



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/589

In the Matter of part of Torver Back
Common, Torver, South Lakeland
District, Cumbria

DECISION

These two references dated 10 June 1986 and 27 May 1987 relate to the question of the ownership of three parcels of the land known as part of Torver Back Common, Torver, South Lakeland District being the land comprised in the Land Section of Register Unit No. CL101 in the Register of Common Land maintained by the Cumbria (formerly Lancashire) Council Council.

Following upon public notice of the 1986 reference, apart from the September 1986 letters mentioned in the fourth paragraph of the First Schedule hereto, no person claimed to own the parcels of the said land in question or to have information as to their ownership.

At Keswick on 12 May 1987, I held a hearing for the purpose of inquiring into the question of the ownership of the parcel then appearing to be within the 1986 reference. The proceedings at such hearing are summarised in the First Schedule hereto. As therein appear I started by assuming that the reference was only concerned with the XYZ parcel shown edged green on the XYZ Plan: page 2 of this decision ("the XYZ Decision Plan") is an uncoloured copy of this Plan with the line of the green edging thickened in black and marked XYZ.

After the hearing, on the CEC direction (mentioned in the sixth paragraph of the First Schedule hereto), I signed a memorandum endorsed thereon as follows:-
"Cancelled by the Commons Commissioner at Keswick on 12 May 1987 in the circumstances set out in a letter dated 7 July 1987 and sent to the persons concerned."

Also I received a copy of the Register map showing the land comprised in this Register Unit edged green; an uncoloured copy of such plan ("the 1988 Decision Plan") is page 3 of this decision.

At Ulverston on 19 January 1988 I held a hearing for the purpose of inquiring into the question of the ownership of the parcels of the land comprised in this Register Unit so far as they had not been determined by the 1980 decision and the Wilson direction mentioned in the First Schedule hereto, after being corrected in any manner which appeared to be requisite.

At this 1988 hearing: (1) Crown Estates Commissioners were represented by Mr Ian Robert Colquhoun, solicitor in their Legal Department; (2) Mr Thomas George Waite Wilson was represented by Mr M S Graham, solicitor of Townsend Livingston (formerly Ian MacI Livingston & Co) Solicitors of Ulverston; and (3) Cumbria County Council as registration authority was represented by Mrs F Harrison.

Mr I R Colquhoun in the course of his oral evidence produced the documents specified in Part I of the Second Schedule hereto and said (in effect):- The Wilson direction (mentioned in the sixth paragraph of the First Schedule hereto) →

Latest plan of bed
41 feet below OS

XYZ

TORVER BANK
COMMON

6.4
5.8

6.4
101

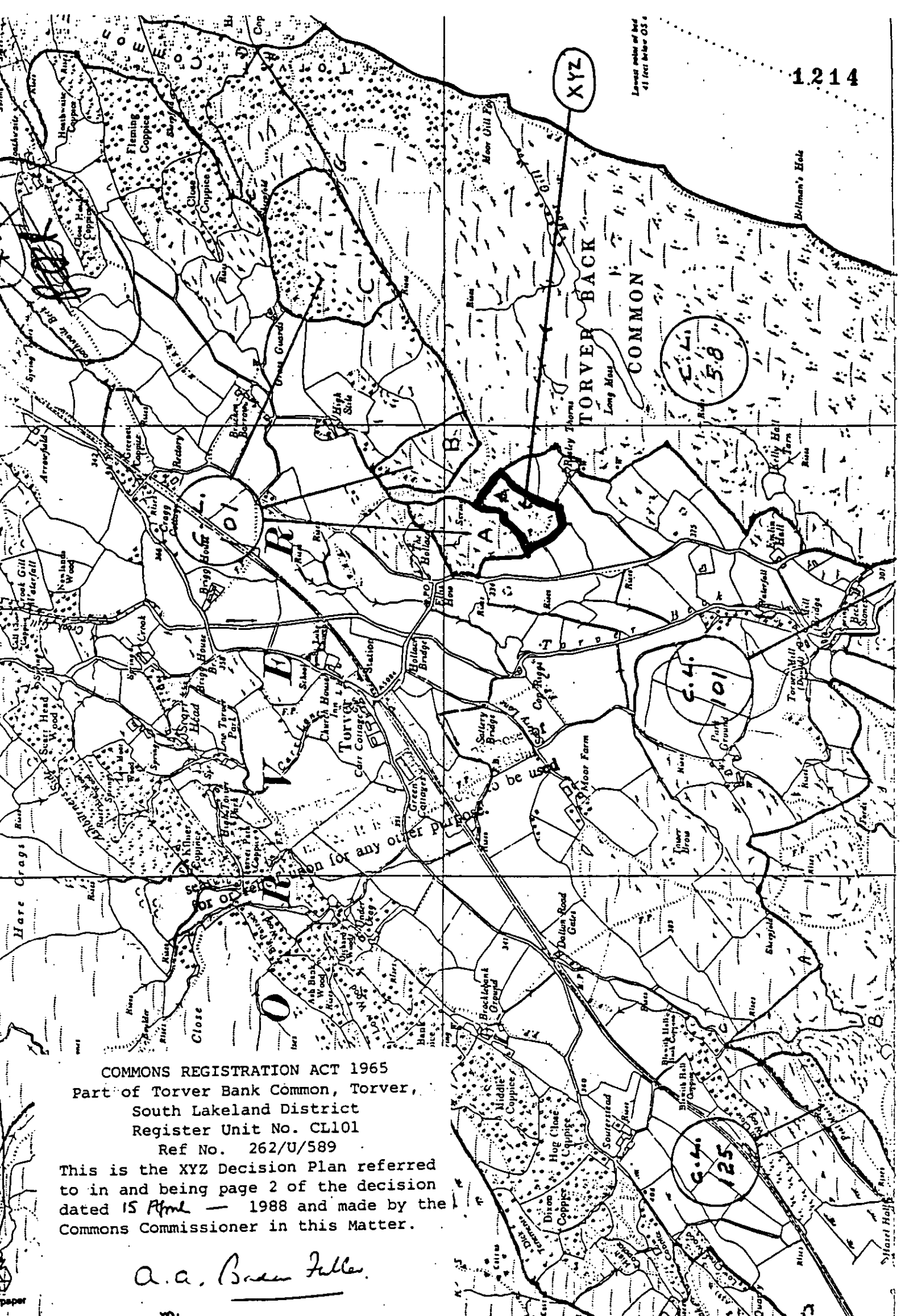
6.4
125

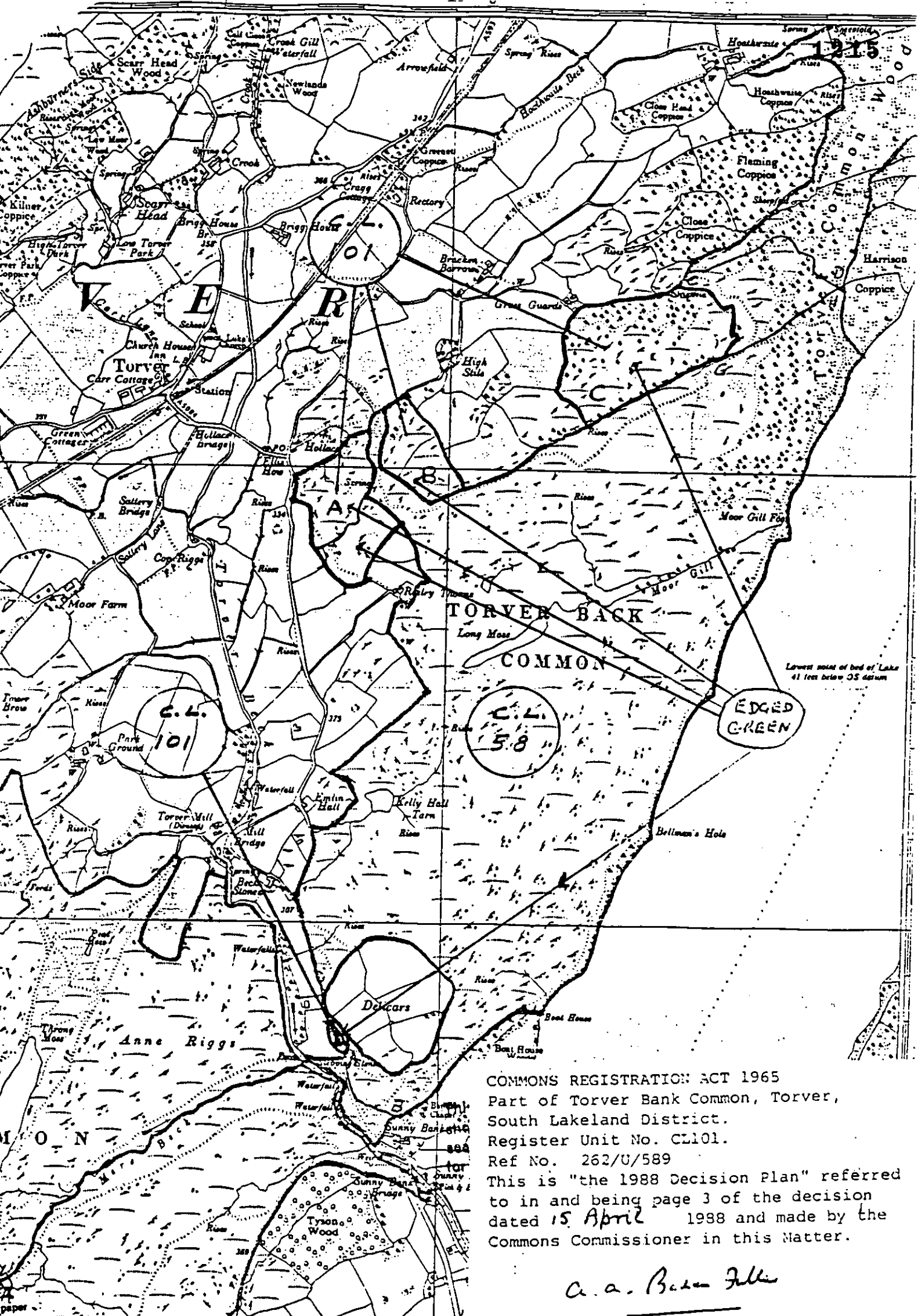
COMMONS REGISTRATION ACT 1965

Part of Torver Bank Common, Torver,
South Lakeland District
Register Unit No. CL101
Ref No. 262/U/589

This is the XYZ Decision Plan referred
to in and being page 2 of the decision
dated 15 April — 1988 and made by the
Commons Commissioner in this Matter.

a.a. Braden Fuller





Lowest point of bed of Lake
41 feet below OS datum

COMMONS REGISTRATION ACT 1965
 Part of Torver Bank Common, Torver,
 South Lakeland District.
 Register Unit No. CL101.
 Ref No. 262/U/589

This is "the 1988 Decision Plan" referred
 to in and being page 3 of the decision
 dated 15 April 1988 and made by the
 Commons Commissioner in this Matter.

a. a. B. J. J. J.



dated 30 July 1981 should be set aside so far as it includes the land coloured red on the plan IRC/1, being essentially the same as the plan IRC/2, an uncoloured copy of which with the area so coloured marked PQR and appearing darkly shaded ("the CEC Decision Plan") is page 5 of this decision. The CEC claim this land as part of the waste lands of the Manor of Torver. He had been informed by Miss Philips of their Records Office that the IRC/1 plan shows the waste land of the Manor as also does the battered 1897 plan IRC/5. Both these plans and the plan on the lease IRC/6 include the area marked PQR as being within the said waste by the lease expressed to be let.

Mr M S Graham said he did not oppose the application or the ownership claim made by Mr Colquhoun.

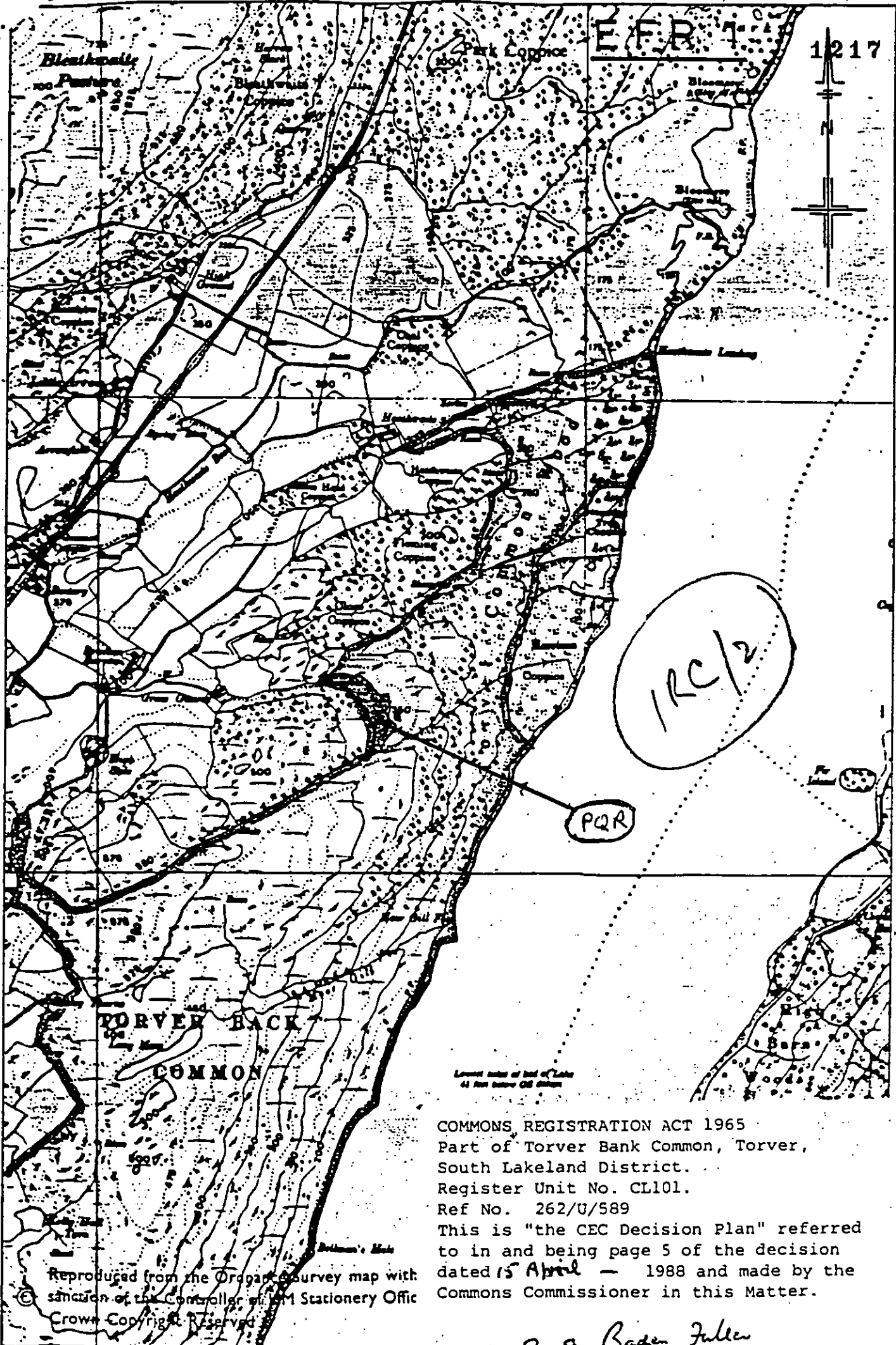
Mr T G W Wilson in the course of his oral evidence produced the documents specified in Part II of the Second Schedule hereto, and said (in effect):- William Wilson party to the 1920 mortgage (TGWW/2) was his grandfather and his executrix Miss F E Wilson was his daughter (the witness' aunt). The XYZ parcel was very rough pasture; mostly on the side of the hill, with a lot of rock but grazable by sheep; all round it is a stone wall; it is really an integral part of High Stile Farm. He thought it had been registered by mistake. Page 6 ("the Wilson Decision Plan") is an uncoloured extract from the plan TGWW/1 which shows on a larger scale the XYZ parcel edged red (on the extract thickened black).

Mr Chapman said that the CL58 land is agricultural land within the Lake District National Park which the public have access under the National Parks and Access to the Countryside Act 1949; the majority is held by them under a lease from the CEC; OS 195 claimed by Mr Waite is not included in their lease.

At the hearing no claim was made and no evidence was offered as to the ownership of the parcel forming part of the land in this Register Unit situated a short distance west of Delicars.

After the hearing Townsend Livingston in letters dated 27 Januar, 3 February and 1 March 1988 to the Clerk of the Commons Commissioners said that they understood from Mr Wilson (in effect):- This parcel does not belong to Mrs Barbour of Sunny Bank. It lies to the west of the Blawith-Torver road (A5094). Mr Wilson has spoken to Mr Appleyard the owner of the adjoining field and neither of them know of anyone who claims to own this parcel. So far as Mr Wilson is aware there is no one else to his knowledge who would claim to own it.

I am satisfied that the Wilson section 6 direction dated 30 July 1981 contains clerical mistakes arising from accidental slips which ought to be corrected by substituting "Section 8(2)" for "Section 8(3)", and by inserting in appropriate places the words "except the land marked PQR and darkly shaded on the CEC Decision Plan" and words identifying such plan with the plan in this decision so called. I shall therefore return to Cumbria County Council as registration authority the Wilson direction so corrected.



Lowest water of bed of Lake
41 feet above O.D. datum

COMMONS REGISTRATION ACT 1965
Part of Torver Bank Common, Torver,
South Lakeland District.

Register Unit No. CL101.

Ref No. 262/U/589

This is "the CEC Decision Plan" referred
to in and being page 5 of the decision
dated 15 April - 1988 and made by the
Commons Commissioner in this Matter.

a. a. Baden Fuller

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COMMONS REGISTRATION ACT 1965

Part of Torver Bank Common, Torver,
South Lakeland District.

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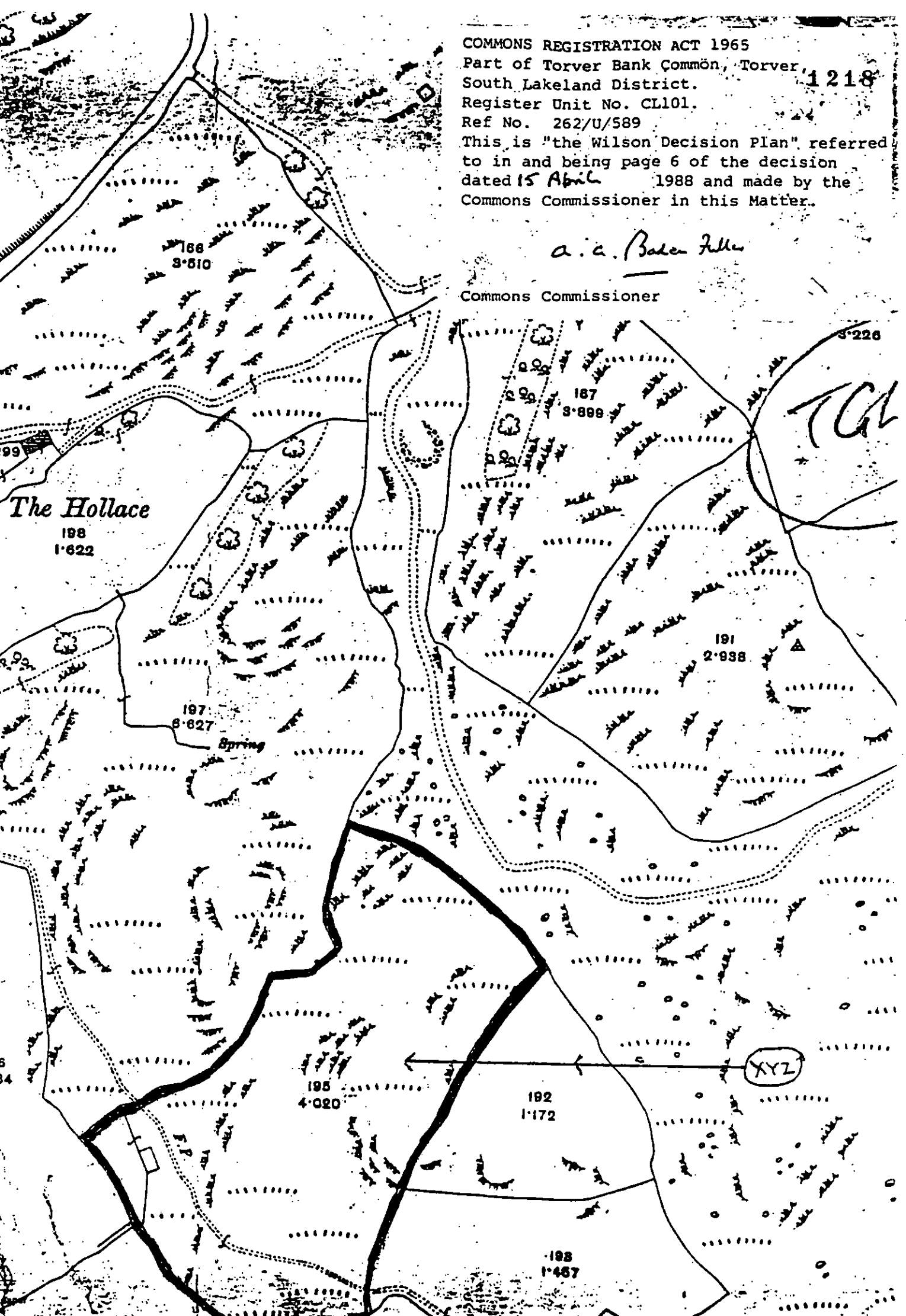
Register Unit No. CL101.

Ref No. 262/U/589

This is "the Wilson Decision Plan" referred
to in and being page 6 of the decision
dated 15 April 1988 and made by the
Commons Commissioner in this Matter.

a. a. Baker Jellie

Commons Commissioner





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On the oral evidence and the documents above referred to, I am satisfied that CEC and Mr T G W Wilson are the owners of the land by them claimed at my January 1988 hearing, and I shall therefore pursuant to section 8(2) of the 1965 Act direct Cumbria County Council as registration authority to register: (1) Crown Estates Commissioners of 13/15 Carlton House Terrace, London SW1 as the owners of the area marked PQR and darkly shaded on the → CEC Decision Plan being page 5 of this decision; and (2) Mr Thomas George Waite Wilson of High Stile Farm, Torver as the owner of the area marked XYZ on the Wilson Decision Plan being page 6 of this decision, such area being OS No. 195 containing 4.020 acres.

In the absence of any evidence, I am not satisfied that any person is the owner of the area marked D on the 1988 Decision Plan (being the area → a short distance west of Delicars thereon marked) and it will therefore remain subject to protection under section 9 of the 1965 Act.

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

(Keswick hearing on 12 May 1987)

At the hearing: (1) the Crown Estate Commissioners were represented by Miss A M Goss, solicitor of their London office; (2) Mr T G W Wilson as executor of Miss F E Wilson of High Stile, Torver (she died 31 January 1986) was represented by Mr M S Graham, solicitor of Iain Maci Livingston & Co, Solicitors of Ulverston; and (3) Cumbria Council as registration authority were represented by Mrs F Harrison, administrative officer.

According to the Register, the land in this Register Unit contains about 13.655 hectares (33.743 acres), and comprises 5 parcels which all adjoin a much larger area which is known as Torver Back Common, which has Coniston Water along its east boundary, and which is the land comprised in Register Unit No. CL58. In the CL101 Ownership Section, at Entry No. 1, Miss F E Wilson was on 24 October 1980 registered as owner of "three parcels of land in this register unit marked A, B and C", and at Entry No. 2 Crown Estate Commissioners were on 24 October 1980 registered as owners of "the parcel of land in this register unit marked D".

On the information available to → me before the hearing started, it seemed that I was concerned only with a parcel ("the XYZ parcel") which is about 200 yards long from southwest to northeast, which has an average width of 135 yards, which is situated about 600 yards southeast of the point in Torver where the A5084 road branches off the A593 road and which is edged green on a plan ("the XYZ Plan") provided by the County Council for the purpose of the hearing.



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Before the hearing the said solicitors for Mr T G W Wilson wrote to the Commons Commissioners letters dated 2, 10 and 17 September 1986 in which they claimed (in effect) that the XYZ parcel is OS No. 195 forming part of High Stile Farm, and suggested that there appeared to be an error in the recording in the Ownership Section of the decision dated 2 October 1980 and made by Mr G D Squibb QC, (the then Chief Commons Commissioner).

At the beginning of the hearing Miss Goss referred to the said 1980 decision. It was made after a hearing at Kendal on 22 July 1980 at which Miss F E Wilson was represented by Mr M S Graham. In it the Commissioner referred to "three areas of land" part of the lands of Mr William Wilson (Miss F E Wilson was his executrix) mortgaged in 1930, and to "a small part" which was waste land of the manor of Torver forfeited to the Crown in 1554; and said he was satisfied that Miss Wilson and the Crown Estate Commissioners were the owners of "parts of the land" and he would accordingly direct their registration as the owners of those parts under section 8(2) of the Act of 1965. Miss Goss said she thought the 1980 decision was correct but that the section 8(2) directions subsequently given were incorrect.

Next at the 1987 hearing, Mrs Harrison produced the directions so given by Mr G D Squibb QC. They are both dated 30 July 1981; one ("the Wilson direction") directs the registration of Miss Florence Elizabeth Wilson as owner of "the land edged red on the plan marked GDS1 hereto annexed"; the other ("the CEC direction") directs the registration of the Crown Estate Commissioners as owners of "the land coloured red on the plan marked GDS2 annexed". The GDS1 plan shows edged red parcels A, B and C as marked on the XYZ plan with the addition of a strip ("the parcel C additional piece") which adjoins the northeast side of parcel C on the XYZ plan and which increase its area by about fifth. The GDS2 plan shows coloured red a piece of land ("the South parcel") which is about 100 yards long from north to south and has an average width of about 30 yards and which is situated about 3/4 of a mile south of parcel a (? by and to the west of the A5084 road).

Next at the hearing Miss Goss said that the Crown Estate Commissioners do not now claim and have never claimed to be the owners of the South parcel, but they do now claim and did at the 1980 hearing claim to be the owners of the parcel C additional piece. She produced (1) a copy letter dated 1 November 1973 (CEC/1) written on behalf of the Crown Estate Commissioners to the Commons Commissioners in which such claim was made by reference to an enclosed plan; and (2) a copy of an affidavit (CEC/2) sworn on 29 July 1975 by Mr Eric Froude Richards who had been engaged since 1958 in the management of land at Torver which formed part of the Crown Estate, and who contended the reasons therein specified that the parcel C additional piece was waste land of the manor of Torver. She submitted that the Wilson direction should be corrected by deleting from the land edged red on the plan annexed, the parcel C additional piece.

Mr Graham said (in effect) that he did not before the hearing (May 1987) know that the Crown Estate Commissioners might claim that the land edged red on the plan annexed to the Wilson direction should not have included the parcel C additional



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piece, and could not therefore without having time to consider his client's documents and obtaining his instructions, either agree (or to) oppose the claim of Crown Estate Commissioners.

Mrs Harrison said that it might be that the parcel C additional piece was included in the CL101 registration, but she could not without looking at documents in Carlisle certainly say whether it was or was not so included.

I said (in effect):- The file 20/U/41 containing the Commons Commissioners' papers relating to the 1980 hearing and decision could not be found either in their office or in the store where files no longer currently in use were kept. I adjourned for consideration at a future hearing all questions there might be as to the propriety of the plan GDS1 annexed to the Wilson direction. I was satisfied that the CEC direction was mistaken, should therefore be treated as void and be sent back to the County Council as registration authority cancelled; the consequence of such avoidance was that they as registration authority would have pursuant to section 8 of the 1965 Act have to make a new reference to the Commons Commissioners, so that the ownership of the South piece could be again considered by a Commons Commissioner at some hearing to be arranged.

Mrs Harrison said she would represent to the County Council that they as registration authority make a new reference which would include the South parcel. All present at the hearing agreed that it would be convenient if the consideration of the ownership of the South parcel and the consideration of the correctness of the Wilson direction and all other questions determinable by a Commons Commissioner were heard by a Commons Commissioner at the same hearing, preferably if possible in Ulverston.

The hearing was adjourned accordingly.

SECOND SCHEDULE

(Documents produced or referred to 19 January 1988)

Part I: on behalf of Crown Estates Commissioners

- | | | |
|-------|----|--|
| IRC/1 | -- | Plan showing coloured red land which should not have been included in the Wilson section 6 notice dated 30 July 1981, being the same as exhibit EFR.1 to the statutory declaration made on 29 July 1975 by Edward Froude Richardson showing the land claimed by CEC, the declaration with its exhibit marked CEC/2 at my May 1987 hearing. |
| IRC/2 | -- | Plan essentially the same as IRC/1. |



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IRC/3	--	Folder (from CEC office) containing old papers and entitled "Manor of Torver: plans, surveys, boundaries of Manor", including:-
	2 April 1845	Letter from Ordnance Survey Office to the Secretary of the Commissioners for HM Woods, Forests and Land Revenue:- "... Manors of Muchland and Torver belong to the Crown ...".
IRC/4	1897-1933	Folder from Public Record Office containing record of fines and admissions relating to Manor of Torver.
IRC/5	1897	Plan (rather tattered) entitled "Torver Manor".
IRC/6	14 August 1967	Copy lease by CEC to Lake District Planning Board for 99 years of waste land of the Manor (the CL58 land).

Part II: by Mr T G W Wilson

TGWW/1	--	Plan showing edged red, field 195 containing 4.020 acres (on an enlarged scale same as XYZ on XYZ Decision Plan).
TGWW/2	7 February 1930	Mortgage by William Wilson to Rosetta Ellen Rathbone of High Stile Farm containing 83.754 acres.
TGWW/3	20 July 1943	Probate of will of William Wilson (he died 6 May 1942) granted to Florence Elizabeth Wilson.
TGWW/4	30 December 1964	Assent by her in favour of herself.
TGWW/4 bis	4 June 1986	Probate of will of Florence Elizabeth Wilson (she died 31 January 1986) granted to Thomas George Waite Wilson.
TGWW/5	21 July 1986	Assent by him in favour of himself.

Dated this 15th day of April — 1988

A. A. Baden Fuller

Commons Commissioner