



COMMONS REGISTRATION ACT 1965

Reference Nos 262/U/468  
262/U/469

In the Matter of (1) Deepdale Common  
and (2) Grisedale Forest, both in  
Patterdale, Eden District, Cumbria

## DECISION

These references relate to the question of the ownership of lands known as (1) Deepdale Common, and (2) Grisedale Forest, both in Patterdale, Eden District being the lands comprised in the Land Section of Register Unit (1) No. CL160 and (2) No. CL57 in the Register of Common Land maintained by the Cumbria (formerly Westmorland) 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) Mrs Sylvia Mary McCosh claimed (her Solicitors' letter of 19 November 1981) the ownership of the Grisedale Forest CL57 land; (2) Mr A C Brown claimed (his Solicitors' letter of 30 November 1981) to be the freehold owner of commons land at Deepdale; and (3) the Trustees of the Tynemouth YMCA claimed (their Solicitors' letters of 4 and 10 December 1981) to be the freeholder so far as the boundaries of these lands impinged on the Patterdale Hall estate, Glenridding. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the lands at Penrith on 12 March 1982. At the hearings (1) Mrs Sylvia Mary McCosh was represented by Mr D Mellor, solicitor of Little & Shepherd, Solicitors of Penrith; (2) Mr Anthony Clifford Brown was represented by Mrs J King solicitor with Harriscn Grainger & Reed, Solicitors of Penrith; and (3) Mrs Kathleen Maud Tonkin of Patterdale Hotel appeared on her own behalf and as representing Mrs Eileen Dorothy Wilson, Mr William John Wilson, Mr William Archie Tonkin and Mr Michael Christopher Tonkin (her sister and brothers).

The land ("the CL57 Land") in Register Unit No. CL57 is a tract very approximately triangular, its north side running from a point near the summit of Helvellyn along Striding Edge and Bleaberry Crag, then turning south toward Eagle Crag then continuing in a line a little to the south of Grisedale Beck to a point a short distance from the Patterdale Hotel on the A592 road from Penrith to the Kirkstone Pass (this side considered as a straight line being about  $3\frac{1}{2}$  miles); its west side being a line passing through or near Nethermost Pike, Dollywaggon Pike nearly to Seat Sandal (this side being about 2 miles); and its south or south-east side being about 1 mile to the east (so as to include Grisedale Tarn) and then turning north-east for about  $3\frac{1}{2}$  miles along the line of St Sunday Crag to end up near the A592 road.

The lands ("the CL160 Land") in Register Unit CL160 is also an approximately triangular area, its north-east side adjoining the CL57 Land, its south side being about  $2\frac{1}{2}$  miles long and its east side being about 3 miles long. It extends at its south side up to the ridge along which runs the District Council boundary at or near Hart Crag.



Mr Brown in the course of his oral evidence produced the documents specified in Part I of the First Schedule hereto. By the 1955 conveyance Mr Baty conveyed to Mr Brown (paragraph 1) first Deepdale Hall Farm containing 138.785 acres as described in the first part of the Schedule and edged red on the plan, secondly three enclosures at Deepdale Bridge containing 21.142 acres edged blue on the plan, and thirdly two adjoining closes at Deepdale Bridge edged green on the plan and (paragraph 2) "the Manor or Lordship ... of Deepdale ..."; the plan annexed to the conveyance is in part 6 inches = 1 mile (showing the paragraph 1 lands), and in part 1 inch = 1 mile superscribed "Extent of Manorial Rights"; the land on this part edged red is a tract which (within the limits of its scale) can be identified as being or including the whole of the CL160 land, Deepdale Hall Farm and the 7.334 acres conveyed by paragraph 1 and other lands between Bridge End and Goldrill Beck (between Brothers Water and Ullswater). By the 1935 conveyance there was conveyed to Mr Charlton (predecessor of Mr Baty) Deepdale Hall Farm (therein said to contain 137.075 acres) and Moss Scale Smallholding (therein said to contain 8.532 acres) and also "the Manor or Lordship ... of Deepdale ..."; the 1935 conveyance contains no plan of Deepdale Hall Farm or of the extent of Manorial rights such as that contained as above described in the 1955 conveyance.

Mr Brown said (in effect):- Both parts of the 1955 conveyance plan were taken from the particulars of sale under which he purchased and pursuant to which the 1955 conveyance was made. As Lord of the Manor he had received in respect of the CL160 Land annually a few shillings for telegraph pole and electricity pole way leaves, and about £9 from the District Council for water supply to some Council houses in Deepdale.

The CL160 land being Common land is capable of passing under a conveyance of a manor if it is "appertaining or reputed to appertain ... or reputed or known as part or parcel or member thereof", see Law of Property Act 1925 section 62(3). The 1955 conveyance plan "Extent of Manorial Rights", is some evidence of its being known as part of the Manor of Deepdale: so also are the said annual sums received by Mr Brown. The name by which the CL160 Land is called and its proximity to Deepdale Hall Farm make it likely that it is reputed to be part of the Manor of Deepdale. Having regard to the rugged nature of the land and the absence of any other ownership claims, resulting from the advertisement of these proceedings, I conclude that subject to the boundary question below mentioned, ~~that~~ Mr Brown is now the owner of the CL160 Land.

Mrs Tonkin said that on behalf of herself and those she represented, she claims ownership of the part of the CL57 land near the Glebe House, Patterdale (next to the road). In the course of her oral evidence she said (in effect):- The claim was as successors of Miss M A Robinson and Mr William Haytor Robinson who died in or about 1970; because Miss M A Robinson had died recently, they had received notice of these proceedings too late to take action. She knew the land because she is a director of Patterdale Hotel Limited.

Mr Mellor in the course of his oral evidence in support of the claim of Mrs McCosh produced the document specified in Part II of the First Schedule hereto. By the 1935 conveyance there was conveyed to Mrs McCosh about 20 farms, a number of other pieces of land and "land called Glamara Park ... Patterdale ... containing 171.298 acres ... delineated on the plan ...", and the Manors of Dalemain and Dacre and "the Barony of Barton ... comprising the Manors or Lordships of Barton Martindale and Patterdale and the Manor of Grisedale parcel of



the Manor of Patterdale and the waste lands thereof and including ... Angle Tarn Patterdale Common Place Fell Grisedale Common ...". The 1925 boundary documents show the boundary of "Grisedale part of the Manor of Patterdale" as a line starting near Grisedale Bridge and extending for about  $3\frac{1}{2}$  miles southwestwards, and then southwards, and then northeastwards to end on the road not far from Middleton Place; a boundary enclosing all the CL57 land, Glamara Park, lands on both sides of Grisedale Beck down to Grisedale Bridge and perhaps other lands too.

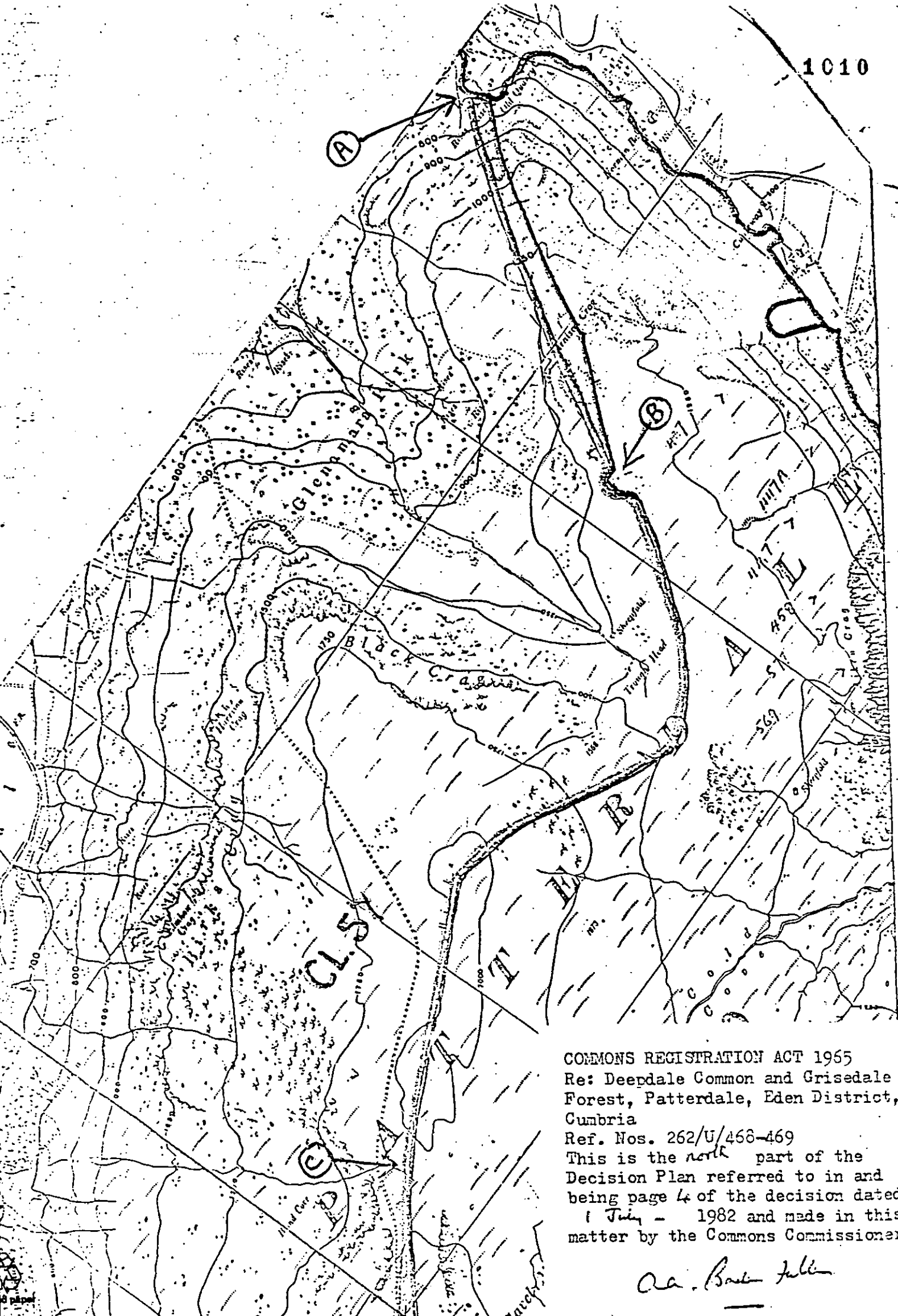
The boundary documents as regards these proceedings are ambiguous in that they treat the north boundary of the Manor (undefined) as being the A592 road, thus including land which although they may historically have been part of the Manor have long since ceased to be regarded as such, or at least to be regarded as waste land of the Manor; in that boundary as regards CL160 Land owing to the scale of the map lacks precision. However I can I think treat the registration in the Land Section as evidence enough that all the CL57 land is waste land and the 1925 boundary documents as evidence enough that except as regards the below mentioned boundary question it all appertains to the Manor of which Mrs McCosh is the owner under the 1955 conveyance.

Mr Mellor and Mrs King have as regards the Ownership Section of these Register Units agreed that the boundary is different from that shown on the Land Section as the boundary between them, such agreed boundary being a line edged red on the map ("the Agreed Boundary Map"). For convenience I have in the Second Schedule hereto defined this boundary ("the Agreed Boundary") ~~in the Second Schedule~~ by reference to two uncoloured extracts from the Agreed Boundary Map which formed pages 4 and 5 of this decision. I consider we can in these proceedings properly adopt the Agreed Boundary, correctly showing the respective ownerships of Mr Brown and Mrs McCosh.

The evidence of Mrs Tomkin given at the hearing does not show any good reason why I should not conclude that Mrs McCosh is the owner of all CL57 Land (adjusted in accordance with the Agreed Boundary). But because Mrs Tomkin ~~cannot~~ <sup>she</sup> ~~is~~ <sup>those</sup> represents may for reasons beyond their control have been unable at the hearing properly to present their case, I give to her and to them liberty to apply to a Commons Commissioner within 3 months of the date when notice of this decision is sent to her to set aside this decision and reopen the hearing; any such application would be made in writing to the Clerk of the Commons Commissioners (it may be by letter) and should specify part of the CL57 land which the applicants claim to be owned by them, summarise the evidence which would be given in support of that claim at the reopened hearing and list documents which would then be produced; a copy of such application and of any documents referred to in it should be sent to Mrs McCosh or her solicitors and also (for their information) to the Cumbria County Council as registration authority.

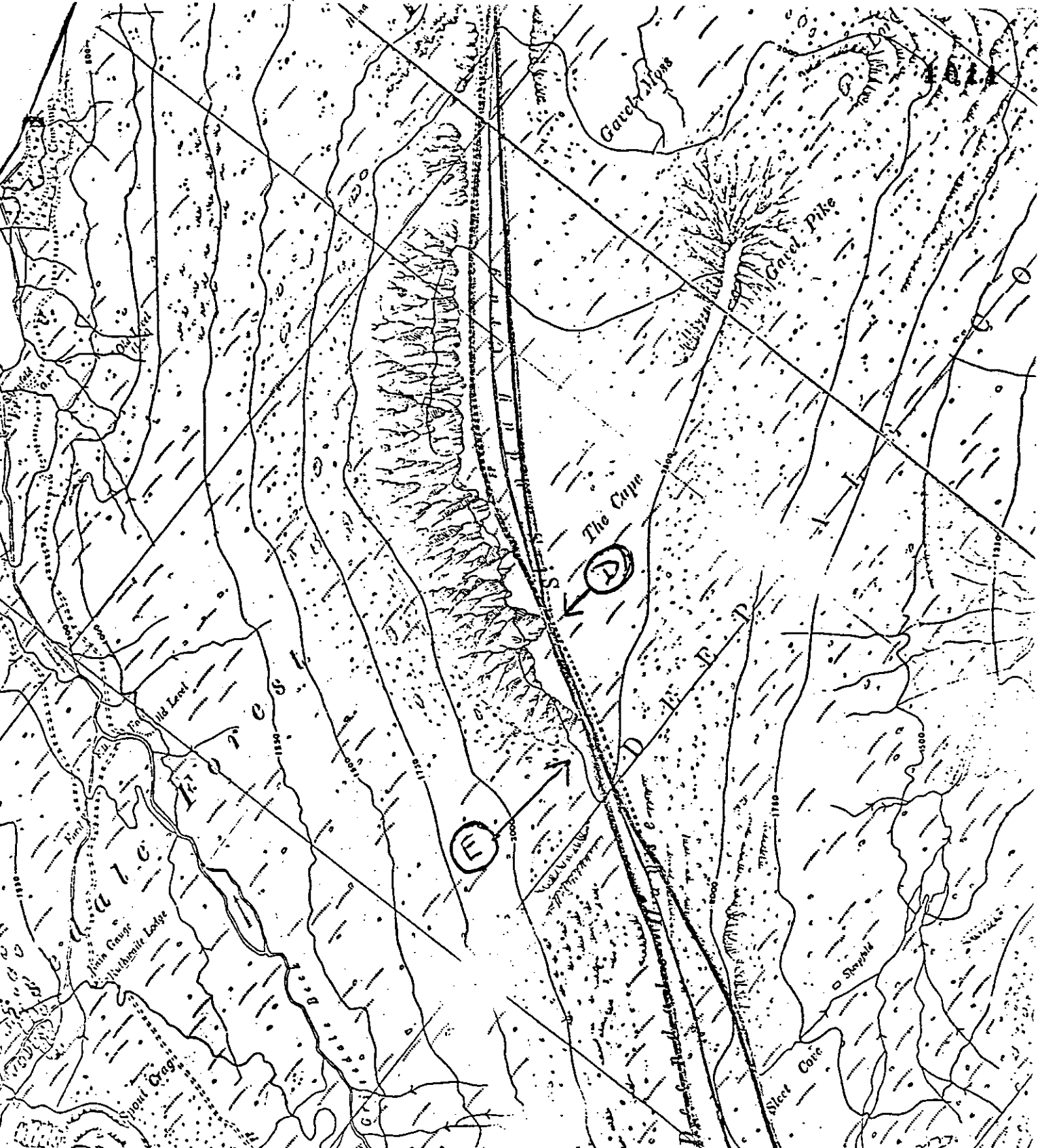
For the reasons above set out I am satisfied that Mr King is the owner of so much if any of the CL57 Land as is east and southeast of the Agreed Boundary Line as defined in the Second Schedule hereto and that Mrs McCosh is the owner of the remainder of the CL57 Land and also the owner of so much ~~and~~ of the CL160 Land as is west and northwest of the Agreed Boundary Line and that Mr King is the owner of the remainder of the CL160 Land; I shall accordingly, ~~unless~~ <sup>and their</sup> pursuant to the liberty hereinbefore granted to Mrs Tomkin ~~although~~ she represents a Common Commissioner (otherwise directs), pursuant to Section 8(2) of the Act of 1965 direct

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COMMONS REGISTRATION ACT 1965  
 Re: Deepdale Common and Grisedale  
 Forest, Patterdale, Eden District,  
 Cumbria  
 Ref. Nos. 262/U/468-469  
 This is the north part of the  
 Decision Plan referred to in and  
 being page 4 of the decision dated  
 1 July - 1982 and made in this  
 matter by the Commons Commissioner

*Ca. Bate Juller*



COMMONS REGISTRATION ACT 1965  
 re: Deepdale Common and Grisedale  
 Forest, Patterdale, Eden District,  
 Cumbria  
 Ref. Nos. 262/U/468-469  
 This is the South part of the  
 Decision Plan referred to in and  
 being page 5 of the decision dated  
 1 July 1982 and made in this  
 matter by the Commons Commissioner

*a. a. Baker-Jules*  
 Commons Commissioner



Cumbria County Council as registration authority to register Mr Anthony Clifford Brown of Deepdale Hall, Patterdale and Mrs Sylvia Mary McCosh of Huntfield, Biggar Lanarkshire as respective owners of the parts of these lands of which I am as above stated satisfied they are the respective owners.

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 six 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: by Mr A C Brown

- |       |                 |  |
|-------|-----------------|--|
| ACB/1 | 31 March 1955   | Conveyance by Robert Armorer Baty to Anthony Clifford Brown of (1) Deepdale Hall Farm containing 138.785 acres, (2) pasture land at Deepdale Bridge containing 21.142 acres and (3) adjoining containing 7.334 acres; and also of the Manor or Lordship of Deepdale.                           |
| ACB/2 | —               | Plan showing how lands originally in Register Unit No. CL57 and CL160 overlapped as mentioned in the decisions of 17 November 1982 of the Chief Commons Commissioner.  |
| —     | 25 October 1937 | Conveyance by Rev. Godfrey Hibberd Marshall and another and their mortgagees to Robert Blackett Charlton of (1) Deepdale Farm containing 137.75 acres, (2) Moss side small holding containing 8.532 acres and (3) 166 square yards land; and also the Manor or Lordship of Deepdale.           |
| —     | 31 March 1955   | Assent by Roy Blackett Charlton and Geoffrey Nicholson as personal representatives of Robert Blackett Charlton (he died 15 June 1953) in favour of Robert Armorer Baty of the Lordship of the Manor of Deepdale; and also (1) Deepdale Hall Farm or lands at Bridge End and land at Moss Side. |



## Part II: by Mr Miller

DM/1	—	Plan showing agreed division between the ownership of Mrs McCosh and Mr Brown.
DM/2	5 April 1961	Vesting deed being a conveyance by Edward William Hassell to his daughter Mrs Sylvia Mary McCosh.
DM/3	18 September 1925	Memorandum of the boundary of Grisedale being ridden and perambulated by Major Edward William Hassell Lord of the Barony Barton and by Thomas Dowker Shepherd his steward.
DM/4	17 September 1925	Memorandum as to the above mentioned boundary signed by Mr Hassell, Mr Shepherd and 12 others.
DM/5	17 September 1925	Map of the boundary riding of 17 September 1925 signed by T D Shepherd, steward.

## SECOND SCHEDULE

## (the Agreed Boundary)

In this decision "the Agreed Boundary" means the line delineated on the map ("the Agreed Boundary Map") produced at the hearing on 12 March 1982 and thereon marked red, such map having also marked on it in green the boundary between the lands comprised in Register Unit Nos. CL57 and CL160 as now shown in the Land Section of these Register Units, and marked in violet the line of the former boundary and the CL57 Land before effect was given to the decision dated 17 November 1980 and made by the Chief Commons Commissioner under reference Nos. 262/D/394-385. Uncoloured extracts from the Agreed Boundary Map are at pages 4 and 5 of this decision, with the addition of the letters "ABCDEF". On the original Agreed Boundary map the green line and the violet line are respectively the most northwesterly and the most southeasterly of the three nearby lines shown on the ~~uncoloured~~ uncoloured extract, save that between A and B a green line adjoins or is very near to the southeast side of the red line; the red line of the three nearby lines shown on the said extract is between A and B the most northwesterly of the three lines and between the C and D and between E and F the red line is the middle of these three lines.

~~(green being to the west and violet being to the east)~~

Dated the 1st — day of July — 1982

*R. A. Baden Fuller*

Commons Commissioner