



COMMONS REGISTRATION ACT 1965

Reference No. 258/U/304

In the matter of Goathland Moor,  
Goathland, Scarborough District,  
North Yorkshire

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") hereinafter defined of land known as Goathland Moor, Goathland, Scarborough District, being the land comprised in the Land Section of Register Unit No. CL4 in the Register of Common Land maintained by the North Yorkshire (formerly North Riding) County Council. The land ("the Unit Land") comprises a tract approximately triangular with sides (very irregular lines) of about  $3\frac{1}{2}$  miles from the north corner to the south corner, of about 3 miles from the south corner to the southeast corner and of about 3 miles from the north corner to the southeast corner; about two thirds are west of and about one third east of the A169 road, which road is excluded from the Unit Land as also are other roads and some enclosed lands, the area of which is very much smaller than that of the Unit Land. Of part ("the SSD Part"), the Secretary of State for Defence is in the Ownership Section at Entry No. 1 registered as the owner, and such registration being undisputed became final on 1 August 1972; the SSD Part comprises two pieces, one near the east corner a little over 1 mile long from east to west and about  $\frac{1}{4}$  of a mile from north to south, and the other much smaller, situated near the north corner and not more than  $\frac{1}{4}$  of a mile long. Of two other parts ("the Land Registry Parts") the title is registered at HM Land Registry under the Land Registration Acts 1925 to 1971 under Title Nos NYK18508 and NYK25729; each of these 2 parts is about 160 feet long and 20 feet wide and each of them has on it one of the dwellinghouses known as Water Ark Cottages situated not far from the west side of Darnholme Lane. The Referred Part means the part of the Unit Land other than the SSD Part and the Land Registry Parts, 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) Mrs Joyce Fussey claimed (her letter of 1/11/83) to be the owner of a small strip which lies between her field wall and the West Beck, extending from the road bridge at New Wath for approximately 100 yards ie the depth of the cliff-face which lies below the field to halfway into the beck; (2) Mr and Mrs R S Jones of New Wath House claimed (his letter of 7 November 1983) ownership of a piece adjacent to New Wath House being an area of moor which contains the spring from which they draw their water supply, the collecting tank and the pump house and the line of land over which the water pipe reaches the house; and (3) the Duchy of Lancaster claimed (their Solicitors' letter of 4 February 1985 confirming a letter of 15 April 1982) ownership of substantially the whole of the Unit Land. No other person claimed to be the freehold owner of the Referred Part 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 Scarborough on 20 February 1985. At the hearing: (1) the Attorney-General for the Duchy of Lancaster was represented by Miss S Cameron QC instructed by Farrer & Co, Solicitors of London; (2) Mr Brian Cooke of 33 Menelik Road, London NW2 as successor of Mr and Mrs R S Jones attended in person and (3) Mrs Joyce Fussey attended in person.

Miss Cameron said that the Duchy had by a conveyance dated 2 April 1964 conveyed land to a predecessor in title of Mrs Fussey and of that land she is now the owner,



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and suggested that such land (so far as it is now included in the Unit Land) could in the Register be described as set out in the paper (F/1) specified in Part I of the First Schedule hereto.

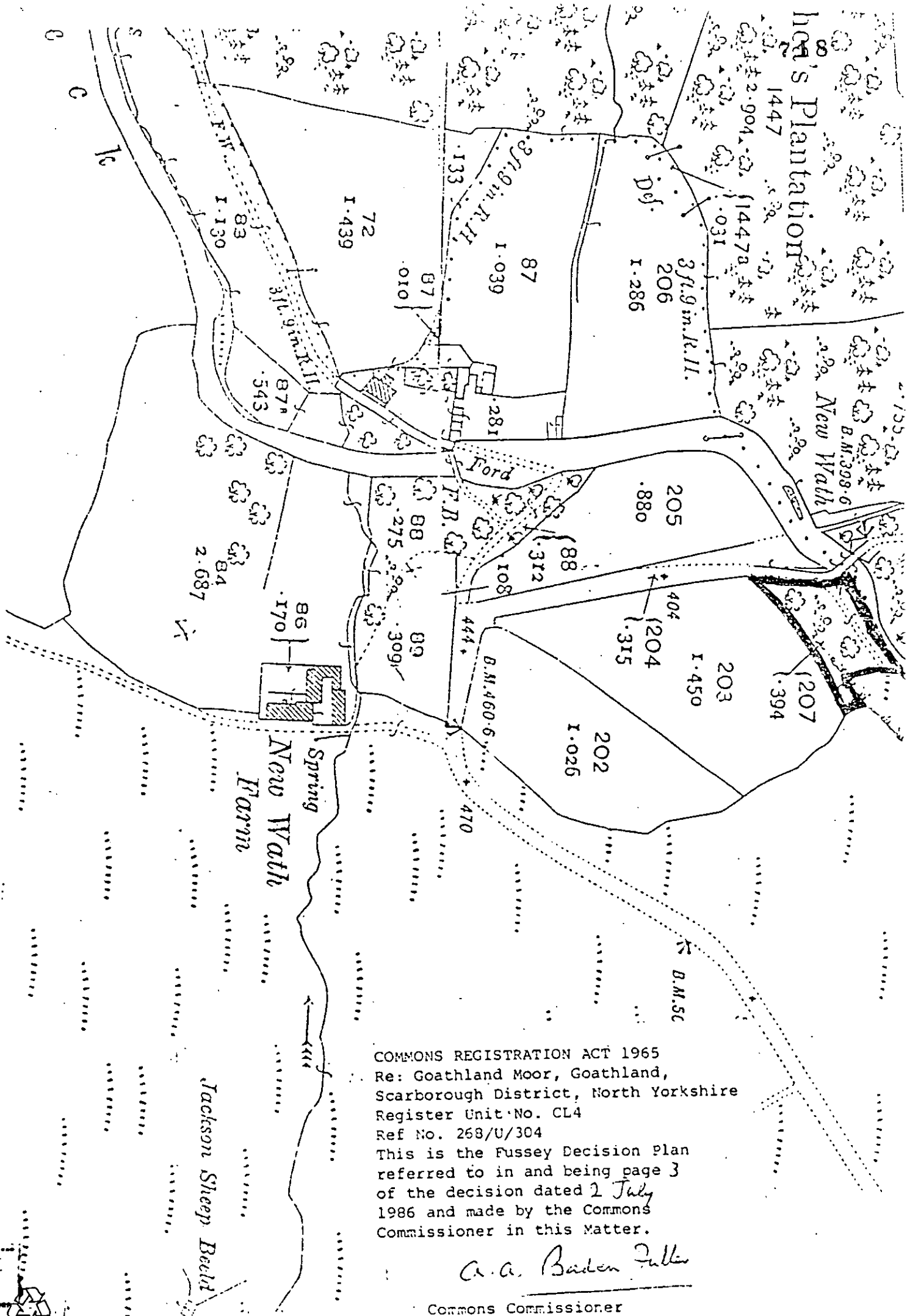
Miss Cameron also said that the Duchy had conveyed to Mr and Mrs Jones by a conveyance dated 15 November 1963 a copy of which (C/1) she produced as specified in Part II of the First Schedule hereto, and suggested that the description of the land now owned by Mr Cooke (so far as it now included in the Unit Land) could in the Register be described as in such conveyance.

Miss Cameron also said (in effect):- The SSD Part had by the Duchy been conveyed to the Secretary of State for Defence by a conveyance dated 16 March 1951 together with an adjoining piece which had subsequently been conveyed back to the Duchy by a conveyance dated 31 March 1964; the Duchy's claim in these proceedings was to all the Referred Part except the 2 pieces of which the ownership of Mrs Fussey and Mr Cooke was conceded, such claim being made in the name of Her Majesty the Queen in the right of her Duchy of Lancaster. In my decision dated 13 March 1974 (reference No. 45/U/105, Register Unit No. VG9) I accepted a similar claim relating to Carleton Green in the Honour of Pontefract which had for many years been in the ownership of the Duchy; the parts of such decision on which she relied are set out in Part III of the First Schedule hereto (the references to the 4th edition 1974 of Halsbury's Laws of England being substituted for those to the 3rd edition 1954); everything in the decision relating to the Honour of Pontefract is applicable to the Honour of Pickering in which the whole of the Unit Land is situated. The Manor of Goathland in which it is also situated was in the 18th and 19th centuries let to the Hill family, lastly to the Rev T R Hill for 31 years expiring in 1887; since then the Manor has been kept in hand by the Duchy, although there have been some leases of and grants of easements over various parts of it.

During the oral evidence next hereinafter summarised, Mrs Fussey produced the said April 1964 conveyance which was made by reference to a plan an uncoloured copy of which ("the Fussey Decision Plan") is page 3 of this decision, the red lines on the original (all by OS No. 207) having by me been thickened in black. She and Miss Cameron were agreed (as I understood them) that the land on which she (Mrs Fussey) is the owner could properly be described as set out in Part I of the Second Schedule hereto.

Also during such oral evidence, Miss Cameron produced a copy of the said November 1963 conveyance (as enrolled in the Duchy records) which was of New Wath House, Goathland, outbuildings, yard and garden by reference to a plan an uncoloured copy of part of which ("the Cooke Decision Plan") is page 4 of this decision, the red line on the original having by me been thickened in black. Mr Cooke and Miss Cameron were agreed (as I understood them) that the land of which he is the owner could properly be described as set out in Part II of the Second Schedule hereto.

In support of the Duchy claim to the remainder of the Referred Part oral evidence was given by Mr Kenneth William Parsons FRICS, FRIEA who now is and since 1973 has been surveyor of lands to the Duchy of Lancaster and as such has access to the Duchy records; from them he produced examined copy documents as specified in Part IV of the First Schedule hereto. He said (in effect):- The part of the Index (D/1) relating to "Goathland Land &c from 1793 to 1919" and relating to "Goathland Grants in Fee from 1836 to 1918", and relating to "Goathland Manor & lands" from 1789 to 1905" includes leases to the Hill family in 1789, 1815, 1828, 1841 and 1856; copies of the 1828 and 1856 leases (the latter for 31 years) are included in the folder D/2. Among the Duchy Records there is no lease or tenancy made after 1887 of the whole Manor.

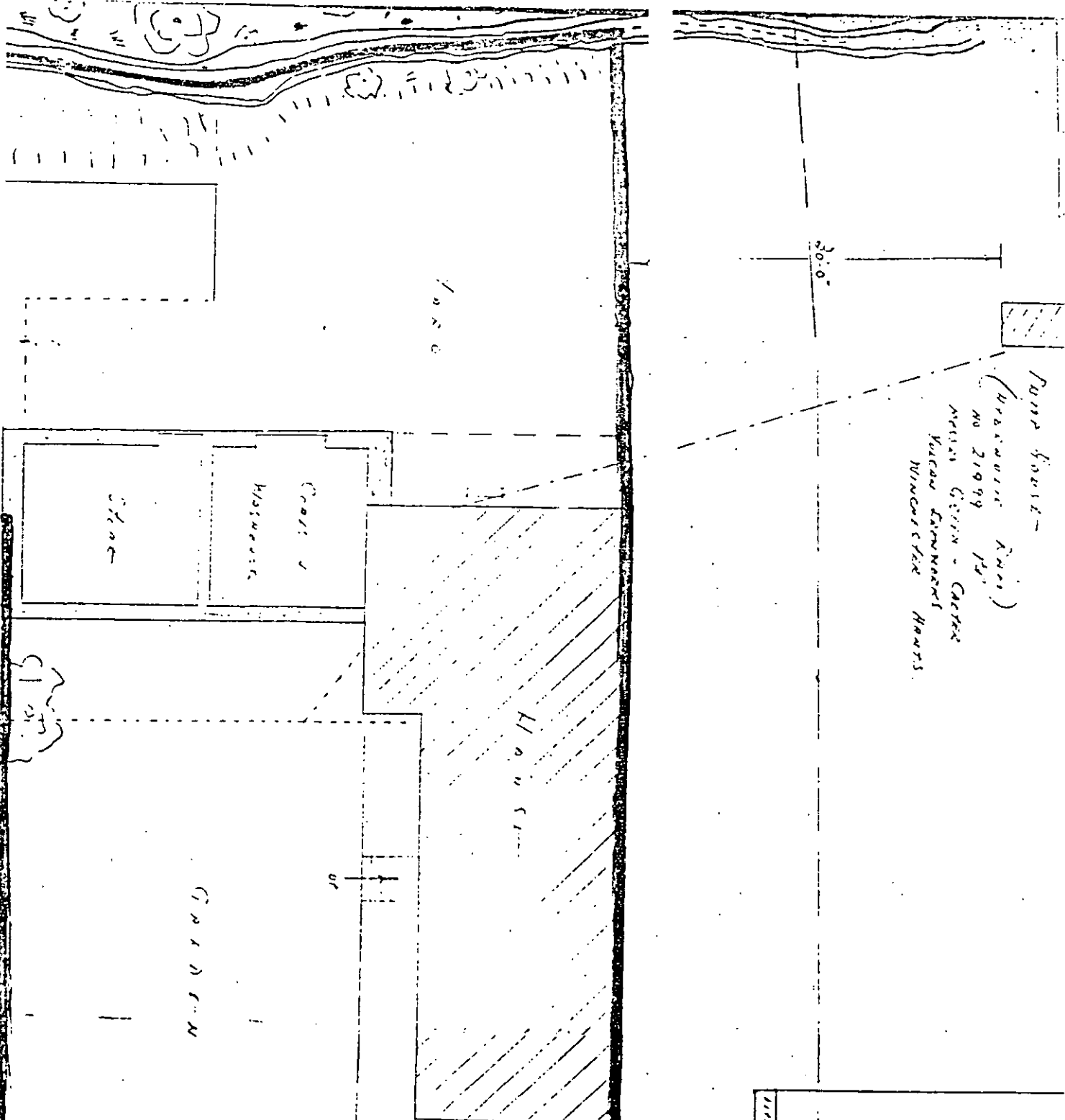


COMMONS REGISTRATION ACT 1965  
 Re: Goathland Moor, Goathland,  
 Scarborough District, North Yorkshire  
 Register Unit No. CL4  
 Ref No. 268/U/304  
 This is the Fussey Decision Plan  
 referred to in and being page 3  
 of the decision dated 2 July  
 1986 and made by the Commons  
 Commissioner in this Matter.

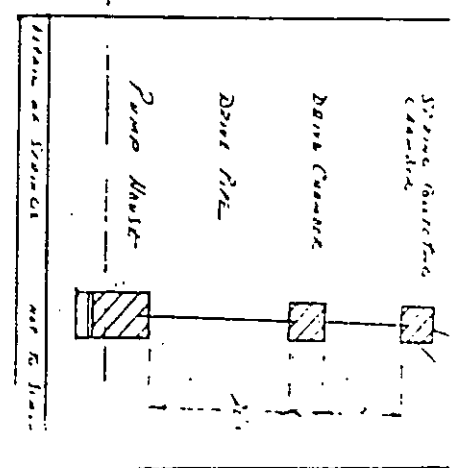
*A. A. Barden Fuller*

Commons Commissioner





Pump House -  
 (Hessington Road)  
 No 21999 1st  
 Mrs G. G. G. G. G.  
 Mrs G. G. G. G. G.  
 Mrs G. G. G. G. G.



COMMONS REGISTRATION ACT 1965  
 Re: Goathland Moor, Goathland,  
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Ref No. 268/U/304  
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The map D/3 shows the 1874 boundary of the Manor; the whole of the Unit Land is within such boundary. Of the other folder D/2 documents: the 1836 grant was of land for the old railway; the 1856 grant was of land added to the churchyard; the 1886 minutes are from an internal book kept in the Duchy office; the 1875 grant was of land for the line of the new railway, that is the eastern of the 2 strips of railway as shown on the Register map; the 1896 grant was of additional railway land (3a.Or.2Cp. ... situate upon Goathland Common); the 1905 presentments are from a Duchy record book; the 1907 grant relates to a road in the village of Goathland; the 1951 conveyance includes the SSD Part; the January 1964 lease relates to shooting over the Unit Land; the 1964 conveyance is the conveyance back (mentioned by Miss Cameron) by the Secretary of State for the War Department; the 1965 lease and the 1968 grants are examples of leases and grants made by the Duchy. The Index D/4 is kept in the office of the Duchy; the page D/5 is an addition to this Index.

On the documents specified in the First Schedule hereto and on the evidence outlined above I am satisfied that the successors of Messrs J G and E Mould and Messrs R S and C E Jones are the owners of the pieces of land specified in the Second Schedule hereto and that the Duchy is the owner of the remainder of the Referred Part; and I shall accordingly pursuant to Section 3(2) of the Act of 1965 direct the North Yorkshire County Council as registration authority to register (1) Mrs Joyce Fussey of New Wath Farm, Goathland and (2) Mr Brian Cooke of 33 Menelik Road, London NW2 as the owners respectively of the pieces of land defined in Parts I and II of the Second Schedule hereto and (3) Her Majesty in right of her Duchy of Lancaster as the owner of the remainder of the Referred Part. Because I have no note or recollection of either Mrs Fussey or Mr Cooke producing at the hearing the conveyances under which they became entitled as successors respectively of Messrs J G and E Mould and Messrs R S and C E Jones my direction as regards them will be held up until they produce or send to the Clerk of the Commons Commissioners such conveyances (or copies properly certified).

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  
(Documents produced)

Part I: claim of Mrs Fussey

|     |              |  |
|-----|--------------|--|
| F/1 | --           | Words suggested as correctly describing Mrs Fussey's land.                                   |
| --  | 2 April 1964 | Conveyance between the Queen's Most Excellent Majesty and John George Mould and Ellen Mould. |
| F/2 | --           | Extract from OS map showing New Wath and OS No. 207 containing .394 of an acre.              |

Part II: claim of Mr Cooke

|     |    |  |
|-----|----|--|
| C/1 | -- | Words suggested as correctly describing Mr Cooke's land. |
|-----|----|--|





15 November 1963

Copy from Duchy records of conveyance between the Queen's Most Excellent Majesty and Robert Stewart Jones and Constance Elizabeth Jones.

Part III: Decision re Carleton Green, Pontefract

Extract (with references to Halsbury Laws of England 3rd edition 1954 up dated to 4th edition 1974) from decision dated 13 March 1974, West Riding VG9 ref. 45/U/105.

Miss Cameron said (in effect):- The 1965 Act applies to any interest of Her Majesty in right of the Duchy of Lancaster, see section 25; accordingly in this inquiry held under section 8, I must consider whether I am "satisfied" that the Duchy "is the owner", see subsection (2). The general position of the Duchy is as set out in Halsbury Laws of England (4th edition 1974) volume 8 paragraphs 1523, 1524, 1528 and 1531; by the Duchy of Lancaster Lands Act 1855, the Chancellor and Council of the Duchy may sell and purchase land; the form of words currently in use in a grant to the Duchy (adapting from Y in the Schedule to the Act) is "unto Her Majesty in right of Her Duchy of Lancaster". By the Assessionable Manors Award Act 1842 (by which certain sections of the Duchy of Cornwall Act 1844 were applied to the Duchy of Lancaster), deeds by which any land being parcel or possession of the Duchy are (among other things) sold leased or granted must be enrolled in the Office of the Duchy; and any copy signed and certified by the Keeper of the Records of the Duchy is to be admissible in all legal proceedings as proof of the original instrument, see section 6 and 14; see also Halsbury ib. paragraphs 1550, 1559, and 1595.

It was, Miss Cameron said, part of the Duchy's case that the Honour of Pontefract had for many years been in the ownership of the Duchy, and in support of this she relied on an Act of Feoffment made in 1475 and an Act of Parliament made in 1485, extracts from which are in The Charters of The Duchy of Lancaster translated and edited by William Hardy published in London in 1845. By the Act of Feoffment His Majesty King Edward 4 intending to cross the sea in person for the recovery of the realm of France with the authority of Parliament enacted that the Archbishop of Canterbury and various other persons should hold various lands including "the honours, castles, lordships, and manours of Pountfret, Tikhull, Knaresburgh, and Pikeryng, with their membres and appurtenaunces, and all manours, lordships, londes, tenementes, rentes and services, parcell of the Duchie of Lancaster in the countees of York and Noyngnam with their appurtenaunces ... to the extent that the revenuez ... be employed to the perfourmyng and executyng of the last Willie that his said Highnes shall make ... of elles if the said Highnes declare and make no Willie concernyng the premisses that then the (Archbishop etc) ... be and stond seased and feoffees of and in the said honours castlex, lordshippes, manours, londes, tenementes and other premysses to the use of His Highness and his heires"; ib. pages 326 et seq. By the 1485 Act after reciting the 1475 Act of Enfeoffment, it was enacted that "the King ure Sovereaigne Lord have hold, enjoye and possede, fro' the said xxi daie of August to him and his heyres for evermore all the honors, castells, lordshippes, mannors, lands, tenements, rents revercions, services possessions and other hereditaments with their appurtenances in the said Acte conteyned ... that were parcell of the Duchie of Lancaster and in the ahnds or possession of the said Edward late King of England ..."; ib. pages 341 et seq.



Part IV: claim by Duchy

|                      |                                 |  |
|----------------------|---------------------------------|--|
| D/1                  | --                              | Extract (pp 136-140) from the Index to enrolment of the deeds with the records of the Duchy of Lancaster.  |
| D/2                  | --                              | Folder containing:-  |
| pp 119-124           | 31 July 1828                    | Lease by the King's Most Excellent Majesty to Richard Hill of the Manor of Goathland and farms for 31 years.   |
| pp 619-662           | 29 April 1828                   | Grant by HM the King to Whitby & Pickering Railway Company of lands within the Honour of Pickering.  |
| pp 513-514           | 25 August 1856                  | Grant by HM Queen to Commissioners for building churches of a piece of land in Goathland.  |
| pp 15 and 19         | 14 March 1866<br>2 October 1866 | Minutes of Duchy Council: Goathland Inclosure of lands in the township proposed/abandoned.   |
| pp 342-344<br>& maps | 9 June 1875                     | Conveyance by Queens Most Excellent Majesty to North Eastern Railway Company of lands in the township of Goathland.  |
| pp 177-178<br>& map  | 5 December 1896                 | Grant by Queens Most Excellent Majesty to North Eastern Railway Company.   |
| pp 174-120           | 25 October 1905                 | Manor of Goathland: presentment of common rights and their proprietors before the Steward by the Homage Jury.  |
| pp 494-495<br>& map  | 2 August 1907                   | Grant by HM King to York Diocesan Trustees of easement of maintaining a road on Goathland Common.  |
| pp 12-13<br>& map    | 16 March 1951                   | Conveyance by the Kings Most Excellent Majesty to HM Principal Secretary of State for the War Department of Part of Goathland Moor.  |
| pp 412-414<br>& map  | 27 January 1964                 | Lease by the Queens Most Excellent Majesty to John Grant Peckston of Shooting and Sporting Rights over land (3,500 acres) at Goathland.  |
| pp 434-436<br>& map  | 31 March 1964                   | Conveyance by HM Principal Secretary of State for the War Department to Her Majesty in right of her Duchy of land coloured pink on map (north part of Widow Howe Moor and east of the A169) except a survey plinth the property of the Secretary of State for Air. |



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|                     |                        |  |
|---------------------|------------------------|--|
| PP 188-300<br>& map | 6 October 1985         | Lease by the Queens Most Excellent Majesty to County Council North Riding of piece of land in Goathland for 21 years (for car park).   |
| PP 62-64<br>& map   | 21 October 1988        | Grant by Queens Most Excellent Majesty to the Mayor Aldermen and Burgesses of the Borough of Scarborough of a perpetual easement for a water main, electric cable and chlorination pipe. |
| D/3                 | 6 November 1874        | Map certified by Steward showing boundary of Manor as considered by the Enclosure Commissioners in 1867.   |
| D/4                 | --                     | My copy of Register map with * Y and * showing location of parts claimed by Mrs Fussey and Mr Cooke.   |
| D/4 bis             | 1925-1967<br>1922-1979 | Goathland grants in fee page 114 continued page 112.<br>Common   |
| D/5                 | 1980-1983              | Extract from Duchy of Lancaster Index to Enrolments from 1980.   |

## SECOND SCHEDULE

## Part I: Mrs Fussey's piece

Piece by West Beck about 0.326 of an acre being so much of OS No. 207 delineated on the Ordnance Survey map (1913 edition) and edged with a thick black line on the Fussey Decision Plan at page 3 of this decision as is within the Referred Part.

## Part II: Mr Cooke's piece

Three pieces by West Beck on which are a pump house, a drive chamber and a spring collecting chamber between 30 feet and 55 feet from the eastern wall of New Wath House, which said house is shown within the thick black line on the Cooke Decision Plan at page 4 of this decision and which pump house, drive chamber and spring collecting chamber are located as shown on the said Plan.

Dated this 2nd day of July 1986.

*A. A. Baden Fuller*

Commons Commissioner

