



In the Matter of part of the land at
Maiden Moor south of Cat Bells at the
head of Derwentwater

DECISION

This reference relates to the question of the ownership of the above land being the part of the land comprised in the Land Section of Register Unit no.CL.166 in the Register of Common Land maintained by the Cumbria 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 the National Trust, Mr A T Leyland and the Askew Trustees claimed to be the freehold owners of the land in question and no other person 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 Keswick on 23 July 1986.

At the hearing the National Trust were represented by Mr P.R. Fitzgerald, Solicitor, of Messrs. Walters, Fladgate of London Mr A T Leyland and Messrs. J F Askew, J. Robinson and J Lancaster the trustees of the Askew family ("the Askew trustees") were represented by Mr D Mellor, Solicitor of Messrs. Little, Shepherd of Penrith and Mr T Greer represented the Registration Authority.

The unit land forms part of a high fell above Derwentwater and the part which has been referred to me lies to the east of the unit being that part which lies within the parish and manor of Borrowdale. The ownership of the remainder of the unit land has already been registered under section 4 of the 1965 Act.

All the claimants claim to be entitled to an undivided share in the freehold by virtue of the ownership of pasture stints over the land.

The Great Deed of Borrowdale

I was told by Mr Bruce Jones formerly Chief Archivist for the Cumbria County Council that the manor of Borrowdale, before the dissolution of the monasteries, belonged to Furness Abbey.

On the dissolution it remained in the Crown in right of the Duchy of Lancaster until, on 12 March 1612/1613, it was with certain exceptions conveyed to two gentlemen from London, William Whitmore and Jonas Verdon. They were evidently speculators for by 1614 they had agreed to sell the whole manor to 38 of its tenants excluding, however, the lead mines which, Mr Jones told me, they sold separately to William Lamplugh of Cambridge and Charles Hudson of Bowderbeck.



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On the 14th November 1614 they conveyed to these purchasers certain mesuages farms and tenements.

Then on 28th November 1614 these two Londoners executed what has come to be called the Great Deed of Borrowdale.

This deed recited the above facts and went on to convey those parts of the manor "which cannot be divided" including (as far as is relevant to this case) the "wastes, commons, heaths" and "moors" to the same 38 persons in common socage on trust for themselves and for the other tenants of the manor.

It follows from this that in 1614 the fee simple of that part of the unit land which lies in the Manor of Borrowdale, that is to say the whole of the part now referred to me was owned by 38 persons in undivided shares.

The Tithe Award

The next piece of evidence which was put before me was the tithe award and map of 1842 for the parish of Borrowdale. That shows the whole of this land together with other common land as forming parcel no. 678. Nine persons are recorded as the joint owners of this land. No doubt they were the successors in title of the 38 to whom it had been conveyed in 1615.

The Title Deeds

Both Mr Fitzgerald and Mr Mellor submitted that what must have happened at some stage is that by some award or agreement the common was stinted and the stints divided among the owners of the common who thereafter owned an undivided share in the land proportionate to their stint. The stints were thereafter sold and conveyed some of them coming into the hands of the National Trust and some into the hands of Mr Mellor's clients, who thereby, it was said, became owners of the land.

Both Mr Fitzgerald and Mr Mellor produced deeds showing that stints on this land had been conveyed to their clients. With one exception referred to below none of these deeds refers expressly to an undivided share in the common and no copy of any award or stinting agreement was produced to me.

The evidence for the existence of such an award or agreement, in so far as it was put before me, was as follows.



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Rowland Standish was shown on the tithe award as being one of the owners of Scawdale Fell. Among the deeds produced by Alan Thomas Leyland (who I will call "Mr Leyland") who is the owner of seven stints on Scawdale Fell and who claims to be an owner of an undivided share in the freehold, is an abstract of title which abstracts an indenture dated 28 February 1870 whereby James Fraser Hore and Rowland Walker Percy Standish conveyed to Mr Leyland's predecessor in title among other property seven stints on Scawdell Fell.

That indenture, as abstracted, recites a settlement dated 26 August 1842 whereby Rowland Standish and Edward Ferris Standish settled among other hereditaments the hereditaments conveyed by the indenture of 28 February 1870 to Mr Leyland's predecessor in title.

It follows that the 7 stints referred to must have come from Rowland Standish who is shown by the tithe map as being an owner of Scawdell Fell.

The deeds produced by Mr Mellor on behalf of the Askew Trustees included an abstract of title which abstracts an assent dated 4 December 1924 which vests in Margaret Threlkeld among other things "4½ stints on Maiden Moor". Margaret Threlkeld died on 3 April 1927 and there is then abstracted an assent by her executors dated 30 September 1927 which refers not to the 4½ stints but to

"nine equal one hundred and thirty second parts or shares of and in the rents and profits and proceeds of sale of the moor or field in the parishes of Borrowdale and Above Derwent known as Maiden Moor"

Now 9/132 is as Mr Mellor points out the same as 4½/66. If it be right that there are 66 stints over Scawdell Fell and that each stint carries with it a proportionate share in the freehold he argues 9/132 shares in the freehold is but another way of describing the 4½ stints which Mary Threlkeld had so recently acquired.

The Letters

Finally there are two letters produced in evidence by Mr Leyland. They were found by Mr Leyland's mother in the house in which the family has lived for many years. The first is dated 5 April 1927. It is addressed to Thomas Leyland (Mr Leyland's Grandfather) by Hayton, Simpson and Fisher, Solicitors, of Cockermouth and written on behalf of clients who wish to open a slate quarry.



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It states:-

"Our information is that Goat Cragg forms part of Low Scawdell which is divided into 66 stints of which you own 8 and that the stint owners are also the owners of the freehold"

The letter goes on to state who the writer considers to be the other stinholders an opinion which is contradicted by some pencil notes on the back of the letter in handwriting which Mr Leyland recognises as being that of his grandfather (which for example correctly assign 7 (not 8) stints to himself). It is also inconsistent with the deeds which I have seen. I am not, however, concerned with who were the stint owners or how many of them there were. For the reasons given below I am only concerned with whether the land was held in undivided shares on 31 December 1925.

The second, letter is dated 10 July 1957. It is written to W A Leyland, who was Mr Leyland's father, by the District Valuer at Carlisle who says he has been requested to negotiate for the acquisition of two plots of land at Swanstey How. Swanstey How lies within the land in question. The letter continues:-

"The clerk has been endeavouring for some months to trace the ownership of the land concerned and after exhaustive enquiries, he has come to the conclusion that it belongs to certain stint owners of whom you are understood to be one".

Conclusion

On the above evidence I am satisfied that subject, to the exception set out below, this land at all material times up to 31 December 1925 was an open space of land owned in undivided shares by the stint owners, that the owners in right of those shares had rights of access and user over it and that the ownership of it accordingly on 1 January 1926 vested in the Public Trustee under paragraph 2 of Part V of the First Schedule to the Law of Property Act 1925.

Mr Leyland's claim to a possessory title

Mr Leyland claims to be the owner of the land partly hatched and partly cross-hatched in black on the plan attached to this decision. He gave evidence which I accept that he was born 37 years ago at the house known as Youdale Knott which is shown on the plan just to the south of the hatched land. His father and grandfather were the owners in succession of Manesty Farm which lies immediately to the east of the hatched land. He has known the land all his life and for as long as he can remember



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it has been fenced and planted with conifer trees. It was referenced in 1966.

After the death of Mr Leyland's father, William Abbott Leyland, Mr Leyland's mother Sara Jane Leyland, by deed of gift dated 3 October 1979, conveyed to Mr Leyland the north-easterly part of the hatched land which is hatched in black on the plan. By another deed of gift of the same date she conveyed to Mr Leyland and John Ronald Leyland jointly among other land the south-westerly part which is cross-hatched on the plan. By a conveyance on sale dated 1 September 1982 between John Ronald Leyland (1) Mr Leyland (2) and Cheryl Annette Leyland (3) John Ronald Leyland and Mr Leyland conveyed the cross-hatched land to Cheryl Annette Leyland and Mr Leyland jointly.

On this evidence I am satisfied that Mr Leyland is the owner of the hatched land and that Cheryl Annette Leyland and Mr Leyland are the owners of the cross-hatched land.

I shall accordingly direct the Cumbria County Council as Registration Authority to register under section 8(2) of the Act of 1965 Alan Thomas Leyland as owner of the land cross-hatched in black on the plan attached hereto, Alan Thomas Leyland and Cheryl Annette Leyland as the owners of the land hatched in black on that plan and the Public Trustee as the owner of the remainder of the land referred to me.

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

12th

day of

August

1986

Peter Langdon-Davis

Chief Commons Commissioner

"SJL 1"

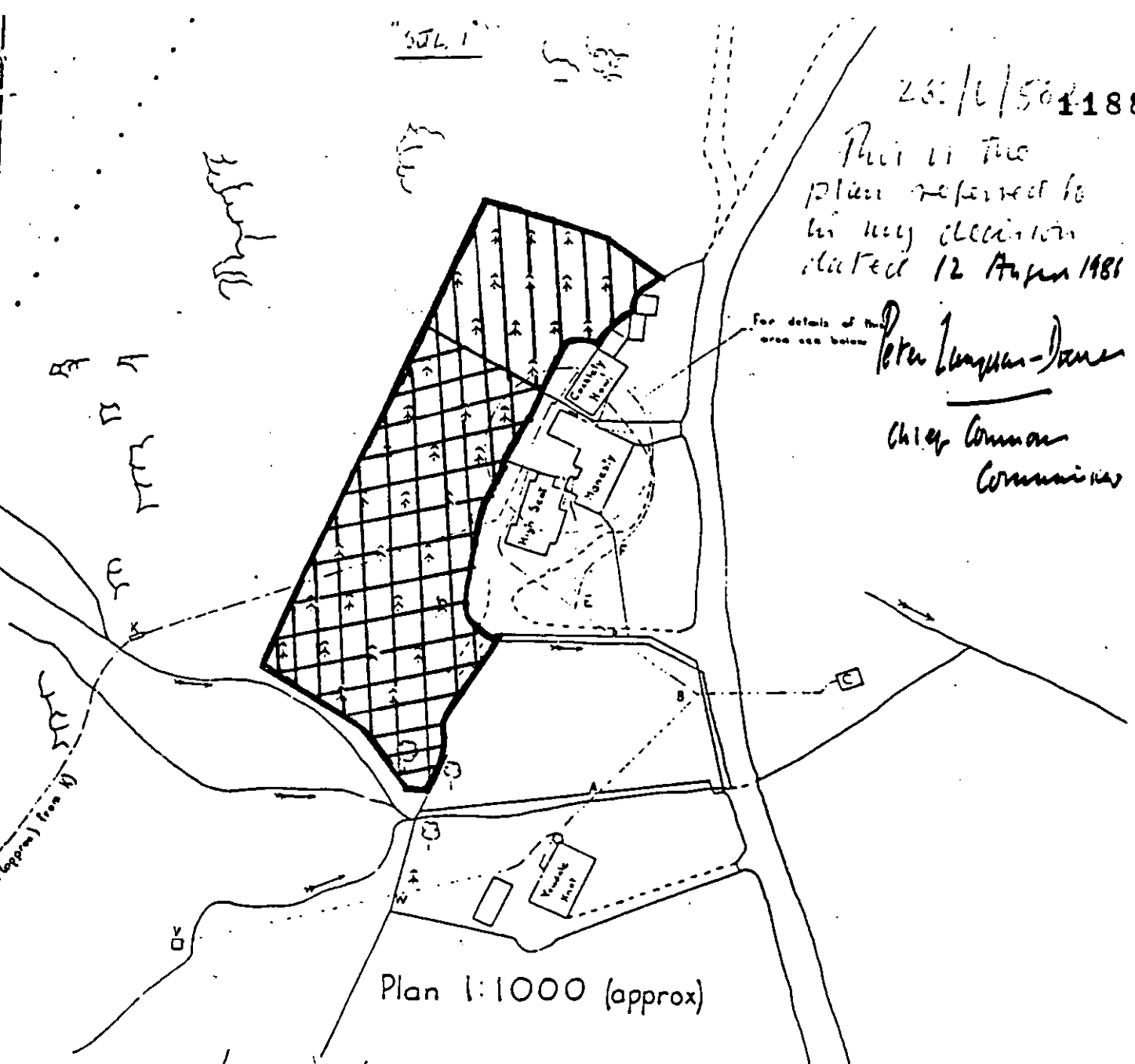
28/10/50 1188

This is the plan referred to in my decision dated 12 August 1981

For details of this area see below

Peter Langman-James

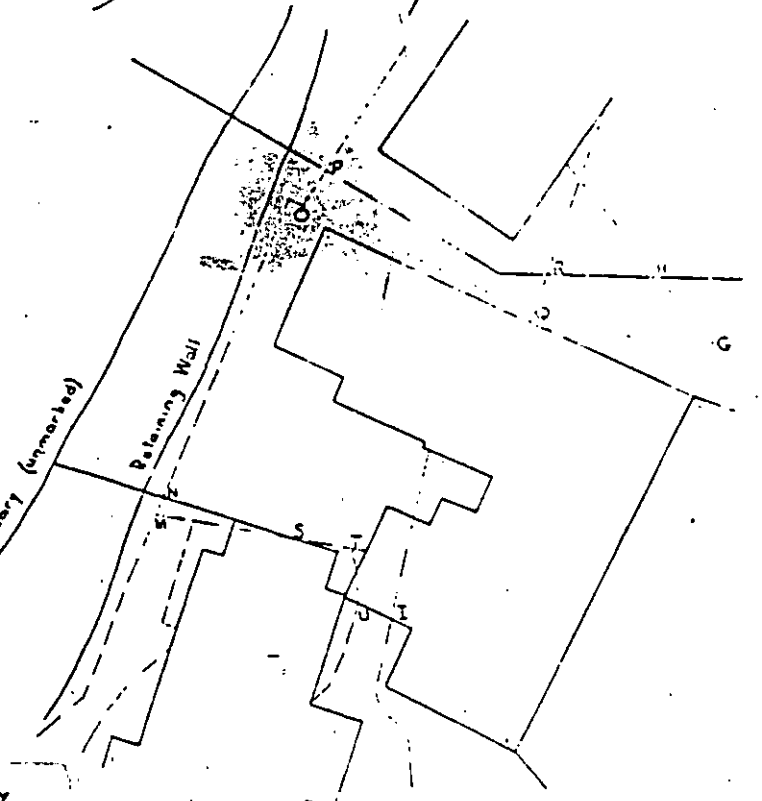
Chief Common Commissioner



Plan 1:1000 (approx)

Legend

- Water pipes
- - - Foul sewers



Detail 1:250 (approx)

This is the plan marked "SJL 1" referred to in the Declaration of Sarah Jane Leyland hereunto annexed and declared before me this 14th day of August 1979

[Signature]
Commissioner of Customs & Excise