



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/343

In the Matter of land known as Stony Moor, Newton, Pickering

## DECISION

This reference relates to the question of the ownership of the land mentioned above being the land comprised in the Land Section of Register Unit No. CL.50 in the Register of Common Land maintained by the North Yorkshire 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 Mr N M Allanson claimed to be the freehold owner of the land in question and Lady E M Kirk and various other persons claimed 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 Scarborough on 4th July 1989. I also held a site visit to Stony Moor on the following day.

ATTENDANCE AT HEARING

The hearing was attended by Lady E M Kirk, Mr & Mrs R A Kemp, Mr J R Holliday, Mr S Peirson, Mr & Mrs G Holmes, Mrs E M Darmody, Mr N M Allanson and others.

SITE VISIT

The site visit was attended by Lady Kirk and Mr Allanson. I also saw at the site Mr Hill (brother-in-law of Mr Allanson) and others of his family. Immediately before the site visit I inspected the title deeds produced by Mrs Audrey B Lax at Lady Kirk's house at Newton.

REGISTRATION AS COMMON LAND

The land was registered as common land pursuant to a rights application. Registration became final with modification after a hearing before Chief Commons Commissioner G D Squibb in 1975.

RIGHTS ENTRIES

There are 4 subsisting entries in the Rights section of the Register, all of which have become final. The registered rights include shooting, turbary, the right to collect stone, to graze sheep and to cut firewood.

OWNERSHIP ENTRIES

There are two entries in the Ownership section of the Register, both of which are stated to have become final, but both of which are of questionable effect. The first of these relates to the land west of the line A-B on the Register map. As I understand the position the whole of the land west of the line A-B (together with the strip of land to the north known as Raindale Road) was removed from the registration pursuant to a Notice of Final Disposition made by Mr Squibb dated 30th April 1975. As no representative of North Yorkshire County Council attended the hearing I was unable to confirm with the registration authority that my understanding of the position was correct. Assuming that it is the first entry in the Ownership section should have been deleted.



### UNDIVIDED SHARES

The second entry in the Ownership section, made in favour of Wilfred Sleightholme and Mary Sleightholme, was in respect of one undivided twenty-seventh share in the land to the east of the line A-B on the register map. This entry (as I have already said) is stated to have become final, but it seems to me that it ought never to have been made. Section 1(1)(c) of the 1965 Act provides for the registration of "persons claiming to be or found to be owners of" common land. In the definitions in Section 22(2) ownership is defined as follows:-

"(2) References in this Act to the ownership and the owner of any land are references to the ownership of a legal estate in fee simple in any land and to the person holding that estate....".

Since the property legislation of 1925 an undivided share in land has ceased to be a legal estate, and can only take effect as an equitable interest. Equitable interests are not registrable under the 1965 Act, with the consequence that the second entry in the Ownership of the Register in respect of an undivided share ought not to have been made and is ineffectual.

### AMBIT OF THIS DECISION

This Decision relates to the part of the original Register Unit lying east of the line A-B on the Register map and with the exclusion of the strip to the north known as Raindale Road. Save for the Entry of the Sleightholmes in respect of an undivided share in the land which I consider to be nugatory, no person is registered under Section 4 of the 1965 Act as the Owner of any part of this land, which I shall refer to in the remainder of this Decision as "The Moor" or as "Stony Moor".

### OPPOSING CLAIMANTS

There were two opposing claims before me. Lady Kirk presented the case for claimants other than Mr Allanson. Mr Allanson presented his own case. Lady Kirk addressed me on behalf of herself and other persons who claimed undivided shares in the Moor. Mr Allanson claimed a possessory title.

### INCLOSURE ACT OF 1785 AND AWARD OF 1789

The origin of the undivided shares in the Moor is an Act for Dividing and Inclosing certain Commons and Waste Lands within the Township of Pickering and Newton in the North Riding of the County of York, 25 George III (1785), and an Award made thereunder in 1789. The Act is 38 printed pages long, and the Award is hand-written on 41 sheets of parchment. In neither document do I find any reference to Stony Moor by that name, but with a little diligence it is possible to identify it on one of the plans accompanying the Award.

### THE ACT OF 1785

Lady Kirk referred me to three or four specific provisions of the Act. By the first paragraph (of the enactment) on page 4 the Commons and Waste Lands (mentioned in the recitals) which exceeded the yearly value of three shillings per acre were to be divided and inclosed; the residue were to be divided and allotted as thereafter mentioned. Lady Kirk said that Stony Moor came within the latter category.



#### PRESENT OWNERS OF UNDIVIDED SHARES

Lady Kirk told me that she believed she could trace other persons owning a total (including her own 5 shares) of 18 or more undivided twenty-seventh shares in the Moor. She listed these as follows:-

1. Mr G Holmes as successor to the Sleightholmes
2. Mr A B Brown as successor to Vasey (Rights Entry No. 2)
3. Mrs E M Darmody as successor to Faulkner (Rights Entry No. 3)
4. Mr S Peirson (Rights Entry No. 5)
5. Mr J R Holliday
6. Mrs Scott
7. R Pledger or other successor to Mrs A M Dunnington
8. The purchaser of Newton School (or the Education Authority)
9. Mrs A B Lax
10. Mr A G Briggs (2 shares)
11. E Tindale
12. Lady Kirk herself (5 shares).

#### VESTING IN PUBLIC TRUSTEE

For present purposes it is not necessary for me to examine the titles of every one of these persons in detail. If I am satisfied that immediately before 1st January 1926 (on which date the Law of Property Act, 1925 came into force) the Moor was vested in more than four persons in undivided shares then under the Transitional provisions of the First Schedule to the 1925 Act the legal estate in the Moor would on that date automatically have vested in the Public Trustee upon the statutory trusts. Lady Kirk accepted that this was the position, although she invited me to hold that such vesting occurred under Part IV rather than Part V of the First Schedule (as to which, see later in this Decision).

#### LADY KIRK'S OWN TITLE: (five twenty-sevenths)

Lady Kirk said that she, jointly with her 3 sons, purchased Manor Farm, Newton with some 30 acres of land from the Aconleys in 1978. She produced the originals of two Conveyances both dated 8th June 1978:-

- (i) in respect of the farmhouse in favour of herself and her sons
  - (ii) in respect of the farm buildings and land in favour of herself alone.
- The latter Conveyance expressly included 5 undivided twenty-seventh parts of Stony Moor.

The title to Manor Farm can be traced back to the Will of John Woodall Woodall in 1902. He devised his property generally to his nephew Charles Dent. In 1922 Dent conveyed the farm to Wood, and in 1946 Wood's Executors conveyed it to Thomas Houlden Coverdale. Finally by a Conveyance dated 6th April 1965 Thomas Houlden Coverdale conveyed the farm to the Aconleys.

All the Conveyances from 1922 onwards expressly include 5 undivided twenty-seventh parts in Stony Moor.

#### MR AND MRS G A BRIGGS: (two twenty-sevenths)

Since the hearing the Commons Commissioners have received copies of title deeds relating to Nos. 1 and 2 Church Row Newton from two separate sources:-

- (i) Ellis Lakin & Co, Solicitors of Pickering on behalf of Mr & Mrs Briggs
- (ii) Dr D L Wynn-Williams



By the second paragraph on page 17 the Commissioners appointed under the Act were directed to allot the residue of the Commons and Waste Lands to and amongst the owners of ancient messuages and sites of ancient messuages according to their rights and interests to be held by them in severalty subject to such regulations for stocking as the Commissioners should direct.

By the first paragraph on page 21 it was lawful for the persons to whom any allotment should be made of Commons and Waste Lands not directed to be inclosed to inclose the same, and from that time all rights of pasture thereon by the cattle of the other proprietors should cease and determine.

Another provision which Lady Kirk referred me to but which she considered not to apply to Stony Moor because it was not directed to the inclosed, was the first paragraph on page 17, which reads as follows:-

"Provided always, and be it further enacted that any three or more of the persons entitled to allotments of the said Commons and waste Lands hereby intended to be divided and inclosed, shall and may have such Allotments laid and allotted to one entire plot of Ground, in case they shall request the same, and give Notice thereof in writing to the said general Commissioners, at their first or second Meeting; and such Plot of Ground shall and may thereafter be held and enjoyed as a Common Pasture by the several proprietors so requesting the same (subject to such subsequent Division amongst themselves as they shall at any Time agree upon) in such Manner, and under such Regulations, as the said General Commissioners shall in that Behalf direct and appoint, in and by their said Award".

It seems to me that this is probably the provision under which Stony Moor was dealt with in the subsequent Award. However it matters little under precisely which provision of the Act the Award was made in respect of Stony Moor. It is with the provisions of the Award itself that I am mainly concerned.

#### THE AWARD OF 1789

The relevant provisions of the Award are at page 38. 121 acres and 7 perches of land on the High Moor identified by reference to the ownership of the adjoining land in every direction were awarded to twenty named persons, to be held by them in the proportions there set out. The allotment was made in undivided twenty-seventh parts to 19 individuals, three of whom were trustees for the Master for the time being of the School at Newton (the twentieth person being named as both one of the Trustees and as an individual). Three persons took 3 shares each, three others took 2 shares each and the remainder took one share each, making up a total of 27 undivided shares. These allotments are stated to be made in respect of ancient Common Right messuages or sites thereof in the township of Newton.

#### THE AWARD MAPS

Lady Kirk supplied me with copies of two of the Maps which accompanied the Award of 1789. From a perusal of these I am satisfied that the entirety of the Moor (as defined above) falls with the area marked thereon "Robert Baker and others. Common Pasture". Robert Baker was one of the persons named in the Award as taking 3 undivided twenty-seventh shares. I am also satisfied that the description at page 38 of the Award of the 121 acres 7 perches to which the provisions set out above relate by reference to the ownership of the adjacent lands coincides with the names of the adjoining owners shown on the relevant map.



MR J R HOLLIDAY: (one twenty-seventh)

Mr Holliday of Elm House, Newton produced the original of a Conveyance dated 8th April 1878 between (1) Frank Langbourne and (2) William Snowdon of a house in the Township of Newton, some 10 acres of land at Newton Bank and a Twenty-seventh undivided share in the Moor. He said that the modern deeds of his property made no mention of the twenty-seventh part.

MR & MRS PEIRSON: (one twenty-seventh)

Mr Peirson of Eddystan Cottage, Newton produced the following title deeds to his property:-

(i) a Conveyance dated 6th April 1916 between (1) George Robinson and (2) George Taylor

(ii) Office copy Probate of George Taylor dated 14th January 1926 in favour of Hannah Taylor

(iii) Conveyance dated 29th November 1955 between (1) Hannah Taylor and (2) Stanley Peirson and Edith Wood (now Mrs Peirson).

The Conveyance of 1916 expressly included one undivided twenty-seventh share in the Moor. In the 1955 Conveyance however no mention is made of this share. Nevertheless from the point of view of establishing the position as it existed on the 1st January 1926 I am satisfied that this twenty-seventh was vested in Hannah Taylor immediately before that date.

MRS E M DARMODY: (rights of common)

Mrs Darmody of Corner Cottage, Newton produced a certified copy of a Conveyance dated 21st July 1978 between (1) L C G Gilling and Brenda Gilling and (2) Michael John Darmody and Elizabeth Maureen Darmody. This conveyance included the common rights referred to in a conveyance dated 27th July 1970. She also produced a certified copy of a Conveyance of that date between (1) Enid Faulkner and (2) Vernon Calloway and Mabel Calloway. This included "such rights of common as the vendor may be possessed or entitled to". Lady Kirk submitted that anyone who had rights on the Moor must have been entitled to a share in the Moor, unless the rights were acquired by prescription.

MRS AUDREY B LAX: (one twenty-seventh)

Mrs Lax (at Lady Kirk's house at Newton) produced two old deeds relating to her family estate. These were a Conveyance dated 6th April 1878 between (1) Frank Langbourne and (2) John Watson, and a Conveyance dated 4th May 1886 between (1) Mary Watson and (2) Henry Boulton. Mrs Lax explained that Henry Boulton was either her grand-father or great grand-father (both of them had the same name).

The 1886 Conveyance was in respect of Raindale New Inn and about 100 acres of land. It expressly included a one twenty-seventh undivided share in the Moor. Mrs Lax said that the land remained in trust in the family until 1968. She produced a copy of a Conveyance dated 6th March 1968 between (1) Rosa Mary Mason (Mrs Lax's mother) (2) Mrs Lax and Philip Madeley Wilson (as Trustees) and (3) the Minister of Agriculture and Fisheries of 97.45 acres of land. This conveyance did not mention the undivided share in the Moor. Mrs Lax said that this share had never been conveyed away.



Ellis Lakin & Co, submitted an examined Epitome of Title as follows:-  
5th November 1921 Conveyance between (1) W Kendall and (2) H Hesp  
3rd February 1964 Probate of Will of H Hesp  
1st April 1964 Assent in favour of J Hesp  
19th November 1981 Probate of Will of H Hesp  
26th February 1982 Assent in favour of Elizabeth Ann Briggs and Anthony Gordon  
Briggs.

The Conveyance of 1921 and both Assents expressly included two undivided twenty-seventh shares in Stony Moor.

Dr Wynn Williams submitted copies of the same documents. It appears from indorsements on the Assent of 26th February 1982 (as supplied by Ellis Lakin & Co) that both cottages 1 and 2 Church Row, have been sold off by Mr & Mrs Briggs, No. 1 to Dr and Mrs Wynn-Williams and No. 2 to Mr & Mrs Trevor Cartwright. Dr Wynn Williams concedes that neither of the two undivided shares in the Moor was expressly conveyed to him and his wife. Although I have not seen a copy of the Conveyance to the Cartwrights, I assume that no express conveyance of an undivided share or shares was made to them either, and that it was the intention of Mr & Mrs Briggs to retain both such shares in the Moor.

MR & MRS GORDON HOLMES: (one twenty-seventh)

Prior to the hearing Ellis Lakin & Co, Solicitors of Pickering acting for Mr & Mrs Holmes sent to the Commons Commissioners a copy Conveyance dated 23rd January 1976 and made between (1) Jonathan Geoffrey Shaw and (2) Gordon Holmes and Josephine Lesley Holmes in respect of the dwellinghouse and land known as South View, Newton. This Conveyance expressly included one undivided twenty-seventh part in the Moor. Ellis Lakin & Co. stated that they had title deeds going back to 1888 showing the same undivided share.

At the hearing Mrs Holmes produced the originals of the 1976 Conveyance and of a previous Conveyance dated 19th December 1968 between (1) W Sleightholme and Mary Sleightholme and (2) J G Shaw which included the undivided share.

MRS MARY SLEIGHTHOLME: (one twenty-seventh)

As mentioned above Wilfred Sleightholme and Mary Sleightholme were finally registered in the Ownership section of the Register as owners of one undivided twenty-seventh share in the Moor (a registration which I consider to be ineffective). The address of the Sleightholmes given in the register is South View, Newton. As appears in the last foregoing paragraph of this Decision South View (together with an undivided share in the Moor) was conveyed by the Sleightholmes to Jonathan Geoffrey Shaw on 19th December 1968 (a few weeks after the date of the Sleightholmes' application for registration of their twenty-seventh share in the Ownership section).

On 31st March 1989 Mrs Sleightholme wrote to the Commons Commissioners claiming to be owner of a one-twenty-seventh share in the Moor as survivor of herself and her husband. She was then informed that her registration was not in question, which was certainly misleading. She did not attend the hearing.

As I understand the position the Sleightholmes' twenty-seventh share in the Moor was conveyed away to J G Shaw in 1968, and is the same twenty-seventh share which is now vested in Mr and Mrs Holmes. If this is correct Mrs Sleightholme has no claim to a share in the Moor in any event.



#### OTHER CLAIMANTS TO UNDIVIDED SHARES

No satisfactory evidence was put before me as to any other claimants to undivided shares in the Moor.

#### CONCLUSION AS TO UNDIVIDED SHARES

It is not my function on this inquiry to allow or disallow individual claims to be entitled to undivided shares in the Moor. As I have already said above, if immediately before 1st January 1926 the Moor was vested in more than four persons entitled in undivided shares, then on that date the legal estate would have vested in the Public Trustee on the statutory trusts.

Although the picture is far from complete, on consideration of the documents produced by Lady Kirk, Mr & Mrs Briggs, Mr & Mrs Holmes, Mr Holliday, Mr & Mrs Peirson and Mrs Lax I am satisfied that on 1st January 1926 the Moor was vested in more than four persons entitled in undivided shares, so that on that date it became vested in the Public Trustee on the statutory trusts.

#### MR ALLANSON'S CLAIM TO A POSSESSORY TITLE

Notwithstanding the vesting of the Moor in the Public Trustee in 1926, it would be possible for some other person to have acquired a title by adverse possession under the Limitation Acts subsequent to that date.

Mr Noel Maurice Allanson prior to the hearing put his claim to a possessory title in writing in the following terms:-

"I the undersigned Maurice Allanson have enjoyed the uninterrupted use of that piece of land known as Stony Moor in the Parish of Newton Upon Rawcliffe since 1975 when I took over the running of Upper Farm Stony Moor. My father the late John Allanson enjoyed the use of Stony Moor for the preceeding 45 years.

The land has been used for the grazing of cattle and sheep and the Ministry of Agriculture Fisheries and Food have acknowledged this use through their calculations for hill compensatory amounts and previously hill cow and hill sheep subsidies. Machinery has been kept on this land and temporary buildings erected. No other person to my knowledge has either grazed stock or disputed my right to use the land since I took over Upper Farm in 1975".

#### PAST HISTORY OF THE ALLANSON CLAIM

The history of Mr Allanson's claim can be traced back through the Decision of Chief Commons Commissioner G D Squibb dated 4th March 1975 in respect of the provisional registration by John Allanson and Noel Maurice Allanson of the right to graze 35 cattle on the Moor. In his Decision the Chief Commons Commissioner said as follows:-

"The two Mr Allansons, who are father and son, are the tenants of Upper Farm, Stony Moor, which is the property of the Forestry Commission. The Allansons went to Upper Farm in 1936. Their immediate predecessor at Upper Farm was a Mr Smith, who had been there for three or four years, and Mr Smith had followed a Mr Grayson, who had been there for 22 years.

Mr John Allanson said that Mr Grayson and Mr Smith had grazed cattle on the land in question and that he did so because they had done so. At first Mr Allanson had 10 cattle, but he built up his herd to 35, which he attained about 10 years ago. Nobody ever objected to the Allansons' cattle grazing on the land. Mr Aconley knew about it, but allowed it to continue as a matter of goodwill".



The Chief Commons Commissioner refused to confirm the Allansons' rights registration because the right they claimed was in gross, that it to say it was not attached to any land. Although such a right may be acquired, it is not easy to establish, as the Prescription Act, 1832 does not apply to rights in gross. For this reason the Chief Commons Commissioner disallowed the registration.

#### PRESENT POSITION OF MR ALLANSON

Mr John Allanson having died, Mr N M Allanson now comes back, some 14 years after the hearing before the Chief Commons Commissioner, with a claim to a possessory title to the Moor based on the same facts as were before the Chief Commons Commissioner, but with the addition of some further facts to bring the claim up-to-date. Mr N M Allanson's personal situation has to some extent deteriorated, as the Forestry Commission has not yet renewed in his name the tenancy of Upper Farm held by his father, and there now appears to be doubt whether they will do so.

#### MR ALLANSON'S ORAL EVIDENCE

Mr Allanson said he was born at Upper Farm 44 years ago. His father died 4 years ago- he was still tenant of Upper Farm. For the past 16 years they had kept quite a lot of cattle on the Moor - between 2 and 35 cows and calves and a few sheep. Nobody had said anything to him about it. He had seen Mr Holmes shooting, and other people walking on the Moor. He had put farm implements on the Moor, tractors and trailers, to store them. He had fenced part of the boundary. He kept up the fence between the Moor and the Forestry Commission's land, to keep cattle from straying. He had never asked anybody's permission to be on the land, and no-one had ever objected to his animals being on the land.

Cross-examined successively by Lady Kirk and Mr Holmes, Mr Allanson made few admissions. He didn't remember marking trees with Lady Kirk, which she said she gave him permission to cut down. He didn't agree that he had removed trailer loads of rubbish at their request - he had merely moved them round a bit. He was claiming ownership of the whole Moor. He no longer lived at Upper Farm. He had seen people riding on the Moor - he didn't know who they were. From time to time he kept broken down cars on the Moor - he sold cars for scrap. He had done this for many years.

#### MR HILL'S EVIDENCE

Mr Hill gave evidence at the site. He was brother-in-law of Mr Allanson - for 32 years had been one of the family. Mr Aconley had never exercised any rights on the Moor. He had never seen anyone exercising rights other than the Allansons. He had seen their cows, calves, sheep on the Moor for 32 years - 20 odd animals regular, including sheep from Lower Farm 20 years ago.

#### LADY KIRK'S EVIDENCE

Lady Kirk had known the Moor since 1978. She had rarely seen cattle or signs of cattle there, nor many cow pats. She was often on the Moor. She had given Mr Allanson her consent to his cutting down trees, provided he removed his rubbish. Together they marked 25 trees.





### OBSERVATIONS ON SITE VISIT

I walked right round the boundaries of the Moor, starting at Upper Farm, proceeding south, then east, then north and back via the track known as Raindale Road. In spite of Mr Allanson's assurance that there were "two or three" animals on the Moor, I saw none nor any traces of any. The fence between the Forestry Commission land to the west and the Moor was mostly strands of barbed wire on posts, which could well have been renewed by Mr Allanson about 12 years ago as he claimed, but was on the whole in poor condition. There was a broken gate near the south-west corner. The southern boundary ran along a beck, and towards the south-east corner there was a gate marked "National Park". To the west the ground fell away steeply, and the precise boundaries were none too clear. To the north, on the far side of the eastern end of Raindale Road, there was a stock-proof fence apparently erected by the Forestry Commission. The Moor was certainly not enclosed, since anyone could approach it from Raindale Road, which runs along the frontage of the three properties known as Upper Farm, Middle Farm and Lower Farm.

### ADVERSE POSSESSION

To establish a claim to land by adverse possession under the Limitation Acts is never easy. It is all the more difficult in the case of common land over which there are registered rights. The acts relied on by Mr Allanson in support of his claim fall far short of what is required to satisfy the requirements laid down in such cases as Powell v McFarlane (1979) 38P. & C.R.452 and Buckinghamshire County Council v Moran (1989) 3 WLR 152.

I have no hesitation in deciding that Mr Allanson's claim to ownership of the Moor by adverse possession must fail.

### PART IV OR PART V OF THE FIRST SCHEDULE TO THE 1925 ACT

Having decided that this is a case in which I shall direct the registration authority to register the Public Trustee as Owner of the Moor, I doubt whether it is necessary for me to determine whether on the 1st January 1926 the legal estate in the land vested in the Public Trustee under Part IV or under Part V of the First Schedule to the Law of Property Act, 1925. The result, so far as my jurisdiction as a Commons Commissioner is concerned, is the same. Nevertheless Lady Kirk asked me to decide in favour of Part IV rather than Part V. I shall therefore express my view on this thorny question of law.

#### PART IV

Part IV of the Schedule is headed "Provisions subjecting land held in undivided shares to a trust for sale". In a case (such as the present) where immediately before 1926 the land was vested in more than 4 persons in undivided shares, then under paragraph 1 sub-paragraph (4) the entirety of the land vested in the Public Trustee upon the statutory trusts for sale, provided that (inter alia) any persons interested in more than an undivided half of the land may appoint new trustees in the place of the Public Trustee.

As I understand it, Lady Kirk hopes to be able to replace the Public Trustee in this way, although to do so she will still have to find persons entitled to more than an undivided half of the land, and the evidence before me fell short of this total.

#### PART V

Part V of the Schedule is headed "Provisions as to Party Structures and Open Spaces". Paragraph 2 provides as follows:-



"2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the Court, and, subject to any order of the Court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting."

#### PREVIOUS DECISIONS OF COMMONS COMMISSIONERS

I have looked at half a dozen cases in which in the past various Commons Commissioners have decided in favour of Part IV, and to rather more in which they have decided in favour of Part V. I have also seen one or two cases in which a decision in favour of the Public Trustee has been made without specifying any particular Part of the Schedule. I do not feel myself bound to follow any of these Decisions.

#### HIGH COURT DECISIONS

There are however two Decisions of the High Court by which I am bound. In Re Cotherstone Moor (1961) 179 E.G.11 Pennycuik J. held that a statutory regulated pasture was precisely the type of case to which the authors of the Act intended Part V to apply. In Re Brotherton Marsh Pasture, West Riding of Yorks (1965) 112 S.J. 48 Ungood - Thomas J. reached the same conclusion regarding land awarded under a private inclosure Act of 1793.

#### MY CONCLUSION

Both cases referred to in the previous paragraph of this Decision were decided before Commons Registration, but it seems to me that nothing in the 1965 Act affects the matter in any way. In the present case the undivided shares arise under an Award made pursuant to a private inclosure Act; and each owner of an undivided share has rights of access and user over the Moor. I do not consider it arguable that the Moor is not an "open space" within the meaning of Part V. Accordingly I am forced to the conclusion that Part V rather than Part IV of the First Schedule to the Law of Property Act, 1925 is applicable in the present case.

#### LIBERTY TO APPLY

As I have not heard any legal argument on the question as to which provision of the Law of Property Act, 1925 is applicable, and as this is a matter on which various arguments could possibly be advanced, I will allow Lady Kirk or any other interested person to whom a copy of this Decision is sent 4 weeks from the date on which notice of the Decision is sent to her or him to apply to the Clerk to the Commons Commissioners in writing for the matter to be restored for legal argument either in London or North Yorkshire, whichever is most convenient.



On this evidence I am satisfied that the Public Trustee is the owner of the land and I shall accordingly direct the North Yorkshire County Council as registration authority, to register the Public Trustee as the owner of the land under section 8(2) 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.

Dated this 13<sup>th</sup> day of September 1989

Mati Roki

Commons Commissioner