



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/592

In the matter of Bethocar Moor,
Colton, South Lakeland District,
Cumbria

DECISION

This reference dated 10 June 1986 relates to the question of the ownership of the part ("the Referred Part") hereinafter defined of the land known as Bethocar Moor, Colton, South Lakeland District, being the land comprised in the Land Section of Register Unit No. CL 189 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) County Council. The Referred Part means the part of the said land of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Lt-Col A Wilson in a letter dated 23 September 1986 written on behalf of Mrs M J Clapham said that she disputed the listing of Ickenthaite plantation shown red on the attached plan as common land, and also wished to register her freehold right to it. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Keswick on 12 May 1987. At the hearing: (1) Mrs Mary J Clapham was represented by Lt-Col A Wilson FRICS of Estate Office, Dalton Holme, Beverley, Yorkshire; and (2) Mr Myras Casson was represented by Mr R F Hart Jackson, solicitor of Hart Jackson & Sons, Solicitors of Ulverston.

The land ("the Unit Land") in this Register Unit according to the Register contains about 551.17 hectares (1,362 acres) and is in two parcels; one ("the Southerly parcel") is from north to south about 700 yards long and has an average width of about 100 yards (area say about 14½ acres), and is a short distance north of Oxen Park; the other ("the Northerly parcel") being the remainder of the Unit Land, is known as Bethocar Moor, being from north to south a little under 3 miles long and in places more than 1 mile wide. The south end of the Northerly parcel is about 300 yards from the north end of the Southerly parcel. The Referred Part comprises two areas; one ("the North Referred Part Area") is the part of the Northerly parcel south of the line GH and IJ (? and KL which is a short distance north of IJ) on the Register Map, and is an irregularly shaped area a little more than half a mile long from north to south containing about 62 acres; and the other ("the South Referred Part Area") is the part of the Southerly parcel south of the line EF on the Register Map. There are 22 Rights Section registrations which being undisputed became final in 1972. In the Ownership Section at Entry No. 1, Mr Myras Casson was in 1969 registered as owner of the part of the Southerly parcel north of the line EF on the Register Map, and such registration being undisputed became final in 1972.

Consequential on a reference dated 31 July 1973 by Lancashire County Council the then Registration Authority, and after a hearing at Kendal on 5 March 1975, I gave a decision dated 29 July 1975 (reference 20/U/94) saying that I was satisfied that the ownership of the part of the Northerly parcel to the north and northwest of the lines GH and KL on the Register Map was in the Public Trustee (as trustee



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for persons having registered rights of common over that part). Following such decision in the Ownership Section at Entry No. 3, the Public Trustee was in 1978 registered as the owner of such part of the Northerly parcel. Save as aforesaid there is in the Ownership Section no registration.

At my 1987 hearing Colonel Wilson claimed that Mrs M J Clapham is the owner of the part of the North Referred Part Area which is shown red on the plan attached to his said September 1986 letter, and in support of such claim gave oral evidence in the course of which he referred to or produced the documents specified in the First Schedule hereto. Also Mr Hart Jackson claimed that Mr Myras Casson is the owner of the part of the North Referred Part Area which is coloured yellow on the plan (Casson/1) which he produced and in support of such claim oral evidence was given by him and by Mr Myras Casson in the course of which they referred to or produced the documents specified in the Second Schedule hereto.

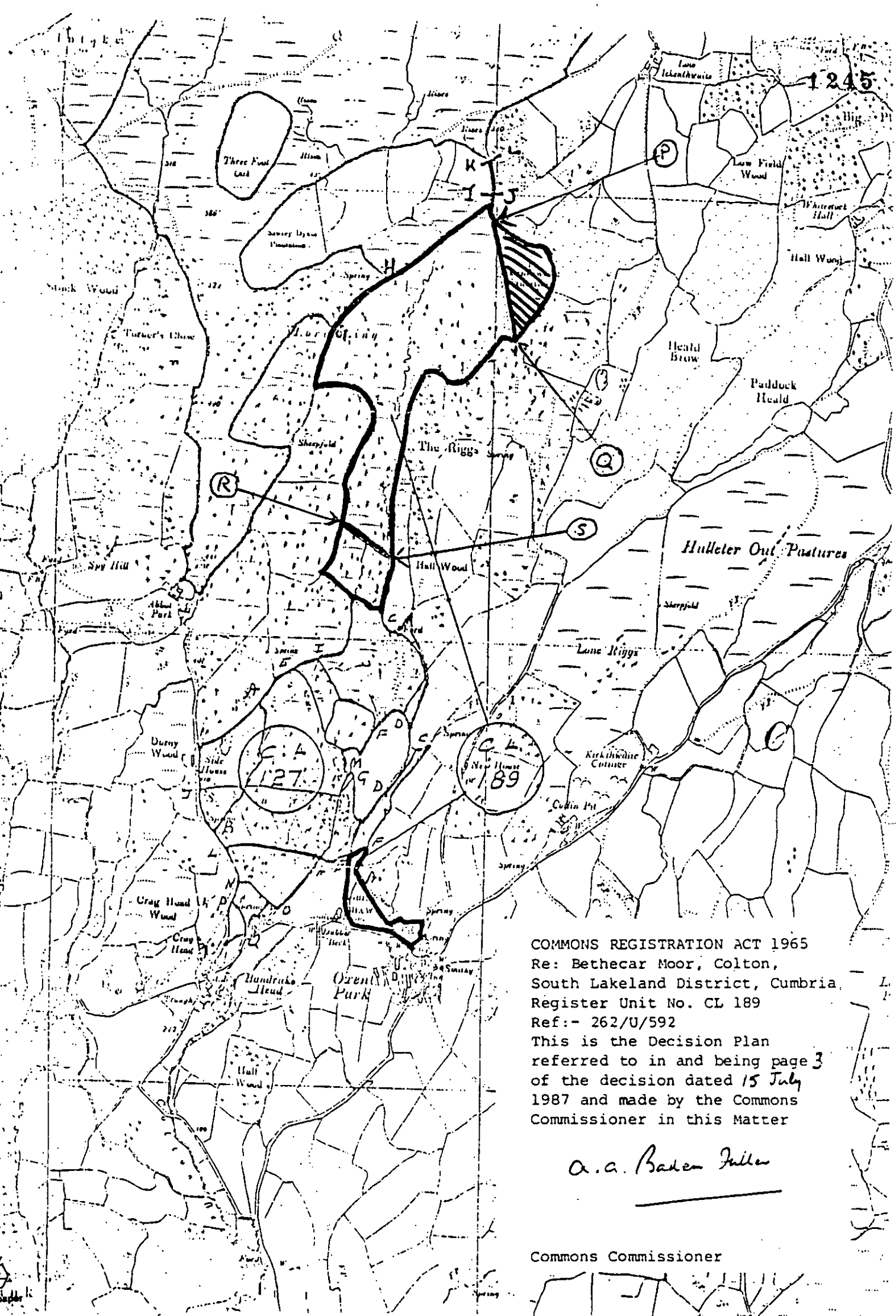
Page 3 of this decision is an uncoloured copy of the September 1986 letter plan on which I have marked with the letters P and Q the line of the west boundary of the land coloured red on the original and on which I have marked with a thick black line lettered R and S as indicating the north boundary of the land coloured yellow on the said plan Casson/1 produced by Mr Hart Jackson. In this decision "the Clapham claimed area" and "the Casson claimed area" have the meanings specified in the Third Schedule hereto by reference to the Decision Plan.

It was said at the hearing that the North Referred Part Area or the greater part of it together with the adjoining land in Register Unit No. CL 127 was locally known as Bandrake Head Common (not as or part of Bethacar Moor as described in the Register) and that Bandrake Head is a small hamlet to the west of Oxen Park (the main village).

Colonel Wilson, who is the resident Land Agent to Lord Hotham, said (in effect):- The husband of Mrs Clapham is and has for the last 9 years been Lord Hotham's Head Keeper. Mrs Clapham was unable to come to the hearing because she had got influenza. He (the witness) knew the Clapham claimed area. On the OS map it is called "Ickenthwaite Plantation". It is approximately 5 acres. Although not now in active use as forestry land, it has been in the past; a mature crop of larch was taken from it in 1944 at which time it was fully enclosed by a post and wire fence; the fence fell into disuse although its line can be discerned, as can the gateway, from inspection on the ground. On what Colonel Wilson said and the documents he produced as specified in the First Schedule hereto I am satisfied that Mrs Clapham is the owner of the Clapham claimed area.

As to her disputing the listing as common land of the Clapham claimed area:- This "listing" is consequential on the area being within that specified in the Land Section registration at Entry No. 1. Neither Mrs Clapham nor the personal representatives of her mother Mrs Lock nor anyone else made an Objection to the registration within the permitted period specified in the regulations made under the Commons Registration Act 1965. So consequentially upon section 7 of such Act, the registration became (as it is so recorded in the Register) final. In my opinion I have no jurisdiction under this reference or as the law of now stands under any reference which could be made to me, to alter the Land Section registration as regards the Clapham claimed area, or at all.

Mr Myras Casson who was born in 1910 and described himself as a retired farmer and blacksmith gave his evidence by reference to the plan annexed to the 1987 assent (Casson/3). The land edged red on such plan is OS No. 1266a containing 30.937 acres;



COMMONS REGISTRATION ACT 1965
 Re: Bethcar Moor, Colton,
 South Lakeland District, Cumbria
 Register Unit No. CL 189
 Ref:- 262/U/592
 This is the Decision Plan
 referred to in and being page 3
 of the decision dated 15 July
 1987 and made by the Commons
 Commissioner in this Matter

a.a. Baker Fuller

Commons Commissioner



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the Casson claimed area is about 5 acres within and at the north end of this OS No. He said (in effect):- From 1927 he worked with his father (also Myras Casson who died in 1949). As far as he knew the edged red land was "allotted", owned by his grandfather and in 1910 passed to his father. It was used by them for grazing, they having 2 or 3 heifers. It was fell land with bracken and not fenced otherwise than by fences around neighbours' fields. ~~Some~~^{As} to the north boundary of the edged red land, "we used to guess at it"; it was more or less in line with the north boundary of OS No. 1207. It was a piece of land that went with the smithy in Oxen Park. The smithy was also the post office and his mother was post mistress.

That Mr Casson has a title to whatever was in the 1910 conveyance described as: "All that Dale portion of land of Bandrake Common situate on Bandrake Head Common situate at Oxen Park" is I think shown by the documents produced. But the 1987 assent having been made I suppose for the purpose of my hearing on information given by Mr Casson, does not by itself satisfactorily identify the land edged red with that so described in the 1910 conveyance; but I can I think from the OS Map on which the plan was based infer that the edged red land was when the map was made generally regarded as an identifiable piece of land distinct from the rest of the Fell for which a distinct No. could properly be assigned. Mr Casson when giving his evidence clearly wished me to understand that the Casson claimed area was part of that so described in the 1910 conveyance. Nobody at the hearing suggested that I should not do this. Notwithstanding that his evidence appeared to be somewhat vague, I consider that I can give full effect to it. Accordingly I am satisfied that he is the owner of the Casson claimed area. I say nothing more about the rest of the land edged red on the 1987 assent plan, because I have no jurisdiction to express any opinion about its ownership.

In the absence of any evidence about the remainder of the Referred Part, I am not satisfied that any person is the owner of it.

Consequentially on my decisions as set out above, I shall pursuant to section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register (1) Mrs Mary Jane Clapham of Moorhill Cottage, Malton Road, Etton, near Beverley, Yorkshire and (2) Mr Myras Casson of Bandrake Head Farm, Oxen Park, near Ulverston as the respective owners of (1) the Clapham claimed area as defined in paragraph 1 of the Third Schedule hereto, and (2) the Casson claimed area as defined in paragraph 2 of the Third Schedule hereto. The remainder of the Referred Part will remain subject to protection under section 9 of the Act of 1965.

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.

TURN OVER



FIRST SCHEDULE
Documents of Mrs Clapham

--	27 March 1987	Letter to Commons Commissioners on behalf of Mrs Clapham from Lt-Col A Wilson.
MJC/1	--	Case (2½ pages) to be presented by Lt-Col A Wilson on behalf of Mrs M J Clapham.
A1	4 Jan 85	Letter from Colonel Wilson signed by Mrs Clapham accepting appointment "to act as my agent in the matter of my land in Cumbria".
A2	3 March 1987	Letter from Mrs Clapham requesting Colonel Wilson "to pursue this matter on my behalf taking any action you see necessary".
B	--	Plan showing Ickenthwaite Plantation hatched red: scale 1/2500.
C	--	Plan of neighbourhood, scale 1/63,360.
D	1958	Abstract of the title of the personal representatives of Mrs M P Phillips, being of a conveyance dated 11 February 1939 by Messrs Hannah Maria Burns, John Nicholas Addison Phillips and Francis Bertram Hart Jackson to Margery Pennington Phillips of (inter alia) "5. ALL that ... dwellinghouse known as New House Cottage Oxenpark ... in the occupation of Mrs Lomas".
E	18 December 1958	Conveyance (original produced) by Mrs Ida Mary Addison as personal representative of Mrs M P Phillips (she died 23 April 1957) to Mrs Lillian Alice Davis Lock "THIRDLY ... parcel of land situate near Oxenpark ... on the eastern side of a road leading from Oxen Park to Satterthwaite and containing ... five acres ... known as Ickonthwaite Plantation ... delineated ... on plan ... annexed ... edged green ..." (edged green same as B above).
F	8 December 1958	Official certificate of search.
G	23 August 1966	Will of Lillian Alice Davis Lock ... residuary estate for "my daughter the said Mary-Jane Vine Kaye provided she ... shall attain the age of thirty years.
H	25 January 1977	Assent by National Westminster Bank Limited as personal representative of L A D Lock (she died 6 April 1969) to vesting in "Mary Jane Clapham" in the will referred to as Mary-Jane Vine Kaye "ALL ... land ... to the eastern side of a road from Oxen Park ... containing an area of five acres ... edged green on plan annexed to conveyance 18 December 1958 (as E above).



SECOND SCHEDULE
Documents of Mr M Casson

- Casson/1 -- Extract from Register Map showing coloured yellow part of the North Referred Part Area claimed.
- Casson/2 --
3 December 1910 Epitome of title.
Conveyance by Edward and Myras Casson as executors of Myras Casson (he died 22 July 1909) with the concurrence of others to the said Myras Casson of two dwellinghouses adjoining each other with the barn and other outbuildings and the ... Orchard and Garden adjoining thereto ... the west side of the highway leading through Oxenpark ... also ... Blacksmiths Shop ... on the East side of such highway ... and also all that Dale or portion of land on Bandrake Head Common ..."
- Casson/5 2 September 1949 Probate of will of Myras Casson (he died 7 April 1949) granted to Mrs Margret Ann Casson (relict) Mrs Mary Croasdale (daughter) and (Myras Casson) (son).
- Casson/4 1 February 1965 Assent by Myras Casson and Mary Croasdale as personal representative of the said Myras Casson deceased (Margaret Ann Casson died 21 May 1964) in favour of Myras Casson of (inter alia) two dwellinghouses adjoining each other with the barn and other outbuilding and orchard and garden ... and Blacksmiths Shop (as in 1910 conveyance not including the Dale of portion of land on Bandrake Head Common) Memorandum endorsed of conveyance of 17 September 1968 which said two dwellinghouses to J and E Teasdale.
- Casson/3 12 May 1987 Assent by Myras Casson and Mary Croasdale as such personal representatives in favour of Myras Casson of ALL that Dale or portion of land on Bandrake Head Common ... identification delineated on the plan annexed hereto and thereon edged red.

THIRD SCHEDULE
Definitions

(1) In this decision the Clapham claimed area means the part of the Northerly parcel of the land comprised in this Register Unit which is on the Decision Plan hatched with black diagonal lines thereon called Ickenthwaite Plantation and which is east of the line P-Q thereon.

TURN OVER



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(2) In this decision the Casson claimed area means the part of the Northerly parcel of the land comprised in this Register Unit which is south of the line R-S on the Register Map.

Dated this 15th — day of July — 1987

A. A. Baden Fuller,

Commons Commissioner