



## COMMONS REGISTRATION ACT 1965

Reference No. 209/U/61

In the Matter of Whiteleigh Meadow,  
Bradford and Black Torrington  
Parishes, Torrridge District, Devon

## DECISION

This reference relates to the question of the ownership of land known as Whiteleigh Meadows, Bradford and Black Torrington Parishes, Torrridge District being the land comprised in the Land Section of Register Unit No. CL 133 in the Register of Common Land maintained by the Devon 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 no person claimed to be the freehold owner of the land in question and no 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 Barnstable on 11 May 1979. At the hearing Mr G E Ridge on whose application Rights Section Entry No. 2 was made, attended in person, and Mr W H B Coham-Fleming on whose application Rights Section Entry No. 4 was made, was represented by Mr J M Rowland, Solicitor with Peter, Peter & Sons, Solicitors of Holsworthy. I had before me a letter dated 27 March 1979 from Mr Coham-Fleming in which he said (among other things) that this land was divided into "journeys" which were part and parcel of certain farms within the parishes of Bradford and Black Torrington. Mr Ridge in the course of his evidence produced a lease dated 22 October 1976 by which land (being or including some part of the land in this Register Unit) was demised to him by the Minister of Agriculture, Fisheries and Food. After some discussion as to the possibility of this land being owned by a number of persons (each owning a part) and as to Mr Coham-Fleming being one of the owners, I adjourned the proceedings.

I held the adjourned hearing at Barnstable on 26 March 1981. At this hearing, Mr Ridge attended in person as before, Mr Coham-Fleming was represented by Mr Rowland as before, and the Forestry Commissioners and the Minister of Agriculture Fisheries and Food were represented by Mr E Harrison, executive in the Legal Department of the Minister.

The land ("the Unit Land") in this Register Unit is a tract of about 202 acres situated a short distance to the south of the Holsworthy-Hatherleigh Road (A3072): crossing the Unit Land is a stream called "Whiteleigh Water". There are 5 Rights Section registrations of rights being or including a right to graze animals of varying numbers and by various descriptions; at Entry No. 4 (made on the application of Mr Coham-Fleming) is of a right attached to "land at Coham Estate" edged red on a map to graze 50 bullocks, 50 sheep, 2 horses over the whole of the Unit Land.

I have a letter dated 22 March 1981 from Mr J Elcome of Middle Rightdown, Brandis Corner; he assumes that the hearing would relate to a possible claim by Mr Ridge regarding the freehold. At the hearing Mr Ridge said he did not claim ownership of any part of the Unit Land (the Rights Section registration at Entry No. 3 was made on his application "as tenant").



Mr Harrison produced the documents specified in Part I of the Schedule hereto, claiming that they showed the Minister's ownership of the land hatched red on the map M of A/2. Page 3 of this decision ("the Decision Plan") is an uncoloured copy of part of the said map, the thick black lines on it showing the boundary of the Unit Land and the areas on it hatched black showing land on the original hatched red.

Mr Rowland after asking Mr Harrison to produce the document specified in Part II of the Schedule hereto, gave oral evidence in the course of which he produced the documents specified in Part III of the Schedule hereto. He said (in effect):- Mr Coham-Fleming and his family before him had lived at Coham (a residence near Black Torrington) since Saxon times. In 1883 the Estate descended to a female who married Mr Fleming (the grandfather of Mr W H Coham-Fleming) who by Royal Licence adopted the name of Coham-Fleming. Because the Estate had been in the same family for more than 8 centuries there were no title deeds. Documents C-F/2, 3 and 4 were found amongst the numerous old documents relating to the Estate and were the only ones (as far as he knew), throwing any light on the "journeys" into which the Unit Land had been treated as having been divided.

The plan on, and the Schedule to, the 1932 conveyance (M of A/1) shows the land thereby conveyed as including two pieces north-west of Whiteleigh Water in Bradford described (by reference to the 1906 OS map) as "pt 169: (area) 12.560"; and the two pieces southeast of Whiteleigh Water in Black Torrington described as "pt 90: (area) 620" and "pt 100: (area) 39.600". I identified the said pieces so conveyed with those hatched black on the Decision Plan; so the 1932 conveyance and the Acts and statutory instruments mentioned in M of A/2 are some evidence of the ownership now claimed by the Minister. The other evidence put before me on behalf of Mr Coham-Fleming casts no doubt on the claim of the Minister and to some extent supports it in that the 1872 conveyance shows divisions of the Unit Land essentially the same as that shown by the 1932 conveyance and in that Mr Coham-Fleming in his March 1979 letter said: "in the past, probably centuries ago, this land was divided into journeys.... these journeys are part and parcel of certain farms within the parishes of Bradford and Black Torrington". In these circumstances I am upon the evidence summarised above satisfied that the Minister is the owner of parts of the Unit Land claimed by him and I shall accordingly in pursuance of Section 8(2) of the Act of 1965 direct the Devon County Council as Registration Authority to register the Minister of Agriculture, Fisheries and Food as the owner of the parts of the land on the Decision Plan hatched black.

The documents C-F/2, 3 and 4 are apparently of great age and in parts somewhat confusing; they would have been difficult to copy and it may be that my description of them in the Schedule hereto is not altogether accurate. Each such document includes some reference to Whiteleigh Meadow. Having gone through them with Mr Rowland I conclude that at the end of the 18th century and the beginning of the 19th century the Unit Land was treated as divided into 68 parts known as "journeys" (in accordance with the boundaries in one place listed) and held in 10 distinct holdings. And I thank him for the trouble he took to explain to me these documents which in many respects are not at all easy to understand.

That this form of holding continued up to 1872 receives some support from the conveyance of that date (M of A/4), because in the Schedule thereto and on the plan drawn thereon, the parts of "Whiteley Meadow" taken by D C Wait are numbered by reference to the Tithe Apportionment Map for Blacktorrington and Bradford, as 1160, 1161, 1165, 1172, 1175, 1176 and 1174 in Blacktorrington and as 94 in Bradford their quantities being therein stated as totalling 37 a. 3 r. 1 p. and 14 a. 1 r. 36 p. respectively. It may well be as Mr Coham-Fleming in his 1979 letter suggests, that a journey was "measured by the amount of land a horse or pair of bullocks could plough in one day".

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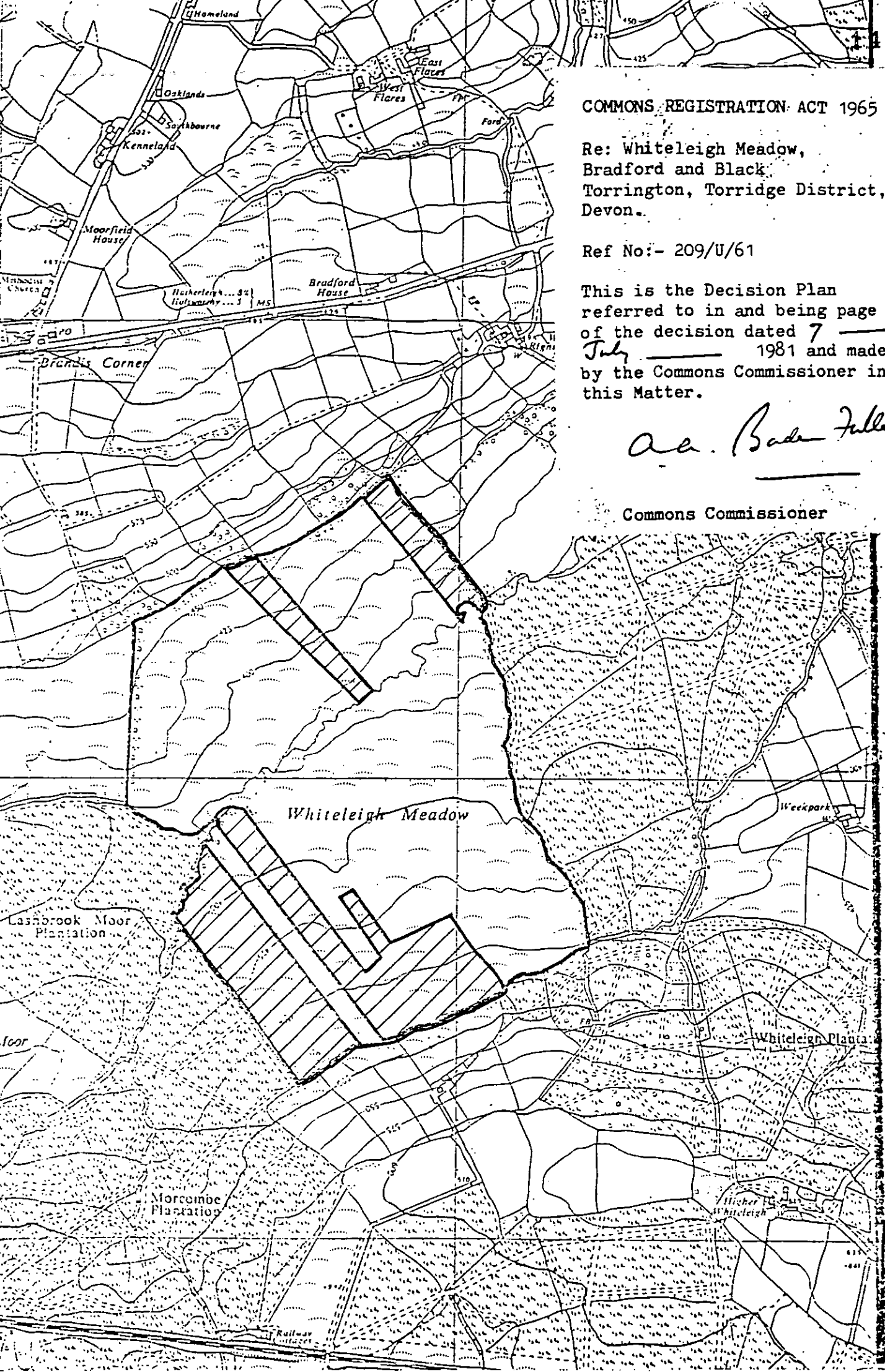
Re: Whiteleigh Meadow,  
Bradford and Black  
Torrington, Torridge District,  
Devon.

Ref No:- 209/U/61

This is the Decision Plan  
referred to in and being page 3  
of the decision dated 7  
July 1981 and made  
by the Commons Commissioner in  
this Matter.

*a.a. Bada Fuller*

Commons Commissioner





As to Mr Coham-Fleming owning any of these journeys, in his 1979 letter he says:- "Up to 1946 the biggest owner of journeys was the Dunsland estate owned by my cousins the Dickinson family. On the sale of the Estate the farmhouse and attached journeys became the properties of the purchasing farmer. In addition other farms in the parishes own journeys. Myself have several. Within living memory these journeys were delineated by boundary markers or fences and were cut for fodder or grazed by the owners". In the absence of any documents to identify the journeys now claimed by Mr Coham-Fleming, Mr Rowland relied on the map tracing (C-F/5), which he said he understood to have been made by Mr Coham-Fleming from a very large or even huge map of the Coham estate which hangs somewhere in Coham.

By the 1965 Act I am required to say whether I am "satisfied" as to ownership, see section 8. While I think it is open to a person under the Act claiming ownership at a hearing before a Commons Commissioner to rely on a map which for some reason cannot be brought to the hearing, he must in my view at least produce evidence of the nature and appearance of the original and also evidence that if the original had been produced it would be some evidence of the ownership of the claimant. Further such a claimant relying on the land claimed being part of an Estate owned by him, must I think produce evidence as to his ownership of the Estate and of the land claimed being part of it. I have no such evidence, so I am not now satisfied that Mr Coham-Fleming is the owner of any part of the Unit Land. In the absence of any evidence of any other person being the owner, I am not satisfied that any person is the owner of any part of the Unit Land, except that claimed by the Minister.

However I agree with Mr Rowland that it may be that Mr Coham-Fleming is the owner of some part of the Unit Land; so if within 42 days of this decision being sent to him or to his solicitors, there is sent to the London office of the Commons Commissioners an affidavit which either fills up the above-mentioned gaps in the evidence so far given in support of Mr Coham-Fleming's claim or alternatively shows that evidence which would fill up these gaps, available I will reconsider this Matter with a view either to giving a decision supplementary to this one saying I am satisfied as to his ownership, or alternatively to adjourning the proceedings again so that further evidence can be given on behalf of Mr Coham-Fleming. If no such affidavit is sent within the time limited or such extension thereof, as upon application I may grant, this Matter will as regards Section 8 of the 1965 Act be closed, with the result that the parts of the Unit Land not owned by the Minister will remain subject to protection under section 9 of the 1965 Act.

Nothing in this decision can be taken as encouraging Mr Coham-Fleming to think that the making of any such affidavit will necessarily result in his succeeding in his claim. On the information at present before me the gaps appear to me to be so large that it may be a troublesome and expensive matter to fill them. In his 1979 letter he indicates that before June 1968 when others had applied for registration of rights, he regarded such applications as "misguided" but nevertheless made a similar application "to protect my interest presuming that proper inquiries would be made at some later date to correct this error". I cannot in these proceedings correct this error because no Objection was taken by Mr Coham-Fleming or anyone else to the possibly misguided registrations made by himself and others, so all such registrations have become final as a result of section 7 of the 1965 Act, and I have no jurisdiction to do anything about them. It may be therefore that Mr Coham-Fleming before he incurs any more trouble and expense in this Matter should consider whether having (as he himself puts it in his letter) "jumped on the bandwagon", the present position is not for his purposes the best that can now be reasonably obtained, bearing in mind the possibility of future legislation and the impossibility of my ever modifying the Register so as to make it accord with the historical position put before me on his behalf.



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)

Part I: by Mr Harrison in support of Minister's claim

M of A/1  
5 March 1932

Conveyance by Mr James Down and his Mortgagee to the Forestry Commissioners of Week Park, High Week Moor and parts of Whiteley Meadow containing altogether 179.774 acres.

M of A/2

Map showing hatched red the part of the Unit Land claimed by the Minister.

M of A/3

Memorandum as to the effect of Section 4(5) of the Forestry Act 1945; the Transfer of Functions (Ministry of Food) Order 1955 (SI 1955 No. 554); the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965 (SI 1965 No. 319); Minister of Land and Natural Resources (Dissolution) Order 1967 (SI 1967 No. 156); and Section 39 of the Forestry Act 1967.

Part II: by Mr Harrison at the request of Mr Rowland

M of A/4  
5 March 1872

Conveyance by Thomas Fisher to Daniel Charles Wait (uses to bar dower) of Week Park, High Week Moor and part of Whiteley Meadow.

Part III: by Mr Rowland in support of Mr Coham-Fleming's claim

C-F/1

Map based on OS map 1/2500 showing hatched red part of Unit Land claimed by Mr Coham-Fleming.

C-F/2

Manuscript notebook (about 7" x 5") found in vellum, endorsed "Wm. Hy. Bd. Coham of Coham and Dunsland, Devon.

C-F/3

Manuscript account book (about 18" x 5") containing references to Whiteley Meadow apparently giving a list of journeys as they were on 10 May 1773.



C-F/4

Foolscap manuscript paper dated  
3 April 1796 giving rates and taxes  
payable for Dunsland Farm and "an  
account of the number of Journeys  
of Ground in Whiteley Meadow".

C-F/5

Tracing of part of map in possession  
of Mr W H B Coham-Fleming.

C-F/6

OS map 1/2500 showing Unit Land  
divided up into parts as also shown  
on C-F/1.

Dated this 7<sup>th</sup> - day of July - 1981.

*a. a. Bode Fuller*

Commons Commissioner