



COMMONS REGISTRATION ACT 1965

Reference No. 220/U/9

In the Matter of Hare Appletree
Fell, Querrmore, Lancaster City,
Lancashire

DECISION

This reference relates to the question of the ownership of land known as Hare Appletree Fell, Querrmore, Lancaster City being the land comprised in the Land Section of Register Unit No. CL90 in the Register of Common Land maintained by the Lancashire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (1) the Executors of the late Rt Hon H W O Earl of Sefton, and Mr J N C James, Mr P G C Corbett, Mr M D T Loup and Mr P H D Crichton as successors of the said Executors claimed (their Solicitors' letters of 30 October 1980, and 30 January 1981) ownership; (2) Mr Peter James Harrison made (his letter of 23 June 1981) a "holding claim" to ownership on behalf of Mrs Barbara Gunn (nee Harrison), Mr Philip Harrison, himself and any other member of the Harrison family proved to be qualified to claim and afterwards provided (letter dated 18 November 1981) a "submission of evidence"; and (3) Mrs M Atkinson claimed (her Solicitors' letter of 16 September 1981) ownership of a small part of the land. 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 Preston on 25 November 1981. At the hearing (1) the said Mr J N C James, Mr M D T Loup, Mr P H D Crichton and Mr John Richard Sclater of Nordic, Bank House, 20 St Dunstons Hill, London EC3 were represented by Miss F E Woodruff solicitor of Bremner Sons & Corlett, Solicitors of Liverpool; (2) Mrs M Atkinson was represented by Mr P Rutherford articled clerk with Holden & Wilsons Solicitors of Lancaster; (3) Mr I Metcalfe on whose application the registration at Right Section Entry No. 2 was made, attended in person; (4) Mr R P France and Mr D France on whose application the registration at Right Section Entry No. 3 was made, were represented by Mr P A Watson articled clerk with Thurn Hill Hunt & Turner Solicitors of Preston; and (5) Mrs Elizabeth Bracken Drinkwater was also represented by Mr P Rutherford.

The land ("the Unit Land") in this Register Unit is approximately triangular, its sides being about 1 mile long (in a straight line a little less), $1\frac{1}{2}$ mile long and $1\frac{1}{2}$ mile long; it slopes from about 800 feet on the south-west to over 1,500 feet at its east corner; according to the Register it contains 184.850 hectares (456.764 acres). In the Rights Section there are 4 registrations of rights to graze and (in some cases) to take turf and/or rushes over all the Unit Land except the land ("the Objection Land") edged red on the plan annexed to Objection 230 made by Mr Walter Drinkwater.



The plan ("the Decision Plan") being page 3 of this decision is an uncoloured copy of the Register Map on which I have marked: (1) with a line AB the division between the Objection Land on the north and the remainder of the Unit Land on the south; (2) with a line PQ the division between the Mrs Atkinson Land (hereinafter defined) on the south and the remainder of the Unit Land on the north; and (3) with a line KLMN the division between the Waterworks Land (hereinafter defined) to the east of and adjoining the public road which crosses the Unit Land and the remainder of the Unit Land which surrounds it on all sides.

Mr Harrison's submission of evidence was accompanied by an extract from Bulmers History and Directory of Lancaster and District (1912) and a photograph of the stone plaque mounted on a tower erected by James Harrison in commemoration of the Jubilee of HM Queen Victoria; it appears from the Directory that "Mr Fredk Jas Harrison" was one of the principal land owners and that "Hare Tree, a shooting box" was used occasionally by him as owner. Mr P J Harrison believes his father's relationship with Mr F J Harrison was "paternal father's cousin".

Miss Woodruff said that Mr Peter James Harrison and Mr Philip Harrison were present before my hearing of this case began and that they after she had shown them the below mentioned 1923 conveyance and statutory declaration, went away and subsequently returned saying they were not going to make a claim. She said that it appeared to her that the vendor under the below mentioned 1923 conveyance was the daughter of Mr F J Harrison mentioned in the Directory. On the information produced by Mr Harrison I am not satisfied that he or any of his father's relations is now the owner of any part of the Unit Land.

On behalf of Mrs Atkinson, Mr Rutherford claimed the ownership of the Mrs Atkinson Land hereinafter defined and in support of this claim produced a conveyance dated 21 April 1949 by which Mr G F E Wilson and Mr J H Jellyman as personal representatives of Mr C H Whittle (he died 12 December 1944) conveyed to Mr T Atkinson and Mrs M Atkinson, High Moor Head Farm containing 79a. 1 r. 4 p. as described in the Schedule including particularly "(OS No.) 44. (Description) Pasture (excluding Jubilee Tower and site thereof). (Area A.R.P.) -. 3.9.". Mr Rutherford for the purpose of identifying the OS No. 44 referred to in the 1949 conveyance produced a conveyance dated 26 March 1979 to North West Water Authority to which was annexed an extract of the said OS map showing plot "44; .807" being the same as that coloured red on the plan enclosed with the said September 1981 letter.

There being no contrary claim to that made on behalf of Mrs Atkinson, I am satisfied that Mr Thomas Atkinson and Mrs Margaret Atkinson under the said 1949 conveyance became the owners of the part ("Mrs Atkinson Land") of the Unit Land included in the 1949 conveyance which part I define as meaning that part of the land in this Register Unit excluding the Jubilee Tower and site thereof which is either the whole or some part of the land on the OS map (1/2500) numbered 44 (with an acreage of 0.807) and of which the approximate position is south of the line AB on the Decision Plan. I have no note or recollection of any evidence being given at the hearing as to how the interests of Mr Thomas Atkinson in the Mrs Atkinson Land came to be extinguished, although it was perhaps implicit in Mr Rutherford's presentation of the case that he is now deceased. Accordingly I give to Mrs Atkinson within six weeks from the day on which this decision is sent to her or to her solicitors liberty to send to the clerk of the Commons Commissioners London evidence showing how (whether by survivorship or otherwise) she has become solely entitled to the land comprised in the 1949 conveyance.

COMMONS REGISTRATION ACT 1965
Re: Hare Appletree Fell, Quernmore,
Lancaster City, Lancashire

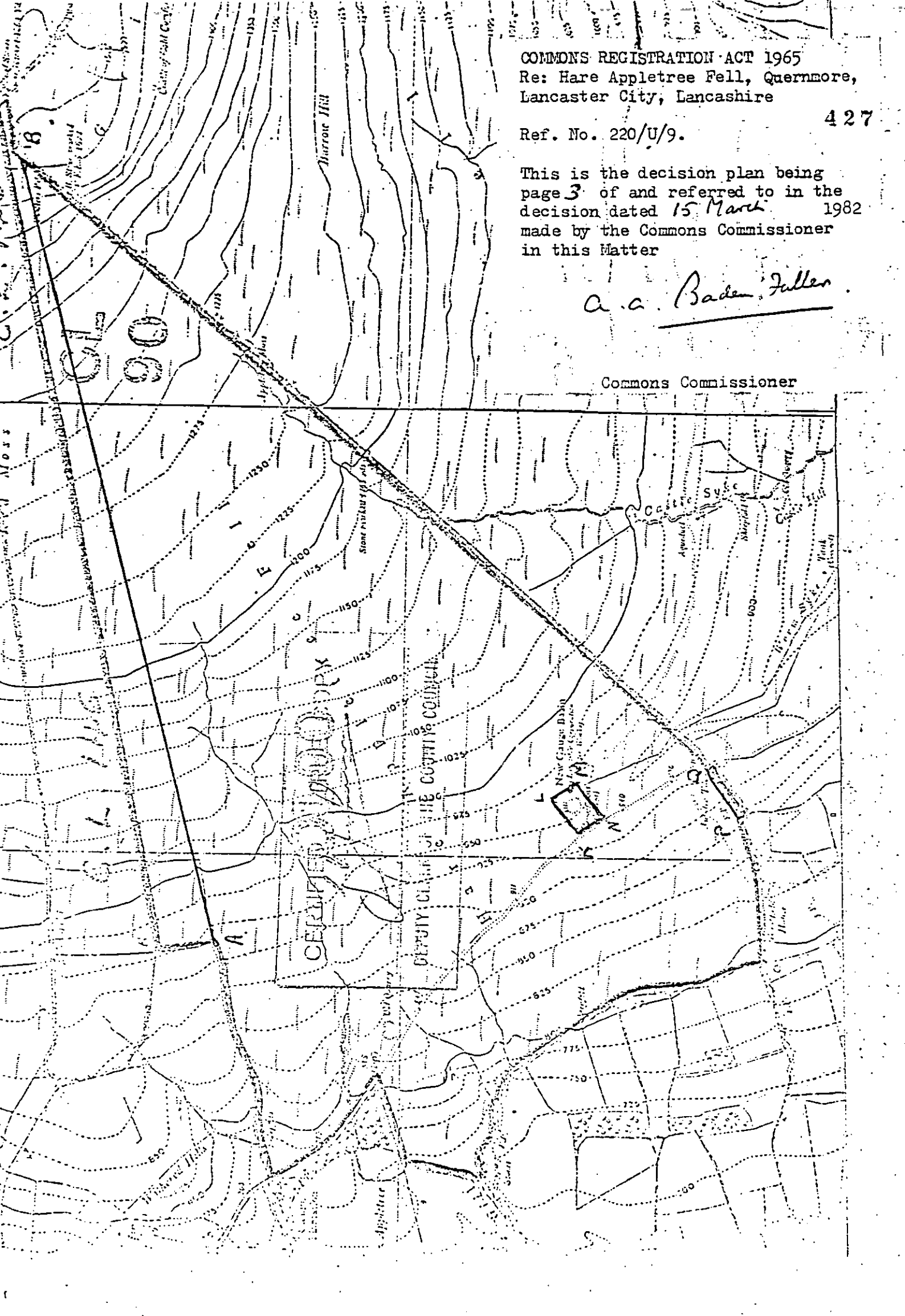
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Ref. No. 220/U/9.

This is the decision plan being
page 3 of and referred to in the
decision dated 15 March 1982
made by the Commons Commissioner
in this Matter

a. a. Baden Fuller

Commons Commissioner





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On behalf of Mrs Drinkwater, Mr Rutherford claimed the ownership of the strip of land being (a little more or less) the Objection Land as hereinbefore defined and in support of such claim he produced a conveyance dated 1 March 1973 by which Mr Walter Drinkwater conveyed to Mr Joseph Edwin Drinkwater and his wife Mrs Elizabeth Bracken Drinkwater, Upper Brow Top Farm "more particularly described in the plan attached hereto and thereon edged red"; the land so edged comprised a strip being the same (perhaps a little more or less) as the Objection Land and a number of other pieces of land to the north-west. Mr Rutherford said that Mr J E Drinkwater had recently died (I understood that an inquest was being held on the same day as my hearing).

On behalf of Messrs James, Corbett, Loup and Crichton (? on behalf of Messrs James Loup Crichton and Sclater), Miss Woodruff claimed ownership of all the land in this Register Unit except: (a) the Mrs Atkinson Land, (b) the Jubilee Tower and the site thereof, (c) the Waterworks Land (as hereinafter defined) and (d) the strip of land being a little more or less than the Objection Land, and in support of this claim produced: (1) a conveyance dated 3 April 1923 which Mrs Frederica Heath Anson conveyed to Rt Hon Osbert Cecil Earl of Sefton the "stinted pasture or Moor formerly called High Cross Moor but now generally known as Hare Appletree Fell ... delineated on the Plan hereto annexed and thereon coloured pink"; (2) a conveyance dated 1 December 1980 by which Messrs F G Apedaile and J M Marshall as surviving personal representatives of the Earl of Sefton (he died 13 April 1972) conveyed to Messrs J N C James, P G Corbett, M D T Loup and P H D Crichton the extensive lands therein described known as the Abbeystead Estate delineated on the plan thereto annexed and thereon edged red and described in the First Schedule thereto; and (3) a statutory declaration made by Mr William Henry Shipley as to the possession of the land comprised in the 1923 conveyance. The plan on the 1923 conveyance is noted "Jubilee Tower not included in this conveyance". The plans on the 1923 and 1980 conveyances also exclude the Waterworks Land which I now define as meaning the piece of land approximately rectangular now or at one time known as New Gauge Basin adjoining the east side a public road which crosses the Unit Land and being on the Decision Plan surrounded by a black line marked "KLMN". On the 1923 conveyance plan it is described as "reservoir covered" and marked "Lancaster Corporation (Waterworks)". On the 1980 conveyance plan it is marked as New Gauge Basin as delineated on the Decision Plan by the line KLMN.

After the said documents had been produced at the hearing, it was noticed as regards the strip being a little more or less than the Objection Land, the plan on the 1973 conveyance (Mrs Drinkwater) did not correspond with the plans on the 1923 and 1980 conveyance (Lord Sefton and Messrs James, Corbett, Loup and Crichton), the difference being a strip perhaps 20 yards wide along or near the line AB on the Decision plan. Being reluctant to decide this boundary dispute solely on the documents produced, at my suggestion and with the agreement of Mr Rutherford and Mr Holden, Mr David France kindly gave oral evidence in the course of which he described the Unit Land in and around the line AB. At the conclusion of the hearing, I said I would consider any agreed solution of this boundary dispute which might after the hearing be put before me on behalf of those represented by Miss Woodruff and Mr Rutherford.

Since the hearing I have had (1) a letter dated 18 December 1981 from Holden & Wilsons enclosing a copy plan from an abstract of title of a mortgage dated 25 February 1914 and a copy of another plan which Mrs Drinkwater had found among some papers at her home; (2) a letter dated 29 December 1981 from Bremner, Sons & Corlett enclosing a



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copy of an agreement dated 14 February 1973 and made between Lancashire County Council and 14 other parties including the Executors of the Earl of Sefton of the second part and Mr Walter Drinkwater of the fifth part together with copies of the plans therein referred to (plan A being the same as that enclosed with the last mentioned letter) being an agreement made pursuant to the National Parks and Access to the Countryside Act 1949 as amended and extended by the Countryside Act 1958 providing for the public to have access to the land ("the Access Land", being open country extending for about 2½ miles from north to south mostly about 1 mile or possibly more wide from east to west and including the Unit Land); and (3) a letter dated 28 January 1982 from Holden & Wilsons accepting that the plan enclosed with their said letter was a copy of that attached to the 1973 agreement about the Access Land.

As I read the letters mentioned above it is now agreed that the boundary for ownership purposes between the lands claimed by Miss Woodruff and Mr Rutherford should be the same as the boundary of the Objection Land referred to in the Rights Section. I am aware of this boundary because the reference to it in the Rights Section is a consequence of the decision dated 29 November 1976 reference 220/D/77 and given by myself after a hearing at Lancaster on 23 November 1976.

As to the ownership of Mrs Drinkwater of the Objection Land, I have not overlooked that her title as put forward at the hearing commenced with the 1973 conveyance and is therefore rather short. However in the said 1976 proceedings the objection of Mr Walter Drinkwater was accepted by those who had applied for registration of rights on the basis as I understood them that he was undoubtedly the owner at the date of the Objection; and the said 1973 access agreement proceeds on the same basis. Mr France giving his evidence at the 1981 hearing did not challenge the claim made by Mr Rutherford on behalf of Mrs Drinkwater. Accordingly I am satisfied that Mrs Drinkwater is owner of the Objection Land.

As to the part of the Unit Land claimed by Miss Woodruff on behalf of Messrs James, Loup, Crichton and Sclater, the title was regularly deduced from the 1923 conveyance to the 1980 conveyance as far as Messrs James, Corbett, Loup and Crichton. I have no note or recollection of any evidence being offered as to how (if ever) the interest of Mr Corbett became extinguished or the interest of Mr Sclater arose. As this may have been an oversight, I give to those represented by Miss Woodruff liberty within six weeks from the day on which this decision is sent to them or their solicitors to send to the clerk of the Commons Commissioners London for my consideration evidence about this. At present I am satisfied that as to this part of the Unit Land Messrs James, Corbett, Loup and Crichton or their successors in title are the owners.

As to the Waterworks Land, it being probable that the North West Water Authority are the owners and that they could easily prove their ownership by production of the relevant documents, I consider they should have the opportunity of giving such proof. Accordingly a copy of this decision will be sent to them or to their solicitor and I gave to them liberty within 3 months from the day on which this decision is so sent to send to the clerk of the Commons Commissioners London for my consideration evidence of their ownership.

Upon the considerations above set out if no evidence is sent to the office of the Commons Commissioners for my consideration pursuant to the liberties hereinbefore granted, I shall pursuant to section 8(2) of the 1965 Act direct Lancashire County Council as registration authority to register (1) Mr Thomas Atkinson and Mrs Margaret Atkinson as owners of the part of the land in this Register Unit in this



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decision called Mrs Atkinson's Land; (2) to register Mrs Elizabeth Bracken Drinkwater of Conder Hill Farm, Quernmore as the owner of the part of the land in this Register Unit in this decision called the Objection Land; and (3) Mr John Nigel Courtney James of 53 Davies Street, London W1, Mr Patrick Geoffrey Corbett of Silver Lands, Boars Head, Crowborough, East Sussex, Mr Michael Douglas Trollope Loup of 53 Davies Street, Berkeley Square, London W1 and Mr Patrick Henry Douglas Crichton of 1/2 Laurence Pountney Hill, London EC4 as all the Unit Land except (a) the Mrs Atkinson Land, (b) the Objection Land, (c) the Waterworks Land, and (d) the Jubilee Tower and the site thereof. In the absence of any evidence I am not satisfied that any person is the owner of the parts of the Unit Land in this decision called the Waterworks Land and the Jubilee Tower and the site thereof and they will therefore (unless pursuant to the liberties herein before granted I am satisfied as to the ownership of the Waterworks Land) both remain subject to protection under section 9 of the 1965 Act. If pursuant to the liberties herein before granted to send further evidence I decide to vary the above directions or to give a new direction about the Waterworks Land, I will give a second or additional decision recording this.

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.

Dated this 15th — day of March — 1982

A. A. Baden Fuller

Commons Commissioner