



COMMONS REGISTRATION ACT 1965

Reference Nos: 269/D/247-254, 255-260
/261-266, 267-274
/275-280, 281-287
/288-297, 298-300
/301-306, 318-323
/324-332, 333-338
/339-340

In the Matter of (A1) Clay Pits Triangle, Stainforth, (A2) Topham Ferry Landing or Public Watering Place, Sykehouse, (A3) Blackshaw Landing or Public Watering Place, Fishlake, (A4) Sour Lane Landing, Fishlake; (5) Bank Landing, Sykehouse, (A6) Low Hill Landing, Thorne, (A7) Barrier Bank and Hanson's Gyne, Thorne, (A8) Love Hill, Thorne, (A9) Reedholme Landing, Thorne, (A10) Plumtree Landing, Fishlake, (A11) Hadds Landing, Thorne, (A12) Hangman Hill, Ferry Landing, Fishlake, and (A13) Ings Piece, Thorne, all (the said 13) in Doncaster District, South Yorkshire.

AND

Reference Nos: 269/D/36-39 and /69-74

In the Matter of (B1) White Lane Pond, Four Doles, Clay Pits and (B2) Ashfield Bank and Ponds, both in Thorne and Stainforth parishes, Doncaster District, South Yorkshire.

AND

Reference Nos: 269/D/24-27, /28-29
/30-32, /47-48
/49-63, /61-68
/82-103, /104-134

In the Matter of (C1) Southend Guyme or Cow Shit End and Guyme, (C2) Church Yards or Old Grave Yards, (C3) North Station Guyme, (C4) Thorne Market Place, (C5) Durhams Warping Drain, all (the 5 last named) in Thorne parish, (C6) Huddle Grounds in Stainforth and Thorne parishes, (C7) River Don and its banks in Kirk Bramwith, Snaith and Cowick, Fishlake, Sykehouse and Thorne parishes and (C8) River Went and its banks in Sykehouse parish, all (the said 8) in Doncaster District, South Yorkshire.



- 2 -

DECISION

Introductory

These matters relate to the registrations made under the 1965 Act in the 23 register Units of the Register of Common Land and the Register of Town and Village Greens maintained by Doncaster Metropolitan Borough Council (formerly South Yorkshire County Council and before them West Riding County Council). For purposes of exposition these Register Units are herein grouped as A, B and C; the registrations, Objections and other circumstances giving rise to the disputes and questions to which this decision relates are specified in the First Schedule hereto.

My decision as regards each of these disputes and questions is set out in the Third (and last) Schedule hereto. The circumstances in which these disputes and questions have arisen and my reasons for giving the decisions so set out are as follows.

I held a hearing for the purpose of inquiring into the said disputes and questions occasioned by the circumstances set out in the First Schedule hereto at Thorne on 24, 25, 26 and 27 February 1987. At the hearing: (1) Mr William Bunting was represented by Mr B R Cox of counsel instructed by Pearlman Grazin & Co, Solicitors of Leeds; (2) Yorkshire Water Authority, (3) Doncaster Metropolitan Borough Council as successor of Thorne Rural District Council and as registration authority, (4) Mr John Cundall Harrison, ——— and (5) Mrs Alice May Asquith were all represented by Mr Peter R Pennington, solicitor of Kenyon Son & Craddock, Solicitors of Thorne; (6) British Waterways Board were represented by Mr Colin Dunkley FRICS; (7) National Farmers' Union were represented by Miss G Darley, barrister at law in their employ; (8) Black Drain Drainage Board as successors of Messrs Arthur Firth and Frederick Firth were represented by Mr R M Williams, solicitor of Dawson Burgess, Solicitors of Doncaster; and (9) British Railways Board were represented by Mr Julian Gott, the Surveyor (Parliamentary) for their North Eastern Region.

Course of proceedings

(24 February) At the beginning of the hearing Mr Cox on behalf of Mr Bunting asked that the proceedings so far as they relate to the Group B Register Units (VG113 and VG117) be adjourned. He said (in effect):- The circumstances relevant to an adjournment as they appeared to Mr T P Smith (solicitor of Pearlman Grazin & Co) were:- The notice of this hearing was given to Mr Bunting on 17 November 1986; in the early part of December Mr Smith attended Mr Bunting at his house and discussed matters with him; they agreed that Mr Bunting would gather his material together and send it to Mr Smith for his consideration; Mr Bunting had recently been in hospital for a hernia operation. Mr Smith got the papers on 19 December and gave them some consideration; on behalf of Mr Bunting on 9 January he applied for legal aid; the papers were completed by Mr Bunting on 16 January; on 2 February an emergency legal aid certificate was granted but it did not cover the preparation for, or the attendance at these proceedings; this certificate was amended on 18 February; an affidavit was prepared and by Mr Bunting affirmed on 23 February; in the circumstances it had been difficult to obtain from Mr Bunting proper instructions.



Mr Cox referred me to paragraph 2 of the affidavit (specified in Part 1 of the Second Schedule hereto) and to the deponent's summary history of his "health" (WB 1) exhibited thereto. Mr Cox submitted the matters in question were complicated and to deal with them effectively it was necessary to analyse carefully many documents and it was highly desirable therefore in the interests of justice that all Mr Bunting's contentions should be fully argued and considered.

Others present at the hearing did not agree the adjournment asked for. Mention was made of my decision dated 20 June 1986 about these two and other Register Units by which I had refused an adjournment after I had heard evidence from Mr Bunting's medical attendant.

Next I said I refused the VG113 and VG117 adjournment asked for, my reasons being as then stated and under the heading "Adjournment" below set out with some amplification. The hearing then proceeded on the assumption that as regards these two Register Units all questions determinable by a Commons Commissioner have been answered in the two decisions dated 30 March 1984 and the one decision dated 20 June 1986; an assumption which when writing this decision I realised as regards some minor matters specified below under the headings (i) "VG113" and (ii) "VG117" was not correct.

Next, Mr Cox on behalf of Mr Bunting asked that these proceedings so far as they related to the Group C 8 Register Units (VG110, 111, 112, 114, 115, 116, 119 and 120) be adjourned for the reasons he had put forward in respect of VG113 and VG117. I refused any such adjournment. Mr Cox said on behalf of Mr Bunting no evidence would be offered about the registrations in these 8 Register Units. I said the consequence as far as he was concerned would be confirmation of such registrations would be refused.

Next Mr Cox outlined the case he would make in support of Mr Bunting's Group A registrations. The rights claimed were to take clods, sand, warp and gravel, to take wood for fuel and to take the herbage. They arise by custom and prescription. The primary documents are: The 1626 agreement between HM Charles I and Sir Cornelius Vermuyden respecting the drainage of Hatfield Chase; the 1627 certificate of Sir John Savile, the 1629 map of John Arlebou (WB/X/1); the 1630 decree in the Exchequer. All these were considered in the 1983 High Court judgment of the Hon Mr Justice Mervyn Davies. He would refer to the History of the Drainage of the Great Level of Hatfield Chase (1975) by George Storer; and also to the 1825 Hatfield Thorne and Fishlake Inclosure Award.

Next (24 February) oral evidence was given by Mr William Walton (called by Mr Pennington) who is a construction foreman of the Yorkshire River Authority. He said (in effect):- Since the early 1960s he had been maintenance foreman of the River Don between Goole and Doncaster, for the repair of the flood banks, the boundary fences, the cross fences, grass cutting and the general maintenance throughout of the cloughs (where streams debouch into the main River Don). He was freelance and inspected as he thought necessary; he traversed the length of the River from Goole to Doncaster at least once a month, and may be more at times: according to heavy rainfall, flooding, and before flooding if wet weather forecasted; going to the sluices and cloughs. From Goole to Bramworth the River is tidal, and it deepens with the tides and the rainfall. Not daytime only, he could be called out at any time for flooding or such. He so worked for about 10 or 12 years until 1973 or 1974. Since then on occasions he had inspected the River Don, but not so frequently as before, because the work inspector (another employee of the Authority) now did what he used to do.



- 4 -

The banks below Bramwith down to Jubilee Bridge were always (in his time) tenanted (meaning from the Authority or its predecessor) by cattle (meaning belonging to the tenant): no others had cattle there. There are places for them to drink, but they could not be driven out of the River, so there are troughs; when working for the River Don, holes were left by the sand taken out to repair the banks, so there are little ponds. From Jubilee Bridge to Stainforth on each side of the River there are two banks "the Barrier Bank" which keeps back the flood water at high tides and heavy rainfalls, and "the River Bank" (which keeps in the normal flow); between the two banks there are approximately 90 acres on one side and more on the other. As to the landings (relevantly south of the Went Sluice and northeast or north of Bramwith): there is not a lot of landing (meaning by people); he had not heard of them (meaning as places) except a landing (wharf) by Sykehouse (CL328) owned by the River Authority. The River Don Scheme came out before he (the witness) started; under the Scheme all the banks were raised to the level pretty well as they are now. (The witness then described as he knew them the areas in the Register described as landings, being CL328, CL332, CL335, CL326, CL336, CL329, CL327 and CL334; in the First Schedule hereto numbered A5, A9, A11, A3, A12, A6, A4 and A10; his descriptions were all against the areas during his time being known as or used as landings in any now possibly relevant sense). As to taking wood from these areas, the Authority had a maintenance gang that took drift wood off the River and its foreshore, and then burnt it; as to other wood, no (laughable!). As to gravel from these areas, "I should not think so". As to taking warp, it is good soil, he had never seen anyone taking it away. As to taking sand from the area, no sand at all. As to taking clods, no; when the river floods it does not wash out the grass turf; there is no peat there. As to hunting deer or seeing deer in the area, no (very laughable!!).

Questioned by Mr Cox, Mr Walton generally adhered to (adding some details) what he said to Mr Pennington, all to the effect that the Group A units described as "Landings" did not now and while he knew them neither appeared to be nor had been used as such; they were not different from the surrounding land.

Next oral evidence was given by Mr George Alan Poskitt (called by Mr Pennington), a cattle dealer, since 1959 a tenant of the Yorkshire Water Authority of the lands by the River Don on its west side from Jubilee Bridge down to Ivy House Farm. He said (in effect):- He had known the area before 1959 (he is 57 years), travelling around; it had not changed. The CL326 area is part of the land tenanted by him, all River bank, the River on one side, all about the same, grazeable by cattle. No cattle other than his grazed there. No gravel or sand there. As to warp, there is good soil; he did not really know how it came there, but no-one took off the soil, or the turf. The water for cattle was from a pool and a container put there by the Water Authority if the pool dried up. He had not seen cattle drinking from the River; they would get bogged down if they tried.



- 5 -

Questioned by Mr Cox and then again by Mr Pennington, Mr Poskitt said:- One side of the CL326 area is a lane (marked on the Register map): "You can get down it in a car". By the lane there is a bank and fencing. The public walk along his tenanted land. From the base (meaning the west side) to the River (meaning the normal water flow) is a sharp incline, height varying a lot, some places gradually; "it is all grass". On his tenanted land there was no wood useable as fuel or timber; not even a hedgerow.

Next (24 February) oral evidence was given by Mr Eric Holt (called by Mr Cox) who said (in effect):- He had lived in or around Thorne all his life (born 1923). He is a local councillor (Thorne Town) but he came to this hearing not as such but as a ratepayer. He was familiar with the River Don and its banks; he had shot duck on the River (below high water mark); during his lifetime the boundaries of the River had changed; he had walked all parts of it. He knew well the area called the Clay Pits (meaning as later appeared the CL324 land, the VG113 land and the adjoining land on the south); he went there as a school boy and learnt to swim there; it silted up; there was plenty of water then, one chap pulled out a 14lb pike; last time he saw fishing it was perch; somebody syphoned water there (from the Canal); there was wild-life, then it was cleared; he could not give specific dates; the public cut pea sticks; just before the war there were cattle; during the war there were crops to help the war effort. As to the CL337 land having a name, it was just a walk to the railway; walking, bird nesting, climbing trees and the like. As to the CL330 land, it is part of Ashfield or Huddle Bank; it is only within the last 12 years it has been fenced. The CL327 land (off Sour Lane) has been taken over by the Water Authority; up to a few years ago it was rough shrub land. As to Hangman Hill (? meaning the CL336 land), there was fishing: "when we were kids we got eels". As to the CL326 land, "we always frequented there when we were young, kids roaming about ...". As to the CL335 land, he went there as a boy and knew it as Hadds landing; he had not seen sand or gravel there, this his father fetched from Thorne Moor. Generally about these lands, there was no interference, there were no complaints about anyone walking anywhere on the River banks; the public walked without any fear of prosecution.

Questioned by Mr Dunkley, Mr Pennington, and again by Mr Cox, Mr Holt said (in effect):- As to the CL324 land (about 3/4 of an acre, 2/5ths of which is tow path), one side of the tow path is scrub; he had not seen anybody digging it, but it had been grazed, "my dad from his boat took off to agist horses". It could have been farmed during or just after the war; there was grass there, not shrub land as now, so there was a bit of decent grazing. He swam in the "Fish Ponds". There were pea sticks in the area, and a public footpath through. Horses were not against nibbling hawthorn trees. There had always been through access. There was a derelict swing. It was swamp, but with modern pumps the water level has been lowered, in the last 12 years. He agreed that the CL337 land had been claimed as public footpath by Thorne Town Council; he thought that people should produce their title deeds (showing the land). The CL330 land was debatable as regards ownership;



it was common, meaning used by the public, because "we have always roamed it", and why should it be contended otherwise; he agreed along it was a public footpath; the northern bit was now fenced with concrete posts and wire in the last 7 months and was never fenced before in his lifetime; the central bit has always been fenced on the west side. The CL327 land was in the 1950s rough shrub land; he had not seen anyone taking warp; he was not against people walking, but was against the fencing. The fences on the east side of the River are post and wire.

Next (25 February), Miss Darley said she was on behalf of the National Farmers' Union only concerned with the VG115, VG119 and VG120 lands; and Mr R Williams said that the Black Drain Drainage Board as successors of A Firth & Son (Mr Arthur Firth now deceased and Mr Fred Firth) were concerned with VG115 Objection No. 1818 (? and 1849). Miss Darley submitted: — because the February 1984 decisions refused confirmation of the Land Section registrations, no decision of mine confirming the Rights Section registrations could create a common, and there was therefore no need for her and Mr Williams to bring any evidence against such registration.

Next, Mr Cox read and explained the February 1987 affidavit of Mr Bunting and the 14 exhibits thereto (briefly noted in Part I of the Second Schedule hereto).

Miss Darley then submitted that the matters in the affidavit relating to rights of way and access, and to rights of fishing were not relevant to the VG115 and VG120 lands because ways and access were not registrable, and the references to fishing were to the VG113 land.

Next oral evidence was given by Mr Fred Firth (called by Miss Darley) in the course of which he produced the documents specified in Part II of the Second Schedule hereto. He said (in effect):— He would talk about Durhams Warping Drain, being the land delineated on the VG115 Register map (FF/1; thereon shown as about 1½ miles long containing, according to the 1969 and 1972 conveyances 26.33 acres). He (now aged 56 years) had known the land since 1942 when his father (now deceased) became tenant (? licensee with Henry Firth) of the Yorkshire Land and Warping Company Limited. When he was 21 years of age he went into partnership with his father. They used the land for grazing. It was not a drainage drain; it was a warping drain, so for long periods it was dry and easily grazeable by cattle; rough grazing. No one else exercised any right of grazing; or any other type of right such as piscary, he never knew of any fishing in the drain, or of venery or aucupary or vert.

After Mr Firth had by reference to the 1972 declaration (FF/2) explained how he and his father became owners in 1969 and sold to the Black Drain Drainage Board in 1972 (FF/3), in answer to questions by Mr Williams and Mr Cox, he said (in effect):— The farm of his father and himself was just north of the land. A warping drain is to let the water in from the River so the silt can settle; this is done in June and September when the River carries the most silt. There is a notice at the east end of the land asking trespassers to keep out and warning them of danger. Fences (post and wire) have replaced hedgerows as long as he could remember. The pumping station near the west end of the land was erected in the 1970s.



- 7 -

In answer to questions by Mr Pennington and Mr Cox about other Register Units, Mr Firth said (in effect):- He and his father for 30 years had been tenants of the Yorkshire Water Authority of land adjoining (and west of) the A614 road to the River Don (east side of) between the road near to the entrance to Durham's Warping Drain and a road just beyond the lane leading to Reedholme Farm; next to the Selby Road (A614) there is a quickthorn hedge, next the River there is a concrete post and barbed wire fence, so the east-west line is: River water, high bank, fence, grazeable land, hedge, road. The River is tidal. They grazed the land with cattle belonging to themselves and nobody else except by arrangement not on a regular basis. The land is not used for sporting purposes; he had never given permission for anyone to shoot there and had no knowledge of anyone taking duck (as said by Mr Holt). The foreshore to the River varies, some places 80 yards other places 20 yards; time of year and tides. No underwood on the bank. When the tide recedes, dross is left; he had never seen anybody take it away, except usually the River Authority takes it away and burns it. He had only very occasionally seen people walk there. The fences he had mentioned had been there since 1939; the concrete posts were put up in the early 1980s.

Mr Firth was questioned by Mr Cox in some detail and by Mr Pennington about people walking over the land by the River of which he is the tenant and about shooting in the locality.

Next (25 February) oral evidence was given by Mr John Cundall Harrison (called by Miss Darley). He said (in effect):- He is the tenant of the lands by the River Don from Stainforth Bridge (on the south) to Bank Side (a farm on the north), meaning the VG119 land excepting the parts let to Mr Poskitt and to Mr Firth (as by them stated). He had been such a tenant of some of the land for 40 years and of nearly all for 30 years. He owned other farm lands nearby and had so done alone or with his father for 40 years at least. As tenant he grazed the land (the River side land) with cattle, mostly beef. Nobody else had so grazed and nobody came on the land to exercise any sort of right.

Questioned by Mr Pennington, Mr Harrison said that all this land had been permanently fenced by the Yorkshire Ouse River Authority about 40 years ago; wood posts and wood rail, in recent years replaced by concrete posts and wire. The areas are gated and the owners have keys.

Questioned by Mr Dunekley by reference to the VG119 Objection No. 850 specified in Part III of the Second Schedule hereto, Mr Harrison agreed that his lease did not extend to the lands in the Objection claimed by British Waterways Board. Questioned by Mr Pennington about the Riverside north of that let to Mr Firth, Mr Harrison agreed that it was tenanted by Mr Stones, but the last bit (north to the New Bridge) was tenanted by him, Mr Harrison. Questioned by Mr Cox, Mr Harrison agreed that there is a footpath along the Riverside and with stiles over the fences; and as to shooting if he saw people on the footpath and thought they were attempting to shoot he would ask them to leave, because shooting would be dangerous to his cattle and to people.



Next (25 February), oral evidence was given by Mr John Desmond Stones (called by Miss Darley). He said (in effect):- The evidence of Mr Harrison was correct. The land of which he (the witness) was tenant had been fenced for approximately 50 years; his father was then tenant. He had known the land all his life (60 years); it had been grazed most of the time except on one or two occasions when cut for hay. Nobody had exercised rights over it except his father and himself. It is fenced now with concrete posts and barbed wire, replacing a wooden type of fence put up about 30 years ago. The Water Authority is his landlord.

To me Mr Stones identified his tenancy as east of the River, west of the A614 road, north of a line a little north of the lane to Reedholme Farm and south of a line opposite the R D Bdy on the south side of Went Green east of the River. Questioned by Mr Cox, Mr Stones said he had not seen shooting on his side of the River; as to CL328 by Bank House on the west side of the River he had not seen people shooting there, but had seen them walking to shoot. To Mr Pennington, Mr Stones explained that he did not see these people actually shoot, they were merely carrying fire arms.

Next Mr Pennington on behalf of Doncaster Metropolitan Borough Council produced the 1987 Footpath Definitive Map specified in Part V of the Second Schedule hereto.

Next (24 February) oral evidence was given by Mrs Alice May Asquith by reference to the plan annexed to her VGL20 Objection No. 2010 (AMA/1), being the same as that annexed to her CL325 Objection No. 2009 (AMA/2); these plans show the CL325 land as OS No. 188 containing 3.712 acres and as adjoining the south bank of the River Went a short distance east of Topham Ferry Bridge. She said (in effect):- Her grandfather bought the land edged red on the said plans (being the said CL325 Land and also to the east of it OS No. 187 containing 0.841 acres being the house and garden Sunny Manse and OS No. 186 containing 2.568 acres adjoining the CL325 land and the River. Since 1928 he had farmed, about half as arable; some of it floods and it is not fenced from the River Went. OS 187 is the house and garden; OS 186 is a field about half is grass and the rest of orchard; OS 188 (the CL325 land) has always arable but nobody had grazed there except themselves. There is a barrier bank in front of her property (shown on the said plan by a double dotted line F.P., south of that thereon edged red.

The said plan included in the edged red is the adjoining water of the River Went up to the middle line, being part of the VGL20 land. After some discussion Mrs Asquith said she would amplify her evidence with documents on the following day and Mr Cox said that he would then question her about the CL325 (not the VGL20) land and Mr Dunkley said he was concerned with other parts of the VGL20 land.

Next (24 February) oral evidence was given by Mr Colin Dunkley a chartered surveyor who until his retirement in 1985 from British Waterways Board was their principal Estate Officer in the North of England and in Scotland. He said (in effect):- As to the VGL16 land, the part lying to the north of the Stainforth and Keadby Canal between Stainforth Basin and the Railway Bridge immediately to the west of Thorne Lock has always been let to Mr Harrison as he had stated in his evidence; no-one had claimed to a right to graze it without the approval of the Board and it had always had a tenant; there are no trees growing on the land which could facilitate the



collection of wood for burning or estovers; the cutting of turf would be the subject of prosecution by the Board as it would produce the stability of the bank and be likely to cause flooding; shooting would be a minor offence across canals and over land adjoining canals and the Board have a long record of prosecuting offenders.

As to VG119 (River Don) Mr Dunkley said (in effect):- The land edged red on the plans attached to the Board's Objection No. 858 comprise four small areas. The first area is a narrow strip of land on the north side of the Stainforth and Keadby Canal extending for a distance of about 400 yards east of Bramwith Swing Bridge, as delineated on Objection Plan No. 31 (JCH/1); it is a public footpath and is so marked; it would not be possible to exercise any right of common over it because (i) there is no grass on it and it is land adjacent to the towpath, (ii) there are no trees or timber growth, and (iii) shooting would be an offence for which the Board would prosecute. The second area is a narrow strip of land on the north side of the access road from Stainforth Bridge to West Bank; it is between 5 and 10 feet wide and is delineated on Objection Plan No. 33 (JCH/2 and CD/1); it is not possible to exercise rights over this area because it is too narrow and the Parish Council have planted an ornamental tree by it. The third area is a disused lock between the River and a basin off the Canal as delineated on the said Objection Plan No. 33; it no longer gives access to the Basin and the River Don, but nevertheless is still in water and is used as a wet dock in connection with boat repairs; the fact that it is a lock chamber full of water precludes anyone exercising any common right over it. The fourth area is part of the foreshore of the River as delineated on Objection Plan No. 34 (JCH/3; thereon appearing as about 60 feet by 40 feet); it is included in and surrounded by land let to Mr Harrison; here again the common rights which have been claimed would be inappropriate to this area and could not be exercised.

As to VG120 (River Went), Mr Dunkley said:- The land edged red on the plan attached to the Board's Objection No. 859 adjoins or is near to the bridge carrying the New Junction Canal over the River; it is part of the Canal, being a very steep embankment (supporting the waterway and the bridge) incapable of being grazed; there is no access to it, no growth of timber, trees or shrubs.

About the ownership of VG119 and VG120, Mr Dunkley said that the Board had been advised by Thorne Parish Council that their registration in the Ownership Section was withdrawn.

Next (25 February) Mr J D Stones continued his evidence saying (in effect):- He had now identified the CL332 land: it is no different from its surroundings, but it was different prior to 1936; we called it "the willow garth" because it grew a lot of willows which the River Board used to cut down. There is the River itself, a flat portion of about 6 yards; the river bank, the other side at the foot of the bank and then next the roadside hedge; there is a gate from the road to this bank, you turn left at the foot of the bank and get into a field; the gate is just south of CL332. He was tenant with his father for 50 years and had known the area for 60 years (now nearly aged 66 years). The holding was grazed mostly and cut hay. No cattle other than their own grazed it. There was no sand; certainly not seen anyone taking clods, this would erode the bank; never seen anyone taking warp off the bank or anybody shooting on this small piece; only very rarely seen walkers.



- 10 -

Mr Stones in answer to questions by Mr Cox generally adhered to what he had said; there was no path on the top of the bank because not sufficient people make a path, but there were cattle paths, he did not know this part of the river as a "ancient watering place"; at the early age about which they were talking (before 1936) it was derelict. He did not know whether the public had free access and was under the impression that anyone could walk along the side of a tidal river. He had seen the River Board people collecting driftwood, to burn it. This derelict area was very wet.

Next (26 February) oral evidence was given by Mr James Armstrong (called by Mr Pennington) who is now aged 69 years and retired, is the Secretary of the Ings Angling Club and is and has been since 1980 an Honorary Water Bailiff of the Yorkshire Water Authority. He said (in effect):- He had been concerned with the Clay Pits Area, meaning the VG113 land and incidentally the CL324 land. The Club was tenant of it from June 1984 to June 1986. When they started it was overgrown with weeds and full of rubbish; on the north part not grass but scrub; there was some copse and some trees, but these disappeared during the miners' strike. The photographs produced (JA/1-11) showed how it was and what they did. They cleared a part, about 10 by 6 yards of the pond. He saw no sand or gravel or warp; additional water came by syphoning from the Canal; there were no turf or clods, no cattle grazed there. He had known the area since 1950; it was always known as the clay pits, more or less like it was in 1982. Local people helped themselves to pea sticks but not in an organised way. The land was "clay pits" (used in the past) for lining the canal and that is what they were. The clay gets very hard when dry.

Next Mrs A M Asquith continuing her evidence produced the documents specified in Part IX of the Second Schedule hereto, and said (in effect):- She had lived at Sunny Manse since 1928; her father, Albert James Holgate lived there from 1928 until his death in 1960. Her grandfather lived there before they came; it was let approximately in 1930 or 1931; her husband farmed it for her father and after his death they had just carried on farming it. OS No. 188 has always been arable, mostly corn, it is good land (not warp), loam not sand and no gravel, no clods or turf; the field is level and stands high, higher than the land that surrounds it except two low corners which flood. It is enclosed all round; the hedge on the River side is kept chopped very low so it is hardly a hedge; there are also hedges on the roadside between the fields which adjoin Topham Ferry Bridge Farm. Their own cattle had grazed on OS 186 but OS 188 was always arable. The land marked on the old map (AMA/16) as the old course of the River floods very badly; it is just very low lying land. The road fronting on the house, "a proper road" to Topham Ferry House, is maintained by the Council.

Next Mr Cox asked me to note that Mr Dunkley had produced an agreement dated 1893 between Manchester, Sheffield and London Railway Company and Sheffield and South Yorkshire Navigation Company on which the words "Thorne Common" were shown between the Stainforth and Keadby Canal and the CL337 land.



Next (26 February) oral evidence was given by Mr Julian Gott who for British Railways Board was concerned with the CL331 land by Thorne South Railway Station and with the part of the railway embankment included in the VG113 land (Mr Dunkley being concerned with the rest of such land) in the course of which he produced the documents specified in Part X of the Second Schedule hereto. About the 1857 conveyance (JG/5), the 1863 Act and the Deposited Plan and Book of Reference (JG/6 and 7) Mr Gott observed that before 1857 the Canal Company and the Railway Company in this area were the same, South Yorkshire Railway and River Don Company; from these documents he inferred that the VG113 land was in 1863 land of the Company. Comparing the modern plans showing the CL331 Land (JG/1 and 2) with the footpath map (JG/8) and the deposited plan as explained by the Book of Reference (JG/4) he inferred that the footpath marked on the CL331 Register Map was Footpath No. "13" on JG/8 and that the land surrounding it was not common land when the deposited plan and Book of Reference were made. The Arlebout Map (WB/X/1) and the OS 1/50,000 Landranger 111 both show the churches of Finningley, Hatfield and Thorne; the 1639 Arlebout map was unreliable as indicating the CL331 land to be historic common land. The first sentence in paragraph 4 of the affidavit of Mr Bunting is unreliable in that Thorne South Station is a long way from anything which could conceivably be a landing stage. Up to 6 April 1965 the CL331 land was part of an operational goods yard, which the Board is under statutory obligation to fence, see section 68 of the Railway Clauses Act 1845. About it there was the South Yorkshire Railway (Sheffield and Thorne) Act 1862, 25 & 26 Vict. c. cxli; see also section 55 of the British Transport Commission Act 1949. No parishioners could have grazed cattle in a goods yard, (as stated in the said paragraph 4). There is much else in the affidavit which could not apply to the CL331 land, for example paragraphs 6, 8 and 9; rights of way such as are mentioned in paragraph 10 are not within these proceedings. The 1815 conveyance (JG/10) showed the title of the Board (as successors of the Great Central Railway Company) and the Deposited Book and Reference Plan show it to be farm land in the 1860s; if there had been common rights over it they would have extinguished under the special act authorising the railway which would incorporate sections 99 et seq of the Lands Clauses Consolidation Act 1845.

Mr Gott submitted that the right of common as registered was negatived by the CL386 July 1983 High Court decision and my observations about similar rights in my CL401 June 1986 decision, that I should pay no attention to the evidence of Mr E Holt because he did not mention the CL331 land although "South Common", which he gave as his address, is nearby. Mr Cox seemed to be relying on prescription; under the 1832 Act, there is no prescription for rights of common in gross, and prescription for such rights, documents should be produced.

Questioned by Mr Cox, Mr Gott said (in effect):- He agreed that the CL331 land was now uncared for and neglected and there were no trees there although there is some grass. He considered the public access along the footpath was lawful, but that the dumping of rubbish on it was not. On appearance the churches now at Finningley, Hatfield and Thorne were there before Arlebout; he though pre-conquest.



- 12 -

Next (26 February) oral evidence was given by Mr James Reed (called by Mr Pennington) who said (in effect):- He had lived since 1953 at 32 Lock Lane and in Thorne all his life (born 1926). His wife (formerly Elsie Firth) lived in the Lock Lane area before (born there). Their house backs onto the CL330 land; there it is a bank or dyke; between it and their property, at the bottom ————— there was a quagmire; the dyke by their property is a nearly straight line next to the back fences of the houses of Lock Lane but it recedes away from such line as it continues (northward) to White Lane; on the other side of the Lane the bank carries on to the main road. The top of the bank is about 10 feet above their backland; along the top of it there is a public footpath. He had grazed the bank because it is near their property (witness described in detail the CL330 land as it is and was at the back of his property). He had grazed animals since 1953. He had had a donkey and Shetland pony, he has no donkeys now but grazes 3 Shetlands and a goat. There were no other animals where he grazed. On the part of the CL330 land by the Ambulance Station (north end), — Mr Horace Dukes grazes a goat and it is there now. A few years ago he (the witness) tethered a pony for about 3 years at the south end of the CL330 land. On the other side of the Swing Bridge there is a small part of the CL330 land that used to be a clough; he thought it was now a tipping place; there were never any cattle on it. ————— He knew the CL337 land as "Ings Lane"; (witness then described it) it opens up the corner and then continues to the railway bridge; the grass by the side of the lane is very rough, mostly nothing but rubbish and nettles; there was a car track; the grass has been grazed by horses, ponies and cattle; up to 12 months ago Miss Shirley Dyas grazed from her house, and before her Mr Freddie Brammer who was a local horse dealer paid for the grazing and before him Mr John Postgate had land near the railway; Mr Dickins grazed and Mr Tony Darley grazed; that would go back about 30 or 40 years. The grazing was tented (for which 5/- a week was paid to the man tenting the beasts).

Questioned by Mr Cox, Mr Reed amplified what he had said about grazing by Mr Horace Dukes and himself of the CL330 land and by Miss Shirley Dyas and Mr Freddie Brammer of the CL337 land. He agreed with Mr Dunkley that part of the CL330 land was occupied by Stanilands, was fenced from the road and that the smaller and other part on the other side of the Swing Bridge was an old clough, but "it would not feed a goat, a derelict piece of land it — is rubbish". Questioned by Mr Pennington he said he thought that Miss Shirley Dyas for her grazing had paid, ————— having first written a letter to the Town Clerk.

Next (26 February) oral evidence was given by Mr Harold Smith (called by Mr Pennington) who was a refuse collecting superintendent and was as a part-time occupation a smallholder. He said (in effect):- At the age of 20 years (now aged 60 years) he became farm foreman for Mr Fred Dickins who used to farm about 93 acres between Ashfield Bank and the Canal; he stayed with him for about 6 years. He was familiar with the area marked "Fish Ponds" on the map (on Register Map apparently including the CL324 land and the VG113 land); it was all overgrown with bushes and being a bit lower than the grassland against it (to the south) it was reasonably wet; it was not put to any use; it was not owned by Mr Dickins; as to pasturing cattle, it would take time to clear it and was not worth it.



He never saw _____ cattle there; "he once had a cow in there but you could not see her, you had to follow a trail to find her". There was no gravel or warp or clods there and definitely no peat and it was not usable for any purpose. He was familiar with the CL337 land as "Low Ings Lane"; he used to go up and down 3 or 4 times a day depending on the season. He never used it otherwise than for going up to the land; it had more nettles and docks on it than grass; it was an ash lane; contractors dropped ashes there from landowners who wanted to get rid of them. There was a narrow strip on either side varying in width; it was not used for anything when Fred Dickins had the land down there. Since he had from 1970 to 1975 himself rented a piece "the Gregory Piece" (on my copy of the Register Map by me marked "HS" extending from the south corner of the CL337 land to the railway next to and north of where it crosses the bank, on the other side of the line named Ashfield Bank). Ings Lane itself was rented from Thorne Parish Council by Fred Brammer (he died 10 years ago) and after him by Shirley Dyas who paid 50 shillings a year for it so she said; she went into see the Parish Council; no one else had it; before Mr Brammer cows came down and grazed it; milking cattle were brought up and down the lane twice a day; "they kept the lane tidy!; they got their bellyful, saving the grass on their own fields!". He did not know of anyone else other than Shirley Dyas paying to graze nor anybody else bringing cattle there other than the owners of the adjoining lands. There was no gravel warp or clods or turf there and nobody used the land "except the people who have land down there". As to the CL330 land he knew of it by all his life just walking up and down the footpath; there used to be a hawthorn hedge overgrown on the bank, you had a job to get along the top but nobody bothered about it; there was no sand, gravel or warp there or turf or clod. Mr Bunting lives at the house called Periplaneta (the witness described it).

Questioned by Mr Cox, Mr H Smith detailed the locality of Periplaneta and amplified his previous evidence about the CL337 land and the CL330 land saying (in effect):- Before Mr Brammer paid money to graze the CL337 land it was used by farmers, at one time 8 landowners in the region then there were 6 different landowners; he agreed it was first come first served, plus the 6 farms who used it taking cattle to Lock Lane and Queen Street. At the White Lane end of the CL330 land was an old pinfold; he thought the land belonged to the Water Authority. Questioned by Mr Pennington, Mr Smith said that Mr Dickins' orchard was where the flats are now; another person who had land nearby was Mr Lees and before him Mr Barley. He agreed with Mr Dunkley that the small part of the CL330 land south of the Canal used to be part of a kitchen garden (as shown on Mr Dunkley's 1897 plan).

Next (27 February) after some discussion as to the possible duration of the hearing, Mr Cox said he would neither apply to call any further evidence nor save in support of the CL324, CL330 and CL337 registrations proceed to any further argument, but he was not withdrawing any evidence or argument already given.



- 14 -

Next Mr E Holt intervened saying that he had spoken to Mr John Megarry, Clerk of the Town Council, that morning and from him understood that in general the CL330 (? CL337) land was common land that the Town Council had designs to plant trees and make it a way from White Lane going westerly by Stanilands Boatyard towards Fishlake. Accordingly he (Mr Holt) stood by all he had already said (on 24 February). Questioned by Mr Pennington, Mr Dunkley and myself, Mr Holt did not dispute that there was a public footpath along the Bank (central part of the CL330 land); the Town Clerk when talking to him was looking at a map.

Next Mr J C Harrison continued his oral evidence producing the documents specified in Part XI of the Second Schedule hereto and saying (in effect):- The land of the Yorkshire River Authority occupied by him was between the barrier banks (which he described) for the protection of the surrounding land from flood water and the river bank (confining the normal flow). All is fenced, possibly for 40 years or more, at first with post and rail (timber fencing) then replaced over the years by concrete posts and barbed wire. The grazing for cattle is between these banks; nothing in the nature of sand or gravel; there would be warp in the river; nobody takes the turf but it has been reseeded over the years; nobody had grazed cattle other than himself; he did not allow shooting on it; there is footpath access for walkers over which there are stiles. The CL337 land was to him basically an accommodation road what you get to over the Lock on turning right affording easy access to the lands on the left and right hand sides of it and also to other lands by going under the railway bridge at the end of CL337. There were as far as he knew no rights of common over it in 1965; he farmed both sides of the CL337 land and also land on the other side of the railway (under the bridge) for some 20 years; he did not farm the land on the west side next to the bridge but he did farm the land next to the bridge on the east side now owned by his wife as appeared from the 1976 Land Certificate (JACH/11 shows title to a piece bounded by CL337 on the south; by the railway on the northwest and the Canal on the north then bounded by the railway on the northwest, by the CL337 on the northeast and by HS land on the southeast and southwest). The 1968 declaration of A Lee (JCH/13) deals particularly with the roadway on the CL337 land and coloured yellow on the annexed plan. (the deponent identified it with a road of the breadth of 21 feet referred to in the Hatfield, Bourne and Fishlake Inclosure Award and says there has never been any interference with free access along it). The road was purely to provide access to land on either side of the Ings Piece (the CL337 land) and access to lands on the other side of the railway (under the bridge); it has recently been improved having been before an ash road or cart track; it has verges of various widths but there are of no use as such; just verges to a road, apart from to Mr Brammer who rented part of these verges and grazed horses and so he thought to the young lady (Miss Dyas) who grazed it for her pony. The cattle which had been there were from the adjoining fields and 3 or 4 farms which were at one time down there; the cattle were driven to the land to which the track formed access; the milk cans are taken down the path every morning every day of the year.



Questioned by Mr Cox, Mr Harrison said that to him the word tenting meant looking after cattle; if you are tenting cattle you do not leave them; you are tenting them; cattle on the CL337 land grazed as they walked along it; there was no rule, first come.

Next Mr C Dunkley continued his oral evidence in the course of which he produced documents specified in Part XII of the Second Schedule hereto and after mentioning the CL324 Waterways Board Objections Nos. 827 and 828, the evidence of Mr J Armstrong and Mr H Smith, and the absence of any mention of the CL324 land in the affidavit of Mr Bunting, amplified the evidence of Mr Gott by saying (in effect):- The CL324 land was part (the west end) of the land comprised in the 1857 conveyance (JG/5). The title of the Canal and Railway became separate consequential on the Sheffield and South Yorkshire Navigation Act 1889 (57 & 58 Vict. c. xli). —→ Pursuant to such Act there was an agreement of 17 January 1893 by which the Manchester, Sheffield and Lincolnshire Railway Company ("MSLRC") sold to Sheffield and South Yorkshire Navigation Company ("SSYNC") and by reference to the book of plans referred to in the Act (CD/10); the CL324 land and the VG113 land are within the land edged red, the ponds being blue. Also included in the area edged red is the part of the CL330 land now fenced in as part of Stanilands Yard and on such plan marked as "garden". By the 1896 conveyance (CD/11) the land comprised in the agreement and reference to it was conveyed MSLRC to SSYNC. By the 1943 conveyance (CD/11) part of the CL330 land south of the Canal was conveyed by Mrs Chappell to the Stafford and South Yorkshire Navigation Company. The Parish Council claims have been withdrawn by the 1987 letters (CD/13 and 14). Part of the CL330 land where it is owned by the British Waterways Board nearest to the Canal is now let to Stanilands Boat Builders and from his own knowledge extending back for about 35 years he believed that there were similar leases 3 years before that, the book of plans shows it as fenced in 1893. There is no way that any rights could be exercised over these small plots. The remainder of the area within the Board's Objection No. 860 was within the 1943 conveyance (CD/12) and is shown on the 1853 book of plans. It is not possible to exercise common rights over it, part is a towpath the excavation of which would endanger navigation, shooting is a bylaw offence, warp and grazing could not apply. The garden ground area has for so many years been such as —→ rights could not have been claimed over it.

Next Mr Pennington made submissions generally on the questions of these proceedings in the course of which we looked at the 1825 Inclosure Award and the map annexed to it (produced from the custody of the Doncaster Metropolitan Council) and he drew attention to the allotment in it and the Ashfield Bank Road referred to in the statutory declaration of Mr Lee (JCH/13).

Next Mr Cox made submissions generally on behalf of Mr Bunting particularly as regards the CL324, CL330 and CL337 lands claiming that rights to graze cattle as registered existed in gross by common law prescription and also existed (at the



- 16 -

date of registration) although never registered in the Rights Section. It was clear before the 1630 Decree that the inhabitants in this area enjoyed general rights of common; such rights have not been lost by abandonment or statute or award. They have in relation to the CL324 land been exercised by Mr Holt grazing it with horses and also a bullock on one occasion, there being as he said adequate grass or herbage for him to do this; also by taking pea sticks as had been said by Mr J Armstrong. They have in relation to the CL330 land been exercised by Mr Horace Dukes grazing a goat, as was said by Mr Reed who himself is now grazing ponies and goats and before a donkey. They had in relation to the CL337 land been exercised by Miss Shirley Dyas grazing a horse or a donkey, by Mr H Smith (he mentioned milk cattle who were tented down there), and by grazing by other farmers; of this there was no evidence that anybody had complained or disapproved. Mr Cox referred to the 1933 CL386 High Court judgment in some detail. The 1825 Award plan shows paths narrower than the CL330 and CL337 lands; this is not inconsistent with rights existing before the Award, after it continuing over the wider parts. The 1983 judgment did not decide that no rights existed under the 1630 Decree after the 1825 Award; it decided that the inhabitants of the relevant areas gave up their rights of common over two-thirds of the area receiving for them the lands referred to in the 1633 deed of enfeoffment, that is they gave up all rights under the 1630 Decree; those over the remainder were retained. The importance of the Arlebout map is the marking on it of Dicksmarsh and Thorne Common; the CL337 and the CL330 lands are within "Thorne Common" so marked.

Mr Dunkley said:- Mr Holt in relation to the CL324 land only said that his father had grazed and he had seen a bullock there. Mr Smith referred only to a straying right.

Mr Pennington said that the 1633 deed of enfeoffment was a conveyance to trustees on behalf of the inhabitants. The arguments of Mr Cox failed because the High Court judgment only went so far as to establish turbary on the CL381 Thorne Waste, and no turbary was claimed on any of the Register Units in these proceedings.

I said I would inspect the lands in these Register Units on a day to be notified.

Inspection

On 18 May 1987 I inspected these Register Units, to begin with in the presence of (1) Mr P R Pennington and Mr C Dunkley who represented those they represented at the hearing, (2) Mr T P Smith, Solicitor of Pearlman Grazin & Co, Solicitors of Leeds representing Mr William Bunting and (3) Mr J C Harrison. We started by the Thorne Swing Bridge over the Canal. Mr Dunkley pointed out the triangular piece shown on the 1893 map now fenced off from the road and used with the Stanilands boat building yard. By Land Rover we then went to the VG113 land by way of the track along the CL337 land and under the railway bridge and Mr Poskett who had joined us, then pointed out the cattle loading pens. We then walked across the southeast side of VG113 land up on to the towpath by the CL324 land; Mr Dunkley remarked that under the VG113 1984 decision the towpath had been deleted from the



- 17 -

registration. Next we returned to the Swing Bridge where Mr Dunkley pointed out the part of the CL330 land south of the Canal. Having seen the Register Units with which Mr Dunkley was concerned, he then left.

We continued on foot the inspection of the CL330 land, walking along the footpath from the Stanilands Yard to White Lane, on the way being joined by Mr Reed who pointed out the back of 32 Lock Lane and the bank, dyke and fences to which he had referred when giving evidence. On reaching White Lane we turned back into Lock Lane and viewed the north part of the CL330 land (a steep bank), where a goat was grazing.

Returning to the Swing Bridge we continued in the Land Rover, inspecting: the VG112 land North Station Guyme (from the road only); the CL329 land (Low Hill Landing); the CL332 land (Reedholme Landing); the CL335 land (Hadd's Landing) approaching it from the Don side land access gate by Durham Warping Drain Sluice, and looking at the CL326 land (Blackshaw Landing) on the other side of the River. After a look at the CL336 land (Hangman's Hill) and the CL327 land (Sour Lane), we returned to Stanilands Boatyard.

Mr Pennington, Mr Smith and Mr Harrison being agreeable to ^{my} continuing the inspection in their absence and Mr Pennington agreeing to warn Mrs Asquith that I might be coming, I continued alone.

I looked again at the CL336 land and the CL327 land and inspected and CL334 land (Plumtree Landing). Accompanied by Mrs Asquith, I inspected the CL325 land (Topham Ferry).

Next I ~~looked~~ under the bridge which takes the New Junction Canal over the road, and got ~~some~~ some idea I suppose of the corresponding bridge over the River Went mentioned by Mr Dunkley. Next I inspected from the road the CL326 land (Bank Landing). Then returning by the new bridge over the River Don, along the Selby Road to Thorne, I inspected the CL331 land (Love Lane) by Thorne South Station, walking over it. Next I looked at the east part of the VG110 land from South End Road and at the west part from the Canal Bank.

I made no special inspection of the VG114 land (Thorne Market Place) and the VG111 land (Church Yards), having as a visitor to Thorne seen them previously.

Adjournment

The application of Mr Bunting was based on his "Health" statement (WB 1) in which he described his disabilities and their distressing consequences. This statement (considered by itself) gives no indication of the likely duration of the disabilities, and in these proceedings no medical evidence about him was given.



- 18 -

I overlook this defect in the application, because in proceedings ("the December 1985 proceedings") about Register Units No. CL401, those in Groups B and C herein and No. CL333, on behalf of Mr Bunting medical evidence was on 4 December 1986 given orally by his medical attendant, as set out in the Third Schedule to my decision dated 20 June 1986.

This evidence was to the effect that then the disablement of Mr Bunting consequential on his arthritic condition was unlikely to improve. By my June 1986 decision I refused to adjourn the proceedings to enable Mr Bunting to renew his application for Legal Aid. Although in these 1987 proceedings, he having been granted Legal Aid, applied for an adjournment to gather material and to instruct his Solicitors more completely, the legal and factual considerations are essentially the same, and accordingly my said June 1986 decision, particularly pages 20, 21, 22 and 23 should so far as relevant be treated as repeated herein.

As appears from my June 1986 decision, Mr Bunting has been much concerned with proceedings under the 1965 Act, and I infer he has for many years known that the disputes and questions arising in these 1987 proceedings would certainly sooner or later have to be considered by a Commons Commissioner; he should therefore having regard to his disabilities in readiness gathered together any material which was complicated. I reject the idea (implicit in what was said by Mr Cox) that he need not have done this before February 1987 when he first knew he had been granted Legal Aid, or before November 1986 when notice of my February 1987 hearing was by him received.

There was nothing at the beginning of the hearing indicating that the proceedings as regards Mr Bunting was or might be complicated. If during the hearing an unexpected complication appeared as regards any one of these Register Units or as regards any particular question, and it seemed likely that Mr Bunting might personally be able to help, Mr Cox could then apply for an adjournment or other relief to prevent any injustice.

Accordingly for the reasons hereinbefore and in my June 1986 decision, I adhere to my refusal on 24 February to adjourn the hearing.

According to my notes and recollection, Mr Cox made the application only as to the Groups B and C. In case this application was as to all the Groups, I record that everything under this heading may be treated as applicable to all the Groups.

Group A, generally

There are 13 Register Units in this Group, and none of them have been considered by a Commons Commissioner before.



In each of the Group A Rights Sections (excluding only CL331 and CL337) there is a registration made on application No 2281 of Messrs W, J and N Bunting

"As successors to the Tenants and Inhabitants of the Manor of Hatfield as described in the 1630 Decree and Award in the Exchequer" of rights described as:-

"To get clods, sand, warp and gravel and to graze 1,000 cattle over the whole of the land comprised in this Register Unit".

Additionally there is in each Rights Section (excepting only CL325, CL326, CL331 and CL337) a deemed registration consequential on VG177 application No 2698 of Messrs W, J and N Bunting "As successors ... (relevantly the same as above)" of rights described as:-

"piscary ... venery (fur) ... auceptary (feather) ... vert ... estovers ... pannage ... graze 150 beasts or 150 horses or 75 sheep over the whole of the land comprised in this Register Unit".

Additionally in the CL325 Rights Section there is a deemed registration consequential on VG120 application No. 2702 of Messrs W, J and N Bunting, relevantly the same as the VG177 registration above quoted, save that instead of "graze ..." is "pasture 50 beasts ...". Additionally in the CL327 Rights Section registration there is a deemed registration consequential on VG119 application No. 2704 made by Messrs W, J and N Bunting: "As successors ... (relevantly the same as above)" of rights described relevantly the same as the VG177 registration above quoted save that instead of "graze ..." is "pasture 300 beasts ...". In the CL331 and CL337 Rights Sections there are no registrations (actual or deemed).

Except for the 1639 Arlebout map (WB/X/1), Mr Cox took the 1630 Decree and the "historic documents" before and after it from the CL386 High Court 1983 judgment. He submitted (as I understood him): (i) the judgment did not altogether negative the existence now of rights of common other than turbary which had existed before 1630; (ii) such judgment, particularly paragraph (7) of the "further agreements" in the 1630 Decree about "rents for agistment in any part of the said waste" contemplated some such rights; (iii) the marking on the 1639 Arlebout map of "Thorne Common" indicated that the Area so marked was subject to such rights; (iv) the Area included at least the CL324, CL330 and CL337 lands; and (v) the judgment showed that in the absence of any evidence of abandonment such rights still existed.

As to (i) and (ii):- My observations on these documents at pages 22 and 23 of my said June 1986 decision should be treated as repeated herein. For the reasons therein stated, I conclude that any right of common such as is described or referred to in the Rights Section and any right of common other than turbary which could have existed before 1630 has been extinguished. On none of the Register Units with which I am concerned, is there any peat or turf to which a right of turbary could be applicable, as was stated by some of the witnesses and was obvious during my inspection. The paragraph (7) referred to, does not I think support the submission. None of the registrations actual or deemed include turbary.



- 20 -

As to (iii):- I consider this on the basis that I may be mistaken about (i) and (ii). On the 1639 Arlebout map "Thorne Common" appears south of "Dicksmarsh, Redham Common, Dicksmarsh". It is difficult to identify the delineation on the Arlebout map with any on the modern (1983) OS, 1/50,000 map. The best I can do (having since the hearing looked at these maps more carefully) is to identify "Redham Common", the south of the two "Dicksmarsh" and "Thorne Common" with "Reedholme Common", "Dikes Marsh", and "North Common" respectively; so the centre of the Thorne Common Arlebout Area is approximately the M18 road junction No. 6, and its north and south boundaries are approximately the road running westward from Moorends and an east-west line somewhere near the line of the Canal. The Area includes much of what is now dwelling houses and buildings now part of the town of Thorne and much now enclosed farm lands. On the Arlebout map, the then village is marked (perhaps symbolically) as one big building (? the church), a large dwelling house south of it, 3 smaller dwelling houses and 11 trees; it would not I suppose be read in 1639 as meaning the Common included all the Village, but may be, then it was difficult to say where the Village ended and the Common started. However whatever inference or guess can be made about 1639 boundaries, I conclude that Arlebout made his map on the basis that his "Thorne Common" Area was then at least two square miles. The 1630 Decree and the 1633 deed of enfeoffment were intended to provide a new era of development; may be the Arlebout map correctly recorded how far this development had progressed by 1639; so the said two square miles Area was then undeveloped. But I reject the idea (implicit in Mr Cox's submission) that the map should be read back to 1630 as indicating the maximum extent of the development by the Decree and deed made possible, without the consent of now unidentifiable persons then entitled to rights of common.

As to (iv):- The 1639 map is some but not cogent evidence that the CL329 land or some part of it was by Arlebout regarded as within his Thorne Common Area, across or near its River Don boundary. The CL327 land might be but probably was not by him so regarded, and it is impossible to say upon a consideration only of his map whether the CL324 and the CL330 lands could or would not by him be so regarded.

As to (v):- I consider this on the basis that I may be mistaken about (i), (ii), (iii) and (iv), that is, that in 1639 there was an area called Thorne Common over which persons had rights of common. I of course accept that as stated in the CL386 High Court 1983 judgment, that as regards the CL386 land there was no evidence of abandonment put forward and no finding of abandonment. But the CL386 land does not now resemble the Arlebout Thorne Common Area; the one comprises many square miles of what is now peat bog, and the other more than two square miles of now enclosed farm, dwelling house and other lands; I infer they always were different. The 1983 judgment does not I think preclude me from finding that over the Arlebout Thorne Common Area, all the before 1630 rights have been abandoned. I have no note or recollection of any evidence expressly relating to any such abandonment, may be because it was not until after all the evidence had been given that Mr Cox drew my



attention to the part of the 1983 judgment relating to abandonment. But nevertheless I had much evidence about the lands in question and about rights not having been exercised over them. As stated in the judgment, mere non exercise of a right is not evidence of abandonment. But open and continuous use of the servient tenement inconsistent with and obstructing the exercise of any rights over it is some evidence that the owner of the dominant tenement has a fixed intention never to assert the right himself or to attempt to transmit it to anyone else. I have much evidence (some further considered below) about the non exercise of any rights over these Group A Register Units, which by implication shows that such rights never were and never could be exercised over the adjoining lands, they being ordinary farms, or dwelling house and other lands enjoyed and used as free from rights of common in circumstances in which the exercise of any grazing or other right of common was practically interfered with either by actual obstruction or by it being in the circumstances of the existing use openly unacceptable. The facts which I now consider to be implicit in such evidence, were during my inspection obvious. Upon these considerations I find that the rights of common existing (if any there were) before 1630 over the Arlebout Thorne Common Area had some time before 1965 been abandoned. Where rights of common have existed over an area of more than two square miles, those entitled can in law abandon the rights over part without necessarily affecting adversely their rights over the remainder, eg by tolerating an encroachment; but where (as has here happened) an intention to abandon rights over an area of more than two square miles has been shown, rights of common cannot sensibly continue to exist (they would be practically very different) over such comparatively very small areas as the CL324, CL329, CL330 and CL334 lands.

Summarising this heading, my decision is:- If there are any rights of common now existing over these Register Units, they cannot have existed from time immemorial, and cannot therefore be established by prescription at common law. I consider later in this decision whether the existence in 1965 of any such rights was established under the Prescription Act 1833 or under a presumed grant such as was specified in *Tehidy v Norman* 1971 2QB 528, leaving open any question there may be as to whether if I find such a right established I must either modify the Rights Section registrations accordingly or must because the right so established has never been registered disregard it.

Group A, River Don (8) Landings

Going down the River, these are:- CL324 (A10, Plumtree Landing), CL327 (A4, Sour Lane Landing), CL329 (A6, Low Hill Landing), CL336 (A12, Hangmans Hill Ferry Landing), CL326 (A3, Blackshaw Landing and Public Watering Place), CL336 (A11, Hadds Landing), CL332 (A9, Reed Holme Landing) and CL328 (A5, Bank Landing).

For these registrations, I have the 1968 statutory declarations made by Mr Bunting in support of his applications, his February 1987 affidavit, the oral evidence of Mr Holt on 24 and confirmed on 26 February, and a number of incidental facts which others when giving evidence either volunteered or mentioned in answer to questions by Mr Cox and others.



The above description of these "Landings", is that given by Mr Bunting in his statutory declarations; only CL326 and CL336 are additionally by him described respectively as a "Public Watering Place" and as a "Ferry" landing.

Mr Bunting in his affidavit says (among other things):- (2) "This affidavit contains matters about which I would wish to give evidence were I well enough to attend the hearing ...". (4) "It is my contention that members of the public have exercised rights of way access (sic) the registered land since time immemorial. The landing places were used as watering places until 1965 ... There is a public right of way, evidenced by a footpath/towpath along the banks of the River Don from Mill Bridge Doncaster to Goole and Trent Falls. This Public Footpath/Towpath has been in existence as long as I can recall: I am now 71 years of age. Further, members of the public have exercised a right to fish and take flora and fauna from the land places. Up until the early 1970's I witnessed persons taking timber and kindling from the relevant landing places. Up until 1930 I frequently saw cattle being grazed by Parishioners"; (5) The exhibited photographs (WB2) "provide clear evidence of the public right of access over the registered areas."; (6) The exhibited 1970 letter from Thorne RDC Clerk indicates his view as to the possibility of water sport activities from West Ings at Stainforth to Ashfields at Thorne, and on to part of the old River Don adjoining Sour Lane, all such areas being linked by footpaths and in some parts by the sites of old public landings where ... it will be possible to create the minimum facilities for water sport and other outdoor recreation"; (7), (8) and (9) The exhibits show that or about 1960 a public right of way was admitted by some authorities consequentially, as was said publicly, on the activities of Mr Bunting; (10) The exhibited 1970 letter (WB12) from the Clerk of Yorkshire Ouse and Hull River Authority showed (so Mr Bunting contends) that "these landings were the subject of public rights of way and indeed used by the public for recreational purposes ..."; and (11) "In addition to the usage referred to above, as long as I can remember the landings have been used by naturalists ...".

Although not expressed, I read Mr Bunting's May 1968 declarations and his February 1987 affidavit as alleging that all these eight Register Units are historically landing places, meaning for some historic period (say 100 years or more perhaps back from about 1930) they have been publicly used as such. They do not appear to be such now, and I have much uncontradicted evidence that none of them are currently so used; I disregard the wharf, apparently private, recently erected on or near CL328, as being obviously not ancient and unlike anything conceived 100 years ago. That over the years the course of the River Don and the height and position of its banks have changed is evident from some of the documents produced or referred to. But about these changes for lack of information, I can make no finding except to say that any historic landings existing before these changes cannot be in exactly the same place as those now claimed and most of them must have been some distance away. I guess that in bygone years persons having boats have with some regularity gone to and from the River from and to places at or near to the lands in these Register Units; they are all conveniently near public roads, now apparently public highways. But I think it unlikely that these ancient landing places ever had distinct boundaries such as for these Register Units are delineated on the Register map; so on the evidence I have I am unable to find that these Register Units are or ever have been landings within any meaning of this word which could now be relevant. Also I am unable in the absence of evidence to find that since 1630 any right of common over any of these Register Units has ever been exercised. Consequently the burden of proof being upon Mr Bunting and any other person claiming that the registrations were rightly made, my decision is against them.



From information about Mr Bunting acquired in the other proceedings mentioned in my said June 1986 decision, I know Mr Bunting as a person with considerable knowledge of the history of this locality. It is therefore possible or perhaps likely, that if he was well enough to give evidence, he could have proved that the whole or some part of all these Register Units, or some places not far from them had in years gone by been locally used and recognised as landings in circumstances leading to a presumption that the public had a right to use them as such.

Mr Cox in opening mentioned the 1824 Award and the History of G Storer; I have no note or recollection of looking in the Award to see whether it contains any allotment of landings on the River Don or of seeing this History. In the circumstances I consider I ought not to give a decision based solely on my aforesaid inability to make any findings about historic landings; I shall therefore in all that follows under this heading assume that these Register Units have the legal status of public landings wholly or in part. On this assumption (favourable to Mr Bunting and others wanting these registrations to be confirmed) I reject the 1987 affidavit of Mr Bunting as being irrelevant for the reasons stated in the next three paragraphs.

In the Commons Registration Act 1965, common land "does not include ... any land which forms part of a highway", see section 22. The River being tidal is or may be highway; the use by the public of these landing places, all of which on their further side adjoin a public right (apparently highway) is evidence that the places themselves are highway, and therefore not properly registrable as common land.

The footpaths mentioned by Mr Bunting are along (or not far from) the top of one of the banks (normal flow or flood) of the River; for great distances there are stiles over fences which might otherwise obstruct walking along them; these footpaths have no necessary connection with the land places; so I have no jurisdiction to investigate their status; I therefore merely record that these footpaths (so far as I saw them) appeared to be enjoyable by any member of the public wishing on foot to view the countryside, particularly the River and that nobody at the hearing dissented from the public recognition of Mr Bunting as having been concerned with the improvement of these footpaths as stated in the 1960 Press Cuttings (WB9).

But in case I am mistaken in treating the lands in these Register Units, if they are ancient landing places, as highway, I consider whether they come within the other parts of the 1965 Act definition: "(a) land subject to rights of common (as defined in this Act) ..."; or (b) "waste land of a manor ...".

As to these lands being in 1965 "subject to rights of common":- Having regard to my decision under the above hearing: Group A generally, I am now only concerned with rights established under the 1833 Act or a presumed grant. The timber and kindling mentioned by Mr Bunting as having been taken by the public, I find, having regard to the evidence of other witnesses, was taken from the River itself; from what I saw on my inspection, having regard to the size of the lands in these Register Units I find there was never any timber or kindling growing there enough to support a prescription. The public fishing, taking of flora and fauna and use by naturalists falls short of establishing any right of common such use being unobjectionable, see *Beckett v Lyons* 1967 Ch 449 at pages 469 and 475. The grazing of cattle by parishioners before 1930 as seen by Mr Bunting was not for long enough to support a prescriptive right and having regard to the evidence of others particularly of Mr J C Harrison and the present appearance of these Register Units I find that any such grazing was not as of right.



As to waste land of a manor:- Many landing places and watering places have been registered under the 1965 Act; there is no reason why such places should not be part of the waste land of a manor; further under a public charitable trust land may be a public landing place or public watering place in respect of which the public in appropriate proceedings can compel its owner to submit to the trust. But the mere circumstance that the land has from time immemorial been used as a public landing or is or may be subject to a public charitable trust is not evidence, or at least is not conclusive evidence that it is waste land of a manor. All these eight Register Units are wholly or in part within the area between the flood bank and the normal flow bank on one or other side of the River and grazed exclusively as described by Mr G A Poskitt, Mr J C Harrison and Mr J D Stones and not as waste land. Notwithstanding that none of these Units are in any Ownership Section registered in the name of Yorkshire Water Authority (or of anyone else other than Thorne Parish Council of CL329, CL330, CL332 and CL335) these units are being grazed by Messrs Poskitt, Harrison and Stones as tenants of the Authority; there was no evidence that the Authority or any of its predecessors are or were Lord of any possibly relevant Manor. In the 1970 letter (WB12) produced by Mr Bunting it is said generally "a majority of the River Don banks are owned by the Authority"; although the writer agrees that "there are a number of landings on the banks of the River Don, many of which are not owned by the river authority" he makes no suggestion that those not so owned are manorial. Mr Holt spoke of Hangman Hill (CL336) and Bank Landing (CL326) as places which he as a boy did boyish things, and of Sour Lane (CL327) as rough, and Mr Stones spoke of some time ago knowing CL332 (Reedholme Landing) as Willow Garth, see above under heading: Course of proceedings; perhaps these units would as Mr Holt and Mr Stones first remembered would have been regarded as waste land; however this may be, I cannot infer that they were ever "of a manor" within any now relevant sense; see re Box, 1980 Ch 109. So generally I had much evidence that these eight Register Units were not and very little evidence that they were waste land of a manor, and on balance I find that none of them at any now relevant time were such.

The Thorne Parish Council CL329, CL330, CL332 and CL335 Ownership Section registrations were not supported by evidence and were in effect withdrawn by their Solicitors letters of January 1987 (CD/14 specified in Part XII of the Second Schedule hereto). So I conclude that they were not properly made.

For these reasons my decision is as specified in paragraphs A3, A4, A5, A6, A9, A10, A11 and A12 of the Third Schedule hereto.

A2, Topham Ferry Landing or
Watering Place

About this Register Unit CL325, Mrs Asquith gave evidence, all against it having been at any now relevant time common land within the 1965 Act section 22 definition. On my inspection, it did not appear to be now within the definition.

From the names on the modern OS map 1/2500 (AMA/2), "Topham Ferry House", "Topham Ferry gate" and "Topham Ferry Bridge", I infer that there was at one time somewhere near the now existing bridge (about 50 yards northwest of the nearest side of this Register Unit) a ferry over the River Went. The bridge may be wholly or in part private and not wholly not for vehicles public highway; however this may be,



- 25 -

Mrs Asquith said there has been no ferry since she has been there (nearly 60 years) and the 1982 conveyances are not significantly different from the 1918 conveyance (AMA/3 and 4). I have no other evidence as to how, when or where the ferry operated; Mr Bunting in paragraph 4 of his February 1987 affidavit refers to this Register Unit without giving any information about it particularly.

Relevantly, the River Went now flows straight between two nearly parallel banks as shown on the 1855 map (AMA/6) and more recent maps; the 1855 map marks the "Old Course of River", a meandering course more or less traceable during my inspection. As a present day landing place for a ferry over the River as it now is, this Register Unit (it contains 3.712 acres) is unreasonably large.

The oral evidence of Mrs Asquith which I accept, shows the Register Unit as not having been used for a long time as a ferry landing place or public watering place or any other public purpose and, no-one has exercised any rights of common over it. Generally the highway and other considerations against the propriety of the Land and Rights Section registrations are the same (for the River Don there being substituted the much smaller River Went) as those hereinbefore stated under the heading: Group A River Don (8) Landings. There are none in favour.

Accordingly my decision is as specified in paragraph A2 of the Third Schedule hereto.

A8: Love Hill

This Register Unit, CL331 approximately triangular, is situated near to and to the northeast of Thorne South Railway Station; its west side is about 25 yards long and its north and south sides, both a little over 200 yards long, run eastwards to a point near the south end of Foxhill Road.

I accept Mr Gott's identification of this Register Unit with part of the land by the November 1918 conveyance (JG/8) conveyance to the Great Central Railway Company and with the land edged red on the map 1/2,500 (JG/1) produced by Mr Gott as showing the land now owned by British Railways Board.

These maps, as also does the Register map, show the Register Unit as crossed by a footpath running near and within its south boundary. Adjoining on the north are the back gardens of the houses fronting on Southfield Road. Adjoining on the west is open land providing vehicular access to and car parking for the nearby Station, between which and the Register Unit, there is a dilapidated fence with gate posts indicating the beginning of the said footpath. Notwithstanding its registration as No. 13 on the Definitive Map (DMC/1 and JG/8), it is disused because there is open land to the south at one time a goods yard (mentioned by Mr Gott whose evidence I accept) is now more agreeable walking. Generally the Register Unit including the said footpath is now rough and uncared for and not (compared with the more open land to the south) of any apparent benefit to the public. Now the name "Love Hill" seems inappropriate, although I guess it might have been otherwise when the goods yard was operational and fenced in.

The Rights Section of this Register Unit is blank, and I have no evidence that it was ever subject to any right of common. So I conclude it is not within paragraph (a) of the definition of common land in section 22 of the 1965 Act.



- 26 -

From the said 1918 conveyance and the evidence of Mr Gott, I conclude that this Register Unit is not "of" any manor within paragraph (b) of the said definition.

Neither Mr Bunting in his February 1987 affidavit nor Mr Cox on his behalf said anything in support of the Land Section registration and I conclude it was not properly made.

The Ownership Section registration was made on the application of Thorne Parish Council from their Solicitors said January 1987 letter I conclude that it was not properly made.

Accordingly my decision about this Register Unit is as specified in paragraph A9 of the Third Schedule hereto.

Al, Clay Pits Triangle

This CL324 Register Unit, approximately triangular has the water of the Stainforth and Keadby Canal for its north boundary (about 100 yards); the Group B VG113 land lies between its west boundary and the Railway from Doncaster on the southwest to Thorne Station and Goole on the northeast. The level of most of this Register Unit is above that of the part of the tow path included in it. Now it appears much overgrown and of no value for grazing or anything else.

Mr Holt said his father from his boat agisted horses, there being "a bit of decent grazing" and they were "not against nibbling at hawthorn trees". Mr Smith said he once had a cow there. Mr Holt also spoke of the taking of pea sticks. But neither they nor anyone else said anything from which I can infer or specify a right of common which they or anyone else was exercising by such grazing and taking. Further even if such activities could be treated as being an exercise of a right of common "as of right" within the legal meaning of these words, I have no evidence of the duration of such exercise, and I decline to infer that the exercise could have been for long enough to support a prescription under the 1833 Act or a presumed grant in accordance with *Tehidy v Norman* 1971 2QB 528. I conclude therefore that no right of common has been established by anything done since 1630, and that accordingly the Register Unit is not within paragraph (a) of the 1965 Act section 22 definition of common land.

I accept Mr Dunkley's identification of this Register Unit with the west part of the land by the 1857 conveyance (JG/5) conveyed to the South Yorkshire Railway and River Dun Company and as being within the land coloured pink on the 1893 agreement plan (CD/10) and by the October 1896 conveyance (CD/11) conveyed to SSYNC. I conclude that these documents rebut any inference that this Register Unit is manorial which could possibly be drawn from its appearance and the casual use made of it as stated by Mr Holt. Accordingly I conclude that it has been proved that this Register Unit although perhaps properly describable as waste land is not "of a manor" within paragraph (b) of the said definition.

The Ownership Section registration of Thorne Parish Council was not supported by evidence by them or anyone else, and from their Solicitors' said January 1987 letter, I conclude, in the absence of any evidence of their ownership, that this registration was not properly made.



- 27 -

Accordingly my decision is as specified in paragraph A1 of the Third Schedule hereto.

A13, Ings Piece

This Register Unit, CL337 is a strip (shaped like a wide V) about 400 yards long extending from a point on the east a short distance south of the swing bridge over the Stainforth and Keadby Canal to a point on the west near the Railway from Doncaster on the southwest to Thorne Station and Goole on the northeast. It has a width varying between about 20 and 30 yards. Along the middle there is a track usable by vehicles leading from the said bridge on the east to a track under the railway to lands on the other side. Described shortly it is a rough farm track with on both sides wide verges covered by grass and other rough vegetation.

I accept Mr Pennington's identification of this Register Unit with the following words in the 1825 Award:-

"... another private carriage road the breadth of 21 feet beginning at the Canal Bridge near Thorne Lock and proceeding in a southerly direction to allotment herein awarded to Mary Makins and the Overseers of the Poor of Thorne, thence in a westerly and northwesterly direction over an ancient enclosure belonging to the Poor of Thorne to the southeast corner of an allotment herein awarded to heirs and devisees of Elizabeth Oates and William Crowder in Stainforth East Ings and which road we call Ashfield Bank Road".

On the definitive map (DMC/1), along this Register Unit is marked a narrow green line with this note:

"There is a claimed public footpath along the route from Ashfield House to East Ings Road. This has been noted under Section 53 of the Wildlife and Countryside Act 1981. The validity of the route will be investigated at the Review of the Definitive map for the Thorne Area ..."

Mr Pennington submitted that because there was no registration in the Rights Section of this Register Unit, it necessarily followed that at the date of the Land Section registration the land could not be within paragraph (a) of the 1965 Act section 22 definition of common land. Mr Cox (as I understood him) submitted that the non-registration of a right of common was irrelevant for the purposes of the Land Section and that rights of common existed under the 1630 decree (as they did over all over Group A Register Units), and that they were not extinguished by the 1825 Award because this strip was by it not allotted, but merely became a private way and that these rights had never been abandoned.

As to the before 1630 rights of common, I repeat what I have said above under the heading: Group A, generally. It is or may be a reasonable inference from the 1811 Act and the 1825 Award made under it, that this Register Unit was before 1811 subject to rights of common of some kind; but in my opinion the strip comprising this Register Unit was by the Award wholly allotted, because an Award must be construed like a conveyance or any other legal document, and by law a grant of land adjoining a private right of way is presumed to include the adjoining part of the way up to



- 28 -

the middle line; the circumstances in which fences of this strip came to be placed further apart than the 21 feet specified in the Award are not relevant, because enlargement of the way could not by itself create a right of common not previously existing over the way. The information given to me by Mr J Reed and Mr H Smith about the grazing of this Register Unit by Mr F Brammer and Mr J Postgate is too lacking in detail for me to find that they either under the Prescription Act 1833 or a presumed grant acquired a right of common; neither they nor any person claiming as their successors either registered or offered any evidence in support of any right, and I cannot even guess the dominant tenement or the other incidents of any such right. The grazing of Miss S Dyas presupposes some right or interest of Thorne Parish Council, as to which, see below as to their ownership. The evidence of Mr J C Harrison suggests that any such grazing was merely incidental with the exercise of a right of way over the strip.

Upon the above considerations I conclude that this Register Unit is not within paragraph (a) of the 1965 Act section 22 definition of common land.

The use of the Register Unit for birds nesting etc as described by Mr Holt, is such as is often made of land properly describable as waste land of a manor within paragraph (b) of the said definition, and may be such use together with other indications of manorial status could amount to decisive evidence that this Register Unit was within such paragraph. But against such manorial status, I have not only the 1825 Award made under the 1811 Act specifying in Part XIII of the Second Schedule hereto, but also the present appearance of the Register Unit; now it appears as an ordinary agricultural access track to a farm or farms and/or fields and/or other lands used for agricultural purposes with nothing on it apparently suggesting it might in any ordinary sense be manorial waste. Balancing such little evidence I have about this Register Unit my conclusion is that it is not within paragraph (b) of the said definition.

To the Ownership Section registration of the Parish Council I have the objection of Thorne RDC, now supported by Doncaster MBC as their successors. The only evidence I have that the Parish Council either own or have some interest in this Register Unit is the statement of Mr J Reed that he thought Miss Dyas paid them rent for grazing it and Mr H Smith's statement that he thought she and Mr Brammer paid rent for it. But neither explained the source of their information and no evidence was produced of any entry in the Parish Council books of any such payment. From their Solicitors' said January 1987 letter (CD/14) I infer that the Parish Council withdraw their claim. My decision is therefore that the Objection succeeds and that the Ownership Section registration was not properly made.

Any right of common presumable from the grazing of Miss Dyas and Mr Brammer as tenants of the Parish Council could only be of a right of common in gross (I have no evidence that the Council own any land to which such right could be appurtenant). On the balance of probabilities such grazing at a rent, if there ever was such, was a purported exercise of a right of ownership which someone concerned with the Parish Council then thought they had rather than in pursuance of a right of common in gross.

I conclude that the Parish Council never had any interest in this Register Unit either as owners of a legal estate in fee simple in possession or as owners of a right of common in gross. Upon the above considerations my decision is as stated in paragraph A13 of the Third Schedule hereto.



A7, Barrier Bank and Hanson's Gyne

This CL330 Register Unit for the purposes of exposition I consider as comprising four pieces, all on a north-south line and having little resemblance to each other. First, a piece ("the Most Southerly Piece") adjoining and south of the Stainforth and Keadby Canal and adjoining and west of the road or track running south from the Swing-bridge by Thorne Lock, being an area about 30 yards or less long with a varying width. Secondly, a piece ("the South Middle Piece") adjoining and north of the Canal and adjoining and west of the road (apparently a public vehicular highway) running north from the Swing-bridge, being an area about 50 yards long, enclosed with the extensive boatyard and boatworks on the north side of the Canal and being a grass area by their main entrance. Thirdly, a piece ("the North Middle Piece") being a strip about 200 yards long, narrow at its south end near the South Middle Piece and widening at its north end to about 50 yards where (at its northwest corner) it joins White Lane; this area includes a bank (apparently to keep back flood water of the River Don) running along its west side. Fourthly, a piece ("the Most Northerly Piece") about 150 yards long being a grass bank next to and on the west side of the carriageway of Pinfold Lane, sloping upwards to enclose land at the top (Ambulance Station etc).

I was told Gyne locally describes a pit such as results when clay is taken to build the banks of a canal or an embankment for a railway. No witness called the Most Southerly Piece Hanson's Gyne, but it is I think the only part of this Register Unit which could be so named. As a pit it appears to be partly filled. "Rubbish" was the word used by Mr J Reed, aptly I think, to describe it. I cannot imagine how there could within living memory have been a right of common exercisable over it.

The bank within the North Middle Piece appears to be a barrier bank, locally meaning a flood bank of which there are many keeping back the River Don. Against this Piece on the Register map is marked "Ashfield Bank"; against a barrier bank more than 2 miles long runs westwards from the south end of the Most Southerly Piece also is marked "Ashfield Bank".

Between the two last so marked lands are the Most Southerly Piece and the South Middle Piece, both high enough to keep flood water back, and possibly before the Canal was built more than 100 years ago were part of a flood bank similar to the banks marked "Ashfield Bank", but neither is appropriately now named Barrier Bank. Apart from the pony said by Mr J Reed to have at one time been by him tethered on the South Middle Piece, I have no evidence that either of the said two Pieces could be subject to any right of common by prescription or otherwise established since 1630. Mr Reed did not specify the duration of his tethering of his pony, and I decline to infer that such grazing was either for long enough or "as of right" (using these words in their legal meaning in this context) to establish a right by prescription or presumed ~~grant~~ → Further the ownership of British Waterways Board and their predecessors as prescribed by Mr Dunkley, particularly their letting of the South Middle Piece, is against such a right ever having come into existence. So on these considerations and those outlined above under the heading: Group A, generally, I conclude that neither of the said two Pieces is within paragraph (a) of the 1965 Act section 22 definition of



common land. I accept Mr Dunkley's identification of the South Middle Piece and part of the Most Southerly Piece with part of the land comprised in the 1893 agreement and the 1896 conveyance (CD/10 and CD/11) and the rest of the Most Southerly Piece as within the March 1943 conveyance (CD/12), both evidence that these Pieces were not then considered manorial. It being practically impossible for these Pieces to have become manorial since these conveyances, I conclude that British Waterways Board have proved that neither of these two Pieces were at any now relevant time within paragraph (b) of the said definition.

Mr J Reed said nothing about the duration of his grazing of the North Middle Piece with a donkey and a pony or with 3 ponies and a goat, either at the hearing or during my inspection (when he showed me where they went). I decline to infer it was for long enough before 1969 (when the Land Section registration was made) to establish by prescription or otherwise a right of grazing over this Piece; he was concerned with the untidy and wet area at the bottom of the east side and between it and the fence of his back land, No 32 Lock Lane and with the failure of anyone to do anything about it. I conclude that this Piece was not at any now relevant time within paragraph (a) of the 1965 Act section 22 definition of common land.

As to this Piece being within paragraph (b) of the definition: "... waste land of a manor": - I think likely that kids did roam around as described and suggested by Mr Holt; the path on the top of the Bank is on the Definitive Map (DMC/1) shown as footpath No. 10; the bank is for part of its length between open grass land on the west and the back fences of the houses of Lock Lane on the east, near a built area from which children might well get pleasure from roaming near it. I sympathise with Mr Holt's ideas that land such as this Piece should be open to the public without any fear of prosecution, but I cannot accept his meaning of common as being that applicable to these proceedings under the 1965 Act; I am bound by the section 22 definition. I agree with him that ownership and possibly much else about this Piece is debatable; for it being within paragraph (b) I have its use by children and others for roaming and against it the bank as the dominating feature of the Piece, a utility (flood protection) on which many depend. Balancing these considerations as best I can, I conclude that the flat land between the east side (bottom) of the Bank and the nearby back fences of the Lock Lane houses is a result of the Bank and that I have no good reason for concluding that any of this Piece is manorial in any now relevant sense. So I conclude that the Piece is not within paragraph (b) of the definition.

The Most Northerly Piece appears to be highway verge and not common land at all. Near it on the Register map is marked "Bank End", and this Piece appears to be the east side of a bank, the west side of which has been privatised and levelled to some extent. I saw the goat which Mr Reed said belonged to Mr Dukes, but in the absence of any evidence of the duration of his grazing, I decline to infer that he (or anyone else) has a right of grazing. The case against this Piece being within any part of the section 22 definition is stronger than that against the North Middle Piece, so my conclusion is the same.



The Ownership Section registration was not supported by Thorne Parish Council, and I have their Solicitors' said January 1987 letter (CD/10) withdrawing the registration. In the absence of any evidence, I conclude that their registration was not properly made.

Accordingly my decision is as specified in paragraph A7 of the Third Schedule hereto.

- Group B (1) White Lane Pond, Four Doles Clay Pits;
(2) Ashfield Bank and Ponds

About these Register Units VG113 and VG117, as explained in Part II of the Second Schedule hereto, this decision is supplemental to the two decisions both dated 30 March 1984 and made by the then Chief Commons Commissioner about the Land Section of these two Units and to my June 1986 decision about the Rights Sections of them, which decisions so far as relevant should be treated as repeated herein.

As to possible clerical errors in the VG117 March 1984 decision:- As indicated in the First Schedule hereto under the heading: B2, Ashfield Bank and Ponds, the National Coal Board in their April 1984 letter alleged that such decision should have included a statement that Mr J D S Adams was present at the hearing and called witnesses; I have on the Commons Commissioners' file a note dated 15/5/84 in the handwriting of the Commissioner that this omission arose from an accidental slip and can be corrected under regulation 33 of the Commons Commissioners Regulations 1971. As indicated under the same heading the said decision failed to indicate adequately "the former marshy area and the ponds" which the Commissioner intended should remain in the Register; there is in the same file a map initialled "G.D.S.I.", annexed to a draft in the handwriting of the Commissioner of the section 6(2) notice to be given pursuant to his decision containing the words "namely the exclusion of all the land other than that shown edged red on the plan marked "G.D.S.I." hereunto annexed"; I conclude that in making his decision he accidentally in it omitted to identify this plan. In these circumstances pursuant to the said regulation I shall correct the said decision as indicated in paragraph B2(a) of Part II of the Third Schedule hereto.

To set aside both these March 1984 VG113 and VG117 decisions Mr Bunting in effect applied in his letters specified in my said June 1986 decision under the heading VG110, 111, 112, 114, 115, 116, 119 and 120. These VG113 and VG117 applications by me considered at my February 1987 hearing are not relevantly different from those by me considered at my December 1985 hearing and by my said June 1986 decision dismissed. Accordingly about them for like reasons my decision is the same: the applications are dismissed as stated in paragraph B1(a) and paragraph B2(b) of Part II of the Third Schedule hereto.

So about the VG113 and VG117 Land Sections and Rights Sections all questions within the jurisdiction of a Commons Commissioner are now under the said March 1984 and June 1986 decisions disposed of. About all the registrations (actual or deemed) in these Sections, I now merely record such decisions as set out in paragraphs B1(b) and (c) and B2(c) and (d) of Part II of the Third Schedule hereto.



In the result as far as I am concerned with VG113, the tow path on the south side of the Canal has not been and will not be deleted from the Register as Mr Dunkley during my inspection seemed to think it had been or would be as a result of the said March 1984 decision. The copy Register map I have (scale 1/2,500) clearly includes the tow path south of the Canal, and the "exclusion" effected by the 1984 decision is only of the land on the north side of the Stainforth and Keadby Canal. I regret any misunderstanding there may have been at the February 1984 hearing, but I have not, and I doubt whether I could ever have, any good reason for depriving Stainforth Parish Council of so much of the March 1984 decision as was favourable to the case put forward on their behalf by Mr Rose of counsel about which he called "a number of witnesses".

It was apparent during my inspection of the VG113 land that the words "White Lane Pond, Four Doles, Clay Pits" in Entry No. 1 of the Land Section cannot after the exclusion of all land on the north side of the Canal, all be correct. Mr J. Armstrong who seemed well acquainted with the land south of the Canal, referred to it as "the Clay Pits"; I have no note or recollection of anyone mentioning "Four Doles" or "White Lane Pond". I give no decision about these above quoted words from the Land Section Entry, because it is I think implicit in the March 1984 decision that the exclusion therein mentioned contemplates that the Registration Authority will appropriately not only alter the Register map but also alter the wording of the Entry.

Considerations similar to those set out in the preceeding paragraph are applicable to the words "Ashfield Bank and Ponds" in the VG117 Land Section. As to the VG117 Ownership Section registration of Thorne Parish Council, no evidence or argument was offered by anyone in support of it. Further I have a letter dated 21 January 1987 from the Solicitors for Thorne Town Council as successors of Thorne Parish Council giving to the Clerk of the Commons Commissioners notice that the Council did not intend to adduce any evidence in support of any Ownership Section application relating to Register Unit Nos. (among others) VG113 and VG117. I conclude therefore that this Ownership Section was not properly made and my decision accordingly is as stated in paragraph B2(e) of the Third Schedule hereto.

As to the VG113 Ownership Section registration of Thorne Parish Council:- In addition to there being no evidence in support of it and to the said January 1987 Solicitors' letter, I have: first as regards the greater part of the land (south of the Canal) in this Register Unit the 1893 agreement and the 1896 conveyance (CD/10 and CD/11) by which it was expressed to be sold and conveyed to the South Yorkshire Navigation Company ("SSYNC"); secondly, as regards the remainder on the east (a small triangular area being part of or near the bottom side of the railway embankment) the extract Book of Reference and the 1857 conveyance (JG/5 and JG/6) and the non-inclusion of such area in the said 1893 agreement and 1896 conveyance; and thirdly, the detailed evidence of Mr J. Armstrong about the improvements to the pond illustrated with photographs. So I conclude that Objection No. 686 by British Waterways Board and No. 2130 by Thorne RDC (supported by their successor Doncaster MBC) both wholly succeed, and my decision is accordingly as in paragraph B1(e) of Part II of the Third Schedule hereto.



- 33 -

Mr Dunkley submitted that instead of merely avoiding the said VG113 Ownership Section registration I should, because the ownership of British Waterways Board and British Railways Board had been proved by the documents specified in Parts X and XII of the Second Schedule, and by the evidence of himself, Mr J Armstrong and Mr Gott, I should in effect decide that there should in the VG113 Ownership Section for "Thorne District Council" be substituted the names of these two Boards (suitably identifying the parts they respectively own). Section 6 of the 1965 Act empowers a Commons Commissioner on a reference made to him under section 5 to make a "modification" to a registration which has been referred to him; section 8 of the Act empowers a Commons Commissioner if satisfied as to the ownership of any person to register him as owner where no person has been registered as such. At my February 1987 hearing I was considering the references under section 5; the procedure under section 8 is different and I cannot therefore register the Boards as owners merely because I am "satisfied". In my opinion a substitution of one person for another in the Ownership Section can only be a "modification" within section 6 if there is a connection of some kind (perhaps in the mind of the applicant is enough) between the old and the new registrations; I am of the opinion that putting the names of the Boards in the Ownership Section would not be a "modification" of the Thorne Parish Council registration. Accordingly I reject Mr Dunkley's submission: I do this with regret because I realise that if I effected such a substitution the Board and others would be saved trouble and expense. This rejection is without prejudice to any ownership claim which may be made by both or either of the Boards when the ownership of this Register Unit as referred to a Commons Commissioner pursuant to section 8 of the 1965 Act.

Group C

As appears in Part III of the First Schedule hereto, this decision is supplemental to decisions dated 29 February and 30 March 1984 made by the then Chief Commons Commissioner by which he refused to confirm the Land Section registrations and to my decision dated 20 June 1986 by which I dismissed the applications therein specified by Mr William Bunting to set aside these 1984 decisions and reopen the hearings on which they were based. So in these 1987 proceedings I am only concerned with the Rights Section and Ownership Section of these eight Register Units.

First as to the Rights Section:-

All by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have had made in them registrations ("the CL 401 deemed registrations") by reason of the CL 401 Rights Section registrations at Entry Nos 1 and 2. Apart from the CL 401 deemed registrations, the Rights Sections of (1) South End Guyme or Cow Shit End Guyme, (2) Church Yards, Thorne, and (4) Thorne Market Place, being the three Register Unit VG110, VG111 and VG114 are blank. In addition to the CL 401 deemed registrations the Rights Sections ————— of (3) North Station Guyme, (5) Durhams Warping Drain, (6) Huddle Grounds, (7) River Don and its banks, and (8) River Went and its banks, being the five Register Units VG112, VG115, VG116, VG119 and VG120, contain registrations of rights all to the same effect, save only that the number of grazeable animals specified differ, as stated in Part III of the First Schedule hereto. Additionally the Rights Section of (7) River Don and its banks, being Register Unit VG119 is by the said regulation 14 deemed to have had made in it a registration the reason of CL 327 and CL 333 Rights Section registrations.



As to Miss Darley's submission (25 February) that I had no need of evidence against these Rights Section registrations:-

The Commons Registration Act 1965 and the Regulations made under it, seem to contemplate that when a right of common exists and is properly registerable in a Rights Section there should also be land which is properly registerable in a Land Section. In my experience this is a general understanding. The submission made by Miss Darley, that the 1984 decisions refusing to confirm the Land Section registrations must impliedly be a refusing to confirm the Rights Section registrations accords with this understanding.

But contra, the Chief Commons Commissioner in his eight 1984 decisions expressly confines himself to the Land Section registration. In his six February decisions, he contemplates that Mr Bunting may apply to reopen his February 1984 hearings and set aside the decisions and in effect concludes that if such application is made and refused, the Land Section registration in the absence of any evidence in support of it, should be avoided. In his two March decisions he, after considering evidence and arguments against the Register Units being within the 1965 Act definition of a town or village green, reaches the same conclusion. It would be extraordinary if his decisions were conclusive against all the Rights Section registrations actual and deemed, when he appears to have given to them no consideration at all.

In my opinion at the hearing, I rightly considered the evidence for (very little if any) and against (a considerable amount) the Rights Section registrations, because: (1) Miss Darley and other concerns were ready to give it and could (and did) give it quickly and without much adding to the duration and expense of the hearing; (2) if upon such evidence I confirmed any registration, those against them could on appeal to the High Court rely on Miss Darley's submissions; (3) on any appeal, time and expense might be saved if there was then available a decision of a Commons Commissioner about the evidence put before him.

As to the evidence for and against the said Rights Section registrations actual and deemed:-

As to my February 1987 hearing, with the possible exception of CL 327 rights, I had no evidence or argument supporting any of the Rights Section registrations actual or deemed. In my said June 1986 decision I have given my reasons for deciding on the evidence I had at my December 1985 hearing that the deemed CL 401 registrations were improperly made. Earlier in this decision under the headings: Group A generally, and Group A River Don (8) Landings I decided that the CL 327 Rights Section registrations were not properly made. Also in my June 1986 decision I decided that the CL 333 Rights Section registrations were not properly made. As to registrations actually made in the Rights Section on application made by Messrs Bunting specifying one of the VG112, VG115, VG116, V119 and VG120 lands, as far as they were based on 1630 decree that documents and reasoning in my said decisions are against them. The oral evidence relating directly to these register units of Mr W Walton, Mr G A Poskit, Mr F Firth, Mr J L Harrison and the oral evidence indirectly relating of Mr C Dunkley, Mrs Asquith and others are against these registrations being supportable under the Prescription Act 1833 or by presumed grant; these actual registrations are essentially the same as the CL 401 deemed registrations.



none of the
So on these considerations, said Rights Section registrations actual or deemed was properly made and — I need therefore express no opinion about Miss Darley's submissions to the conclusiveness of the said February and March 1984 decisions; so about the Rights Section registrations my decision is as set out in paragraph (b) of paragraph (C1) to (C8) inclusive of Part III of the Third Schedule hereto.

Secondly as to the Ownership Section:-

The registration in Thorne Market VG114 is at Entry No. 1 of the ownership of Thorne Parish Council. To this registration there was no objection, so I am unable for lack of jurisdiction to express any opinion about it. However this disability will be of no practical consequence to anyone, because consequential on the cancellation pursuant to this decision of the Land Section registration and the Rights Section deemed registration, pursuant to subsection (3) of section 6 of the 1965 Act, the Ownership Section registration will also be cancelled by the registration authority.

As appears in Part III of the First Schedule hereto, in the VG115 Ownership Section of Durhams Warping Drain there is a registration of "Cyril Cadman, Chairman of Black Drain Drainage Board" as owner and to this registration (made on 13 January 1970) there were Objections Nos 1845 and 2134 (dated 30 June and 21 July 1972) by Messrs Arthur Firth and Fred Firth and by Thorne Rural District Council.

At my December 1985 hearing, Mr Cadman (5 December) gave oral evidence and produced documents, see pages 16 and 17 of my June 1986 decision and Part XVII of the Second Schedule thereto. After that hearing Mr Cadman wrote to me, see page 18 of the said decision and Part XIX of the said Schedule. At page 31 of the said decision, I gave my reasons for then doing nothing about Mr Cadman's 1985 evidence and submissions, indicating that any difference there might be between Mr Cadman and Messrs Firth and the Black Drain Drainage Board would if need be have to be decided by the High Court or such other tribunal as would have jurisdiction if the 1965 Act had never been passed.

At my February 1987 hearing, in the understandable absence of Mr Cadman, Mr Fred Firth as above recorded gave oral evidence (25 February) and produced the documents specified in Part II of the Second Schedule hereto. Much of what he said and produced was helpful in relation to the Rights Section questions discussed under the preceding heading, so he was not wasting his time. However on some of his evidence and documents, I could conclude that on 13 January 1970 (the date of the registration) neither Mr Cadman nor Black Drain Drainage Board (is it not clear which was by him intended to be registered as owner) was then owner of the VG115 land because at the time it was owned by Messrs Arthur Firth and Fred Firth.

I deduce from reading the Commons Registration Act 1965 both generally and subsection (3) of section 6 particularly, that Parliament did not intend a Commons Commissioner to adjudicate on ownership of land other than land registered in a Land Section pursuant to the Act. Although at my February 1987 hearing the VG117 land was so registered, apart from a possible appeal it is practically certain that shortly after publication of this decision Land Section registration will be cancelled and subsection (3) of section 6 will come into operation. In these circumstances, I now give no decision about Objections Nos 1845 and 2134.



- 36 -

But because it is possible that such registration may not within a reasonable time be cancelled pursuant to the said subsection (3), I give to Black Drain Drainage Board as successors of Messrs Arthur Firth and Fred Firth and to Doncaster Metropolitan Borough Council as successors of Thorne Rural District Council liberty to apply for a decision by a Commons Commissioner as to these two Objections. Any such applications should in the first instance be by letter to the Clerk of the Commons Commissioner with a copy to Mr Cadman and it should be made within SIX MONTHS after a copy of this decision has been sent to the persons concerned or within such larger time as a Commons Commissioner may allow.

Final

The decisions by the former Chief Commons Commissioner and myself about these Register Units are shortly stated in the Third Schedule hereto, and such Schedule should be treated as part of this decision.

As to costs, I shall in pursuance of regulation 143 of the Legal Aid (General) Regulations 1980 and having read the certificate and the amendment thereto specified in Part I of the Second Schedule hereto, ORDER that the costs of and about these proceedings to which the Legal Aid Act 1974 applies incurred on behalf of Mr William Bunting be taxed.

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.



FIRST SCHEDULE

Part I: Group A

(A1): CL324: Clay Pits Triangle: 269/D/247-254

Land Section Entry No. 1: made on application No. 783 of Mr William Bunting: noted application No. 807 (larger area including CL401) by him and application No. 1300 by Thorne Parish Council. Rights Section Entry No. 1 made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors to the Tenants and Inhabitants of the Manor of Hatfield as described in the 1630 Decree and Award in the Exchequer" of (1) right to get clods, sand, warp and gravel and (2) to graze 1,000 cattle. Ownership Section Entry No. 1, Thorne Parish Council.

Objections:- No. 827 by British Waterways Board, to Land Section and Rights Section registration grounds (in effect):- the CL324 land not common land at the date of registration and no rights exist. No. 828 by British Waterways Board to Ownership Section registration, grounds (in effect) land is owned by British Waterways Board. No. 2122 by Thorne Rural District Council to Ownership Section registration, grounds "person named as owner was, at the date of the registration, not the owner of the land". No. 2123 by Thorne Rural District Council to the Land Section and Rights Section registration, grounds as set out in Schedule attached, a flscap paper in paragraphs lettered A to H, referring to an Award or Allotment by virtue of the Decree of the Court of Exchequer noted on the register, to the Hatfield, Thorne and Fishlake Inclosure Award 1825, to matters of law therein specified, and to various other matters including the words "the land is not Common Land". Conflict (or deemed objection): Land Section and Rights Section registrations in conflict with VG177 Land Section and Rights Section registrations.

(A2): CL325: Topham Ferry Landing or Public Watering Place: 269/D/255-260

Land Section Entry No. 1: made on application No. 784 of Mr William Bunting: noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1: made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section: blank.

Objections:- No. 2009 by Mrs. Alice May Asquith to Land Section, grounds: "... land ... not common land at the date of registration; the Objector is the owner of the land and the person named as owner was at the date of registration as such not the owner ... the Objector objects to the rights as registered on the annexed grounds; the "annexed grounds" are relevantly the same as those referred to in Thorne RDC CL324 Objection No. 2123 supra. No. 2121 by Thorne Rural District Council to Land Section and Rights Section registrations, grounds set out in the Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed objection): Land Section and Rights Section registrations conflict with VG120 Land Section and Rights Section registrations.



(A3): CL326: Blackshaw Landing and Public Watering Place: 269/D/261-266

Land Section Entry No. 1: made on application No. 785 by Mr William Bunting: noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1: made on application No. 2281 by Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section: blank.

Objections:- No. 644 by Mr Lewis John Riley to Land Section and Rights Section registrations, grounds: "... was not Common land at the date of registration and no rights exist at the date of registration. Objector is Owner of freehold fee simple in possession". No. 1564 by Yorkshire River Authority, grounds "... the land was not Common land at the date of registration; the rights referred to in the Register did not exist at the date of registration; the person making the registration is not entitled to the rights in the capacity stated; the land cannot possibly be used as Common land for the purposes mentioned in the registration". No. 2120 by Thorne Rural District Council, to Land Section and Rights Section registrations, grounds as set out in Schedule attached (as in their CL324 Objection No. 2123 supra).

(A4): CL327; Sour Lane Landing: 269/D/267-274

Land Section Entry No. 1: made on application No. 786 by Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1: made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section, blank.

Objections:- No. 1563 by Yorkshire River Authority to Land Section registration, grounds as for CL326 Objection No. 1564 supra. No. 2119 by Thorne Rural District Council to Land Section and Rights Section registrations, grounds set out in Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations in conflict with VG119 Land Section and Rights Section registrations.

(A5): CL328; Bank Landing: 269/D/275-277

Land Section Entry No. 1: made on application No. 787 of Mr William Bunting: noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1: made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors (as for CL324 supra)". Ownership Section, blank.

Objections:- No. 1562 by Yorkshire River Authority to Land Section and Rights Section registrations, grounds as in their CL326 Objection No. 1564 supra. No. 2118 by Thorne Rural District Council to Land Section and Rights Section registrations, grounds as set out in Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section in conflict with VG177 Land Section and Rights Section registrations.

(A6): CL329; Low Hill Landing; 269/D/281-287

Land Section Entry No. 1: made on application No. 789 of Mr William Bunting: noted application No. 807 (larger area including CL401) by him. Rights Section Entry



No. 1 made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section Entry No. 1: Thorne Parish Council.

Objections:- No. 1561 by Yorkshire River Authority to Land Section registration, grounds as in their CL326 Objection No. 1564 supra. No. 2117 by Thorne Rural District Council to Land Section and Rights Section registrations, grounds set out in Schedule attached (as in their CL324 Objection No. 2123 supra). No. 2116 by Thorne Rural District Council to the Ownership Section registration; grounds, the person named as owner was at the date of registration not the owner of the land. Conflict (deemed Objection); Land Section and Rights Section registrations in conflict with VGL77 Land Section and Right Section registrations.

(A7): CL330; Barrier Bank and Hanson's Gyne; 269/D/288-297

Land Section Entry No. 1: made on application No. 790 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him; and application No. 1298 made by Thorne Parish Council. Rights Section Entry No. 1, made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section Entry No. 1; Thorne Parish Council.

Objections:- No. 829 by British Waterways Board to the Ownership Section registration; grounds, the person named as owner was at the date of registration of the part of the land edged red on the attached plan (two pieces one on the south and one on the north of the Canal and both being the southern part of the Unit Land); which land is owned by the British Waterways Board. No. 860 by British Waterways Board: grounds (in effect) the said part edged red was not common land at the date of registration and no rights exist thereover. No. 1560 by Yorkshire River Authority to Land Section registration, grounds as in their CL326 Objection No. 1564 supra. No. 2114 by Thorne Rural District Council to the Ownership Section registration: grounds, the person named as owner was at the date of registration not the owner of the land. No. 2115 by Thorne Rural District Council to the Land Section and Rights Section registrations: grounds, as in Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations in conflict with VGL77 Land Section and Rights Section registrations.

(A8): CL331; Love Hill; 269/D/298-300

Land Section Entry No. 1: made on application No. 795 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section: blank. Ownership Section Entry No. 1; Thorne Parish Council.

Objections:- No. 1376 to Land Section by British Railways (Eastern Region); grounds, the land was not common land at the date of registration. Objection No. 2113 by Thorne Rural District Council, grounds as in Schedule attached (as in their CL324 Objection No. 2123 supra).



(A9): CL332; Reedholme Landing; 269/D/301-307

Land Section Entry No. 1: made on application No. 796 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1: made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section Entry No. 1: Thorne Parish Council.

Objections:- No. 1559 by Yorkshire River Authority to Land Section; grounds as in their CL324 Objection No. 1564 supra. No. 2110 by Thorne Rural District Council to Ownership Section registration; grounds, the person named as owner was, at the date of registration, not the owner of the land. Objection No. 2111 by Thorne Rural District Council to the Land Section and the Rights Section; grounds, as set out in the Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations in conflict with VG177 Land Section and Rights Section registrations.

(A10): CL334; Plumtree Landing; 269/D/318-323

Land Section Entry No. 1, made on application No. 798 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1, made on application No. 2281 of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section: blank.

Objections:- No. 1557 by Yorkshire River Authority to Land Section and Rights Section; grounds, as in their CL326 Objection No. 1564 supra. No. 2109 by Thorne Rural District Council; grounds as set out in Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations in conflict with VG177 Land Section and Rights Section registrations.

(A11): CL335; Hadds Landing; 269/D/324-332

Land Section Entry No. 1, made on application No. 799 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1 made on application No. 2281 by Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section Entry No. 1: Thorne Parish Council.

Objections:- No. 1556 by Yorkshire River Authority to the Land Section; grounds, as in their CL326 Objection No. 1564 supra. No. 1626 by Messrs Winston & John C Harrison to the Land Section and the Rights Section; grounds (in effect) the land was not common land and rights did not exist at the date of registration; objectors are occupiers of the land on an agricultural tenancy. No. 2108 by Thorne Rural District Council to the Land Section and the Rights Section; grounds, as set out in the Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations are in conflict with VG177 Land Section and Rights Section registrations.



(A12): CL336; Hangman Hill Ferry Landing; 269/D/333-338

Land Section Entry No. 1 made on application No. 800 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section Entry No. 1 made on application of Messrs William Bunting, Joyce Bunting and Nicholas Bunting "as successors ... (as for CL324 supra)". Ownership Section: blank.

Objections:- No. 1555 by Yorkshire River Authority to Land Section and Rights Section registrations; grounds, as in their CL326 Objection No. 1564 supra. No. 2106 by Thorne Rural District Council to the Land Section and Rights Section registrations; grounds, as set out in Schedule attached (as in their CL324 Objection No. 2123 supra). Conflict (deemed Objection): Land Section and Rights Section registrations conflict with VGL77 Land Section and Rights Section registrations.

(A13): CL337; Ings Piece; 269/D/339-340

Land Section Entry No. 1 made on application No. 801 of Mr William Bunting; noted application No. 807 (larger area including CL401) by him. Rights Section: blank. Ownership Section: Thorne Parish Council.

Objections:- No. 2104 by Thorne Rural District Council to the Ownership Section; grounds, the person named as owner was, at the date of registration, not the owner of the land. No. 2105 by Thorne Rural District Council to the Land Section, grounds as set out in the Schedule attached (as in their CL324 Objection No. 2123 supra).

Part II: Group B

(B1): VGL113; White Lane Ponds, Four Doles and Clay Pits; 269/D/36-46

This decision is supplemental to a decision dated 30 March 1984 by Mr G D Squibb QC, the then Chief Commons Commissioner after a hearing at Thorne on 13 February 1984 by which he confirmed the registration at Entry No. 1 in the Land Section "with the following modification, namely the exclusion of the land on the north side of the Stainforth and Keadby Canal.

This decision is also supplemental to a decision dated 20 June 1986 by which I, after a hearing at Doncaster on 2, 3, 4 and 5 December 1985, refused to confirm the Rights Section registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos 1 and 2, see particularly page 26 of my said decision and paragraph 2 of the Fourth Schedule to it.

For the reason stated in my said 1986 decision at page 27, I did not at my said December 1985 hearing consider the application made by Mr William Bunting in all or some of his letters to the Clerk of the Commons Commissioners dated 14, 20 and 27 February, 5, 6 and 7 March and 11 and 18 April 1984 that the said VGL113 March 1984 decision be set aside and the hearing reopened.

Further neither the then Chief Commons Commissioner at his 1984 hearing nor I at my 1985 hearing considered the registration at Entry No. 1 in the Ownership Section of



Thorne Parish Council as the owner of the Unit Land. This registration was the subject of the following two Objections:- No. 686 made by British Waterways Board, the grounds of which are the person named as owner was at the date of his registration as such not the owner of the part of the land verged red on the attached plan which said land is owned by the British Waterways Board; the part so verged red comprises the whole of the land in this Register Unit except possibly a comparatively very small area south of the Canal next to or part of the railway embankment. And No. 2130 by Thorne Rural District Council, the grounds of which are, the person named as owner was, at the date of registration, not the owner of the land.

(B2): VG117; Ashfield Bank and Ponds; 269/D/69-80

This decision is supplemental to a decision dated 30 March 1984 of Mr G D Squibb QC, the then Chief Commons Commissioner, after a hearing at Thorne on 13 February 1984 by which he confirmed the registration at Entry No. 1 in the Land Section "with the following modification:- namely the exclusion of all the land other than the marshy area and the ponds which will be defined on the map to be attached to the notice of final disposal."

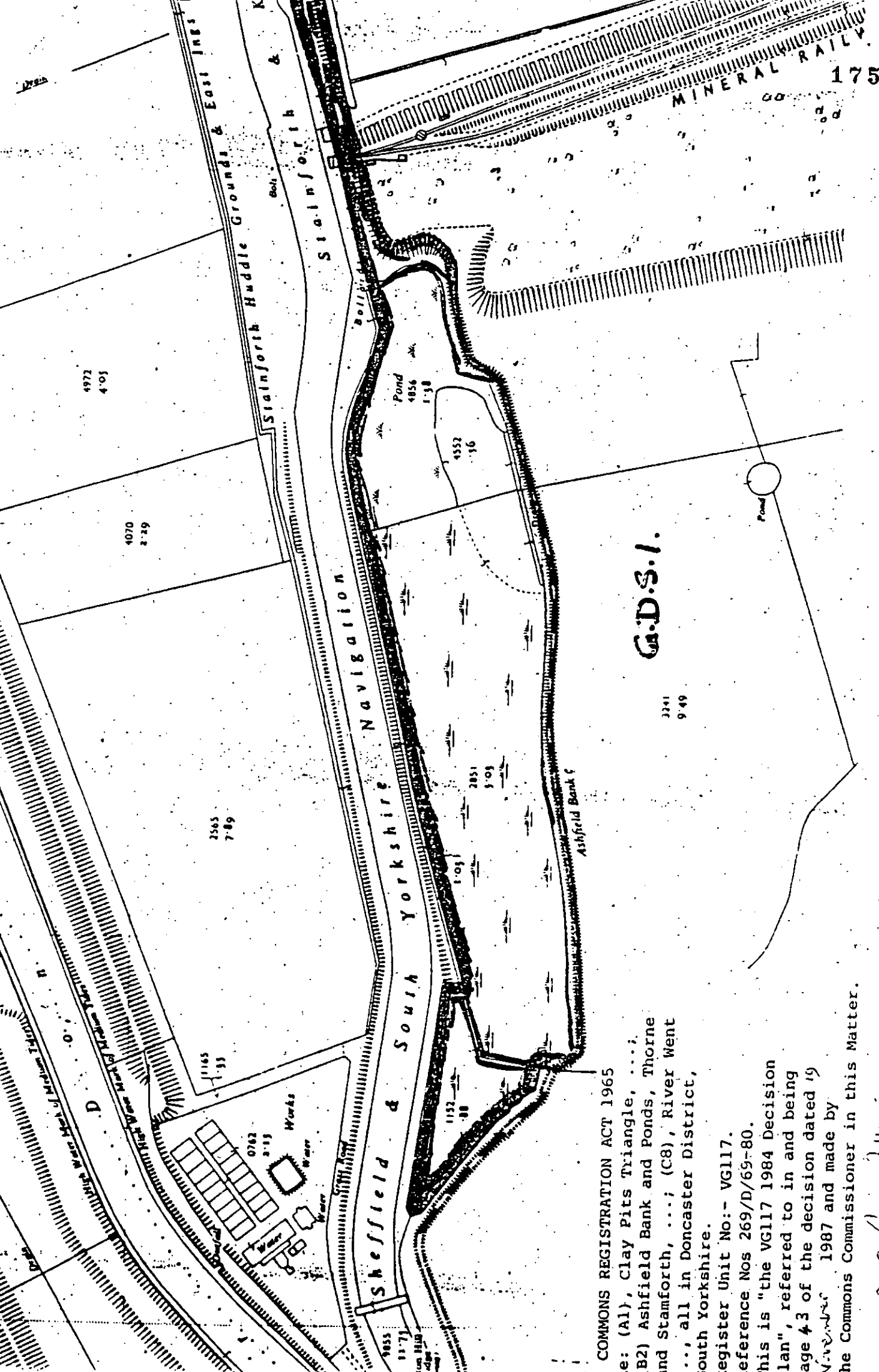
This decision is also supplemental to a decision dated 20 June 1986 by which I, after a hearing at Doncaster on 2, 3, 4 and 5 December 1985, refused to confirm the Rights Section registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos 1 and 2.

For the reason stated in my said 1986 decision at page 27 I did not at my December hearing consider the applications made by Mr William Bunting in all or some of his letters to the Clerk of the Commons Commissioner dated 14, 20 and 27 February, 5, 6 and 7 March and 11 and 18 April 1984 that the said VG117 March 1984 be set aside and the hearing reopened.

Further neither the Chief Commons Commissioner at his 1984 hearing nor I at my 1985 hearing considered the registration at Entry No. 1 in the Ownership Section of the Thorne Parish Council as the owner of the Unit Land. This registration was the subject of Objection No. 2137 by Thorne Rural District Council the grounds of which are: the person named as owner was, at the date of the registration, not the owner of the land.

The notice of final disposal mentioned as aforesaid in the said VG117 March 1984 decision has not yet been sent out, by reason, I suppose of the 1984 applications above mentioned. However the intended notice specifies the following modification: "the exclusion of all land other than that edged red on the plan marked "G.D.S.l. hereunto annexed". An uncoloured copy of such plan ("the VG117 1984 Decision Plan") is page 43 of this decision; the red on the original appears on the copy as two thin black lines enclosing two areas: one (the larger) being the area containing the figures "1.03; 2851 5.03; 4552 .56; Pond 4856 1.38"; and the other (the smaller and separated from the larger by a narrow strip, (? a footpath) being the area enclosing the figures "1152 .88".

In a letter dated 19 April 1984 to the Clerk of the Commons Commissioner, from the Legal Department of the Doncaster office of the National Coal Board it is said that the March 1984 decision failed to mention that the writer (Mr J D S Adams) appeared for the Board and called three witnesses in support of the Board's objection.



COMMONS REGISTRATION ACT 1965

Re: (A1), Clay Pits Triangle, ...;
 (B2) Ashfield Bank and Ponds, Thorne
 and Stainforth, ...; (C8), River Went
 ..., all in Doncaster District,
 South Yorkshire.

Register Unit No:- VGL17.

Reference Nos 269/D/69-80.

This is "the VGL17 1984 Decision
 Plan", referred to in and being
 page 43 of the decision dated 19
 November 1987 and made by

the Commons Commissioner in this Matter.

a. a. [Signature]

Commons Commissioner



Part III: Group C

(C: introduction): VG110, VG111, VG112, VG114, VG115, VG116, VG119 and VG120, are mentioned in paragraphs (C1) to (C8) below.

This decision is supplemental to 8 decisions dated 29 February or 30 March 1984 of Mr G D Squibb QC, the then Chief Commons Commissioner by which, after a hearing at Thorne on 15 February 1984, he refused to confirm the registrations at Entry No. 1 in the Land Section of each of the said 8 Register Units, and supplemental also to my decision dated 20 June 1986 by which after a hearing at Doncaster on 2, 3, 4 and 5 December 1985, I dismissed the application of Mr William Bunting in all or some of his letters dated 14, 20 and 27 February, 5, 6 and 7 March and 12 and 18 April 1984 to set aside the said 1984 decisions and continue the said 1984 hearings.

All the Group C Rights Sections are by regulation 14 of the Commons Registration (General) Regulations 1966 deemed to have had registrations ("the CL 401 deemed registrations") made therein by reason of the CL 401 Rights Section registrations at Entry Nos 1 and 2.

(C1): VG110; South End Guyme or Cow Shit End Guyme; 269/D/24-27.

The Rights Section apart from the CL 401 deemed registrations and the Ownership Section are blank.

(C2): VG111; Church Yards, Thorne; 269/D/28-29

The Rights Section apart from the CL 401 deemed registrations and the Ownership Section are blank.

(C3): VG112; North Station Guyme; 269/D/30-35.

Rights Section Entry No. 1 made on application No. 2703 of Messrs Joyce, Nicholas and William Bunting "as successors to the tenants and inhabitants of the Manor of Hatfield as defined by the Decree and Award in the Exchequer dated 30 November 1630" of rights of piscary, venery (fur), auceptary (feather), pannage, vert. and estovers and the right to graze 10 beasts (cattle or horses) or 20 sheep; also CL 401 deemed registrations. Ownership Section blank.

Objections:- No. 1375 by British Railways and No. 2127 by Thorne Rural District Council, the grounds of both of which only put in question the town or village green status of the Unit Land and do not expressly deal with a possible right of common; nevertheless by section 5(7) of the Commons Registration Act 1965 both the Objections are to be treated as objections to the Rights Section. Conflict (deemed Objection): said Rights Section registration conflicts with CL 401 Rights Section registrations at Entry Nos 1 and 2.

(C4): VG114; Thorne Market Place; 269/D/47-48

The Rights Section apart from CL 401 deemed registrations, blank. Ownership section at Entry No. 1, Thorne Parish Council. No Objection to Ownership Section registration.



Subsection (3) of section 6 of the Commons Registration Act 1965 provides that when the registration of any land as a town or village green is cancelled the registration authority should also cancel the registration of any person as the owner.

(C5): VG115; Durhams Warping Drain; 269/D/49-60

The Rights Section Entry No. 1 made on application No. 2699 of Messrs Joyce, Nicholas and William Bunting, as "successors ... (as for VG112 supra except 20 beasts or 40 sheep instead of 10 beasts or 20 sheep)"; also CL 401 deemed registrations. Ownership Section Entry No. 1, "Cyril Cadman, chairman of Black Drain Drainage Board".

Objections:- No. 1818 by A Firth & Sons, No. 2006 by National Farmers' Union and No. 2133 by Thorne Rural District Council, the grounds of which only put in question the town or village green status of the Unit Land; by section 5 of the 1965 Act (quoted under VG112 above), these objections are treated as putting in question the Rights Section registration. No. 1849 by Arthur Firth and Fred Firth the grounds of which put in question not only the town or village green status but also give detailed reasons against the Rights Section registration. No. 1845 to Ownership Section registration by Arthur Firth and Fred Firth, grounds "the Black Drainage Board were not at the date of registration the owners of the land comprised in this Register Unit". No. 2134 by Thorne Rural District Council, grounds similar to No. 1845. Conflict (deemed Objection):- the Rights Section registration is in conflict with the CL401 Rights Section registrations at Entry Nos 1 and 2.

(C6): VG116; Huddle Grounds; 269/D/61-68

Rights Section registration at Entry No. 1, made on application No. 2700 by Messrs Joyce, Nicholas and William Bunting as "successors ... (as for VG112 supra except 30 beasts instead of 10 sheep or 20 beasts); also CL401 deemed registrations. Ownership Section blank.

Objections:- No. 857 by British Waterways Board, grounds the land edged red on attached plans was not a town or village green at the date of registration and no rights exist thereover (land so edged is nearly all the Unit Land). No. 1531 by Yorkshire River Authority, grounds the land was not town or village green and the rights did not exist at the date of registration, the person making the registration is not entitled to the rights in the capacity stated, and the land cannot possibly be used as town or village green for the purposes mentioned in the registration. No. 2135 by Thorne Rural District Council, grounds putting in question the town or village green status. Conflict (deemed Objection): Rights Section registration conflicts with CL401 Rights Section Entry Nos 1 and 2.

(C7): VG119; River Don and its banks; 269/D/82-103

Rights Section Entry No. 1 made on application No. 2704 of Messrs Joyce, Nicholas and William Bunting as "successors ... (as for VG112 supra except 300 beasts instead of 10 sheep and 20 beasts)"; also registration deemed to have been made therein under the said regulation 14 by reason of the CL327 and CL333 Rights Section registrations; also the CL401 deemed registrations. Ownership Section blank.



Objections:- No. 475 by Mr Alan Pashley of Braithwaite Lodge Farm, about part of Unit Land northeast of Bramwith Bridge. No. 645 by Mr William Henry Lucas about a small part of the Unit Land a short distance south of Waterside (south of Hangsman Hill). No. 858 by British Waterways Board about (i) a strip east of Stainforth Bridge, (ii) a strip east of Bramwith Swing Bridge and (iii) a small piece by Dunston Hill Bridge. No. 1128 by West Riding County Council, grounds was not a town or village green and rights did not exist at the date of registration, the applicants were not entitled to apply to register rights in the capacity stated in the register. No. 1527 by Yorkshire River Authority, grounds as in their VG116 Objection No. 1531. No. 1677 by Mrs Mildred Harrison to small part of Unit Land in Fishlake. No. 1735 by Mr Sam Pownall about a part of the Unit Land a short distance northwest of Stainforth Bridge. No. 2143 by Thorne Rural District Council grounds putting in question the town or village green status. Conflicts (deemed Objections): Right Section registrations are in conflict with CL327 Rights Section registration at Entry No. 1, CL333 Rights Section registration at Entry No. 1, and CL401 Rights Section registrations at Entry Nos 1 and 2.

(C8): VG120; River Went and its banks; 269/D/1 4-134

Rights Section at Entry No. 1 made on application No. 2702 by Messrs Joyce, Nicholas and William Bunting as "successors ... as for VG112 supra except 50 beasts instead of 10 beasts or 20 sheep"; also the CL401 deemed registrations. Ownership Section blank.

Objections:- No. 498 by Mr George Jubb Asquith about parts of Unit Land northwest of Moor Lane. No. 859 by British Waterways Board about the parts of the Unit Land near the aqueduct carrying the New Junction Canal. No. 1127 by the West Riding County Council about all the Unit Land. No. 1312 by Mrs K Scott for Mr C Hayward about part of the Unit Land by Topham Ferry Gate. No. 1380 by British Railways, Eastern Region about part of the Unit Land near Bate Lane between Topham and Sykehouse. No. 1532 by Yorkshire River Authority about the River Went part of the Unit Land (not about the Barrier Bank). No. 1609 by Mr R O Lamb about part of the Unit Land at the north end of Bate Lane a short distance west of Sykehouse windmill. No. 1732 by Mr Charlie Shaw about parts of the Unit Land between Eskholme and New Junction Canal. No. 1803 by Messrs R & G Thompson about the part of the Unit Land near the River Don. No. 1844 by Went Internal Drainage Board, grounds not a town or village green and further grounds annexed. (Applicants not trustees of deed of feoffment dated July 15 1663, no common rights over land covered by plan on Hatfield Thorne and Fishlake Inclosure Award 1825 and other grounds as in the annexed specified). No. 2005 by the National Farmers' Union, Yorkshire West Riding County Branch, grounds not a town or village green at date of registration. No. 2010 by Mrs Alice May Asquith, grounds under Hatfield Thorne and Fishlake Inclosure Award 1825 no town or village green exists over the Unit Land which is covered by the Award Plan, and other grounds. No. 2138 by Thorne Rural District Council, grounds generally putting the town or village green status of the Unit Land in question. No. 2457 by Mr Roy Clarke about part of the Unit Land near to Sykehouse Windmill. Conflicts (deemed Objections): Rights Section registration conflicts with CL325 Rights Section registration at Entry No. 1 and CL410 Rights Section registrations at Rights Section Entry Nos 1 and 2.



- 47 -

SECOND SCHEDULE
(Documents produced)

Part I: on behalf of Mr W Bunting

- 2 February 1987 Emergency certificate under Legal Aid Act 1974 granted by No. 9 (North Eastern) Legal Aid Area.
- 18 February 1987 Amendment to said February 1987 certificate "by deleting the limitation in paragraph 2".
- 23 February 1987 Affidavit (affirmed) by Mr William Bunting with exhibits WB 1 to WB 13.
- WB 1 -- Statement of deponent's "Health:--"
- WB 2 -- Photographs taken by deponent and T F Evans (now deceased) in about 1955.
- (i) BARRIER BANK (1623-6) from Canal-Selby Road: Hasoms Garth Rd: 13 Oct 1959.
- (ii) BARRIER BANK (1623-6), from Canal-Selby Rd, Hansoms Garth Rd: 13 Oct 1959.
- (iii) and (iv) RIVER DON Right Bank 7 October 1959; access from Hadds Nook Road under stubble; and Wm. Bunting removing an obstruction (two photographs).
- (v) and (vi) RIVER DON ... Right Bank ... 6 September 1959; Hadds Landing (two photographs).
- (vii) and (viii) RIVER DON ... Right Bank ... 6 September 1959; looking south about 50 yards south of Durham's Warping Drain. Reedholme Landing (two photographs).
- (ix) and (x) RIVER DON ... Right Bank ... River Bank ... 6 September 1959. Cattle grazing on left bank. (Second photograph) foot access to River Barred, vehicular etc access obstructed to Low Hill Public Land/public watering place; padlocked gate; pond filled in and limestone road laid... for whom?
- (xi) and (xii) River Don Banks ... 11 October 1959 ... Left, west bank: violation of Sour Lane junction with River Don ... Junction Sour Lane/Cowick Lane.



- 48 -

(Second photograph) right bank taken from upstream of Thorne waterside ... "Old Bed" on left; cattle on Left Bank.

- WB 3 10 November 1970 Copy report of Clerk to Recreation and Amenities Sub-Committee of Thorne RDC, headed "Thorne Marina".
- WB 4 7 April 1960 Cutting from Doncaster Free Press headed "RIVER DON", Rights of Way 1½ columns, from Wm. Bunting.
- WB 5 12 October 1959 Copy letter to Area Engineer, Yorkshire Ouse River Board from Wm. Bunting deeply concerned over the violation of rights of way.
- WB 6 20 November 1959 Copy letter from Wm. Bunting to Yorkshire Ouse River Board who had violated rights of way on the River Don bank at Thorne.
- WB 7 25/1/60 Press cutting from newspaper (MS Express 25/1/60 headed "Mr Bunting's way was right".
- WB 8 19 Jan 1960 Cutting (2" x 2") headed "FAR AND NEAR; A man fights for lovers". (MS Daily Mail with date).
- WB 9 12, 18, 12, 12, and 12 February 1960 Five press cuttings (all about 2" x 2") headed "Campaign won right of way", "Mr Bunting wins a right of way", "Mr Bunting wins river bank battle", "Now you can walk along river bank" and "River bank battle won" from (MS) Manchester Guardian, Doncaster Gazette, Express, York Evening News and Yorkshire Post.
- WB 10 9 February 1960 Letter (without prejudice) from Yorkshire Ouse River Board to W Bunting headed "Alleged rights of way at Thorne".
- WB 11 16 February 1960 Copy letter from Wm. Bunting from Yorkshire Ouse River Board, headed "Access to the Countryside. Rights of way on the River Don banks from Bentley to Goole and Beyond".
- WB 12 3 July 1970 Letter from Yorkshire Ouse and Hull River Authority to Wm. Bunting headed "The Amenities of the Level of Hatfield Chase".
- WB 13 February-March 1951 Extract from Water Life and Aquaria World, being a page by W Bunting, FRES and headed "Collecting and Culturing Tubifex".
- WB 14 July-September 1956 Extract from the Naturalist headed "A New Blue-Green Alga. Epizooic on Daphnia Pulex L." by W Bunting and J W G Lund.



- 49 -

WB 15	21 October 1981	Cutting (1½" by 4") headed "Thorne's Old Clay Pits" (MS: Don Even Post and date).
WB/X/1	1639	Extract from map by Josias Arlebout.
Part II: by Mr Fred Firth		
FF/1	--	Copy of VGL15 register map showing Durham's Warping Drain as registered.
FF/2	21 July 1972	Statutory declaration by Arthur Firth with exhibits as below; facts recited in conveyance to the best of my knowledge and belief true.
AF/1	27 June 1969	Copy Conveyance between (1) Henry Firth, (2) Arthur Firth and (3) Fred Firth under which (2) and (3) became trustees for themselves in equal shares of Durham's Warping Drain as delineated on the plan (on a smaller scale but otherwise, perhaps a little more or less same as FF/1 above); such conveyance recited liquidation of the Yorkshire Land and Warping Company Limited in its dissolution under Section 300 of the Companies Act 1948 3 months after 14 November 1953 and a notice of disclaimer dated 25 August 1954 by the Treasury solicitor of the Crown's title and the subsequent possession of Henry Firth and Arthur Firth in the assumed character of owners.
AF/2	25 August 1954	Copy of said notice of disclaimer.
AF/3	3 March 1966 to 6 October 1967	Bundle of correspondence between R A & C P Heptonstall solicitors of Goole with Crown Estate Office and the Treasury Solicitor.
FF/3	1 August 1972	Conveyance by Arthur Firth and Fred Firth to Black Drain Drainage Board of 26.33 acres being a portion of Durham's Warping Drain between Selby Road Bridge and Goole Road Bridge as delineated on plan annexed to conveyance of 27 June 1969.
FF/4	27 June 1969	Original conveyance, AF/1 above.



- 50 -

Part III: put to Mr John Cundall Harrison

JCH/1 7 December 1970 Plan No. 31 annexed to VG119 Objection No. 850 made by British Waterways Board (Northern Region).

JCH/2 7 December 1970 Plan No. 33 so annexed.

JCH/3 7 December 1970 Plan No. 34 so annexed.

Part IV: put to Mr John Desmond Stones

JDS/1 -- Copy of register map showing CL328, CL332, CL335, CL326 and northern part of CL401; the witness identified Fieldside where he has lived, the farm being Bankside marked "S1" to "S2".

Part V: by Mr P R Pennington for Doncaster Metropolitan Borough Council.

DMC/1 18 February 1987 Certified copy of statement accompanying and certified true extract from Definitive Map prepared by former West Riding County Council under the National Parks and Access to the Countryside Act 1949 and having a relevant date of 22 September 1952 (shows public footpaths including "10 footpaths known as Barrier Bank commencing at its junction with White Lane county road and proceeding southwards ...")

Part VI: by Mrs Alice May Asquith

AMA/1 14 July 1972 Plan with VG120 Alice May Asquith Objection No. 2010.

Part VII: by Mr Colin Dunkley.

CD/1 Plan attached to VG119 British Waterways Board northern region objection No. 858 (same as JCH/1, 2 and 3 above).

Part VIII: by Mr James Armstrong

JA/1, 2, 5 1985 Various photographs showing Clay Pits VG113 and also
to " 1984 Clay Pits Triangle CL324.
1983

JA/12 6 July 1984 Tenancy (Lease) etc. rights from the said land owners (Barnes & Co.)

Part IX: by (26 February) Mrs Alice Mary Asquith

AMA/2 14 July 1972 Plan with CL325 Alice May Asquith Objection No. 2009. (same as AMA/1 above).



- 51 -

AMA/3	9 March 1918	Conveyance by Edwin Firth to James Holgate of firstly dwellinghouse "Sunny Manse", Topham and "secondly ... Goosehill ... contained 3a. 2r. 33p." bounded ... on the north by the River Went ... numbered (188) on the Ordnance Survey.
AMA/4	1918	Abstract of title of Mr Edwin Firth including conveyances of 12 April 1892, 14 February 1892.
AMA/5	1855	OS map, 6" = 1 mile.
AMA/6	--	Extract from AMA/5 showing the present course of River Went by Topham Ferry Bridge and "Old Course of River".
		Part X: by Mr J Gott
JG/1	10 February 1987	Extract OS map (scale 1/2500) showing Thorne South Station land of British Railways Board edged green and showing CL331 land edged red.
JG/2	10 February 1987	Extract OS map (scale 6 inch to 1 mile) showing CL331 land edged red.
JG/3	--	Copy CL331 Land Section (and notes) and CL331 Ownership Section "Thorne Parish Council c/o William Bunting".
JG/4	--	Extract (pages 19 and 20) from Book of Reference for (? an Act of the 1860s) with extract from Deposited plan: CL331 land is "111 Pasture Field"; also small part of "109, Arable Field and Drain" and crossed by "101 Occupation-road"; and (?) "98a Footpath".
JG/5	7 November 1857	Conveyance by William Armitage and Thomas Coupland to the South Yorkshire Railway and River Dun Company, reciting 6 Geo 2 to explain and amend two Acts made in 12 and 13 Geo 1 for making navigable the River Dun, reciting the South Yorkshire Doncaster and Goole Railway Act 1847 and the South Yorkshire and River Dun Act 1850, and conveying 3a. Or. 4p. south of the Canal (identified with CL324, VG113 lands, the railway next on the east and land further to the east).
JG/6	--	Further extract from said Deposited Plan showing "Stainforth & Keadby Canal".
--	--	South Yorkshire Railway Act 1863: 26 & 27 Vict. c. cxlvi.



- 52 -

- JG/7 -- Extract (pages 424 and 425) from Book of Reference to 1863 Act.
- JG/8 -- OS map (1/10,560); copy definitive map including Thorne on which footpath 13 runs (in part) within CL331.
- JG/9 —
- JG/10 8 November 1918 Conveyance by trustees of James Goody to Great Central Railway Company of 6a. 1r. 4p. of land being the CL331 land and much land to the north and northwest of it, Nos. 49, 51 and 53 Ellison Street, No. 93 Orchard, No. 98 Gardens and No. 111 (unspecified but now part of housing estate).

Part XI: (27 February) by Mr J C Harrison

- JCH/11 10 August 1976 Land Certificate: Title No. SYK 3800 showing Ownership of Irene Baker Harrison.
- JCH/12 24 February 1976
2 March 1976 Enquiries before Contract, and replies:
R K Raper Ltd to J C Harrison.
- JCH/13 21 August 1968 Epitome of title including conveyance of 22 June 1976 to R K Raper Ltd and examined copy statutory declaration by Arthur Lee, aged 79 years and resided in Thorne all his life, with plan showing edged red areas (i) north of the CL337 land, (ii) southwest of the CL337 lane and (iii) northwest of the railway and south of the VG113 and CL324 land, and showing also yellow track running the length of the CL327 land.

Part XII: (27 February) by Mr C Dunkley

- CD/10 17 January 1893 Agreement by which Manchester Sheffield and Lincolnshire Railway Company ("MSLRC") sold to Sheffield and South Yorkshire Navigation Company ("SSYNC") pursuant to North Sheffield and South Yorkshire Navigation Act 1889 (57 & 58 Vict. c. cxi) lands by reference to Book of Deposited Plans showing the existing navigation and on sheet 22 showing CL324 and VG113 land verged red (ponds in blue).



- 53 -

- CD/11 7 October 1896 Conveyance by MSLRC to SSYNCR for £1,400,000 of lands pursuant to the said 1889 Act and the said January 1893 agreement (CD/10).
- CD/12 2 March 1943 Conveyance by Mrs M E Chappel to Sheffield and South Yorkshire Navigation Company.
- CD/13 21 January 1987 Letter to British Waterways Board from Bridge-Sanderson and Co as solicitors for Thorne Town Council formerly Thorne Parish Council (similar to CD/14 below).
- CD/14 21 January 1987 Letter to Commons Commissioners from Bridge-Sanderson and Co solicitors of Doncaster on behalf of Thorne Town Council saying ~~was~~ intention to deduce any evidence in support of applications which are still subsisting for registration of the Land Section, the Rights Section and Ownership Section of the Register Unit specified and would if appropriate withdraw such applications. Letter applicable to CL324, 325, 326, 327, 328, 329, 330, 331, 332, 334, 335, 336 and 337.

Part XIII: (27 February) produced by Mr Pennington

- 11 July 1825 Hatfield, Thorne and Fishlake Inclosure Award and map, made under Hatfield, Thorne and Fishlake Inclosure Act 1811 (51 Geo. 3 c. xxx).

TURN OVER



THIRD SCHEDULE
(Decision table)

Part I Group A

(A1): CL324; Clay Pits Triangle; 269/D/247-254.

I REFUSE to confirm (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registrations if any in the Rights Section which by regulation 14 of the Commons Registration (General) Regulation 1966 are deemed to be made therein by reason of any VGL77 Rights Section registration; and (c) the registration at Entry No. 1 in the Ownership Section of the said CL324 Register Unit.

(A2): CL325: Topham Ferry Landing or Public Watering Place: 269/D/255-260.

I REFUSE to confirm (A) the registration at Entry No. 1 in the Land Section; and (B) the registrations if any which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made in the Rights Section by reason of any VGL20 Right Section registrations.

(A3): CL326: Blackshaw Landing and Public Watering Place: 269/D/261-266.

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section and (B) the registration at Entry No. 1 in the Rights Section.

(A4): CL327; Sour Lane Landing: 269/D/267-270.

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Section which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VGL19 Rights Section registrations.

(A5): CL328; Bank Landing: 269/D/275-277

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; and (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Section which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VGL17 Rights Section registrations.

A(6): CL329; Low Hill Landing: 269/D/281-287

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Section which by regulation 14 of the Commons Registration



(General) Regulations 1966 are deemed to be made therein by reason of any VG177 Rights Section registrations; and (C) the registration at Entry No. 1 in the Ownership Section.

(A7): CL330; Barrier Bank and Hanson's Gyne: 269/D/288-297

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Section which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VG177 Rights Section registrations; and (C) the registration at Entry No. 1 in the Ownership Section.

(A8): CL331; Love Hill, Thorne: 269/D/298-300

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; and (B) the registration at Entry No. 1 in the Ownership Section.

(A9): CL332; Reedholme Landing: 269/D/301-307

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Sections which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VG177 Rights Section registrations; and (C) the registration at Entry No. 1 in the Ownership Section.

(A10): CL334; Plumtree Landing: 269/D/318-323

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; and (B) the registration at Entry No. 1 in the Rights Section and the registrations (if any) in the Rights Section which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VG177 Rights Section registration.

(A11): CL335; Hadds Landing: 269/D/324-332

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; (B) the registration at Entry No. 1 in the Rights Section and the registration (if any) which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VG177 Rights Section registrations; and (C) the registration at Entry No. 1 in the Ownership Section.

(A12): CL336; Hangman Hill Ferry Land: 269/D/333-338

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section; and (B) the registration at Entry No. 1 in the Rights Section and the registration (if



any) which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of any VGL77 Rights Section registrations.

(A13): CL337; Ings Piece: 209/D/339-340

I REFUSE to confirm: (A) the registration at Entry No. 1 in the Land Section and (B) the registration at Entry No. 1 in the Ownership Section.

Part II: Group B

(B1): VGL13; White Lane Pond, Four Doles, Clay Pits: 269/D/37-39

(a) The application made by Mr William Bunting in all or some of his letters dated 14, 20 and 27 February, 5, 6 and 7 March and 11 and 18 April 1984 that the March 1984 decision of the then Chief Commons Commissioner about this Register Unit be set aside and that the hearing about it in February 1984 be reopened is by me in this 1987 decision DISMISSED.

(b) By his said March 1984 decision the then Chief Commons Commissioner CONFIRMED the registration at Entry No. 1 in the Land Section with the MODIFICATION, the exclusion of the land on the north side of the Stainforth and Keadby Canal.

(c) In my said June 1986 decision I REFUSED to confirm the Rights Section registrations in this Register Unit which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos 1 and 2.

(d) In this 1987 decision I REFUSE to confirm the registration at Entry No. 1 in the Ownership Section.

(B2): VGL17; Ashfield Bank and Ponds: 269/D/69-80

(a) I have this day pursuant to regulation 33 of the Commons Commissioners Regulations 1971 (clerical errors) corrected the decision dated 30 March 1984 and made by the then Chief Commons Commissioner in this Matter as follows:- (i) In the second paragraph of the first page between "... District Council," and "Mr C Dunkley ..." insert "Mr J D S Adams on behalf of National Coal Board". (ii) In the last paragraph of the first page, between "Mr Rose" and "called a number of witnesses ..." insert "and Mr Adams". (iii) In the penultimate paragraph of the second page for the words "will be defined on a map to be attached" substitute "is defined by a red verge line on a map by me marked G.D.S.1, which map will be referred to in".

(b) The application made by Mr William Bunting in all or some of his letters dated 14, 20 and 27 February, 5, 6 and 7 March and 11 and 18 April 1984 that the said March 1984 decision about this Register Unit be set aside and that the hearing which the



then Chief Commons Commissioner held about it in February 1984 be reopened, is by me in this 1987 decision DISMISSED.

(c) By his said March 1984 decision the then Chief Commons Commissioner CONFIRMED the registration at Entry No. 1 in the Land Section with the MODIFICATION, the exclusion of all the land other than the former marshy area and the ponds which are defined by a red verge line on a map by him marked G.D.S.1, which map will be attached to the notice of final disposal. Note: an uncoloured copy of such map ("the VG117 Decision Plan") is page 43 of this decision, the red on the original appears on the said copy as two thin black lines enclosing two areas: one (the larger) being the area containing the figures "1.03; 2851 5.03; 4552 .56; Pond 4856 1.38"; and the other (the smaller and separated from it by a narrow strip (? a footpath)) being the area enclosing the figures "1152 .88".

(d) In my said June 1986 decision I REFUSED to confirm the Rights Section registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos 1 and 2.

(e) In this 1987 decision I REFUSE to confirm the registration at Entry No. 1 in the Ownership Section of this Register Unit.

Part III: Group C

(C1): VG110; South End Guyme or Cow Shit Guyme, Thorne Parish: 269/D/24-27

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the Rights Section registrations in this Register Unit which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

(C2): VG111; Church Yards, Thorne Parish: 269/D/28-29

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the Rights Section registrations in this Register Unit which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.



(C3): VG112; North Station Guyme, Thorne parish: 269/D/30-35

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registration at Entry No. 1 in the Rights Section and the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

(C4): VG114; Thorne Market Place, Thorne parish: 269/D/47-48

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

Note: By subsection (3) of section 6 of the Commons Registration Act 1965, following upon the cancellation of the said Land Section registration consequential on its confirmation being refused, the registration at Entry No. 1 in the Ownership Section should also be cancelled by the Registration Authority.

(C5): VG115; Durhams Warping Drain, Thorne parish: 269/D/49-60

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registration at Rights Section Entry No. 1 and the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to be made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

(c) I give no decision as to the registration at Entry No. 1 in the Ownership Section; but Black Drain Drainage Board as successors of Messrs Arthur Firth and Fred Firth and Doncaster Metropolitan Borough Council as successors of Thorne Rural District Council are to be at liberty to apply for a decision about such registration within



the time and subject to the conditions specified in the last paragraph under the heading: Group C at page of this decision.

Note: By subsection (3) of section 6 of the Commons Registration Act 1965 following upon the cancellation of the said Land Section registration consequential on its confirmation being refused, the registration at Entry No. 1 of the Ownership Section should also be cancelled by the Registration Authority.

(C6): VG116; Huddle Grounds, Stainforth and Thorne parishes: 269/D/61-68

(a) Pursuant to the March 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registration at Right Section Entry No. 1 and the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

(C7): VG119; River Don and its banks, Kirk Bramwith, Snaith and Cowick, Fishlake, Sykehouse and Thorne parishes: 269/D/31-103

(a) Pursuant to the March 1984 decision of the then Chief Commons Commissioner and my June 1986 decision, confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registration at Entry No. 1 in the Rights Section and the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2 and of the CL327 and CL333 Rights Section registrations.

TURN OVER



(C8): VG120; River Went and its banks, Sykehouse parish: 269/D/104-134

(a) Pursuant to the February 1984 decision of the then Chief Commons Commissioner and my June 1986 decision confirmation of the registration at Entry No. 1 in the Land Section is REFUSED.

(b) In this 1987 decision I REFUSE to confirm the registration at Rights Section Entry No. 1 and the registrations which by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein by reason of the CL401 Rights Section registrations at Entry Nos. 1 and 2.

As to costs see under heading: Final

Dated this 19th day of November 1987

On a Baden Fuller

Commons Commissioner