



In the Matter of Scawdale Fell
and Cat Bells Above Derwent

Decision

This reference relates to the question of the ownership of the land referred to above being the part of the land comprised in the land Section of Register Unit No. CL.255 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; Mr P Jenkinson was represented, by leave, by Mr I McWilliam FRICS; and the Registration Authority were represented by Mr T Greer.

This land is adjacent to the land with which I was concerned in reference no. 262/U/582 (CL.166) which I heard immediately before this case. It forms part of the same unit on the tithe map as that land and again forms that part of the unit land which lies in the parish and manor of Borrowdale, the ownership of the remainder of the unit land having been registered under section 4 of the 1965 Act.

The argument put forward on behalf of the National Trust, Mr Leyland and the Askew Trustees is therefore the same as they put forward in reference no. 262/U/582.

The difference in this case is that Mr Peter Jenkinson who is the tenant of the National Trust of Hollows Farm which lies on the eastern boundary of the unit land and the owner of other land in the vicinity claims to be the owner of the whole of the land under a possessory title. Alternatively he claims such a title to part of the land.

His claim to be owner of the whole of the land referred is based on the fact that he and his father and uncle before him have grazed this land with sheep since 1938 without permission or interference, and that no one else has done so.



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He gave evidence to this effect which I accept but the ownership of this land in 1938 was for the reasons which given in reference no 262/U/582, vested in the Public Trustee and the mere use of an unfenced part of an area of open land for grazing does not amount to adverse possession so as to give the grazier possessory title under section 17 of the Limitation Act 1980.

The position is quite different in respect of the smaller area which is shown and hatched in black on the plan attached to this decision.

Mr Jenkinson told me and I accept his evidence that that area, known as the Swanesty How Land, was fenced in by Mr Jenkinson and his father without asking anyone's permission in 1954 and has remained fenced ever since. It has been used by them for grazing sheep.

There is no doubt, I think, that this long period of possession by Mr Jenkinson and his father has, by virtue of section 17 of the 1980 Act, extinguished the title of the Public Trustee to this land. The question is who is now entitled to the fee simple. Mr Mc William says it is Mr Jenkinson. Mr Fitzgerald says it is the National Trust.

In 1954, when the land was first fenced in, Mr Jenkinson's father was the tenant from the National Trust of Hollows Farm which adjoins this land. The presumption therefore is that the Swanesty land became annexed to the demised land. There being nothing to rebut that presumption it follows that in 1966 when the period of limitation had run the land was held by Mr Jenkinson's father as part of the land let to him by the National Trust. In 1972 Mr Jenkinson's father died. His tenancy was terminated in one way or another and in 1972 a new tenancy of Hollows Farm was granted to Mr Jenkinson. On the termination of Mr Jenkinson's father's tenancy the Swanesty land together with the rest of Hollows Farm was surrendered to the National Trust who were by now the owners in fee simple. The new tenancy to Mr Jenkinson did not include the Swanesty land but Mr Jenkinson continued to occupy it, adversely now to the National Trust. By 1984 12 years had run again and again, there being nothing to rebut the presumption, the land became annexed to the demised land leaving Mr Jenkinson as tenant but the National Trust as owner in fee simple. The fact that Mr Jenkinson has, during his tenancy bought 20 acres adjoining Hollows farm and 29½ acres of glebe elsewhere both of which he holds in fee simple does not in my opinion affect the matter.

I shall accordingly direct the Cumbria County Council as registration authority to register the National Trust as owners of the land hatched in black on the plan attached to this decision and the Public Trustee as owner of the remainder of that part of the unit land which has been 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

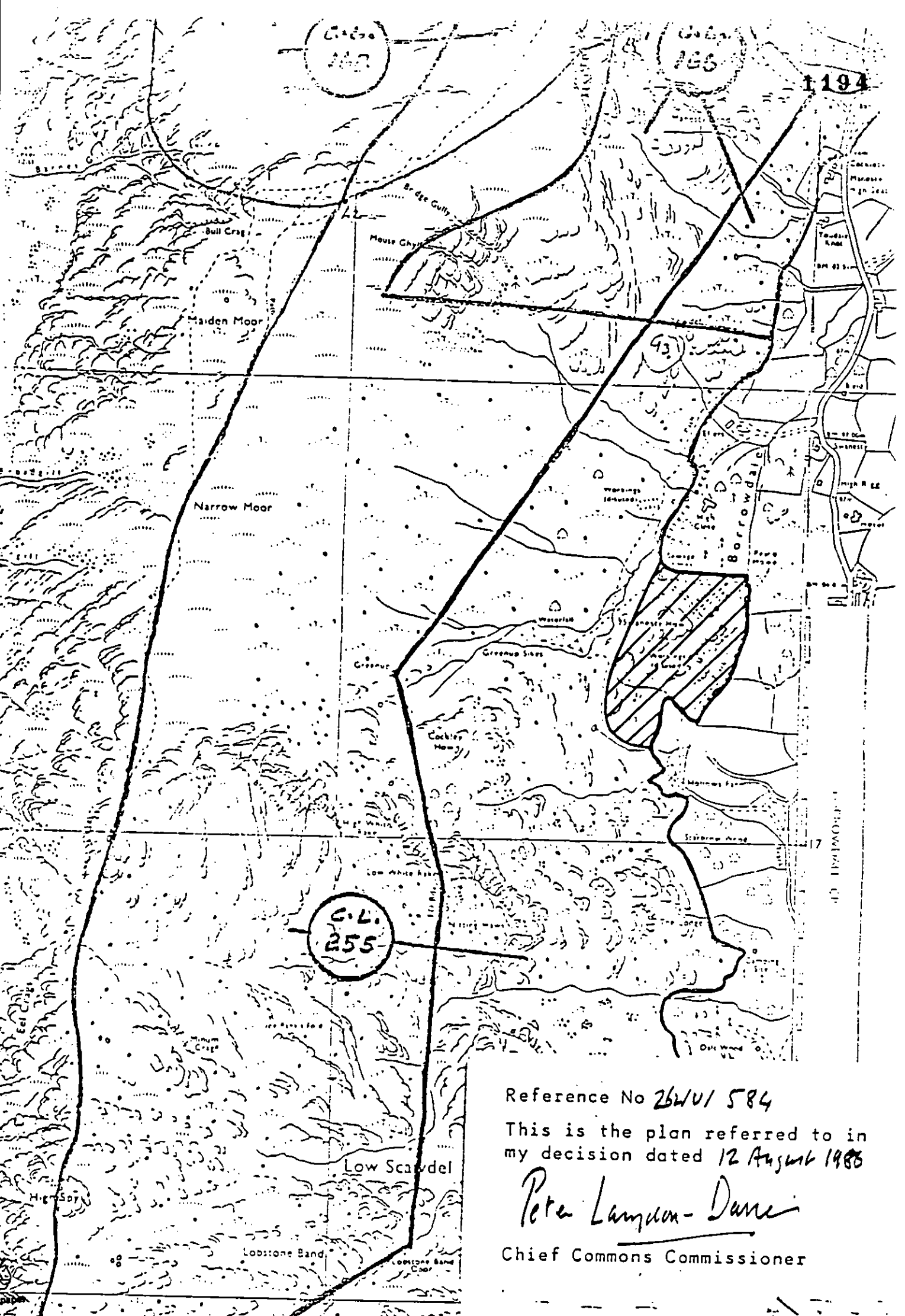
day of

August

1986

Peter Langan-Durie

Chief Commons Commissioner



Reference No 26WU/ 584

This is the plan referred to in
my decision dated 12 August 1988

Peter Langdon-Davie

Chief Commons Commissioner