



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/109
209/D/110
209/D/111

In the Matter of Bottoms, near
Dry Bridge, Ramsley, South Tawton
Parish, West Devon District, Devon

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No VG. 61 in the Register of Town or Village Greens maintained by the Devon County Council and are occasioned by Objection No 22 made by Mr P R Harris and noted in the Register on 11 June 1969 and Objection Nos 709 and 853 made by the said Council and noted in the Register on 15 March 1971.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 16 and 17 November 1977. At the hearing (1) Mrs E M Wonnacott on whose application the registration was made and (2) South Tawton Parish Council were represented by Mr R J Woodward of Burd Pearse & Co, Solicitors of Okehampton; (3) Mr Walter Alfred Towler and Mrs Mary Doreen Swift Towler as successors in title of Mr P R Harris, were represented by Mr D M Morris solicitor of Anstey & Thompson, Solicitors of Exeter; (4) Devon County Council were represented by Mr P A J Browne solicitor in the County Secretary's Department; and (5) Mrs Edith Molly Tarry was represented by her son Mr P B Tarry.

The land ("the Unit Land") in this Register Unit is of irregular shape and of varied appearance. It is south of the A30 road and west of the side road ("the Throwleigh Road") which leads southwards from the A30 road to Throwleigh and northwards (under the A30 road) to the Village of South Zeal. The Unit Land is crossed by a road or track ("the Track") and by a stream ("the Stream") which intersect a little south of the middle of the Unit Land in an area ("the Ford/Footbridge Area") which being where the Unit Land is narrow, apparently divides it into two distinct parts ("the North Part" and "the South Part"). The North Part almost completely surrounds an area ("the House Area") not part of the Unit Land, on which there stands a dwelling house now known as Herons Brook and formerly known as Dry Bridge Cottage. The North Part also partially surrounds an area ("the Water Wheel Area") on which according to the 1906 below mentioned photographs there formerly stood a building, an overshot waterwheel and a substantial structure supporting a high level aqueduct which began on Ramsley Hill (on the east side of the Thornley road) and which after crossing such road ended at the Water Wheel Area. For the purposes of exposition it is convenient to divide the North Part of the Unit Land into four parts all of which now appear to be lands held with the House Area: (i) a part ("the East Triangle") on the east of and for the most open to the Track, being land in front of the building apparently now used incidentally to the House Area (?as a garage); (ii) a part ("the North Triangle") east of the Water Wheel Area; (iii) a part ("the Garden Strip") being the part of the Unit Land between the east side of the Stream and the west side of the Waterwheel Area and now cultivated as a garden for the House Area; and (iv) a part ("the West Rough Ground") which is on the west side of the Stream.



In the Ownership Section of the Register, Mr P R Harris is registered as the owner of the North Part. The grounds of Objection No 22 (Mr Harris) are (in effect) that the North Part was not a village green at the date of registration. The grounds of Objection Nos 709 and 853 (the County) are (709) that the land coloured pink on the plan annexed being the part of the Track which lies in Thornleigh Road and the Ford/Footbridge Area was not a village green at the date of registration but formed part of the County highway, and (853) that the land (apparently meaning the whole of the Unit Land) was not a village green at the date of registration.

In support of the registration evidence was given as follows:- (1) By Mrs W J Redstone orally who said that Mrs Wonnacott was bedridden and unable to attend the hearing; (2) by Mrs Wonnacott by affidavit sworn on 15 November 1977 (she was born in 1886 and has lived all her life in South Zeal and been a member of the South Tawton Parish Council from 1934 until 1976), (3) by Mr E Hill orally (he was born in 1912 and had lived in South Zeal all his life); (4) by Mr W J Knapman by affidavit sworn on 15 November 1977 (he was born in 1918 and had lived in South Zeal all his life until 1955); (5) by Mr R C G Hooper by affidavit sworn 15 November 1977 (he was born in 1923 and has lived in South Zeal all his life); (6) by Mr W R Sampson by affidavit sworn 15 November 1977 (he was born in 1929 and lived in South Zeal all his life); (7) by Mr A J Hooper affidavit sworn 15 November 1977 (he was born in 1938 and lived in South Zeal except from 1962 to 1970 all his life); (8) by Mr K C Redstone by affidavit sworn 15 November 1977 (he was born in 1944 and lived in South Zeal all his life); (9) by Mr W F Cann orally (he was born in 1945 and has lived in South Zeal all his life) and had been a member of the Parish Council for 10 years and chairman for 5 years); (10) by Mrs E A Myers orally (she was born in 1947 and has lived at South Zeal all her life until 1963; (11) by Mr A J Trussley by affidavit sworn 15 November 1977 (he was born in 1947 and lived in South Zeal all his life); (12) by Mr P F Carpenter orally who was born in 1960 and came to South Zeal 12 years ago.

Against the registration evidence was given by Mr F J Doughty who is and has for the last 20 years been provisional surveyor for the Okehampton District of the Devon County Council Engineers Department, (14) by Mr P R Harris orally (he was the owner of the North Part from 1965 until he sold it to Mr & Mrs Towler in 1977); (18) by Mr Towler (he and his wife are the present owners of the North Part) and by Mr G H J Fursdon by a letter dated 7 November 1977 written to Mr Morris (he in 1964 conveyed the North Part to Mr Harris). In the course of the evidence against the Objection, the documents listed in the Schedule hereto were produced.

In accordance with regulation 23(5) of the Commons Commissioners Regulations 1971, I heard the oral evidence of Mr P B Tarry of 53 Quarry Park Road, Exeter who was concerned with that part of the South Part which is west of the Track (he is the estate manager for his mother at Pixie Garden and lived there himself from 1963 to 1966).

After this evidence was given Mr Cann was recalled as a witness, and oral evidence was given by Mr J M Draisey Assistant County Archivist who produced the South Tawton Tithe Award (confirmed by the Tithe Commissioners on 13 September 1847). Reference was also made to the Register map from which it appeared that Ramsley Hill (sometimes at the hearing called Ramsley Common) to the east of the Unit Land is Register Unit No CL. 176 and that some land nearby or adjoining on the south is Register Unit No CL. 239.



On 19 November 1977 I inspected the Unit Land in the presence of Mr Cann, Mrs Redstone, Mr Towler and Mr Tarry and subsequently by myself walked over some of the parts of Ramsley Hill or Common visible from the Unit Land and over the part of the Track which continues southwards from the Unit Land.

During the cross-examination of Mr Hill, Mr Browne put in an OS (1/2500) map (CC/1) showing coloured red the part of the Unit Land to which Objection No 709 was intended to relate; the part so shown is in some respects a little larger than that coloured pink on the Objection plan. All present at the hearing agreed that whatever might be my decision as to the remainder of the Unit Land, the red area should be removed from the Register. Hereinafter I use the words "Unit Land" as not including this red area.

As to the history of the Unit Land before living memory, I have only the 1844- Tithe Award which shows it as being part of South Tawton Common (2634a.Or.17p, all then with no owner or occupier), and having on it a building (perhaps a cottage where Herons Brook now is). The earliest living memory of it is of Mrs Wonnacott who of its history before 1910 said:- "Ramsley Common was mined for Copper Ore on a stop/go basis related to the rise and fall of income for the sale of Copper to the smelting works in South Wales after preliminary processing at Ramsley South Zeal by local labour first by washing at the floors on the higher lever at Ramsley and secondly at the floors on the lower level at Bottoms where the ore received another washing on new jigger tables. The residue after the second washing was deposited as sand on Bottoms and the area of Bottoms became known as Sand Hills. In 1909 the Ramsley mine was closed...". And Mr G H J Fursdon (under conveyances dated 1913 his predecessors Miss F C and Mr H C Fursdon became entitled) said:- "...The land in question was in part or in whole used in connection with the Ramsley Copper Mine until about 1905 or whenever the Mine closed...". The 1906 photographs mentioned in the Schedule hereto show the Mine in operation, the North Triangle and the north part at least to the Garden Strip were being used for a large water wheel (the water apparently coming from the above-mentioned aqueduct); clearly the Unit Land (or at least the North Part) was for the operation of the Mine of great importance.

For the Unit Land (or any part of it) to have been properly registrable as a town or village green it must be within the definition of section 22(1) of the 1965 Act: "land which has been allotted...for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years".

Having regard to what I saw of the remains of the mining works at the nearby Ramsley Hill and what could be seen during my inspection of the Unit Land I find that up to about 1909 when the Mine was closed, the Unit Land was in all now relevant respects industrial land which was being used in a manner quite inconsistent with it ever having been allotted for any recreational purpose or been subject to a customary recreational right. Accordingly to come within the above quoted definition the Unit Land (or some part of it) must be land "on which the inhabitants of any locality have indulged in (lawful) sports and pastimes as of right for not less than 20 years", that is 20 years before 5 August 1965 (the date of the passing of the 1965 Act) see Windsor v Mellor 1975 Ch 380.



As to the use for recreational purposes after 1909 and before 1965, the evidence in support of the registration, (both oral and by affidavit) was all to the same effect: the Unit Land, or at least the North Part, (more particularly the West Rough Ground and the land around the Waterwheel Area) was over the whole period used by children for their play and amusement. As to this being "as of right", Mrs Wonnacott said that the use she described by the children was "as of right without secrecy and without force and without permission of any person" and the deponents of the said affidavit said "...we went there as of right; the area was known to the inhabitants of South Zeal to be public land where any person could go for recreation. It was mainly children who used the area; to the children of the Village of South Zeal it was an invaluable adventure playground and regularly used as such". The oral evidence was to the same effect.

Accordingly finding as I do that the land was used by children as described in the evidence, the most important question in this case is whether such use was "as of right" within the meaning of the above-quoted definition.

On this question I am bound by the observations of the Court of Appeal in *Beckett v Lyons* 1967 1 Ch 449 to the effect that to show that permission has never been asked or refused "is very far from showing that the exercise of the privilege was under claim of right...that when the law talks of something being done as of right it means that the person doing it believes himself to be exercising a public right"; that the question whether the act was done by a person who "believes himself to be exercising a right" or is merely doing something which he felt confident that the owner would not stop but would tolerate because it did no harm (per Harman LJ at pages 468 and 469) and that a distinction must be made between the activities of a person doing something as of right and doing it as a "de facto practice which (he) rightly thought no one would find objectionable and which the owner...in fact tolerated as unobjectionable" (per Russell LJ page 475). On the basis of these observations, I conclude that the question of whether the use of the Unit Land by children as described by the witnesses was "as of right" is a matter of law to be determined by me from the nature of the use and the circumstances in which it was made and that the views of the witnesses on this question are irrelevant.

As to the use made by children:- Mrs Wonnacott said (in effect) that the Unit Land had been used by the children of South Zeal as an adventure playground since 1909 and they used to ride bicycles there on a "sporting course" and also used carts made of soap-box and pram wheels; they also played games of "cowboys and Indians" type. The statements of the deponents to the other affidavits were, apart from some slight individual variations, all to the same effect: during the period he or she had known the area known as Bottoms, he or she had played with his or her local Village friends from about the age of 7 to the age of 15, and that they usually entered the area by the Throwley Road just north of the yard of Mr Madder's cottage (now Heron's Brook) and they repeated Mrs Wonnacott's observation about bicycles, carts made with soap-box and pram wheels and games of cowboys and Indians type. Mr Hill said that between 1917 and 1930 he played on the Unit Land with plenty of friends, nobody turned them off, they climbed trees, played cowboys and Indians, and made hideouts; on the average there were about half a dozen children there, sometimes more, sometimes less. Mr Cann said (in effect) that he played on the Sand Hills in the Bottoms from 1953 to 1959; that there were usually about 20 children there and that at that time there was no playing field in South Zeal. Mrs Myers said (in effect) that she and her two brothers played on the Unit Land where there were a lot of cycle tracks.



As to the nature of the land during this period:- By comparing the 1909 photographs with its present appearance, clearly there has been much change, but I had no precise evidence as to when the various industrial structures existing in 1909 were removed. Mr Hill said that the big wheel was there when he played (1919-1926). Mr Cann and Mrs Myers during their period of play (1953-1959 and 1957-1969) remembered the play area as the Sand Hills (meaning the West Rough Ground and perhaps including much of the Garden Strip). Mr Doughty said that in about 1958 the Granite Pillar (which supported the west end of the aqueduct) was still there together with many derelict buildings, including a structure which was part of the waterwheel about 15 feet long and six feet wide which contains about 3 or 4 feet of stagnant water; in about 1959 the County Council (the work was done under his supervision) removed the Pillar (the granite was of value). Mr Harris said that when he first came there (about 1964) there was on the West Rough Ground a dangerous pit, about 20 feet long walled with granite containing about 3 feet of water. On my inspection I could see numerous vestigial remains of industrial structures and that a large part of the surface of the West Rough Ground was sand (now covered with vegetation) was obvious.

My conclusion is that for at least 20 years after the closure of the Mine many of the industrial structures must have remained and much of the West Rough Ground, and possibly some of the Garden Strip too, was open sandy ground (the sand being the waste product of the mine). During this period at least the North Part must have been to children a great attraction as an exciting play area. Although the attraction may have somewhat diminished as the industrial remains became more and more dilapidated and the surrounding land became more and more overgrown, I infer that right up to 1965 the structural industrial remains and the Sand Hills area were always a considerable attraction.

Against the Unit Land (particularly the North Part) being used in this recreational manner by children as of right, I have: (a) The attraction of the land for children was entirely due to structural and other remains of the pre-1909 industrial activity; nothing had ever been placed on the land for children; (b) the land is not being used for any industrial purpose by those claiming under mineowners or for any garden or domestic purpose by the occupiers of Dry Bridge Cottage or for any purpose at all, so that no one could reasonably object to its use by children as a play and amusement area; (c) although the parents of the children and others in the Village knew that the North Part was being used by the children as a play and amusement area, there was no evidence that any adult, (except possibly as a spectator of the children) had made any recreational use of the land, indeed Mr Hill said that he had "never seen any grown-ups there".

Applying as best I can the above quoted observations from *Beckett v Lyons*, I conclude that the use made by the children of the North Part was never "as of right"; accordingly my decision is that Objection No 22 (Mr Harris) which was expressed to be limited to the North Part, wholly succeeds.

As regards the South Part there was no evidence it had ever been used for industrial purposes except possibly as incidental to the industrial use of the North Part; so its attraction to children to play and amuse could never have been so great. Its situation and present appearance is against it ever having been used as a recreational area in any way distinct from the North Part. Further I have the evidence of Mr Tarry as to the west part of the South Part having been taken into the agricultural land owned by his mother. I have therefore no reason for not applying to the South Part the conclusion as above set out about the North Part. Objection No 853 (the County Council) (except in relation to the highway) was not much pressed by Mr Browne; nevertheless it clearly puts the status of all the Unit Land in issue; because it cannot be in the public interest that any land should remain registered as a town or village green, if I am satisfied that it is



not, my decision is that this Objection wholly succeeds for the benefit of Mrs Tarry and whoever may be the owner of the remainder of the South Part.

At the conclusion of the hearing I was then inclined to the view that the Unit Land might perhaps have been registered as common land, and there was some discussion about this. Mr Woodward submitted that I was competent to modify the registration by in effect transferring all relevant Entries to the Register of common land, and at my inspection I was handed a letter dated 18.7.1977 signed by the Clerk of the Parish Council in which I was asked to do this.

Since the hearing there has been sent to the office of the Commons Commissioners an agreement dated 3 June 1978 and made between (1) Mrs Wonnacott, (2) South Tawton Parish Council and (3) Mr and Mrs Towler to which is annexed a plan showing two areas edged green and edged red and therein referred to as "the agreed land"; by this it is agreed (in effect) that without prejudice to any decision I may give as to the Unit Land being a town or village green, the parties will accept an order by the Commons Commissioner for the cancellation of the provisional registration VG. 61 in the said Register of Town or Village Greens provided nevertheless that the Commons Commissioner at the same time make an order for the agreed land to be registered in the Land Section of the Register of Common Land for the said Parish of South Tawton. Page 7 of this decision is an uncoloured copy of the said plan save that I have on it marked the red and green edging with heavy black lines, and marked "the agreed land" as ABCDEFG, PQRS and XYZ. The agreed land includes no part of the land which at the hearing as above stated all present agreed shall be removed from the Register.

I consider I ought to give effect to the said June 1978 agreement, although I shall not adopt the exact wording proposed. Accordingly following the considerations above set out in respect of the Unit Land being a town or village green and following the agreement in other respects, I confirm the registration with the modifications: (1) that in the Land Section of this Register Unit for the heading "Register of Town or Village Greens" there be substituted "Register of Common Land", and for the heading "Register Unit No VG. 61" there be substituted "Register Unit No CL. (formerly No VG. 61)", (2) that there be removed from the Register all the land comprised therein except the land marked with heavy black lines inside the boundary on the copy plan being page 7 of this decision, such lines being therein identified by the letters ABCDEFG, PQRS and XYZ and (3) that all such other modifications if any be made by the County Council as registration authority as may be necessary or consequential on the transfer of the said land from the Register of Town or Village Green to the Register of Common Land including the provision of some appropriate new Unit No.

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.

SCHEDULE

(Documents produced on behalf of Mr & Mrs Towler)

- | | | |
|---------|-------------------|---|
| T1 & t2 | About 1906 | Photographs 8" x 6" of Ramsley Mine, South Zeal, 7296 and 10194 |
| T3 | 29 September 1964 | Conveyance by Mr G H J Fursdon to Mr P R Harris of part of OS Nos 2437 and 2450 as edged red on plan (all the North Part except the East Part and |

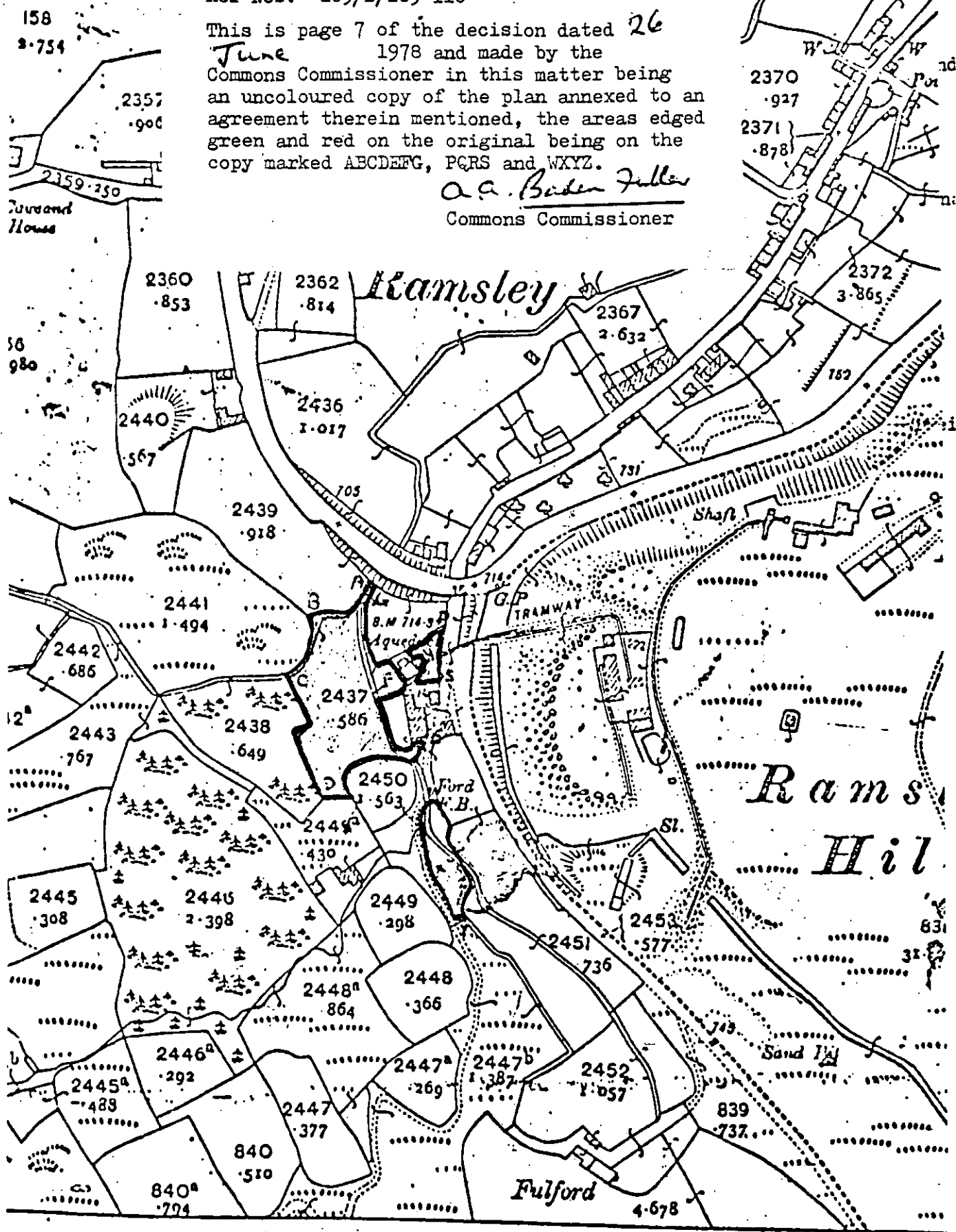
COMMONS REGISTRATION ACT 1965

Re:- Bottoms, near Dry Bridge, Ramsley,
South Tawton, West Devon District, Devon

Ref Nos:- 209/D/109-110

This is page 7 of the decision dated 26
June 1978 and made by the
Commons Commissioner in this matter being
an uncoloured copy of the plan annexed to an
agreement therein mentioned, the areas edged
green and red on the original being on the
copy marked ABCDEFG, PQRS and WXYZ.

A.A. Baden Fuller
Commons Commissioner



in 1883-86. Revised in 1904. South Tawton Common
DARTMOOR
40/87. 50/47. 50/212.

CHARACTERISTICS AND SYMBOLS

e7



including the Waterwheel Area but not including
Dry Bridge Cottages: OS 2450 not part of the Unit Lan

- T4 5 April 1965 Conveyance by Mr A S Madders as personal representative of Mr S Madders of Dry Bridge Cottage who died intestate on 31 January 1955 and as personal representative of his widow Mrs H M Madders who died intestate on 1 May 1967 to Mr P R Harris of Dry Bridge Cottage coloured pink on the plan and all his estate and interest (if any) in the land coloured green (pink = House Area and the Garden Strip: green = OS 2450)
- T5 20 August 1966 Conveyance by Mr L G Bailey to Mr P R Harris of Hoopers Plot (about 1 rood) between Drybridge and "the old mine crusher" (?not part of the Unit Land)
- T6 1964 Abstract of title of Mr G H J Fursdon to land at Ramsley commencing with conveyance dated 16 April 1911 by Mr W H Toller to Miss F C Fursdon (she died 27 November 1940) of 3/4th share of the Manor of South Tawton with lands etc and a conveyance dated 26 April 1913 by him to Mr G H Fursdon (he died 17 January 1942) of the other 1/4th share, and concluding with a conveyance dated 16 September 1964 by his (Mr G H Fursdon's) executors to Mr G H J Fursdon of the said Manor with lands etc
- T7 15 July 1977 Conveyance by Mr P R Harris to Mr & Mrs Towler of the cottage called Heron's Brook formerly Dry-Bridge Cottage
- T8 7 November 1977 Letter from Mr G H J Fursdon to Mr Morris

(Documents produced on behalf of County Council)

- CC/1 - Extract OS map showing part of Unit Land mentioned in each Objection
- CC/2 - Letter from Parish Council enclosing copy of particulars of sale of Heron's Brook (the then occupier being Mr P R Harris)
- CC/3 28 July 1972 Decision of Chief Commons Commissioner re Riverside South Zeal reference 9/D/8

(Documents produced by Mr Tarry)

- Tarry/1 16 August 1919 Statutory declaration by Mr M A Tucker and Mr D S Ward as to (among other things) possession for the last 10 years of land coloured blue (the part of the South Part of the Unit Land which is west of the Track)

Dated this 26th day of June — 1978

a. a. Baden Fuller

Commons Commissioner