said commons remain free and clear from cattle and other goods until the fourteenth day of May the following". His client and the clients of Mr. Balmer ("the Joint Claimants") were together entitled by purchase or otherwise to 191 and 13/32 shares out of the total of 201 and 21/32 shares mentioned in the 1821 Award. By an Agreement dated 24 February 1966 the Joint Claimants agreed to partition the Out Marsh by a short fence thus confining Mr. Slinger's cattle to the northerly end and enabling Mr. Balmer's clients to graze the southern part and the Corporation Land without intermingling with Mr. Slinger's cattle. Since the 1821 Award and as a result of the bed of the River Ribble being canalised between training walls the course of the River had changed considerably and the Out Marsh increased in size and fertility as a result of accretions thrown up by the tides. Explaining his statement, he claimed that the part of the Unit Land West of the New Sea Cop belongs to the Joint Claimants as the owners of the 201 21/32 Cattle Gates subject to such compensation to the owners of the remaining 10¼ Cattle Gates by way of rent or otherwise as may be agreed; or alternatively belongs to all the Cattle Gate owners.

Mr. Balmer on behalf of his clients adopted Mr. Houghton's written statement.

Mr. Holmes claimed that the New Sea Cop belonged to the Lancashire River Authority (on April 1 1974 under the Water Act 1973 their interest passed to the Northwest River Authority).

Mr. Bennett said (in effect):- The Parish Council were concerned to preserve the rights which the people of Longton had over the Unit Land exercised for generations walking, collecting driftwood, gathering mushrooms and so forth. The fence errected under the 1966 agreement (being on common land) was illegal.

Mr. Holmes, who in 1951 on the formation under the River Boards Act 1948 of the Lancashire River Board had been appointed their clerk, and who on the formation under the Water Resources Act 1963 of the Lancashire Rivers Authority had continued as their clerk, gave evidence. He described the New Sea Cop and the Old Sea Cop; generally they are now as drawn on the 1821 Award Plan. He produced the River Douglas Catchment Board (Transfer of Powers of the Lords of the Manor of Longton) Order 1943, made under the Land Drainage Act 1930, bu which after reciting the catchment area of the River Douglas is a catchment area for the puposes of the 1930 Act, that under the 1821 Award (made under the 1759 Act) "the Lords of the Manor of Longton were appointed to administer and carry out any repairs necessary in connection with the drainage works referred to in the said Act and that by virtue of the foregoing the Lords of the Manor were a drainage authority within the meaning of section 81 of the 1930 Act, it was ordered that the powers duties and property of the Lords of the Manor (insofar as they relate to land drainage) shall be transferred to the Catchment Board".

Mr. Holmes said (in effect) :- The Old Sea Cop has for many years been let for grazing successively by the Catchment Board, the River Board and the River Authority. The New Sea Cop had been grazed by the cattle which grazed the rest of the Unit Land because it was not practicable to fence the New Sea Cop on the seaward side (the water coming in at high tide made it impossible to maintain such a fence; the wrack brought in would batter any fence down). He claimed that the Lord of the Manor was the owner before the 1821 Award and his ownership passed under the 1943 Award to the River Authority as successors of the River Douglas Catchment Board. He referred me to the provisions of the Award:- "And we do also award ... that all the Sea and other Cops Banks ... shall be repaired and forever hereafter kept in repair by and at the joint and proportionate expense of the owners and occupiers of allotments on the said marshes rateably and in proportion to the value of their respective allotments ... AND for the better and more regular effectuating of all and every of the Sea Cops Banks .. hereinbefore directed to be repaired and kept in repair by and at the joint and proprtionate expense of the owners of allotments on the said marshes and collecting the rates and assessments which shall be made and assessed for that purpose as aforesaid We do hereby award ... that the Lords of the Manor of Longton for the time being or such person or persons as they shall direct or appoint shall be from time to time and at all times forever hereafter the Surveyor or Surveyors ... of the said Works and the Collector of the rates and assessments as aforesaid ... ". he also referred me to the part of the award relating to this "stinted pasture" which described it as being as "on the outside of the New Sea Cop"...

Mr. Slinger who is now aged 46 years and has lived at Marsh Farm for the past 25 years, produced five conveyances dated between 1948 and 1950 and by which he acquired 96 and 13/32 cattle gates in the Unit Land, the parcels of such conveyances are summarised in the First Appendix hereto. He said (in effect):- When he had bought the rights they were called "cattle gates" and he had always heard them so described. He registered under the 1965 Act grazing for 97 cattle merely rounding up the number 96 and 13/32. There is a public footpath along the top of the New Sea Cop, but there are no other public rights over the Unit Land.

Mr. Hesketh junior who is now aged 41 said (in effect):- Before 1966 his father (now retired) rented (as recited in the 1966 agreement) all the 200 cattle gates from the agent (Mr. Heaton was one of the agents). The yearly rent was £80 and this rent the Agent divided among the cattle owners proportionately. Under the 1966 agreement, (which was produced) the Unit Land was to be divided by a sheep and cattle proof fence,and until determined as therein mentioned Mr. H. Hesketh or Henry Hesketh & Son were to graze the part of the Unit Land north of the fence exclusively and Mr. Slinger was to graze the Corporation Land and the part of the Unit Land south of the fence exclusively. He thought that the Hesketths owned 95/201 parts of the Unit Land; this could not mean that the stint holders

had a right to depasture 201 cattle because the area would not take 201 cattle, However, when making the registration under the 1965 Act for grazing for 89 and 6 cattle, they had merely rounded up the figure 88.23/32 and 5.5/16 below mentioned.

Mr. W. Balmer produced five conveyances dated between 1948 and 1960 by which Mr. H. Hesketh Senior acquired 88.23/32 cattle gates and a conveyance dated 1960 by which his other clients acquired 5.5/16 cattle gates; the parcels of such conveyances are set out or summarised in the Second Appendix hereto.

Mr. W.A. Hesketh who is 40 years of age and has lived in Longton all his life and at Old Grange Farm since he was eleven years old, and had been brought up with and been intimately concerned all his life with the Marsh said (in effect):- He is now and has for many years been the person, who on behalf of the Heskeths arranges for the cattle to be grazed on the Unit Land. The Unit Land can be a dangerous and treacherous place, particularly when tides are high and there are storms. He and his brother are in partnership (he, Mr.W.A. Hesketh, deals with the cattle aspect of their business.) Cattle (sometimes sheep) are put on the Unit Land after high tides and are brought off before the next tide. He considers the Unit Land is now "no use for anything else: only fit for pasture". Although he understood that there were 201 parts in or cattle gates over the Unit Land, it would be quite ridiculous to attempt to graze 201 animals there because even on a non-tidal piece of land of a comparable kine one cow per acre would be intensive stocking in accordance with today's standards. He knew that in 1968 the Parish Council had expressed the hope that the rights of the Parish would not be interfered with and that there had been some discussion about these rights but in his view the Parish had no rights over the Unit Land.

Mr. Bennett, who has lived at Longton for about 48 years, has been a member of the Parish Council for the last 8 years and is now chairman, said (in effect):- The Villagers have always had free access to the Unit Land: just to walk over or for a meander. He and his family and many others had walked there ... He had exercised his right to cross it by going from the Ferry House (on the other side of the River Douglas) across the River and across the Unit Land to the Dolphin Inn.

Mrs. Peacock, who had been a member of the Parish Council for 14 years and was formerly chairman, explained that the Council were anxious to protect the rights of the Parish over the Unit Land and were advised that if they put in a claim for ownership it might bring a Liability on the Council should any accidents occur. She and her family and many others played ball games there and enjoyed the amenities. The residents of Longton would be very unhappy if they could not exercise their rights with the same freedom as they had for many years before the 1966 Agreement fence had been erected: they were unhappy about the fence as the Unit land was a pleasure to walk on, to exercise their dogs and so on.

On this reference, I am, as regards the Unit Land concerned with "ownership", a word by Section 22 of the 1965 Act defined as meaning "ownership of a legal estate in fee simple".

In my opinion the Parish Council is not the owner. The public have, I think, a right of way along the top of the New Sea Cop; but I cannot from the things which Mr. Bennett and Mrs. Peacock describe as having been done by the

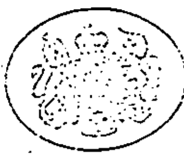
inhabitants of Longton, conclude that any part of the Unit Land is Parish property in any relevant sense of this expression. Whether the inhabitants (in addition to using the public right of way) have a right to do any of these things, is a question which on this reference I have no jurisdiction to answer; it may be that the answer does not matter much, because as long as the inhabitants continue to do these things to no greater extent than they have done in the past, the owner of the Unit Land is unlikely (whoever he may be) to object; Mr. Slinger and Messrs. Hesketh do not object and to fence the Unit Land against the inhabitants is impracticable. The fence erected pursuant to the 1966 agreement obviously facilitates the grazing of the Unit Land: on this reference, I am not concerned with its legality.

If I am not satisfied as to the ownership, the Unit Land will under Section 1 (3)(b) of the 1965 Act vest "as Parliament may hereafter determine". As matters now stand, this future Parliament nominee, will not (if I decide in his favour) get anything of very great value, because (as said by Mr.W.A. Hesketh) the Unit Land is now useless except for pasture and because the registrations made under the 1965 Act of rights of common as set out above secure to the clients of Mr. Houghton and Mr. Balmer a right to exercise all the grazing rights they need. But it is possible that the ownership of the Unit Land, subject to such grazing rights as may now be exercisable, might become valuable; the Rivers might be more strictly confined; the River traffic might increase; the turf ("sea washed") might be marketed; and so on. So although the present value of the questions arising on the reference may not be so much, the questions are important, if not as regards the Unit Land, certainly as regards land elsewhere.

Mr. Houghton (whose arguments were adopted by Mr. Balmer) while conceding that the River Authority owned the New Sea Cop, as regards the remainder of the Unit Land submitted that it was a stinted pasture owned by the stintholders, a form of ownership well known in the north of England. After some discussion as to the effect of the Law of Property Act 1925, by which (among numerous other alterations in the law), ownership in common of a legal estate in land was abolished, Mr. Houghton submitted that if I felt unable to direct the registration under the 1965 Act as owners, "the persons who owned the cattle-gates" (in some such words and meaning whoever they might be), I should, in accordance with the transitional provisions of the 1925 Act applicable to land held in undivided shares, direct the registration of the Public Trustee as owner.

This is the first case in which such submissions have been made to a Commons Commissioner. Subsequently in two other cases upon which I have not yet given my decision, similar submissions have been made. Because I think it likely that there may be other cases, I record in this my first decision on any such sumission, the legal considerations which are, I think, applicable.

In Halsbury Laws of England (4th edition 1974) volume 6 paragraph 522 it is said with reference to cattlegates: "In some cases ...; in other cases the land is vested in the cattlegate owners as tenants in common", and three cases decided in 1786, 1736 and 1738 are cited. In the Appendix to the Report of the Royal Commission on Common Land (Cmd. 462; 1958), Sir Ivor Jennings says of cattle-



gates: "Some ... the soil remains vested in the Lord of the Manor ... In other cattlegates, however, the commoners are in fact tenants in common of the land itself, who have sole vesture or sole pasture, each to the extent of his gate because the commoners own the land".

Simple tenancy in common (I use these words as meaning ownership resulting from a grant to two or more persons as tenants in common without any additional words), is a form of ownership long recognised by law, not necessarily having anything to do with grazing; although the owners, under any such ownership may agree between themselves, how or when all or any of them may graze the land, this grazing will be under the agreement, not by virtue of the ownership. Also a right to graze animals on land is a right long recognised by law. And it follows that there is no reson why persons who own grazing rights should not combine together to acquire the land as tenants in common; or conversely. So in the result, disregarding for the moment any question that there may be as to merger, they may under one title together own the land as simple tenants in common and under another title each severally own a grazing right.

In my opinion no such double title as is mentioned in the preceeding paragraph is established by the evidence in this case. No such title is contemplated either by the 1759 Act or the 1821 Award or by any of the conveyances (except possibly that dated 1960) summarised in the Appendices hereto. The conveyances seem to me to show, as also did some of the earlier documents relating to Mr. Slinger's title produced by Mr. Houghton (particularly a conveyance dated 21 March 1883) that the rights intended to be conveyed were the rights resulting from the 1821 Award, no more and no less.

So the submissions made by Mr. Houghton seems to me to raise the following questions:- is there now or was there before the 1925 Act, a form of ownership recognised by the law under which persons can have rights to graze cattle by virtue of which they together own the land, and at the same time can own the land in common by virtue of which ownership they each have the right to graze cattle; if such an ownership, which for convenience I will call "combined grazing and soil ownership" can in law exist, how can it in any particular case be recognised; and how is any combined grazing and soil ownership affected by the 1925 Act.

In Section 11 of the Inclosure Act, 1845, reference is made to: "all gated and stinted pastures in which the property of the soil or some part thereof is in the owner of the cattlegates or other gates or stints or on any of them". By section 113 of the said Act, an inclosure award may include a provision for a regulated pasture, and by section 116 "The right of soil of and in all land which shall be converted into regulated pastures shall (with some exceptions) be vested in the persons who under the ...award shall be owners of the stints or rights of pasture therein, in proportion to the shares or aliquot parts which such stints shall be thereby declared ... as tenants in common". By section 13 of the Inclosure Act 1803, (repealed) an award may include a provision for stinted pastures; the conditions on which such a provision may be made, indicate, I think, that those who under the award become entitled to graze the pasture will be the only persons intereste in the land so awarded.

In Lonsdale v Rigg (1856) 11 Ex. (H. and G.) 654, and on an appeal Rigg v Lonsdale (1857) 1.H. and N.923, it was held that those entitled to cattlegates on Bretherdale Bank, Westmorland did not own the land; the case was elaborately argued in the first instance before four Judges (who were equally divided) and on an appeal before six Judges who were unanimous. The majority based their decision on the form of the conveyances by which the cattlegate had been conveyed from time to time (indicating that they were held of a Manor) and on the use made on the land from time to time, all as set out in the case stated then under consideration; but it is, I think, a necessary implication of the majority judgements that a combined grazing and soil ownership could exist, otherwise the Judges need have said no more than that the claim for ownership of the soil was in law misconceived. Further Martin B. observed (1856) at page 675; "It was said that in many parts of the north of England, the owners of cattlegates are the owners of the soil: it may very well be so ... It may also be, that a question may arise as to the Plaintiff's right to the cattlegates by reason of his ownership of the soil ...".

The question when cattlegates comprise an interest in the soil is discussed in some detail in the 1877 lectures given by Professor J. Williams (published 1880) at pages 81 et seq. Referring to the authorities before Lonsdale v Rigg, he says that they "are far from distinct; and in these cases it must, I think, be considered that the phrase cattle gate or beast gate was a popular mode of expressing the ownership of an undivided share in the soil, coupled with an agreed mode of enjoying the surface by putting thereon so many cattle, in common with the cattle of the other owners of the remaing undivided shares". By his use of the word "coupled", I conclude that he thought that the ownership of a share in the soil could in law be regarded as combined with the right of grazing; his reference to an"agreed mode of enjoying the surface" amounts I think to no more than a recognition that if all the cattle gate owners agree, the grazing and the soil could be disposed of, either together or separately, as might be agreeable to all of them; but until such an agreement by all is made, the ownership of the grazing and the ownership of the soil remains "coupled".

The following words appear in paragraph 2 of Part V of the First Schedule of the Law Property Act 1925: "Where ... an open space of land ... is held in undivided shares, in right whereof each owner has rights of access and user over the open space, ... ". The words "open space of land" are not limited to the special definition directed to the special purposes of special Acts, but are to be given their natural meaning, see re Bradford 1928 Ch. 138 at page 142. In their natural meaning they include pasture land and the words "rights of access and user" include rights of grazing.

In my view the 1813 Act, the 1845 Act, and the 1925 Act all impliedly recognise a combined grazing and soil ownership, and having regard to Rigg v Lonsdale supra and Williams supra, I conclude that such ownership is recognised by law.

This conclusion is not, I think, contrary to the rule that a right of common is extinguished if the owner acquires the land over which the right is exercised, see White v Taylor 1969 1 Ch.150; each cattlegate owner has a right of common over the entirety, not merely over the undivided share of which he is the owner. Further a person who registers a right of common is not, I think, by the 1965 Act estopped or otherwise absolutely precluded from subsequently claiming ownership; it would be unjust that a person knowing he had at least a right of common and thinking that he might be the owner, should before 1972, if he wished to preserve his ownership claim, be required to risk being deprived by non-registration of his right of common; but of course in many cases, a person's actual reasons for registering a right of common may be such as to make it practically impossible for him subsequently to claim ownership.

I now consider how a combined grazing and soil ownership can be recognised.

Williams at page 83 supra says: "I believe that, generally speaking, no part of the property of the soil belongs to the owner of a cattlegate. It is often a mere right of common for so many cattle belonging to a farm. Sometimes it is a right of common in gross for so many cattle. Sometimes it is a right to an undivided share for several pastures". I conclude (and I think this conclusion accords with every day usage) that the mere fact that rights of grazing are called cattlegates provides no evidence that the owners are tenants in common of the land over which such rights can be exercised.

But equally, the mere fact that a right of grazing is described as a cattlegate, is I think, no evidence that the persons entitled are not entitled to an interest in the soil. A combined soil and grazing ownership can as well in a conveyance be described as "a cattlegate" or as a "share".

In many cases grazing, which is not referable to a grant of a right of pasture or of a cattlegate, may be regarded as an act of ownership, and therefore evidence of ownership in fee simple. But grazing or any other act for the better enjoyment of the pasture by the grantee of a right of pasture or of a cattle gate cannot be relied on as supporting a claim for ownership, see Rigg v Lonsdale (1857) supra at page 936.

Where there has been an inclosure award, and the conflict is between the Lord of the Manor who was the owner before the award was made and persons taking under an allotment, the position depends on the construction of the award. The Lord of the Manor may retain his interest in the legal estate, if it is not by the award otherwise disposed of, see R. v Inclosure (1871) 23 L.T.778; or be entitled to a beneficial interest under a trust established by the award, see Attorney General v Meyrick 1893 A.C.1. Contra, the award maybe read as extinguishing every estate and interest of the Lord of the Manor, see Simcoe v Pethick 1898 2 Q.B. 555. The effect of each Inclosure Act and award depends on its own particular terms, see Booker v James (1968) 19 P.& C.R. 525.

Apart from an award, the circumstance that the cattle gate have in the deeds been treated as part of a manor, is evidence that the ownership is in the Lord of the Manor, see Rigg v Lonsdale (1857) supra.

Generally, the judgements in Rigg v Lonsdale (1865) (1866) supra, seem to me to show that the priciples of law applicable to determine whether in relation to a particular piece of land, combined with grazing and soil ownership exists are the same to those applicable to determincing the existence of any other estate or interest in land: the relevant deeds must be considered, along with evidence as to the nature of the land and evidence as to its use. The observations of Fry J. in Robinson v Duleep (1879) 11 Ch.D.798 are I think, helpful; when considering whether a lease of "all their (the lessor's) warren of conies at Lakenheath" was a lease merely of a franchise or of the land itself, he said at page 836: "Upon the whole reading of the instrument I have come to the conclusion that although each individual expression is probably capable of being applied to a franchise, yet that all the expressions taken together lead to the conclusion that a corporeal hereditiment is being dealt with and demised, rather than an incorporeal hereditiment". These words are I think as much applicable to a right of common as to a franchise.

I now consider the effect of the transitional provisions of the Law of Property Act 1925 relating to land formerly held in undivided shares.

The above quoted paragraph from the First Schedule to this Act continues:-"... the ownership thereof shall vest in the Public Trustee upon the statutory trusts which shall be executed only with the leave of the court and subject to any order of the court to the contrary, each person who would have been a tenant in common, shall, until the open space is conveyed to a purchaser, have rights to access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remain as subsiting". By Section 39 of the 1925 Act the First Schedule is made effective "for subjecting land held in undivided shares to trusts for sale and for dealing with party structures and open spaces held in common".

In my opinion the First Schedule is effective to vest the legal estate in the Public Trustee of any land on 31 December 1925 held in combined grazing and soil ownership. And unless and until new trustees are appointed in his place the ownership remains in him. So in the result, the ownership devolves in accordance ———— with the recommendation made in the 1958 Report of the Royal Commission supra at page 130, but not adopted by Parliament when enacting the 1965 Act; but to avoid any misunderstanding, I record that in my view because the vesting is under the 1925 Act, the result will not necessaril be the same as that contemplated in the Report.

I now apply the principles outlined above to the evidence in this case.

The 1759 Act recites that four named persons "are Lords of the said Manor of Longton and are Tenants in Common thereof; and they and ... five other named persons ... and some other persons are the owners of the Antient Messuages, Land and Tenements within the said Manor; and have severally for themselves ... Right of Common upon the said waste Grounds ... ". The Act proceeds on the basis that each of the four Lords of the Manor were entitled to rights in Common in the same way as the owners of other lands in Longton. Thus the Act treats the Lords of the Manor either as having no interest or no interest worth noticing in the soil of the land intended to be inclosed.

Under the 1759 Act, the Commissioners are to make an Award enclosing part of the waste grounds leaving it open for "further award to be made at a later date enclosing a further part." The 1821 Award recites "previous Award dated 20 July 1760 and was therefore a further award such as was contemplated by the Act. The recitals in the 1821 Award show that the lands not enclosed by the 1761 Award were by such Award to remain a stinted pasture to "be held and enjoyed in the manner until further order should be made relating thereto pursuant to the said Act of Parliament ... and that they (the 1821 Commissioners) ... do find that there now are in or upon the said open and uninclosed lands two hundred and one Beast or Cattle Gates and two fourths, one sixteenth and one thirty second part of another Beast or Cattle Gate and that the same are now held and enjoyed by the several persons hereinafter named in the proportions, parts or shares following, that is to say ... ". The operative part of the 1821 Award to which the side note is "Stinted pasture in 201 parts and 2/4, 1/8 and 1/32) is as follows: "And we do hereby award ... that the open and uninclosed Land and Waste Ground ... shall from henceforth until we shall award, order and direct to the contrary be held and (as a) enjoyed Stinted Pasture by the several person or persons to whom an Allotment or Allotments are hereinbefore made in two hundred and one parts or proportions and two fourths, one eighth and one thirty second part of another share ... and we do all award, order and direct the owners of the said parts, shares or proportions of the said lands so to be occupied as a stinted or limited pasture, and be at liberty to have their cattle and goods thereupon ... (after 14 May yearly until 25 December next)." Although land over which the allotees merely had a right of grazing can properly be described as being 'enjoyed as a stinted pasture', the operative words in the 1821 Award are "land ... held and enjoyed as a stinted pasture by..." words which in my view are —— properly applicable to a corporeal hereditiment

No claim on behalf of the Lords of the Manor to the ownership of the soil was made at the hearing before me; nor as I read the 1759 Act and the 1821 Award was any such claim made before the Act and Award where enacted and made.

In none of the conveyances produced to me was a Cattle Gate dealt with (as they were in Rigg v Lonsdale supra) as held of the Manor.

On the above consideration I conclude that the Lords of the Manor had no interest in the soil before the 1821 Award was made (so that R.v Inclosure ———— ———— supra is distinguishable), alternatively such interest was extinguished by the 1821 Award, and the Unit Land either was before the 1759 Act held in combined grazing and soil ownership or became so held after the 1821 Award. On the legal priciples set out earlier in this decision, it follows that this stinted pasture is now vested in the Public Trustee. He has not yet been asked to, and may never be asked to act.

As I read the 1821 Award, the New Sea Cop therein mentioned had been built before the Award was made: the Award merely provided for its repair and upkeep. For reasons similar to that which are set out above in relation to the rest of the Unit Land, I am unable to conclude that at the date of the 1759 Act, the site of the New Sea Cop (which I assume was not then built) belonged to the Lords of the Manor. There is nothing in the 1821 Award indicating that the Lords of the Manor had previously become owners, and the North Sea Cop is not alloted to the Lords of the Manor or to anyone else.

However, from the 1821 Award, the 1943 Order, the present appearance of the New Sea Cop and the evidence which I had about it, I conclude that ever since the 1821 Award it has been administered as a drainage work by the Lords of the Manor, the Catchment Board, and the Rivers Authority in succession. Everybody at the hearing assumed that the New Sea Cop was owned by the Rivers Authority. On a common-sense basis, having walked the full length of the North Sea Cop, I cannot imagine how anybody but the Catchment Board and the Rivers Authority as their successor could be the owner, and accordingly, norwithstanding the absence of any clear indication in the 1759 Act or the 1821 Award, as to whether the Lords of the Manor, because they errected, or for any other reason were considered to be the owners, I conclude that the Rivers Authority were at the date of the hearing the owners of the North Sea Cop.

It was generally accepted that such ownership extended from the base of the North Sea Cop on its seaward side to the boundary of the Unit Land on its landward side.

On inspecting the land, I discovered that the evidence about the North Sea Cop given at the hearing was. as regards small length of cop on either side of the Tarra Carr Gutter, incomplete. About 100 yards before reaching the Gutter, the New Sea Cop divides. The part on the river side continues straight on until it reaches the Gutter at which point it ends (apparantly having been allowed to go into disrepair or having been destroyed by the sea); it starts again on the other side of the Gutter, and continues to the south end of the Unit Land where it joins another cop. The other part on the land side continues without any break along the east boundary of the Unit Land accross the Tarra Gutter (there is there a sluice) where it divides again one part going along the boundary of the Unit Land until it joins the said part on the river side.

On the plan on the 1821 Award the only part of the New Sea Cop delineated south of where it divides is the said part on the land side.

In the absence of any evidence about the origin of the cops around the Tarra Gutter, above described, I can only rely on what I saw on my inspection. I infer that under some arrangement the part of the cops which are on the river side and through which the Tarra Gutter flows unobstructed has somehow been restored to the stinted pasture, so — that the Rivers Authority, if they or their predessessors ever owned it do no do so now. But I conclude that the cops everywhere they go along the east and south boundary of the Unit Land are in the ownership of the Rivers Authority.

Being for these reasons satisfied that the Unit Land was at the date of the hearing in the ownership of the Public Trustee and the Rivers Authority as above set out, I shall accordingly pursuant to section 8 (2) of the Act of 1965 direct the Lancashire County Council as registration authority (1) register Northwest Water Authority (successors under the Water Act 1973 of the Lancashire Rivers Authority) as the owner of the part of the land comprised in this Register Unit known as the New Sea Cop including the cop which runs south of the Tarra Carr Gutter along the southeast boundary of the land comprised in this Register Unit, and including also all drains, ditches, grass and other lands (if any) on [which are between] the land side of the New Sea Cop (including as aforesaid) and the east and southeast boundary of the land comprised in this Register Unit, but not including the two cops which are in line on either side of and at right angles to the Tarra Carr Gutter, through which the Gutter now flows without any obstruction and which do not run along the boundary of land comprised in this Register Unit and (2) to register the Public Trustee as the owner of the remaining part of the land comprised in this Register Unit.

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 decision of the High Court.

FIRST APPENDIX

(Conveyances to Mr. Slinger)

(1) 18 August 1948:- "All those eighty eight Cattle-gates or parts or shares and one fourth one sixteenth and one thirty second of another Cattle-gate or part or share ... upon the open and unenclosed land and waste ground situate and being on the outside of the New Sea Cop in Longton ... lying between the said New Sea Cop and the Rivers Ribble and Astland".

(2) 5 August 1949:- "ALL THAT one beast or cattle gate of and in the stinted pasture or outmarsh at Longton near Preston aforesaid and one sixteenth of another beast or cattle gate of and in the said stinted pasture or outmarsh."

(3) 23 March 1948:- "ALL THOSE two Cattle-gates carrying the right to agist Cattle in and upon the Marshlands known as Longton Out Marsh in the Parish of Longton."

(4) 13 December 1950:- "ALL THOSE the four several cattle or marsh gates formerly appertaining or belonging to certain closes or allotments of marsh land situate on the enclosed Marsh in Longton in the said County and being parts of the properties comprised in a Conveyance dated the nineteenth day of July 1947 ..."

(5) 31 August 1948:- "ALL THAT one Cattle gate Beast or undivided part or sh[illegible] of and in the open and unenclosed land and waste ground situate and being on the outside of the New Sea Cop on Longton Marsh Longton aforesaid and lying between the New Sea Cop and the Rivers Ribble and Astland and now used as a stinted pasture".

SECOND APPENDIX

(The conveyances to Mr. H.THesketh)

(1) 24 November 1947:- "ALL THOSE Thirty two and one half Cattle Gates in and upon the Marshlands known as Longton Out Marsh in the said County".

(2) 12 July 1948:- "ALL THAT one part or share and one fourth one-sixteenth and one-thirty second part or share of another part or share of the Vendor of and in the Stinted Pasture on Longton Marsh ... still remaining unenclosed awarded by the Commissioners for enclosing waste lands at Longton aforesaid by their Award dated the Twenty seventh day of December One thousand eight hundred and twenty one in respect of a certain Cattle Gate and parts or shares of another Cattle Gate."

(3) 26 July 1948:- "ALL THOSE Three fourths and one eighth part of a Cattle Gate on the Outmarsh in Longton near Preston in the said County of Lancaster."

(4) 27 August 1948 "ALL THOSE fourteen cattle gates and five eighth parts of other cattle gates of and in the unenclosed land or outmarsh lying between the New Sea Cop and the Rivers Ribble and Astland in Longton near Preston aforesaid the whole of such outmarsh being divided in One hundred and ninety eight cattle gates and eleven sixteenths parts or shares of another cattle gate and containing one hundred and eight and a half acres in statute measure."

(5) 1 October 1948:- "ALL THOSE twenty four Beast or Cattle Gates and a moiety of one other Beast or Cattle Gate in or upon the Marshlands known as Longton Outmarsh in the County of Lancaster Together with all common ways and appurtenances whatsoever belonging or appertaining to the same."

(6) 15 April 1950:- "ALL THOSE thirteen parts or shares and one sixteenth part of another part or share of and in the Outmarsh of Longton aforesaid the whole of such Outmarsh being directed by the Longton Enclosure Award dated the twenty second day of December one thousand eight hundred and twenty one to be held as a stinted pasture in two hundred and one shares and two fourths and one eighth and one thirty secondth of another share."

(7) 9 November 1960:- "ALL THOSE two and eleven-sixteenths Cattle Gates on Longton Marsh near Preston in the said County of Lancaster."

(The Conveyance to Mr. H. Hesketh the younger, Mr. W.A. Hesketh, Mr. J. Hesketh and Miss A. Hesketh)

(8) 8 November 1960:- "ALL THOSE five and three quarters and one eighth and one sixteenth Cattle Gates or Stinted Pasture of certain Cattle Gates or Stinted Pasture known as the Longton Marsh Cattle Gates and situate at Longton near Preston in the County of Lancaster and also the usual and unaccustomed proportion and extent of the ground and soil of or belonging to the said premises as the same are usually occupied or enjoyed in or upon the said stinted pasture by the owner or tenant or owners or tenants of the said Marsh or Cattle Gates as aforesaid in respect of thereof with their appurtenances."

Dated this 15th day of July 1974

A. A. Baden Fuller

COMMONS COMMISSIONER