



## COMMONS REGISTRATION ACT 1965

Reference No. 262/U/591

In the Matter of part of  
Blawith Fell, Blawith and  
Subberthwaite, South Lakeland  
District, Cumbria

FIRST DECISION  
Introduction

This reference relates to the question of the ownership of the part ("the Referred Part") hereinafter defined of the land known as Blawith Fell, Blawith and Subberthwaite, South Lakeland District being the land comprised in the Land Section of Register Unit No. CL 155 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 Registrations Act 1965 as the owner.

Following upon the public notice of this reference: (1) in letters dated 1 and 28 August 1986 Mrs Vera Grant claimed ownership of the central small portion of the Referred Part lying between "Gravel Pit, Ford, Mill Pond" and "Mill Stream"; and (2) in a letter dated 19 February 1987 Mr R Baxter said he was concerned first as the secretary of the local (Blawith and Subberthwaite) Commoners Association and as such represented several interested parties, and secondly and more especially part of the land in question belongs to him and is not common at all. 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 Referred Part at Keswick on 12 May 1987. At the hearing: (1) Mrs Vera Grant and Mr Jens Christian Fogh both of Katymoss, Water Yeat attended in person; (2) Mr John Robert Stalker of Greenholme Farm (successor of his mother Mrs Elizabeth Margaret Stalker who applied for the registration at Rights Section Entry No. 21) attended in person; (3) Mr Ross Baxter of Picthall, Blawith (successor of his father Mr Alfred Colin Clarke Baxter who applied for the registration at Rights Section Entry No. 23) attended in person on his own behalf, and as representing: (4) Mr Joseph Reginald Stalker of Houkler Farm (he with Mary Stalker applied for the registration at Rights Section Entry No. 22).

The land ("the Unit Land") in this Register Unit (the Land Section) contains (according to the Register) about 453.69 hectares (1,121 acres). In the Rights Section there were originally 23 registrations; all or nearly all of them being undisputed have become final, and some have been replaced by other registrations. In the Ownership Section: at Entry No. 1 Michael Boswell Brown is registered as the owner of the part of the Unit Land lying north and east of the lines A-B, C-D and E-F on the Register Map; and at Entry No. 2, The Boughton Estates Limited are registered as owners of the whole of the Unit Land except the part of it last mentioned and except the Referred Part, being the seven pieces described in the First Schedule hereto and hereinafter called: (1) "the Tottlebank Piece", (2) "the Subberthwaite Bank Piece", (3) "the Houkler Hall Piece", (4) "the Picthall Piece", (5) "the Katymoss Piece", (6) "the A5084 roadside Piece", and (7) "the South of Fairholme Green Piece".



## The May 1987 proceedings

Mrs Vera Grant in the course of her oral evidence produced the documents specified in Part I in the Second Schedule hereto. She said (in effect):- She and Mr Fogh in June 1985 jointly purchased Katymoss as described in the 1985 conveyance (Grant/1); the property consisted of a house and garden and another parcel of land ("the edged blue and red land") edged blue and red on the plan annexed to the 1974 conveyance (Grant/3) and to the 1974 Chalker declaration (Grant/4). When they bought they understood from their solicitor that Mr Piper (their vendor) in answer to the usual questions had said that no other person had rights over any part of the property. Not very long after they moved in, their neighbour Mr John Stalker came to tell them that the edged blue and red land was his!; they were surprised so they talked to their solicitor who corresponded with Mr Stalker's solicitor; the outcome was that they would have to claim ownership before a Commons Commissioner. Mr John R Stalker intervened saying (in effect) that he and his family had grazed the edged blue and red land for three generations, and that he agreed that there had been correspondence between his solicitors and the solicitors for Mrs Grant. Mrs Grant continuing her evidence then described the edged blue and red land as it is and had been since June 1985.

Next oral evidence was given by Mr John R Stalker, by reference to the 1974 Chalker declaration (Grant/4) which contains the statement:-

"Upwards of twenty years ago I erected two fences shown in blue on the plan ... enclosing the land shown edged blue and red on the said plan which lies adjacent to the said dwellinghouse "Katymoss" aforesaid and the land which I purchased therewith on 22 June 1953. Since the above mentioned fences were erected I have been in undisputed possession of the land shown edged blue and red on the aforesaid plan without acknowledging the title of Boughton Estates Limited or of any other person claiming title thereto."

An uncoloured copy ("the Decision Plan") of the plan annexed to the 1974 conveyance (being the same as that referred to in the 1974 declaration) to which I have added the letters "A, B, C, D, E, F and K", is page 3 of this decision. On the Decision Plan the blue and red edging on the original appears as a thick black line of which parts "A-D" and "C-F" are blue and the other parts are red.

Mr John R Stalker said (in effect):- The rest of the Common is to the north of the Katymoss house and garden (OS No. 112) and of the edged blue and red land. Fences were put up on the blue to control animals getting from the rest of the Common into Mr Chalker's garden but did not affect access from Greenholme Farm (it includes OS No. 113 west of the Decision Plan line D-K-E). His father helped Mr Chalker to put up the fences on the blue lines; their purpose was to control stock. He (the witness) felt: "I am entitled to own it if it is going to be owned by anybody".

Before giving a decision I considered that I should inspect the edged blue and red land, but I could not do this before 2 June. Messrs Grant and Fogh could obtain from their solicitors and hand to me at my inspection copies of the letters which had passed between them and Mr Stalker's solicitors; and Mr Stalker could then produce any documents he relied on.

It being then late in the day, at the request of Mr Baxter, I adjourned the hearing so far as it related to the other 6 pieces of the Referred Part to a day and place to be fixed by a Commons Commissioner.

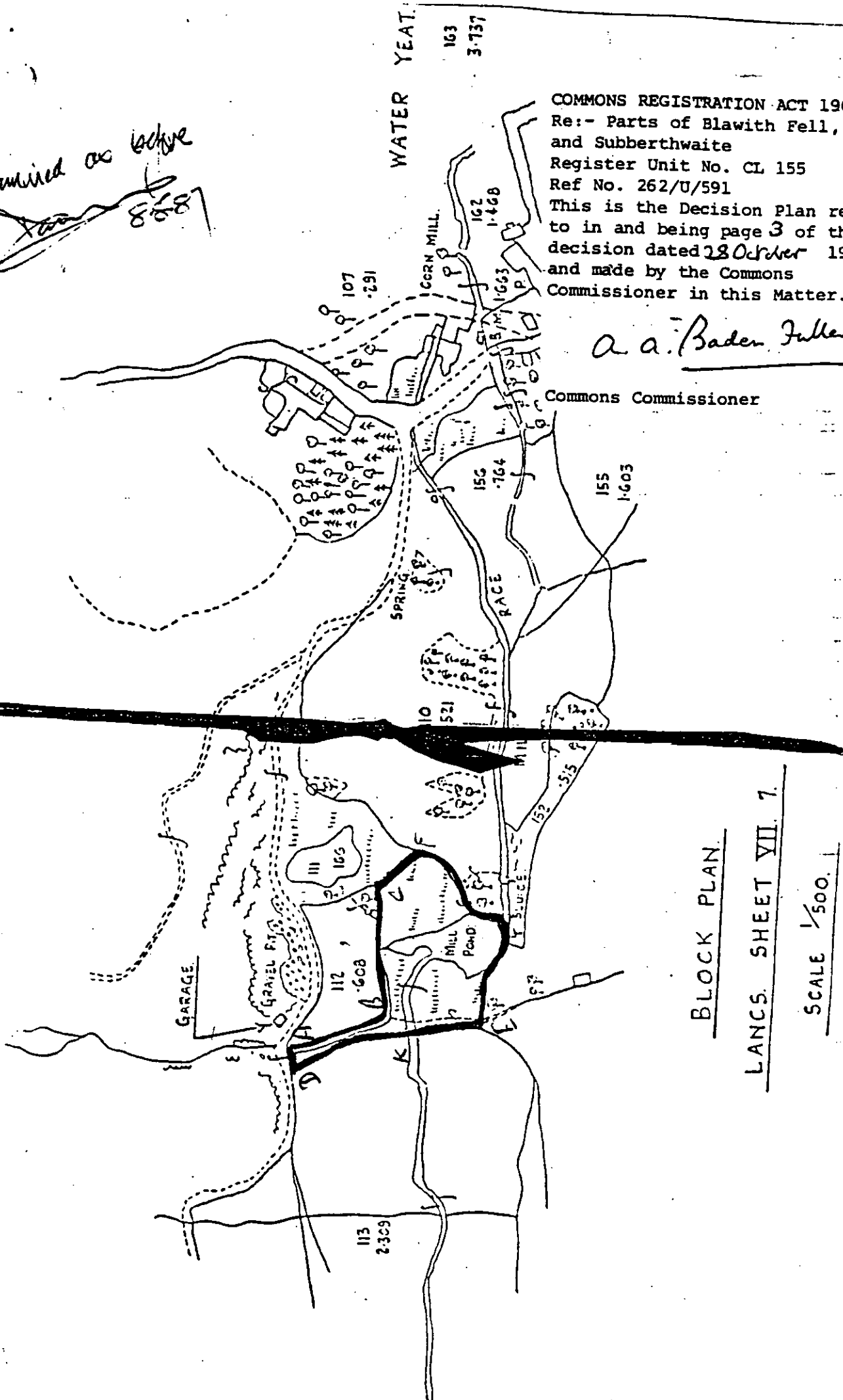
COMMONS REGISTRATION ACT 1965  
Re:- Parts of Blawith Fell, Blawith  
and Subberthwaite  
Register Unit No. CL 155  
Ref No. 262/U/591  
This is the Decision Plan referred  
to in and being page 3 of the  
decision dated 28 October 1987  
and made by the Commons  
Commissioner in this Matter.

*a. a. Baden Fuller*

Commons Commissioner

*Examined as before  
8/2/87*

WATER YEAT.  
163  
3-737



BLOCK PLAN.

LANCS. SHEET VII. 7.

SCALE 1/500.



## June 1987 inspection

At my inspection on 2 June, there were (to begin with): (1) Mr John R Stalker in person, (2) Mrs Eva Grant in person, (3) Mrs Josephine Baxter representing her husband Mr Ross Baxter and (4) Mrs Judith Stalker representing her father-in-law Mr Joseph Reginald Stalker.

We started by driving to Katymoss where Mrs Grant produced the documents specified in Part II of the Second Schedule hereto, and Mr John R Stalker produced the documents specified in Part III of such Schedule.

Vehicular access to Katymoss is from the village of Water Yeat (the A5084 road) which is about 400 yards to the east; it is by a road or track ("Greenholme Road") which is marked on the Decision Plan by double dotted lines. Greenholme Road, after about 300 yards west of Katymoss (OS 112) provides the main vehicular access to Greenholme Farm. Further to the west Greenholme Road (so I was told) provides the main vehicular access to Cocken Skell Farm and there ceases.

The part of the Unit Land in this decision called the Katymoss Piece and defined in the First Schedule hereto is NOT the same as the land which is edged blue and red on the 1974 conveyance and the 1974 declaration plans and which was at my May hearing much discussed. The Katymoss Piece which is part of the Unit Land and is therefore registered as common land under the 1965 Act comprises: (i) an area ("the XY Area") which is south of the line XY on the Register Map (approximately the same as the middle line of the Greenholme Road → shown on the Decision Plan by double dotted lines extending eastwards from the northeast corner of OS No. 112) and north and northeast of the line C-F on the Decision Plan; (ii) an area ("the Hillock Area") which extends from the line C-F on the Decision Plan on the northeast to the east boundary of the "mill pond" delineated on the Decision Plan; and (iii) an area ("the Former Pond Area") which is the said "mill pond" delineated on the Decision Plan. The edged blue and red land referred to in the 1974 conveyance comprises: (a) the Hillock Area; (b) the Former Pond Area; (c) an area ("the West of the Pond Area") which extends from the west side of the Former Pond Area to a line which may be imprecisely defined as a line running south from the point B on the Decision Plan; and (d) an area ("the Former Bridlepath Area"), being the strip on the Decision Plan as bounded by E-K-D-A-B-due south from B-then due west back to E.

After I had inspected the Katymoss Piece, I then from Houkler Hall accompanied by Mr Joseph Reginald Stalker inspected the Houkler Hall Piece, and later I from Picthall accompanied by Mrs Judith Baxter inspected the Picthall Piece.

## The Katymoss Piece

At the hearing Mr Stalker, although indicating that he claimed ownership of the edged blue and red land and accepted that two fences ("the 1954 fences") were



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erected as described by Mr Chalker in his 1974 declaration, seemed unable to describe the land he claimed to own or to state the facts on which he relied as showing his ownership. So at the hearing, I was not satisfied that he was the owner of any part of the Katymoss Piece.

At my inspection, I noticed that the edged blue and red land is diverse, much of it being unlike either the adjoining parts of Greenholme Farm or the adjoining parts of the rest of the Unit Land. In the course of my inspection, Mr Stalker said (in effect):-

(1) Before the fences were put up, the OS 112 land on which now stands Katymoss dwellinghouse and which is now fenced in garden land held with it, was occupied by Mr Chalker as a house and garden. It was surrounded on all sides by land which was open (for humans and animals) to Blawith Fell (a comparatively very large area of land to the north, being now the rest of the Unit Land) which Mr Stalker called "the Common" (properly it is registered as common land under the 1965 Act). The beck delineated on the Decision Plan as flowing into the "mill pond" thereon marked, ceased to be dammed up about 50 years ago; about that time he (now aged 59 years) was taken down there by his father; the mill in the village powered from the "mill race" marked on the Decision Plan had then ceased to operate, and the dam was in disrepair. The Former Bridlepath Area was apparently a bridlepath from the Greenholme Road running by the (derelict) dam southwards. The then state of the edged blue and red land was disadvantageous to Mr Chalker because animals from Blawith Fell (they might or might not be from Greenholme Farm) could easily go and did go to the west and south side of the OS 112 land, and from there break into such land causing damage (eating the plants, treading down the flower beds, etc). It was also disadvantageous to Mr Stalker's father and to himself because animals driven from or to Greenholme Farm along Greenholme Road to and from the Village would stray down the Former Bridlepath Area and across the XY Area, and would be lost sight of, or be troublesome to collect back on to the Road.

(2) So in 1954 (Mr Stalker said "about 1954" against Mr Chalker's "upwards of" 20 years before 1974) Mr Chalker and Messrs Stalker put up the 1954 fences. Now the fence at D-A on the Decision Plan is for humans and animals practicably impenetrable (stout wire); and the fence at C-F is stockproof but has a gate (about 4 feet wide) near F, easily openable. The fences were when put up as they now are (perhaps repaired from time to time).

(3) Since 1954, he and his father before him had grazed the edged blue and red land. For them the 1954 fences were no hindrance; the wall at D-E on the Decision Plan had gaps so was no obstruction to animals going there from Greenholme Farm;



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also, the wall had in it hogholes, meaning holes through which, unless temporarily blocked by a movable stone, sheep could pass. Mr Chalker kept hens on the Former Bridlepath Area.

As to (1):- The before 1954 history of the edged blue and red land as told by Mr Stalker is confirmed by probabilities deducible from the present appearance of its surroundings. I find that before 1954, the Former Bridlepath Area appeared to be part of a public bridlepath. I find that the edged blue and red land was part of a much larger piece of land known as Blawith Fell open to Greenholme Road (and other roads which I need not specify) and that over such piece of land, including the edged blue and red land, animals could move without meeting any obstruction so that (in the absence of special circumstances of which I have no evidence) rights of common attached to any of the surrounding Farms were over all of it (including as aforesaid). I infer from the registrations made under the 1965 Act that such rights at least included rights of grazing attached to the Farms specified in the CL 155 Rights Section.

As to (2):- I find that the 1954 fence at D-A obstructed such public highway rights if any as previously existed over the Former Bridlepath Area, and that Mr Chalker and Messrs Stalker assumed that no effective objection would be made to such obstruction; as a Commons Commissioner I have no jurisdiction over highways although I record that during my inspection of the Picthill Piece I understood that the bridlepath had not been registered. I find that both the 1954 fences substantially interfered with the rights of common then existing over the edged blue and red land, except such rights as were attached to Greenholme Farm; the owners of animals not from this Farm would find it difficult or troublesome to arrange for the opening of the gate near F on the Decision Plan; Mr Chalker and Messrs Stalker assumed no-one would ever object to such interference; nevertheless the December 1968 application to register the Unit Land included the Hillock Area and the Former Pond Area and the subsequent applications for the registration of rights were over all the Unit Land, including such Areas. I find that the erection of the 1954 fences effected a change in the rights of common attached to Greenholme Farm potentially, but in 1954 not certainly, beneficial to Messrs Stalker: in that for grazing profitably on the rest of the Unit Land neither the Former Bridlepath Area nor the Hillock Area would be convenient or advantageous (the main entrance to the Farm, a short distance to the west, would be far more convenient); and in that to get such grass as there might be on the edged blue and red land direct access from the out of repair fence D-K-E would continue (as it has in fact continued) and be more convenient than expecting the animals to find their way there across the XY Area.

As to (3):- I was not persuaded by anything said by Mr Stalker that either he or his father before him ever grazed the edged blue and red land between 1954 and 1970 otherwise than in purported exercise of the grazing rights which before 1954 was and after 1954 attached to Greenholme Farm. I specify 1970, because by section 1 of the Commons Registration Act 1965 any grazing right in 1954 so attached and exercisable over the Former Bridlepath Area and the West of the Pond Area cease to be exercisable because not registered under the Act. Except on the lower parts of the Hillock Area there is little grass there and this grass, together with that of the 3 other areas which make up the edged blue and red land was not enough to make any systematic grazing from Greenholme Farm worthwhile. Both before and after 1954 it might have been convenient to Messrs Stalker on some occasions to turn sheep from Greenholme Farm onto the main part of the Unit Land by the edged blue and red land with the incidental advantage that they could take any grass there on the way;



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it might also before and after 1954 have been convenient to Messrs Stalker to allow any sheep to escape from Greenholme Farm on to the edged blue and red land attracted by such grass as there might be there and to remain there until it was finished. Mr Stalker did not suggest that either he or his father before him had ever done anything on the edged blue and red land other than graze it with sheep. Although much of what he said showed he considered himself to be owner of Greenholme Farm in succession to his father, he produced no documents relating to his ownership (the 1970 Rights Section registration at Entry No. 21 was made on the application of his mother Mrs Elizabeth Margaret Stalker as "owner"). During the inspection Mr Stalker more than once insisted that the edged blue and red land is and always had been "common land", and said nothing to suggest that it was ever regarded as part of his Farm, or that he had any other good reason for being the owner of it.

In these proceedings I am concerned with "ownership", meaning the legal estate in fee simple, see section 22 of the 1965 Act, and not with any right of common of pasture which may now consequentially on the said registration (now final) at Entry No. 21, or otherwise be appurtenant to Greenholme Farm. Upon the considerations above set out, my decision is that Mr Stalker is not now and neither he nor any predecessor of his has ever been in possession of the edged blue and red land, and he is not the owner of it as he to Mrs Grant before the hearing and to me at the hearing claimed to be.

As to Mr Stalker having grazed the edged blue and red land for three generations:- This statement of his made at the hearing, even if qualified by what his solicitors wrote in their May 1986 letter (VC/25 and JRS/16) was misleadingly confusing in that about any such grazing there was a material difference before and after 1954; before 1954 the fences AD and CF were not there, the edged blue and red land which was apparently part of the great area of common land (now registered as CL 155 under the 1965 Act) and over which numerous persons had grazing rights, so any grazing from Greenholme Farm over it across the line DKE was practically no different from grazing from the main gate of the Farm; after 1954 the fences were there and stock proof (a small gate near F and no gate in DA), and it was practically impossible for anyone having grazing rights over the Unit Land with the exception of the owner or occupier of Greenholme Farm to graze the edged blue and red land, and the grazing from such Farm was only possible through hog holes or across a dilapidated stone wall apparently built as a boundary and intended to be stock proof (apart from hog holes). I consider the evidence of Mr Stalker at the hearing to be unreliable, and that I should treat all he said as not in any respect subtracting from any conclusion favourable to Messrs Grant and Fogh on the evidence by them adduced.

There is now a gate between OS 112 and the edged blue and red land situated approximately centrally between B and C on the Decision Plan; such land is fenced with no access to Greenholme Road except conveniently through the OS 112 land and inconveniently through the gate near F on the Decision Plan. The OS 112 land comprises a dwellinghouse and garden which is now and has been since their 1985 purchase in the undisputed possession of Messrs Grant and Fogh as owners. The OS 112 land and the edged blue and red land appear to be one property in one possession; the dilapidation of parts of the stone wall along the line DKE although indicating that sheep from Greenholme Farm might escape onto the edged blue and red land, is not apparently against such apparent unity of possession. It may be that Messrs Grant and Fogh since their 1985 purchase have done little in or on the edged blue and red land except walk over it, tidy it a little, and wonder what they might do if Mr Stalker was not claiming ownership. However this may be, I find that Messrs Grant and Fogh are now and have been since their 1985 purchase



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in possession of the edged blue and red land. Such possession is some evidence of their fee simple ownership of it.

Additionally, as showing the ownership of Messrs Grant and Fogh, I have their 1985 conveyance, the 1974 conveyance, and the 1974 declaration specified in the First Schedule hereto; the November 1985 letter (VG/17) containing information given by Mr Piper, and Mr Stalker's statement that Mr Chalker kept hens on the Former Bridle Path Area. Although not all these documents would be admissible in legal proceedings at which contrary legally admissible evidence was given, in the absence of any such contrary evidence, and in the absence of any contrary ownership claim by anyone else (as above explained I am not disregarding the claim of Mr Stalker), I consider such documents together with their present possession enough for me to give the decision below set out favourable to Messrs Grant and Fogh.

As above explained the edged blue and red land and the Katymoss Piece are not co-extensive. My jurisdiction is limited to land which as common land is registered under the 1965 Act. So formally my decision is:- I am satisfied that Messrs Grant and Fogh are the owners of so much of the Katymoss Piece as is included in the edged blue and red land, and I shall accordingly pursuant to section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register Mrs Vera Grant and Mr Jens Christian Fogh both of Katymoss, Water Yeat, near Ulverston as the owners of the part of the land in this Register Unit which is both within the Katymoss Piece as defined in the First Schedule to this decision and within the piece marked on the Decision Plan and thereon shown as surrounded by a black verge line "ABCEKD". In the absence of any evidence as to the ownership of the remainder of the Katymoss Piece (such remainder being in this decision called "the XY Area"), I am not satisfied that any person is the owner of it and it will therefore remain subject to protection under section 9 of the 1965 Act.

The Houkler Hall Piece and  
the Picthall Piece

My said June inspection of these Pieces was at the suggestion of Mr Baxter, after discussion indicating that the adjourned hearing might be easier if before it I knew something of the appearance of these Pieces.

From what I saw at my inspection, I can form no conclusion as to the ownership of these Pieces; because what Mr John Reginald Stalker and Mrs Judith Baxter then told me was not said at a public hearing, I consider that I cannot properly act on it. Accordingly at the adjourned hearing any evidence adduced in support of an ownership claim should be on the basis that about these pieces I know no more than what was visually apparent.

TURN OVER





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#### The Four Other Pieces

At my May hearing, I had no evidence about the Tottlebank Piece, the Subberthwaite Bank Piece, ~~and~~ the A5084 Roadside Piece ~~and~~ the South of Fairholme Green Piece. I will about these Pieces consider any ownership evidence which may be offered at the adjourned hearing which will be held for my further consideration of the ownership claims of Mr J R Stalker and Mr Baxter to the Houkler Hall Piece and the Picthall Piece. Any person claiming to own any of the said four Pieces should therefore attend the hearing.

#### Final

So these proceedings as regards the Katymoss Piece are concluded, but as regards the six other Pieces specified in the First Schedule the proceedings are adjourned to a date and place to be fixed by a Commons Commissioner. The present intention to hold such a hearing in or after January next.

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  
(The Referred Part)

- (1) The Tottlebank Piece:- A piece in the Register described as southwest of the line L-M, being an area approximately an equilateral triangle the southeast side of which is an irregular line about  $\frac{3}{4}$  of a mile long from a point a little to the north of Birch Bank Farm to a point a little to the north of Tottlebank Farm, and on the Register Map including Tottlebank Height, Tottlebank Moss and White Borran and much ground to the west of Blawith Knott (806 feet).
- (2) The Subberthwaite Bank Piece:- A piece in the Register described as southwest of the line N-O, being an area having a length of about  $\frac{1}{2}$  mile from a point on the northnorthwest about 300 yards southwest of Tottlebank to a point on the southsouth-east about 200 yards east of Kilnbank, and having an average width of about 200 yards.
- (3) The Houkler Hall Piece:- A piece in the Register described as east of the line V-W on the Register Map, being an area about 50 yards from north to south and having an average width of about 20 yards situated southwest of Houkler Hall.
- (4) The Picthall Piece:- A piece in the Register described as east of the line T-U on the Register Map, being an irregular area extending from the point U northeast for about 300 yards and having a south boundary about 150 yards north of Picthall.
- (5) The Katymoss Piece:- A piece in the Register described as south of the line X-Y being an area extending southwestwards from the line X-Y for about 150 yards and situated east and south-east of a bungalow known as Katy Moss.
- (6) The A5084 Roadside Piece:- A piece in the Register described as east of the line K-S and having a length from north to south by the road of about  $\frac{1}{4}$  mile and a width too small to appear on the Register Map.
- (7) The South of Fairholme Green Piece:- A piece in the Register described as east of the line P-Q having as its east boundary about 300 yards of the A5084 road and extending westwards from the road for about 300 yards, which is situated south of the area on the Register Map named Fairholme Green.

SECOND SCHEDULE  
(Documents produced)

Part I: by Mrs V Grant at May hearing

Grant/1

23 May 1985

Examined copy of conveyance by William Hedley Paul Piper to Vera Grant and Jens Christian Fogh of First "close ... called Dan Parrock containing (about) .608 of an acre ... numbered 112 on the Ordnance Map ... with the dwelling house ... Katy Moss ... and SECONDLY (so far as the vendor can lawfully convey the same) All ... interest of the Vendor ... edged blue and red on the plan annexed Conveyance (dated 20 May 1974) ..."



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Grant/2	20 May 1985	Land Charges Act 1972, certificate of search.
Grant/3	20 May 1974	Examined copy of conveyance by Oliver Chalker to William Hedley Paul Piper with plan annexed: parcels relevantly the same as Grant/1.
Grant/4	20 May 1974	Examined copy of statutory declaration by Oliver Chalker with plan marked A (same as Grant/3).

## Part II: by Mrs V Grant at June inspection

VG/11	2 June 1987	Letter from Vera Grant to Commons Commissioners enclosing certified copy documents from Denby & Co and letters (19) and (26).
VG/12	17 & 29 April 1985	Katymoss: Piper to Grant & Fogh. Inquiries before contract; vendor solicitors Hart Jackson & Sons ... "No" to "Have any disputes arisen between the vendor's and neighbouring landowners and farmers over the vendors' occupation of the additional piece of land?".
VG/13	21 May 1985	Contract for sale by W H P Piper to V Grant and J C Fogh.
VG/14	8 August 1985	Copy letter from Denby & Co to J R Stalker with plan and reply from Iain MacI Livingstone & Co.
VG/15	16 August 1985	
VG/16	12 November 1985	Copy letter from Denby & Co to Hart Jackson & Sons: "If Mr & Mrs Piper were aware of the arrangements concerning grazing of livestock on land belonging to Katy Moss, why was this not revealed? If ... not aware ... an arrangement ... or a dispute ..." and reply (17):
VG/17	27 November 1985	"Our client informs us that to the best of his knowledge the land in question was fenced off from the remaining common some 40 years ago by Mr Chalker, the then owner of Katymoss and the present Mr Stalker's father. Our client does not understand Mr Stalker's contention that he has grazed the land in question for the best part of 100 years because since our client owned the property the arrangement has been strictly on an informal basis that Mr Stalker grazed the land as and when he wished and in order to keep the grass down. Our client contends that he



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always had the understanding with Mr Stalker that if he wished Mr Stalker to remove the livestock he would do so and in fact on one particular occasion Mr Piper asked for this to be done as some cattle had strayed on to the garden causing damage in so doing. Therefore, the reason why our client made no reference to this in reply to your enquiries before contract was that as the arrangement was strictly on an informal basis and could be terminated at any time by Mr Piper he did not consider it relevant."

VG/18	2 December 1985	Copy letters from Denby & Co to Iain MacI Livingstone & Co and replies (18) proposing a grazing agreement; (20) reminder;
VG/20	21 February 1986	(21) acknowledgement; (22) propose to give notice to accept grazing agreement or will securely fence; (23) enclosed draft agreement;
VG/21	24 February 1986	(25) reply:- "... Mr Stoker (sic) and his family have grazed this piece of land for almost one hundred years. The question did arise some years ago with Mr Piper in relation to the grazing but this was not followed up at the time and our clients have continued to graze the land ever since. Our clients' Commons Rights are registered. The land was fenced off by Mr Chalker and Mr Stoker (sic) senior over thirty years ago, this was merely to keep control of the stock and to prevent them straying. Our client has himself grazed the land for twenty-three years."
VG/22	20 March 1986	
VG/23	7 April 1986	
VG/25	2 May 1986	
VG/19	17 December 1985	Letter from Denby & Co to Mrs Grant and Mr Fogh.
VG/26	27 May 1987	Letter from Cumbria Council, Department of Property Services to Mrs V Grant enclosing plan of land registered as common land near Water Yeat.
Part III: by Mr John R Stalker at June inspection		
JRS/11	12 November 1976	Letter from W H P Piper to I MacI Livingstone "... when I bought this house the deeds included a document of title to the piece of land in question. This is legal business ... my solicitors ... to clarify the matter between you ... I have told Mr Stalker more than once notwithstanding this apparent change in ownership



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of the piece of land in question I am happy for him to continue to use it as he has done in the past. The only proviso I have made is that whilst his sheep are always welcome, his cattle are not; the land tends to be very marshy and their hoofs do no good to the drainage at all ... in truth there is little nourishment for cattle in any case."

JRS/12	13 October 1976	Letter from I MacI Livingstone to John R Stalker enclosing JRS/11.
JRS/13	8 August 1985	Same as VG/14 above.
JRS/14/A		Letter from I MacI Livingstone to Mr R Stalker enclosing JRS/13.
JRS/14/B	27 November 1985	Copy VG/17.
JRS/14/C	2 December 1985	Same as VG/18.
JRS/15	31 January 1986	Letter from Iain MacI Livingstone to J R Stalker saying they will write to Denby & Co.
JRS/16	2 May 1986	Same as VG/25.
JRS/17	16 August 1985	Same as VG/15.

Dated this 28<sup>th</sup> — day of October — 1987

*A. A. Baden Fuller*

Commons Commissioner