



COMMONS REGISTRATION ACT 1965

# BURNHOPE MOOR

and

# MOSS MOOR

Stanhope, Wear Valley, Durham

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## Decision

of

Mr A A Baden Fuller, Commons Commissioner

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Hearings at Durham, and  
Middleton-in-Teesdale,  
February, July and October 1986,  
and June and October 1987

Clerk Of The Commons Commissioners  
Golden Cross House  
Duncannon Street  
London  
WC2N 4JF

Reference Nos:-  
211/U/101  
211/U/92



COMMONS REGISTRATION ACT 1965

Reference Nos 211/U/101  
211/U/92

In the Matter of (1) Burnhope Moor and  
(2) Moss Moor, Stanhope, Wear Valley  
District, Durham

DECISION

Preliminary

This decision relates to the ownership of lands known as (1) Burnhope Moor and (2) Moss Moor, Stanhope, Wear Valley District being the lands comprised in the Land Section of Register or Units (1) No. CL25 and (2) No. CL73 in the Register of Common Land maintained by the Durham County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner. As regards both these lands my decision stated shortly is as set out in the Fifth (and last) Schedule hereto. The circumstances which have occasioned this decision and my reasons for it are as follows.

Burnhope Moor, introduction

The ownership of the CL25 Burnhope Moor land ("the Burnhope Unit") was referred to a Commons Commissioner by Durham County Council.

Following upon the public notice of this reference the following persons claimed to be the owners of stints over and/or shares in or parts of the land in question: (a) Mr F Peart of The Wham, Wearhead (letter of 26 April 1985 signed for him by A E Peart); (b) Mr W R Walton and Mr J Walton of Black Cleugh Farm, Wearhead (letter of 1 May 1985); (c) Mr P R S Rutherford of Waterside Farm, Wearhead (letter of 5 June 1985); (d) Mrs Janet Lonsdale of 3 Bungalow, Vedra Close, Wearhead (letters of 15 and 30 August 1985 and her solicitors' letter of 2 September 1985); (e) Mrs Olive Peart of Eastville, Wearhead, Mr George Leonard Peart of 6 Dargue, Wearhead and Mr Alfred Lloyd Peart of Eastville Wearhead (their Solicitors' letter of 2 September 1985); and (f) the following claimed to be the owner of all the land, Bracken Bank Shooting and Fishing Company Limited (their Solicitors' letters of 16 October and 5 December 1985). No other person claimed to be the freehold owner of the land in question or 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 Durham on 5 February 1986, at Middleton-in-Teesdale on 16 July, 8, 9 and 10 October 1986, 3, 4 and 5 June and 19, 20, 21 and 22 October 1987. A hearing



at Durham arranged for 5 February 1986 was by snow made impossible. At the February 1986 hearing: (1) Mr Peter B Keenan of counsel instructed by Little & Shepherd, Solicitors of Penrith represented Bracken Bank Lodge Limited (formerly named Bracken Bank Shooting and Fishing Company Limited) of Bracken Bank, Lazonby, Cumbria who in the Rights Section are said to be the owner of the stints specified at Entry No. 4 (their director Mr R N Burton is therein stated to be the owner of the stints specified at Entry No. 8) and who claimed ownership of the land; (2) Mr J H Fryer-Spedding of counsel instructed by Snowball, Tucker and Bibby, Solicitors of Consett represented (a) Mrs Olive Peart, Mr Alfred Lloyd Peart and Mr George Leonard Peart as the \_\_\_\_\_ personal representatives of Mr George Peat (he died 23 January 1978), (b) Mr Frederick Peart, (c) Mr Richard Stephen Rutherford, (d) Mr William Rutherford Walton, (e) Mr Robert William Dalton and Mr John Richard Dalton both of Wellhope Farm, Wearhead as personal representatives of Mrs Doris Marion Dalton (she died 15 December 1982), (f) Mrs Jennie Walton, (g) Mrs Janet Lonsdale, Mr George Arnold Lonsdale and Mr John Russell Lonsdale as personal representatives of Mr Charles Russell Lonsdale who applied for the Rights Section registrations at the following Entry Nos. respectively: (a) No. 1, (b) Nos. 2, 3, 4, 14 and 15, (c) Nos. 5, 6 and 16, (d) Nos. 7, 8, 9 and 10, (e) No. 11, (f) No. 12 and (g) Nos. 17, 18, 19 and 20, and (h) Northumbrian Water Authority who own the stints specified at Entry No. 10 (applied for by Mr W R Walton as tenant); and (2) Mr A Nelson of Hodgson & Angus, Solicitors of Stanhope represented the executors of Mr Charles Raymond Watson and the executors of Mr John Harrison Walton. At the July 1986 hearing (1) Mr D Mellor solicitor of Little & Shepherd and (2) Mr J D U Sheeham, solicitor of Snowball Tucker & Bibby represented those at the February 1986 hearing represented by Mr Keenan and Mr Fryer-Spedding. At the October 1986 hearing and all subsequent hearings (1) Mr Peter B Keenan represented Bracken Bank Lodge Limited as before and so far as necessary also Mr Richard Nicholson Burton their managing director who is in the Register said to own the stints specified in the registration at Rights Section Entry No. 8; (2) Mr Fryer-Spedding represented the same persons as before; (3) Mr Fryer-Spedding instructed by Snowball, Tucker & Bibby as agents for Hodgson & Angus Solicitor of Stanhope also represented (a) Mr William Lloyd Watson and Mr Thomas Stanley Watson as executors of Mr Charles Raymond Watson of Allerslea, Cowhill (he died 21 April 1977) and (b) Mrs Violet Walton and Mr John Stanley Walton as executors of Mr John Harrison Walton of Front Street, Wearhead (he died 18 September 1972); and (4) Mr I Mackenzie solicitor employed in their Legal Department represented Durham County Council as registration authority.

The land ("the Burnhope Unit") in this Register Unit comprises a tract registered on 7 November 1968 as containing about 3,960 acres and tracts registered on 3 April 1972 as containing 165 acres. Its length from west to east varies between about 3 miles and about 2½ miles, and its width from south to north is about 2 miles; it does not include Burnhope Reservoir and much enclosed land which is near to and not much higher than the Reservoir. The south boundary of the Burnhope Land is the same as that between Wear Valley District and Teesdale District and is (a little more or less) the line of the watershed between the River Wear and the River Tees; the west boundary of the Burnhope Unit is the same as that between the counties of Durham and Cumbria and is (a little more or less) the line of the watershed between the River Wear and the River Eden. Generally the Burnhope Unit slopes from southwest



down to northeast. The Rights Section registrations are summarised in Part I of the First Schedule hereto. There are no registrations in the Ownership Section.

#### Moss Moor, introduction

The ownership of the CL73 Moss Moor land ("the Moss Unit") was also referred to a Commons Commissioner by Durham County Council. This decision so far as it relates to the Moss Unit is supplemental to a decision ("the 1985 decision") dated 23 April 1985 and made by the then Chief Commons Commissioner after a hearing at Durham on 7 March 1985 for the purpose of inquiring into the ownership of the Moss Unit.

The Moss Unit contains according to the Register about 247.2 acres; along its south boundary it adjoins the Burnhope Unit.

The registration in the Land Section and the registrations in the Rights Section at Entry Nos. 1 (right attached to Burnt Hills Farm and other land at or near Lane Head) and 9 (right attached to Mount Haley & Stone Drass Farms, Wearhead) being undisputed, became final on 1 August 1972. Following Objections made by Mr R N Burton and a decision about them dated 5 April 1982 of the then Chief Commons Commissioner, on 24 September 1982 the Rights Section registration at Entry No. 7 (right attached to Black Cleugh Farm, Lanehead) became final with the modification now specified in Entry No. 20, and all the other Rights Section registrations became void. On 6 July 1983 the Rights Section registrations at Entry Nos. 1 and 9 were replaced by Entry Nos. 16 and 18, and No. 14. So in the result there are now 4 Rights Section registrations as summarised in Part II of the First Schedule hereto, made on applications by Mr William Rutherford Walton, Mr George Peart, Mr Malcolm Maddison and Mrs Wendy Maddison and Mr John Malcolm Morgan attached to (7) Black Cleugh Farm, (14) Mount Haley and Stone Drass Farms, (16) Burnt Hills Farm and (18) in gross.

The Commissioner in his 1985 decision about ownership stated that the Moss Unit was by an Award made in 1815 allotted and divided into 16 plots, but such plots are not numbered in the Award or on the plan accompanying it. He in his 1985 decision dealt with these plots by reference to a modern plan produced by the claimants, and (in effect):- (1) said he was satisfied that Mr W R Walton is the owner of plots 2, 7, 9, 14 and 16; (2) said he was satisfied that the Public Trustee (as trustee for persons equitably entitled in undivided shares and pursuant to paragraph 1 of Part IV of the First Schedule to the Law of Property Act 1925) is the owner of plots 1, 5, 6, 8 and 11; (3) refused to reopen the hearing for the purpose of considering claims made shortly after it concluded: (a) on behalf of Mr and Mrs Maddison to own one or more of the other plots and (b) on behalf of Mr G L Peart, Mrs O Peart and Mr A Ll Peart to own plots 12 and 15 as successor of the late Mr G Peart; (4) rejected the claim of Mr W R Walton to own plots 10 and 13 in the absence of evidence that they were within an assent and deed of gift dated 17 June 1970; (5) rejected the claim of Bracken Bank Shooting and Fishing Company Limited to own plots 3, 4, 12 and 15 in the absence of the plan attached to a lease dated 29 July 1937; and (6) said he was not satisfied that any person is the owner of plots 3, 4, 10, 12, 13 and 15.



No copy of the modern plan referred to in the 1985 decision was annexed to it. I have drafts of two section 6 notices intended to give effect to the 1985 decision for the benefit of Mr W R Walton and the Public Trustee in the handwriting of the then Chief Commons Commissioner, and of the plans to be annexed thereto signed "GDS1" and "GDS2"; I conclude from these plans that the modern plan so produced was that a copy of which ("the Moss Decision Plan" or "MDP") is at page 5 of this decision.

After the publication of the 1985 decision, Solicitors on behalf of Mr W R Walton, in a letter dated 11 June 1985 about such decision submitted (in effect):-

Page 2:- (in relation to plots 1 and 2) all references to Elizabeth Peart should have been to Esther Peart.

Page 4:- dealing with plot 10 this should refer to 1½ stints and not 10½ stints.

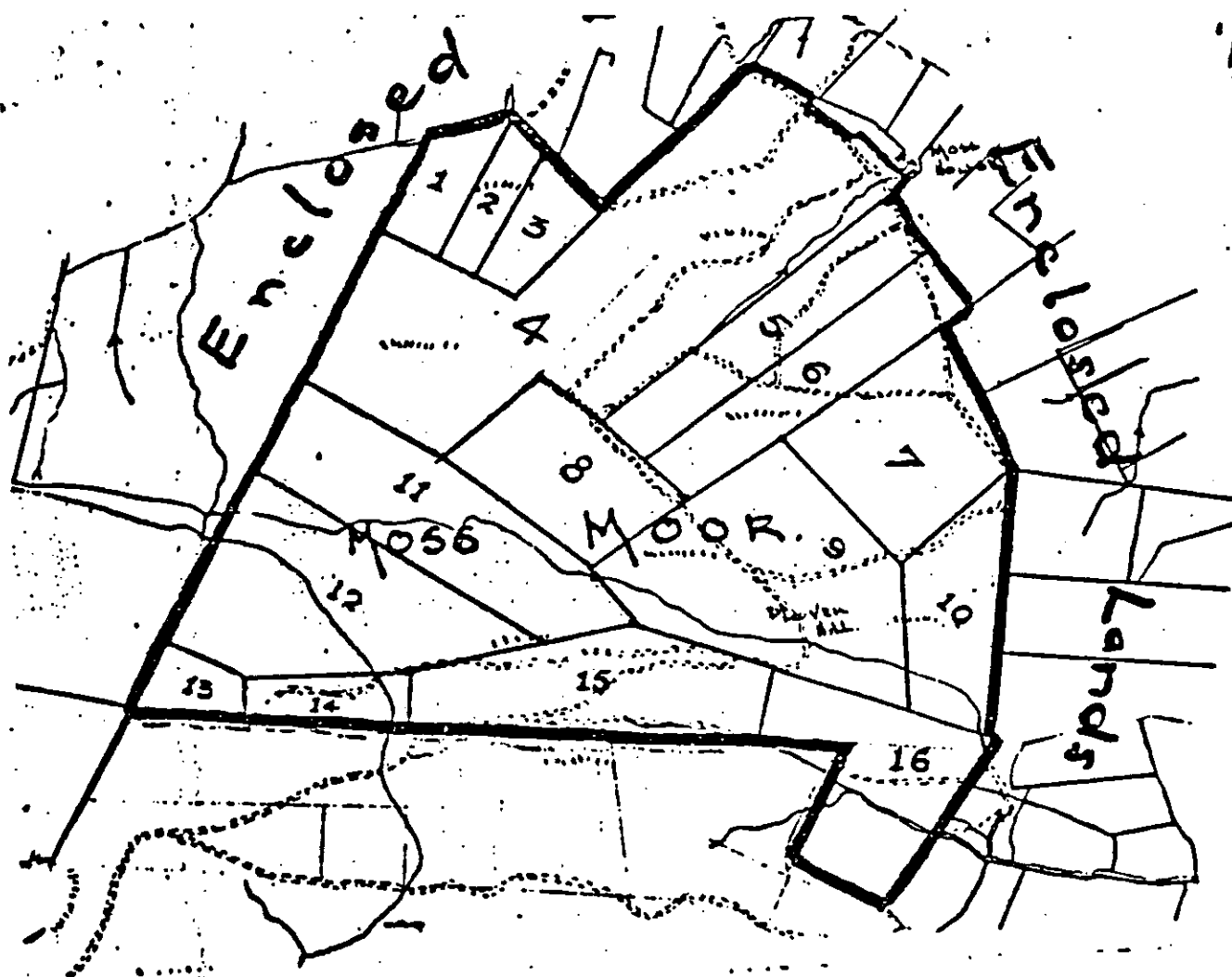
Page 4:- in relation to plot 12, "John Coulthard for half a stint" should read "John Harrison for 2 stints".

The decision as regards plots 10 and 13 should for reasons given in the letter be amended so as to benefit Mr W R Walton.

In a letter dated 18 June 1985 the said Solicitors were informed (in effect) that although pages 2 and 4 might by me be corrected under regulation 33 of the Commons Commissioners Regulations 1971, I would only consider Mr W R Walton's claim to be owner of plots 10 and 13 at a new hearing for which he could if so advised and on notice to the other persons concerned, apply. Such an application was made by letter dated 24 June 1985 from the said Solicitors, and notice of it was given to the person specified in their letter dated 28 June 1985.

Following this notification, in a letter dated 3 July 1985 Solicitors on behalf of Bracken Bank Shooting and Fishing Company Limited "who made claims to areas 3, 4, 12 and 15 ..." said they had no objection to the matter being reopened as applied for by the Solicitors for Mr W R Walton and suggested that it be reopened also on behalf of their clients as regards the said areas and gave reasons why there should be such a reopening.

For the purpose of considering the matters raised as above stated on behalf of Mr W R Walton and Bracken Bank Shooting and Fishing Company Limited, I held a hearing at Durham on 5 February 1986. At this hearing: (1) Bracken Bank Lodge Limited formerly named Brackenbank Shooting and Fishing Company Limited were represented by Mr Peter B Keenan of counsel instructed by Little & Shepherd, Solicitors of Penrith; (2) Mr William Rutherford Walton was represented by Mr A Nelson with Hodgson & Angus, Solicitors of Stanhope; (3) Mrs Olive Peart, Mr Alfred Lloyd Peart and Mr George Leonard Peart as personal representatives and successors of Mr George Peart (he died 23 January 1978), and (4) Mr Malcolm Maddison and Mrs Wendy Maddison were represented by Mr R A Bibby Solicitor of Snowball, Tucker & Bibby, Solicitors of Consett.



COMMONS REGISTRATION ACT 1965  
 Re: Burnhope Moor and Moss Moor,  
 Stanhope, Wear Valley District,  
 Durham.  
 Register Unit Nos. CL25 and CL73  
 Ref No:- 211/U/101 and 211/U/92  
 This is "the Moss Decision Plan"  
 → referred to in and  
 being page 5 of the decision  
 dated 11 October 1988  
 and made by the Commons  
 Commissioner in this Matter.

*A. A. Baden Fuller*

Commons Commissioner



## Course of proceedings

At the February 1986 hearing these two references (CL25 and CL73) were listed together. On the agreed application of Mr Keenan and Mr Fryer-Spedding and without hearing any evidence or argument, I adjourned the CL25 proceedings. On the agreed application of Mr Keenan and Mr Bibby, I adjourned the CL73 proceedings to come on with the CL25 proceedings.

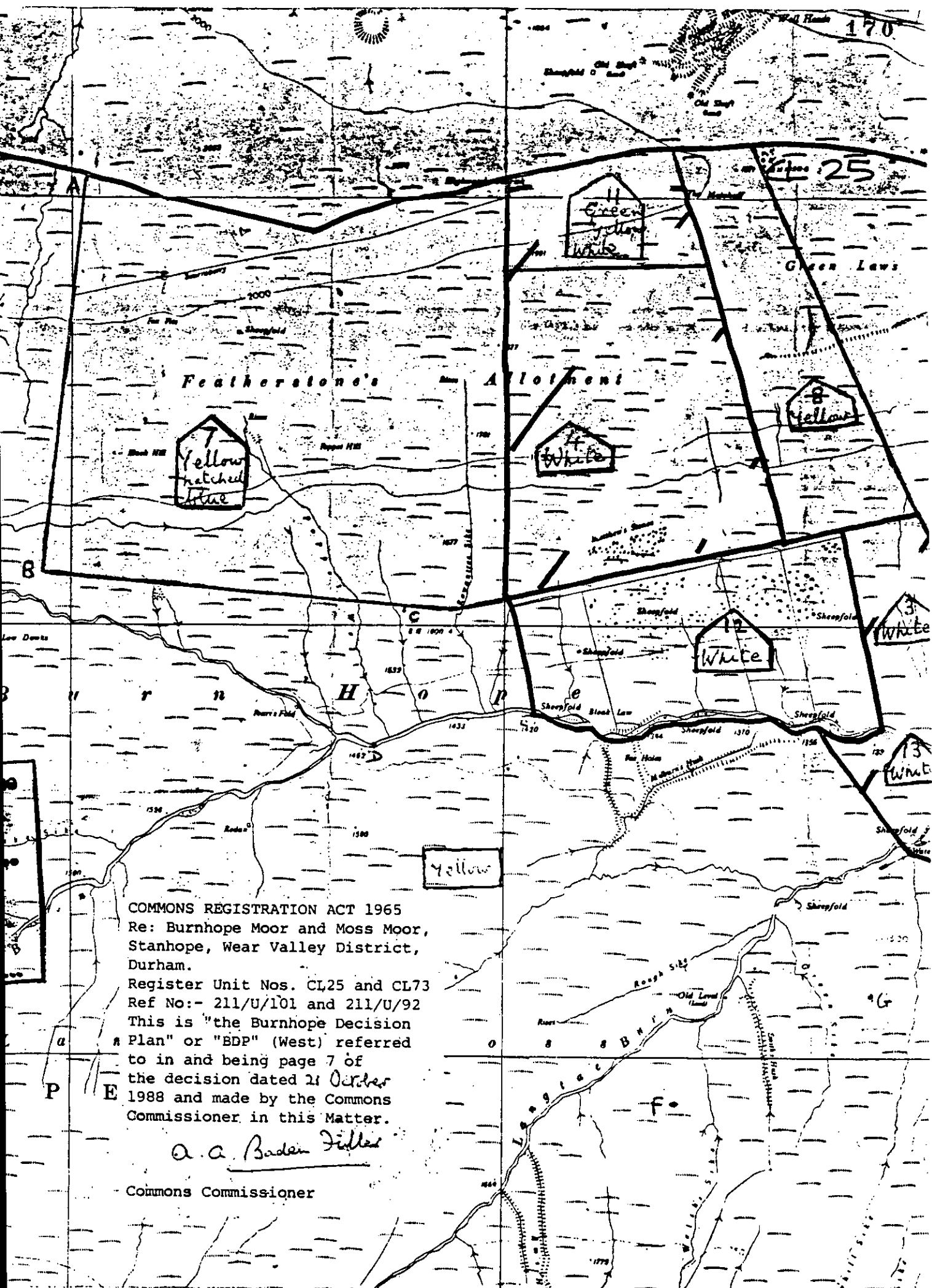
At the adjourned hearing at Middleton-in-Teesdale on 16 July 1986, Mr D Mellor solicitor of Little & Shepherd and Mr J D U Sheehan solicitor of Snowball Tucker & Bibby represented those at the February 1986 hearing represented by Mr Keenan and by Mr Fryer-Spedding or Mr Bibby. They agreed that I should on the following day inspect the Burnhope Unit and the Moss Unit; subject thereto, on their agreed application I again adjourned both the CL25 and CL73 proceedings.

On 17 July 1986 I inspected the Burnhope Unit and the Moss Unit as stated in Parts I and II of the Second Schedule hereto.

At the October 1986 hearing, it soon became apparent that some of the evidence about the Burnhope Unit would also relate to the Moss Unit, and it would therefore be convenient if the proceedings relating to these Units were combined, but so as to give priority (in point of time) to the evidence relating to both Units or to the Burnhope Unit only, leaving to the end of the hearing the evidence relating to the Moss Unit only.

(8 October) The first document produced was the plan (RNB/4) specified in Part I of the Third Schedule thereto. Mr Keenan explained: Bracken Bank Lodge Limited ("BBL") claimed to be the owner of the parts of the Burnhope Unit coloured yellow on such plan; such claim included the part which is coloured yellow hatched blue and marked "FEATHERSTONES LOT". BBL made no claim to the part marked "Featherstone Lot owned by W R Walton", or to any of the other parts (very small areas compared with the rest) on such plan left uncoloured. The plan also marked brown or brown hatched black the parts of the Moss Unit of which BBL claim to be the owners, being plots Nos. 3, 4, 12 and 15.

Next Mr Fryer-Spedding produced the documents specified in Part II of the Third Schedule hereto, and said the ownership of the Burnhope Unit parts numbered 1 to 5 on the Ownership Plan (S/1) was claimed to be Mr W R Walton, solely as to numbers 1 and 2, and with Northumbrian Water Authority, with the executors of C R Watson and of J H Walton and with the personal representatives of Mr G Peart as to numbers 3, 4 and 5 respectively; and of the Burnhope Unit part No. 6 on such plan was claimed to be the personal representatives of Mr C R Lonsdale. He put BBL to proof of their ownership of the part marked "Featherstones Lot". The ownership of all the remainder of the Unit Land was claimed to be in —————→ the stinholders in shares corresponding to their stints (legal estate in the Public Trustee).



COMMONS REGISTRATION ACT 1965  
Re: Burnhope Moor and Moss Moor,  
Stanhope, Wear Valley District,  
Durham.  
Register Unit Nos. CL25 and CL73  
Ref No:- 211/U/101 and 211/U/92  
This is "the Burnhope Decision  
Plan" or "BDP" (West) referred  
to in and being page 7 of  
the decision dated 21 October  
1988 and made by the Commons  
Commissioner in this Matter.

*a. a. Baden Filler*

Commons Commissioner







At pages 7 and 8 are two extracts (the "Burnhope Decision Plan" or "BDP") from my copy of the Register Map with additional lines and markings: "Yellow", "Black" and "White" to correspond with the colouring or lack of it on RNB/4), and areas numbered 1 to 13; of these numbers 1 to 6 correspond with plots 1 to 6 on S/1. My delineations have been made with the Award Map (S/4) in mind. Exact correspondence is not possible. The BDP is therefore for purposes of exposition; so far as my decision depends on the determination of the boundary of any of the Areas delineated on BDP, there will be liberty to apply as below stated under the heading, "Final". By reference to the BDP the ownership claims to the Areas numbered 1, 2, 3, 4 and 6 were not in question between Mr Keenan and Mr Fryer-Spedding; the substantial question between them with which most of the hearing was concerned was the ownership of the part of the Burnhope Unit south, south-west and west of the Areas 10, 11 and 12, and of the Areas 5, 8 and 9 on the BDP.

Mr Keenan opening the case on behalf of BBL shortly summarised their claims:- First, they had "a paper title" from the Church Commissioners to the parts of the Burnhope Unit coloured yellow, and the parts of the Moss Unit coloured brown on the RNB/4 plan. Secondly, if such paper title falls short, BBL have a good claim under the Limitation Act: adverse possession for 12 years. Thirdly if both fall short, they rely on estoppel as establishing a title in that both BBL and before them the Church Commissioners have had at all material times received no claim to ownership of the Burnhope Unit and the Moss Unit from the persons now claiming them and BBL have altered their position to their detriment relying on their silence.

Next Mr Keenan went through Bundle 1 (BBL/1 — in Part III of the Third Schedule hereto). The claimed "paper title" comprises: the 1937 lease (No. 3) and the 1959 conveyance (No. 14), the plans on which include all the parts of the Burnhope Unit and the Moss Unit of which BBL now claim ownership; but these plans also include areas not so claimed. The 1867 conveyance (No. 6) includes part of the Burnhope Unit to the north (being BDP west Area 7 Yellow hatched blue). →  
The 1870 conveyance (BBL/2) has a plan of which the "16a.1r. for 2 Stts" is the same as plot 15 of the Moss Unit, and the "24a.1r.27p. for 2 stints" is the same as the part of the Burnhope Unit in the Award map (S/4) marked "Joseph Dawson ... 24.1.27. leasehold". The paper title is supported by the 1962 Collenette declaration (No. 16), the 1935 grant of a pipe easement (No. 2), and the 1922 conveyance (No. 1) of land at Pryhill adjoining the Unit Land.



Next (8 and 9 October 1986), oral evidence was given by Major Anthony Farrant in the course of which he produced or referred to the documents specified in Part IV of the Third Schedule hereto. He acted professionally as land agent for BBL from September 1969 to 1 May 1985: he referred particularly to Bundle 4 Nos 1, 3, 5, 8, 7, 10, 10a, 11, 11a, 18, 22, 23, 27, 37, 36, 59, 60, 61, 74 and 75 noted in the said Part IV. Before and while he was giving evidence Mr Keenan read from Bundle 4, and Major Tarrant amplified and explained parts of what he read; all to the following effect:- In or before 1968 BBL were concerned (No. 1) to clarify the rights of the stinholders (themselves and others). In May 1974 and June 1975 (Nos 14a and 10) BBL wished to register with the Stinholders Association the Burnhope 25 stints described in the 1959 conveyance, BBL/1(14), as let 18 to J W Peart, 5 to T E Rowell and 2 to the executors of J Harrison; and "at present" (1974) let were 18 to Fred Peart and 6 to W Walton; the October 1975 letter (No. 14) was the first occasion Major Farrant could recall of any stinholders claiming to own the Unit Land. From 9 December 1969 to 7 March 1973 (Nos 15 to 51) there was correspondence with the Ministry of Agriculture, Fisheries and Food about gripping for which they would not make a grant without the agreement of the stinholders; Mr R N Burton, Major Farrant and Mr G Egle met 7 stinholders (or their representatives) on 25 November 1970; because one (at least) objected, BBL in or soon after February 1973 abandoned the (gripping) scheme. In September 1974 (Nos. 52 to 55) there were differences about a proposed roadway over the Unit Land. In September or October 1973 (Nos. 56 to 60) there were differences about the ownership of the Moss Unit and a meeting about this was held on 10 October from which BBL's Solicitors deduced (No. 59) that with the exception of plots 3, 12 and 15, "the remainder belongs to various freeholders", so Mr Burton was prepared to negotiate for the purchase of shooting rights, or if not prepared to sell to negotiate rents. Between May and August 1974 (Nos. 63 to 68) negotiations with Mr C Humble were unsuccessful; between August and September 1975 (Nos. 69 and 73) there were other unsuccessful negotiations with Mrs D M Dalton. The bundle includes a list (No. 76) of rents paid by RNB (? meaning BBL).

Questioned by Mr Fryer-Spedding, Major Farrant (among other things) said (in effect):- His understanding of the ownership of BBL (page 1 of AF/1) was the 1959 conveyance. As to the "research" mentioned by Hodgson and Angus in their

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April 1968 letter (No. 1), he would at some stage (in or after 1969) have seen the correspondence; his consideration of the stintheolders' rights arose he thought out of the Commons Registration Act 1965. As to the 1959 price being remarkably low, he could not give a factual comment, it might be that Mr Burton being a sitting tenant may have been a valuation factor. As to what BBL obtained under the conveyance which they had not already got under their lease, they were able to continue to manage the moor, to keep up the butts and use the lunch cabins without having to make any reference to any other owner or alleged owner; nobody could raise the question that it was exercising its management on land which did not belong to it; but if there was any ownership other than that of the Church Commissioners in the days of the lease they would have had to refer; there was no suggestion that the shooting rights exercised under it were over land not owned by the Church Commissioners. He agreed that if you want to drive grouse rather than walk them up you have got to have butts, unless you have a series of well placed features; shooting without an ancillary right to put up butts would be worth considerably less but not nothing; he agreed that a Land Rover and/or Argocat (or the like) are a necessary part of shooting. The statement ascribed to him in the December 1969 letter (No. 15) "... (BBL) are the owner and the occupiers are the various graziers of sheep ...", was based on the letter of 12 August 1952 from Smith, Gore and Co (attached to No. 1). The minute of the November 1970 meeting (No. 36) was not sent out to those who attended; as to "Owner of Burnhope Moor" and "... the owner of the grouse moor ...", he was afraid that after 15 years he could not now say whether the ownership of BBL was at the meeting accepted by anybody.

Major Farrant when further questioned by Mr Bibby, Mr Keenan and Mr Fryer-Spedding, (among other things) said (in effect):- He stated his understanding of the 1959 conveyance so far as it related to the Moss Unit; he was not aware that the stintheolders claiming ownership had done some gripping on it; as an Agent he would welcome an improvement however it was achieved although "we would expect a grazier or tenant would ask our (BBL) approval". With the exclusion of minerals, the only uses being made of the Burnhope Unit are shooting and grazing; if in 1959 the land had not been subject to grazing rights, the price would have been higher because the property would have included the right to let the grazing; he had had nothing to do with the 1959 conveyance price. As to the possible use of the Unit Land for trees its principal value was shooting; trees would encourage foxes and interfere with drives; not economical in the absence of public roads for extraction.

Next (10 October) oral evidence was given by Mr Gunars Egle in the course of which he produced the statement specified in Part V of the Third Schedule hereto and (among other things) said (in effect):- He worked for BBL from 3 March 1969 to 31 January 1985 and a game keeper in charge of all their interests on the moors in Weardale including the Burnhope Unit and the Moss Unit visiting these moors "just about every day". His general duties involved attending to the grouse on the moors; organising drives and beaters, dealing with heather burning, butt maintenance, vermin control, road mending, repairing



cabins, clearing out and maintenance of drainage systems, and scattering grit for grouse; also preventing trespassing and poaching. He had not seen any stintholder shooting either on the Burnhope Unit or the Moss Unit. The incident mentioned in his statement (turfs taken from the top of the butts and put back in the exact places from which they were cut) was about 4 or 5 years ago. The "opening of the drains" refers to places where they got blocked so that the water builds up. The heather burning should be rotated over 10 years but "you cannot do that"; it finishes on 15 April you cannot begin before October; waiting for the seeds to have dropped, depends on the weather. Gritting was in the spring and before the winter sets in; little heaps are left over the moor close to where the heather is best and the heaviest proportion of birds are; now use an argocat (first 7 years ago) dropping bags, before that a Land Rover and before that ponies. The Moss Unit —→ was the lowest area and is used for shooting on foggy mornings. As to stintholders claiming they are owners, "I am just a game keeper and the ownership is nothing to do with me"; he had never told any of Stintholders that BBL owned the Moor.

Next oral evidence was given by Mr Alfred William Colclough in the course of which he read the statement specified in Part VI of the Third Schedule hereto. He had been employed as a game keeper by BBL for approximately 18 months. He was questioned by Mr Keenan and Mr Bibby and described some of his activities orally amplifying his said statement as regards clearing drains, burning heather and other matters.

Next oral evidence was given by Mr Richard Reginald Stewart Burton in the course of which he read the statement specified in Part VII of the Third Schedule hereto and about it was questioned by Mr Keenan, Mr Fryer-Spedding and Mr Bibby. He had been employed by BBL as an assistant for some 7 years, under studying to his grandfather (Mr R N Burton) running Bracken Bank Lodge on the lines of an hotel (during the shooting season) and also assisting with the running of the shooting. He described some of his activities.

Next (10 October) oral evidence was given by Mr Richard Nicholson Burton who is the managing director of BBL, for them keeping an hotel and running, shooting and fishing parties. His February 1986 statutory declaration (RNB) was read: of this, paragraphs 17, 18 and 19 (during the hearing disputed) were as follows:-

"17. The Company has since 1936 and I in the previous year exercised the right to take game from Burnhope Moor and Moss Moor without interruption pursuant to the leases and tenancies from the Commissioners up to 1959. Since 1959 the Company has continued to take game from Burnhope Moor and Moss Moor and to exercise all the rights of an owner of the freehold in respect of the areas of Burnhope Moor shown coloured yellow on plan "RNB 4" herewith and areas 3, 4, 12 and 15 of Moss Moor



shown coloured orange on plan "RNB 4" herewith. Before 1934 ownership and thus the right to take game from the moors was vested in the Commissioners and it is within my recollection that the right had been exercised for a number of years on their behalf.

18. The moors, Burnhope and Moss shown coloured orange and yellow on plan "RNB 4" herewith have been kept continuously by the company over the past 50 years. Initially two keepers were employed but latterly as a result of increasing costs the work has been done by one keeper with such part-time assistance as needed. The keeper's duties have included the destruction of vermin, the discouragement of poachers, the maintenance of butts and the protection of game. Under his overall authority stretches of moorland have been burnt off each year, the butts have been maintained and re-sited where necessary and a permanent lunch cabin has been kept in a proper state of repair. There are 4 cabins and 7 butts on the moors, the position of which are marked on plan "RNB 4" herewith.

19. The stinholders on Burnhope and Moss Moor (shown orange and yellow on plan "RNB 4") have consistently recognised the Company's rights as owner and there has been a good deal of give and take between them and the Company. It has always been for example, the practice of the Company's keeper to warn the stinholders of the time and place of any drive likely to affect grazing rights. The stinholders would then move the animals elsewhere. By the same token if any of the Company's shooting activities seemed likely to disturb the grouse season from 12 August to the end of October and the odd day up to 10 December in each year the Company organise shooting parties on 4 days each week employing beaters and other staff to assist. The number and direction of the drives are shown by the red arrows on plan "RNB 4".

On being questioned by Mr Keenan, Mr Burton (among other things) said (in effect):- One of the two keepers he had before the war was Mr Amos Johnston who had before been employed by the Church Commissioners and previous tenants of theirs and who was in 1935 in his last 60s or early 70s. One of the first days (shooting) he (the witness) had before his lease (1936) was with the Commissioners' Agent, Mr George Gore. In the early 1930s the Commissioners had a drainage scheme running down to the Redan Hut where the butts are. Between 1935 when he started to shoot and 1959 when he took the conveyance, as to any claim being made by the stinholders that they were the owners and that he should not be shooting there, "none whatever". He had always maintained a cabin where Todd Sike Cabin is, and the track to the boundary of Lord Barnard's land (adjoining on the south); the car park there was merely an area suitable for parking. He had also maintained a sleeper road from the Moss Hut (on the Moss Unit) from about half a mile up the hill (sleepers here and there where road impassable with no sleepers) as indicated by him on the RNB/4 plan ———→ ("1" by Moss Hut to "18" by the northwest corner of Featherstone Lot). When he purchased in 1959 he was certainly not aware of any claim to ownership by the stinholders to any of the areas



(coloured yellow) on RNB/4; if he had known he would have wanted it straightened out before going on. You can only value a grouse moor by the bag; £3 a brace (in 1959) averaging 700-800 brace you get £2,400. There were no difficulties as to title (before the 1959 conveyance, Hodgson and Angus acted for him at that time until after the Ireshope hearing) 30 April 1974 and "after I had to get an injunction"; he was not present at and knew nothing about the Ireshop hearing. As to the co-operation between "the company" mentioned in paragraph 19, "I leave that to the keeper, I try to employ a keeper to be on the best possible terms ... part of their instructions ... you have responsibility for making all driving arrangements". As to the hotel, its main business is housing shooting parties; grouse parties until October; pheasant parties October, November and if favourable December; salmon and trout from 15 January off and on to 14 October; fishing is only about one-sixth of the intake for shooting; we do have occasional days of grouse shooting in fine weather in November even up to the last day, 10 December".

Mr Burton when questioned by Mr Fryer-Spedding (among other things) said (in effect):- Before the 1937 lease (effective from 13 May 1936) he (? BBL) had

→ other moors in 1934 and 1935. His knowledge of Burnhope Moor before 1936 was as guest of the Agent, Mr George Gore, 2 or 3 times, and having been given some records of the bags. As to the before 1935 draining, this was taking place, and he saw it. As to the source of his before 1935 information in paragraph 17 of his declaration, he first took a tenancy of the moor in 1935 after the season commenced: "information given to me by the Agent of the Ecclesiastical Commission and also by their keeper Amos Johnstone who was then on the Moor". The before 1935 drains were there when he went out to the beat, newly cut drains; certainly they were paid for by the EC; George Gore told him. He (the witness) agreed (hesitatingly) → that they were still there and easy to fall into. Between 1936 and 1959, the butts were (? meaning situated) as now. Stone huts in some places: they went up with ponies and tied up outside (the huts); there was a track up the river bed (to Redan). As to when they started using vehicles for taking shooting parties about, not until after the war as soon as Land Rovers available, and satisfactory tracks; they had about 4, but frequently guests bring them; they would be parked by the cabins (? meaning Todd Sike & Moss). They always had one keeper and it was easier for him to get about in a vehicle; casual labour needed an extra vehicle. As to the before 1935 drains, they are still operating; the keepers clear them, and the drains clear themselves by fall of water, but if too much fall of water "they cut deep and that is what the stinholders object to". As to drainage beneficial to heather, yes, heather is never very happy in wet conditions. As to paragraph 17 of his declaration "all the rights of an owner of the freehold", during the lease, "I would say carrying on the normal moorland management which we were responsible for under the lease". As to whether after 1959 they carried on as before, yes. As to paragraph 19 of his declaration "stinholders consistently recognised the Company's rights as owner", "suppose that the stinholders acknowledged you were entitled to



shoot, what did you do to indicate you were the owner rather than the shooting?" "nothing, as far as I know what would you expect me to say?!".

As to paragraph 19 ... recognised the Company's rights as owner ...", "If the stinholders thought you were entitled to shoot how could they have told you?" "no complaints about maintenance of butts and about general work done by my people on the Moor; also the placing of two new lunch cabins, one at Redan and one on Moss Moor". As to how the stinholders could have known BBL claimed to be the freehold owner: (with hesitation) "one would have more criticisms if one was heather burning unless something is done, none could dispute the ownership of the land; it is assumed on both sides presumably; the ownership of land conveyed to me by the Commissioners: they had asserted their right by drainage schemes". As to drainage of heather land which might be wet, if good for grouse is also good for sheep, "certainly". As to heather burning being necessary for grouse shooting and also useful for sheep, "also maintaining a good crop of heather a very slow growing plant normally down on a rotation of 16 years; it produces the best seed for grouse and sheep between 5 and 16 years, depending on the weather". He agreed it was not very likely that the stinholders would object to heather burning if they took the view that they as owners were entitled to shoot, the heather burning being beneficial. As to prior to the present dispute brewing up (whenever that was) the stinholders knowing of any claim to ownership other than a claim ———→ to a shooting right, "no, not as far as I know but should there be a claim, one does not walk about saying I am the owner of this moor!". As to BBL's case resting on "as owner" in paragraphs 19 and 17, "you are suggesting I should have told them (I was the owner): why should they not have told me?!".

Mr Burton was asked by Mr Fryer-Spedding a variety of other questions. About the Ireshope proceedings, writ issued, 19 July 1976 interlocutory injunction; two counsel for plaintiff, no attendance by stinholders; about "my Burnhope Moor" October 1975 letter and Mr Peart's letter in reply (Nos 13 and 14 of Bundle 4, Watson Lewis and Co file of papers) both before the Ireshope proceedings started about the March 1962 Collette declaration (3 years after the sale. And about other matters. Mr Burton about plot No. 6 on the ownership Plan (S/1) agreed that he was paying Mr Lonsdale £20 a year for shooting on it and that Redan Cabin as marked on the plan RNB/4 is not humanly used now, used by sheep and that the car park at Todd Syke had not much work done on it, slight levelling, about 15 yards by 15 yards.

Next Mr Burton was questioned about the Moss Unit ———→ by Mr Bibby who put to him the ownership claims he made on behalf of Mr and Mrs Maddison (plots 3 and 4) and Mr Walton and Mr Peart (plot 15) and mentioned the Maddison March 1985 declaration (MM/1).

Next Mr Burton was re-examined by Mr Keenan who asked him to comment on the letter dated 28 September 1954 included in the Hodgson & Angus file specified in Part XXII of the Third Schedule hereto. He said BBL never paid rent for plots 12, 14 and 15 of Moss Moor and no claim for rent had ever been made for them and that the line of butts on plot 15 had been put up by him about





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the time of the war, about 1940; at that time the moor was driven by a line of stone butts in the centre which line was moved to the gulley; grouse has insufficient time to settle behind. Questioned finally by Mr Bibby, Mr Burton agreed that the fences on Moss Moor are maintained by the stinholders.

Next (10 October) Mr Anthony Arthur Young who is a deputy director of the Computer Centre at the University of Durham produced the photographs listed in Part IX of the Third Schedule hereto.

Next (10 October 1986 and 3 June 1987) against the ownership claims of BBL oral evidence was given by Mr Alexander Eadington Peart who is a lecturer in agriculture and head of the Science Department of the Durham Agricultural College and who is the son of Mr Frederick Peart of Wham Farm, the applicant for the Rights Section registrations at Entry Nos. 2, 3, 4, 14 and 15 (see First Schedule hereto). In his statement (S/13) he among other things) said (in effect):- He had lived at Wham Farm all his life (born 7 February 1944). Of 117½ stints so registered, his father for 18 paid rent to BBL. His father under an agreement dated 3 May 1939 rented Whan Farm from EC for E and purchased the farm in 1955.

"The grazing rights entered extended over the whole of CL25 and the grazing has been controlled according to the total number of stints on the registered unit. The balance of grazing has been controlled when appropriate according and in proportion to the number of stints owned. Thus, one over stint has been allowed for every 10 stints held and rent for the over stint had been paid to the committee to finance fencing or other commons' expenses. There are annual meetings of the stint owners and the total number of sheep on the registered unit are restricted to the 320 stints on the unit plus the over stints in proportion to the stints held."

He had seen a copy of Mr Burton's February 1986 declaration (RNB) and had a number of comments on the meaning in it ascribed to the September 1815 Award (S/3) to the February 1959 conveyance (RNB/2) and to the March 1962 Colenette declaration (RNB/5), and also on the actual statements made in paragraphs 17, 18 and 19 in February 1986 Burton declaration (RNB):-

- "(a) On no occasion that I can recall have we been told by the Company that they were going to shoot on the moor and sheep have never to my knowledge been moved to facilitate shooting ...
- (b) Mr Burton has been stopped from open ditching the moor ...
- (c) ... Mr Burton commented on the fact that he had been stopped ditching ... I replied that he had no right to even move a handful of soil ...
- (d) ...I met Mr Burton when gathering, Mr Burton suggested an extension of a new road built on a private allotment called Haggs ... I again



We told Mr Burton ...we were not in favour of the extension of the road over Burnhope Moor ...

(e) ...Mr Burton started a road excavation at Redan and was stopped as a result of action by the stintowners

(f) My father and I have without the consent of Mr Burton maintained a number of round folds on different parts of the Moor.

(g) The dipping pens at High House on the Unit have been maintained and when necessary extended by the stintowners without the consent of Mr Burton and my father and I and Mr Rutherford have repaired the road from the Haggs to the dipping pens.

(h) When water holes have become dangerous these have been released or made safe by the stintowners without the consent or approval of Mr Burton.

(i) I have ... regularly removed pieces of the butts replacing them on the bare peat.

(k) The stone built cabin at Redan has been used as a sheep shelter.

(l) The stint owners have maintained fences on the edge of the Unit where it is adjacent to Moss Moor and Haggs without the consent or approval of Mr Burton.

(m) On occasions when shooting has been taking place and we have been gathering sheep the shooting has had to stop until the gathering had been completed".

Mr A E Peart orally added to his statement (S/13), saying (in effect):- An "interruption to the Company's taking game" specified at the beginning of paragraph 17 of his statement, was on 18 November 1967 during a foot and mouth outbreak; on three or four other occasions "we had gone out to gather sheep and we had to drive them (sheep) in the middle of a drive (of grouse); one such occasion was 15 September 1972. The stopping from open ditching the moor in (b) such paragraph was on 8 September 1972 (Mr B Peart is not a relation of the witness). The "stopped" in (e) appears from the letters already read (GAL/3, etc). >

The "round folds" in (f) are: repaired photo 3 (square fold, Langtae Burn), kept and repaired photo 5 (round fold, Langtae Burn), and repaired photo 13 (round fold, Scraith Burn). The "no repair to Redan" in (k) led on one occasion to 40 sheep dying (suffocated) because they got into the Cabin during a snow storm. The "maintained fences" in (l) are the the whole of the south boundary of Moss Moor except where uncoloured on RNB/4 and by the Haggs between PQ on RNB/4; "Q" is east of the "S" of "BUTTS" near the south-east corner of the RNB/4 Decision Plan. The "had to stop" in (m) probably happened once in 4 or 5 years, "normally we would be gathering sheep in September". The photographs of Redan Cabin mentioned in paragraph 18 are Nos 12, 11 and 10. He (the witness) was much at home at gatherings and shearings. His father was not attending the hearing because now aged 78 was turning deaf and cannot hear at this sort of hearing; Mr R N Burton and his



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gamekeeper visited his (the witness') father on 29 August 1967. About his father's then attitude, a further discussion was suggested to him (the witness) by Mr G Shirilan (acting so he thought for Mr Burton).

Next, on 3 June after an interval of about 8 months, it was agreed that the last 15 words of paragraph 5 of S/13 should be deleted. Mr A E Peart then continued his oral evidence saying he believed the Redan wooden cabin was present on the moor prior to 1959 and that although he worked in Durham he spent all his spare time working on the Farm and so was familiar with the Moor and everything that goes on on the Common.

Questioned by Mr Keenan, Mr A E Peart (among other things) said (in effect):- He had worked at Durham since 1967 then aged 23 years. As to paragraph 22 of S/13, his belief that the right of stintage was a right to a proportion of the soil was formed as soon as he was old enough to understand, "I cannot say, early teens"; from his father knew or had gained from his ancestors. His father whenever ownership was discussed maintained that nothing was reserved in his title deeds; he rented the farm and then purchased in 1957. "I cannot say I know the date when he first claimed ownership but I can say he always believed when he bought stints he also bought ownership". As to whether with hindsight it would have been preferable if his father had (to BBL) made his position clear, "when you buy a farm it costs money/my father was not in a position to see that through; before you take legal action you considered not having to take legal action. The 1965 Act the Commons registration protects ownership; protection which has resulted in this hearing". As to paragraph 19 of RNB, "how do you define give and take" ... we have respected his (Mr Burton's) rights as part owner of the Moor; that is not give and take ...". He agreed the statement RNB/20 was a fair account of the facts, but did not agree the last sentence or "that Mr Burton or his Company is owner of the Moor".

Next (3 June) Mr Anthony Arthur Young whose wife is the sister of Mr A E Peart and the daughter of Mr Frederick Peart, gave further oral evidence in the course of which he said that he, his wife and family had often assisted in the gatherings of sheep, quite a number in the last 20 years before the incident on 17 September 1985; he described the incident (it interfered with a BBL shoot) in detail.

Next (3 June) oral evidence was given by Mr Robert William Dalton of Wellhope Farm in the course of which he produced the documents specified in Part XI of the Third Schedule hereto. By reference to his statement RWD/1, he said (in effect):- His father William Burdess Dalton and his mother Doris Marion Dalton are the owners of 6 stints on the Burnhope Unit registered at Entry No. 11. They purchased them under the 1966 conveyance (RWD/4); the Church Commissioners had sold the land to their vendor under a conveyance dated 22 April 1954. He believed the stints went with the land at Hole Dam. His father died on 11 October 1970 and his mother died on 15 December 1982; he (the witness) and his brother John Richard Dalton had approved his mother's will but they had not yet assented to the property. He had not been using the stints regularly but some of his sheep from adjoining Moors stray onto the Burnhope Unit "I have the right for them to be on Burnhope Moor as a result of my stints".



Next (3 June) oral evidence was given by Mr George Arnold Lonsdale of Pry Hill Farm who was born in 1930 and has lived all his life at Wearhead. Such evidence (to begin with) was by reference to the statement (GAL/1) specified in Part XII of the Third Schedule hereto on the basis that paragraph 4 and some of paragraph 7 had from it been struck out. Mr Fryer-Spedding explained that this striking out was consequential on his advice to Mr Lonsdale that the title deeds mentioned did not show his ownership of the area 6 on the Ownership Plan (S/1) so the claim made for him was to a possessory title. In such statement, Mr Lonsdale, after explaining he and his mother now owned the 45 stints registered at Entry Nos 17, 18, 19 and 20 (see First Schedule hereto), (among other things) said (in effect):- Referring to the area 6 on the Ownership Plan (S/1), "...I receive rent from Burton to shoot this land. My father Charles Russell Lonsdale purchased Benthead Farm and Cleugh House Farm from F Douglas and J Douglas by a conveyance dated 11 July 1964 (No. 20 in Lonsdale Bundle 1 specified in Part XII of the Third Schedule). As to paragraphs 14, 17, 18 and 19 of the 1986 declaration ———→  
——→(RNB, specified in Part VIII of the said Schedule):

"... .."

14. It is true I receive rent from the Company in respect of shooting ...

17. ... Neither I nor the other stinholders have sought permission from the Company for any of the acts of ownership which we have fully exercised. We have stopped the Company from cutting ditches and excavating a road on the Moor.

18. I have never sought the permission of the Company or accepted the authority of the keeper in respect of burning moorland. The cabin is not kept in a proper state of repair.

19. ... We have never been warned of the time and place of any drive and we would never move animals elsewhere. We have caused drives to be abandoned. We have never known of the Company re-siting a drive."

Questioned on his statement by Mr Fryer-Spedding, Mr G A Lonsdale said (in effect):- As to paragraph 7, his father or he had received the "rent from Burton to shoot this land" since 11 July 1964 when his father purchased (Mr Keenan agreed that Mr Burton had paid rent as stated); he grazed his own sheep on the area; 10 sheep "but they do wander, they are not fenced in"; rent is now £20 per annum. As to paragraph 19 of his said statement he had been informed on one occasion of a (an intended) drive by Mr Egle, but only on one occasion. His father C R Lonsdale died in December 1979 leaving his half share of his estate (meaning of Benthead Farm and Cleugh House Farm and possibly also Pryhill Farm) to him (the witness), so he therefore became a tenant in common in equal shares with his mother.



on the Ownership Plan (S/1), they are walls which have been derelict from his earliest recollection and would not constitute a sheep boundary, so Mr Peart's sheep although heafed do tend to wander".

Questioned by Mr Keenan (3 June), about the shooting rights of BBL and the ownership of the Burnhope Unit, Mr Lonsdale gave a variety of answers some of which if read by themselves would indicate that he agreed that the Burnhope Unit or all of it not proved to be owned by some individual or group of individuals was before 1959 owned by the Church Commissioners. However his answers included: "I understand my father when he purchased the stints also purchased the soil ... It depends what you call a shooting right ... we have a right for sheep to be on any part of the moor ... stint does not mean an ownership of the land. Area 6 was awarded but not taken up". Area 6 has always been claimed and it has "come back to the moor, abandoned is probably the wrong word". "Q. It was accepted by your father and you that the Church Commissioners owned the moor? You bought Lot 6 because you thought they owned the land? A. He did not buy Lot 6 because they were not the owners. Q. Accept the Church Commissioner owned some parts of Burnhope Moor? A. Yes ... they owned the majority of the yellow parts of the Moor. They owned the stints, the stints they accept and the soil as well. Q. So that is the reason you certainly allow the Church Commissioners to lease out the shooting? I suppose they want to do so: it was entirely for them. Q. They then in 1959 Bracken Bank took a conveyance from the Church Commissioner. Mr Burton says he bought the area? A. Not disputed - it is a question of what they buy in my opinion. Q. Church Commissioner owned the yellow area? A. ... They then bought something which we call a stint ... I don't know what they conveyed ... I can't comment any further on this ... My father has owned stints for several generations. Q. Over the yellow area. A. ... Q. Before 1959 who was the owner of Burnhope Moor: You have said Church Commissioners owned it?

Next (4 June) Mr Fryer-Spedding said that stintheolders accepted that neither BBL or Mr R N Burton authorised Mr G Shirilan to act as agent for either of them in any respect concerning the management of the Moor CL25. He also said he might refer to the Lonsdale documents (Bundle 1 specified in Part XII of the Third Schedule hereto).

TURN OVER



Next Mr Keenan continued his questioning of Mr Lonsdale who (among other things) said (in effect):- As to cutting ditches mentioned in paragraph 17 of his statement (GAL/1), sheep fall into and die in ditches. As to his father at the meeting at the Cows Hill Hotel on 25 November 1970 (see page 36 of Bundle 4 specified in Part IV of the Third Schedule hereto), his father made the point that he did not want any ditches to be made on his part of the Moor, it was because of damage to sheep falling into ditches. His father's objection to a road was not for the safety of sheep, Mr Burton had no right to make a road on the Moor; it would give access to unauthorised people; the sheep would be disturbed by people going onto the Moor. As to paragraph 22 of his statement (GAL/1) "vested in the Public Trustee", "it would be as at present (held by the stinholders)". As to how the shooting would be run, "Bracken Bank own stints; as far as shooting is concerned and it coming to an end "I don't think they would have any right there ... It's a question I can't just answer here and now". As to the Bishop of Durham owning (originally) 7 stints, over the years that (EC for E) acquired rights of other stinholders and so owned stints; in the early 1950s they decided to sell the stints in the same manner as they bought them. In the 1860s his family sold stints to the Commissioners and we bought their farm. The stinholders do not interfere with the shooting; "Q. I asked you how you would deal with the shooting. A. I consider this to be a hypothetical question". It is true that gripping was not agreed in 1970 ... Q. It is possible that the stinholders could not agree about the shooting. A. Possibly so, I cannot answer the question. Q. Maintenance of the anti-vermin gritting treatment, could all that come to an end? A. I am sure the farmers are practical minded."

Re-examined by Mr Fryer-Spedding, Mr Lonsdale said he thought the stinholders were opposed to roads generally. He agreed with the letter of 4 September 1974 (GAL/3 No. 52 in Bundle 4). As to the Bishop of Durham having the same right as the rest of the stinholders, "yes". As to the ownership of the Commissioners before 1959 "I have said they owned a portion of the moor in proportion to the stints they owned."

TURN OVER



Next (4 June) Mr Bibby said that Mr Richard Stephen Rutherford who owns and rents stints and who is secretary of the Stinholders Committee had fallen off a ladder and was unable to attend the hearing as he intended. Without prejudice to any person asking for an opportunity of questioning Mr Rutherford, Mr Bibby read or referred to the documents specified in Part XIII of the Third Schedule hereto.

Next (4 June) oral evidence was given by Mr George Leonoard Peart in the course of which he produced the documents specified in Part XIV of the Third Schedule hereto. He among other things said (in effect):- His mother Olive Peart, himself and his brother Alfred Lloyd Peart are the personal representatives of his father George Peart (probate GLP/7) who died 23 January 1978. They farmed lands as "George Peart & Sons", and held 29½ Burnhope Stints (Entry No. 1) which were formerly owned by the Church Commissioners (acquired 1865, GLP/4 and conveyed in 1958 to George Peart, GLP/6). He claimed a half share in the Burnhope area No. 5 (see BDP east). He disputed some of the 1986 declaration of Mr Burton (RNB); particularly paragraphs 11 and 12,

"... we ditched on areas 12 and 15 on Moss Moor (MDP plots 12 and 15) and sought no one's permission before doing so. Burton did put a road through Moss Moor and the road goes over those two areas. Burton does not interfere with our grazing. We have renewed the fence on area 12 of Moss Moor which is next to Wellhope Moor and we have not discussed the matter or sought permission from Burton. Burton has a cabin in area 10 of Moss Moor and a line of butts in area 15 and another line covering areas 4, 11 and 12. Charles Watson used to own area 7 on Moss Moor and it is within my knowledge that he would not let Burton shoot over that area which was let to someone else namely, a Mr Patterson. ... although I have never stopped the shooting it is not true as to the re-siting of drives."

As to paragraphs 18 and 19 of the 1986 declaration (RNB):

"As to paragraph 18 of the declaration there is no heather on our side of Burnhope Moor which is white ground and there is therefore no need to burn. We have never burnt on Moos Moor but the keepers have burnt and although there has been no co-operation between us we have been satisfied with the burning. ... we are not informed about drives and there is no give and take nor is there any moving of animals by agreement. I have never moved our animals and I have gathered through the middle of a shoot."

Questioned by Mr Keenan, Mr Peart (among other things) said (in effect):- He and Mr Walton both put sheep on area 5 (BDP east); they do wander; they had stints on the rest of the Burnhope Unit; area 5 "was awarded but is physically no different". He agreed the ditching on plots 12 and 15 of Moss Moor was done for the benefit of the sheep. Mr Burton for putting the road on these plots, "got permission". He agreed Mr Burton had been shooting on Moos Moor. As to his never having sought to charge Mr Burton for so shooting, he did not know. The purpose of the fencing (paragraph 8 of GLP/1) was to make it stock proof. He had never known them (BBL) to resite a drive to accommodate the gathering of sheep. As to gathering through "the middle of a shoot", he remembers one occasion when it was misty; he came through; the beaters were quite near; he thought (rightly) he could get through before them.



Questioned by Mr Bibby about his March 1985 declaration (GLP/9), Mr Peart said it was made after the Moss Unit March 1985 hearing. As to grazing plot 12 (MDP) "exclusively", "yes, we try to! ... no walls in my lifetime". Plot 15 was grazed with Mr Walton; also walls "not in my lifetime".

Questioned by Mr Keenan about the Moss Unit, Mr Peart said:- They tried to keep their sheep on their plot, but they do wander; "Everyone tries to keep them on their own plot". As to sheep of others wandering, they do nothing "because it will be put right the next time the owner is around".

Next (4 June) Mr R A Bibby gave oral evidence in support of the ownership claim of North West Water Authority, in the course of which he produced and explained the documents specified in Part XV of the Third Schedule hereto.

Next (4 and 5 June) oral evidence was given by Mr William Rutherford Walton who is 64 years of age, in the course of which he produced the documents specified in Parts XVI and XVII of the Third Schedule hereto. He started by reading his statement (WRW/1), which set out his reasons for claiming to be the owner of or a share in the BDP Areas Nos. 1, 2, 3, 4 and 5 (being the areas so numbered on S/1) and which concluded:-

I have seen the declaration of R.N. Burton of 4 February 1986 and I confirm the observations of some of my fellow stint holders that there are many inaccuracies in the declaration. I am well aware that Burton has been stopped ditching on Burnhope Moor and also from making roads. I believe that Mr Burton used to lease his shooting from the Commissioners in respect of Moss Moor and the Commissioners themselves were the lessees of the shooting from some of the Moss Moor owners. I have never been asked to cooperate with Burton's keepers and there is no co-operation between us. I have burnt heather on Moss Moor and it is not true that I have ever recognised Burton's claim to ownership of Moss Moor or Burnhope Moor.

...I have erected and maintained sheep folds on Burnhope Moor without anyone's permission and I recently erected storage huts for hay without seeking anyone's permission. I have ditched part of Burnhope Moor and I have not sought anyone's permission.

Questioned by Mr Fryer-Spedding, Mr Walton described the areas he was claimed and referred to the photographs (S/12):- (6) No. 1 New Fold was by him repaired in 1985, before that it was down and derelict; (7) No. 2 New Fold: is completely new in 1985, before it was derelict; (9) Square Fold, was rebuilt in 1985, before it was derelict; (13) Round Fold, completely new, nothing there before (witness paid contractors); (7) and (8) two other buildings near Folds (not shown in photographs) done at the same time and used as forage stores; nobody objected to the buildings.





Some fencing was done in the last year in 1986 between Moss Moor and Burnhope Moor and next to The Hags (BDP east). There has always been fencing done by the stintheolders as far back as he could remember.

Questioned by Mr Bibby, Mr W R Walton gave information about The Moss Unit Plots 10, 16, 13, 15, 16, 10 and 13.

Questioned by Mr Keenan, Mr Walton (among other things) said (in effect):- The fencing he had described was not to keep the sheep (of the stintheolders) in, but to keep other people's sheep out. Mr Burton put in a gate which was not there before; there are two other gates in the fence. The stintheolders carry the responsibility for the Moss-Burnhope fence and the Hags-Burnhope. On Burnhope Area 4, he had about 60 sheep; there were also sheep of C R Watson and J Walton; also odd sheep. As to the Moss Unit he had sheep on Plots 10, 13 and 16; sheep wander but he could not remember complaints; "well, you keep them on the hefts." He agreed that Mr Burton from him rented shooting on Moss Unit Plots 13, 14, 10, 9 and 2. Plot 16 is fenced in. He agreed Mr Burton is using Plot 15 for shooting and not for renting it. He (the witness) claimed "grazing rights and interests in the soil"; he agreed Mr Burton has shooting rights on Plot 15. As to his (above quoted) statement (WRW/1), Mr Burton was ditching the land on which there was heather; I would like him to ditch the wetter; we were against the ditching by him anyway because he did not own the soil". As to his view of Mr Burton's right to shoot over the yellow land (so coloured on RNV/4), "I do not agree with it... You could not stop Mr Burton shooting because he had 25 stints which he owned.

Next Mr W R Walton read his statement (WRW/20) about his wife's stints. Questioned by me at the end of his evidence, Mr Walton said:- Lambing time (3 weeks or a month) is in April, dipping (6 days) in August and October, tuppung (16 days to one month) late November and December. Grazing is either ewes with lambs or hogs (kept separate). The gatherings are when the sheep are brought in. Sheep stay out all the year, being fed in the winter. During the evidence of Mr W R Walton (at the beginning of 5 June), Mr Bibby interposed by producing the documents specified in Part XVII of the Third Schedule hereto. After the conclusion of the evidence, Mr Bibby produced the documents specified in Parts XIX and XX of such Schedule.

Next (5 June) oral evidence was given by Mr Malcolm Maddison in the course of which he referred to the documents specified in Part XXI of the Third Schedule hereto, and said (in effect):- He confirmed his wife's 1985 declaration (MM/1). When they bought Burnt Hills Farm, Mr Graham took them round to show them what they were buying; it included the land edged red on the plan WM.1 (Moss Plot Nos. 3 and 4 being on the Award Map, Bibby/103, the same for No. 4 that allotted to Thomas Coulthard and for No. 3 the south part of that allotted to Esther Peart). They grazed Moss Plot 4 equally with Mr Malcolm Morgan (his brother Mr Robert Morgan is of High Tower, Westgate, Weardale, Bishop Auckland).



Questioned by Mr Keenan, Mr Maddison said his understanding was that Mr Malcolm Morgan was a co-owner with them (his wife and himself). They (the witness and his wife) graze 6 sheep per stint in the summer and 20 sheep per stint in the winter (they had 3 stines); they were heafed on Plots 3 and 4. When they took the farm, they took it with the sheep, and they knew Mr Burton and his company were shooting over it; before this they (the witness and his wife) had never demanded any rent. As to whether they accepted Mr Burton has the right to shoot, "I don't know whether I accept; that is still to be decided". He had not objected to the keepers burning the heather on Moss Moor (Plots 3 and 4) occasionally; he had never spoken to them. Questioned by Mr Bibby, Mr Maddison agreed that the heather burning was to his advantage, because it kept down the heather and was better for the sheep.

Next I adjourned the proceeding, having then no time or place to continue them, it being agreed that the evidence was closed except as regards Mr R S Rutherford (if well enough) and possibly Mr Malcolm Morgan and his brother.

Next (after 4 months), 19 and 20 October, Mr Keenan made submissions by reference to skeleton submissions on behalf of BBL and produced the other documents specified in Parts XXII and XXIV of the Third Schedule, in the course of which he submitted (among other things) I should deduce from the evidence of Mr Lonsdale that it was generally accepted by the stinholders that the Church Commissioners owned the fee simple in possession, and as a result of the 1925 legislation (Law of Property Act 1925 etc) land subject to stints must mean subject to a profit, because if the stint included a share of the soil, it would be a share in the net proceeds of sale; the stinholders documents of title do not refer to a share in the land: as to this see the following documents of title: Fred Peart, 15 March 1955 conveyance (Bundle 3), R S Rutherford 28 February 1955 conveyance (RSR/1), R W Dalton 23 April 1954 conveyance (RWD/2), Mr and Mrs G A Lonsdale 29 September 1954 conveyance (Bundles No. 4), and R A Peart 19 December 1958 conveyance (GLP/6).

Interposed in the submissions of Mr Keenan was the oral evidence of Mr Richard Stephen Rutherford who is aged 72 years and who is and for the last 25 years has been the Secretary of the Burnhope Stinholders Committee. In the course of his evidence he produced the documents specified in Part XXVIII of the Third Schedule hereto and in his statement (RSR/1) about the Burton February 1986 declaration (RNB) made the following observations:-

- (a) I do not recall much trouble between stinholders and the Shooting Company until about fifteen years ago. Both groups lived and worked alongside each other and I do not believe anyone particularly concerned themselves as to who actually owned the soil.
- (b) I recall an incident about fifteen years ago when Mr Burton was stopped from ditching by some stinholders including Mr Frederick Peart.
- (c) To my personal knowledge it is not a practice of the Shooting Company to notify the stint holders of shooting. I have been on the common on occasions at the same time as shooting has been taking place and on some occasions I have held up my gathering while on other occasions the shooting has been held up while I completed my work.
- (d) To my knowledge the Shooting Company has not contributed to any fencing on the Moor. The stinholders have an obligation to repair a number of fences on the boundary of the Moor and these are partly financed by the arrangement for over stinting.



(e) I recall on another occasion in the past when Mr Burton has been stopped from building a road on Burnhope Moor by the stinholders.

Questioned by Mr Fryer-Spedding, Mr R S Rutherford said (in effect):- Of the original stint book (S/7 and RSR/3) he is the custodian. The Stinholders Committee are there to see if any section of the fence requires repairs or anybody wants help with their dipping (meaning in the dipping pens on the edge of the Moor) or any other question arises. As to the overstints, they are according to the amount of the stints you have yourself, 1 overstint for every 10. As to the work and use of the money, it depends on the fencing and the amount of material you use and the price; when you know what it costs. The money comes from the overstints.

A discussion followed from which I understood every stinholder may have an overstint but has to pay for it; and they do pay so an overstint is (to the witness) a contribution of money.

Questioned by Mr Keenan, Mr Rutherford said (in effect):- A stint was 1 horse 5 sheep 1 cow (in the register said to be 5 sheep or 1 cow and 2 stines counting as 1 horse). He explained how and when ownership came in question (see below at page 43). He agreed that the fencing by him mentioned in paragraph (d) above was to keep the sheep in so they do not wander. As to (e) above and to the reason the road was stopped being because of the sheep, they were disturbed or something and as to that being the reason as far as he could recall "I think it would be".

Further questioned by Mr Fryer-Spedding, Mr Rutherford agreed that one of the fences was between the two commons, Burnhope and Ireshope; the graziers on them, except Mr G P (father of Mr A E) Peart, were different. After a discussion about overstinting, I understood Mr Rutherford agreed that in earlier years the stinholder could have been charged without getting an extra stint but this was or may have been before Mr Rutherford's time. The overstint is "created by the Committee".

After Mr Rutherford had concluded his evidence, Mr Keenan continued his submissions by reference to the documents specified in Part XXIV of the Third Schedule hereto.

Next (21 and 22 October) Mr Fryer-Spedding who had during Mr Keenan's submissions said that he did not accept that the Burnhope Unit was in the Manor of Stanhope, made submissions by reference to the skeleton argument specified in Part XXV of the Third Schedule hereto and produced or referred to the other documents in such Part specified.

(22 October) All evidence and submissions as regards the Burnhope Unit having been concluded, Mr Bibby, as relating to the Moss Unit, produced or referred to the documents specified in Parts XXVI and XXVII of the Third Schedule hereto. Mr Keenan submitted that the Moss Unit 1985 hearing should not be re-opened as regards Moss plots 3 and 4, at any rate as regards the claims of Mr and Mrs Maddison which should fail as they had failed in 1985. I said for the reasons which I would give in my decision I consider that I could re-open the 1985 hearing as regards the Moss Unit Plots 3, 4, 10, 12, 13 and 15 and would therefore about them hear all evidence and arguments which might be offered.



Mr Bibby said that all the evidence he wished to give had already been given and asked that the submissions made by Mr Fryer-Spedding as to the meaning of stints as to the title of BBL and as to the Limitation Act should all be treated as repeated.

Mr Keenan made a similar submission with regards to the evidence and arguments on behalf of BBL. Mr Bibby emphasised that all his clients had conveyances from the Church Commissioners made before that (dated 12 February 1959 BBL/1.14 by them to BBL. Mr Keenan submitted that the conveyances mentioned by Mr Bibby although prior to the BBL 1959 conveyance were defective in that: (i) they do not purport to convey an interest in the soil only a profit, and (ii) they do not identify the particular area of the Moor he was claiming, in contrast to the BBL title of Plots 3, 4 and 15 which goes back to the 1815 Award (see page 2 of his Skeleton Argument).

Next Mr Bibby pointed out that the 1958 conveyance (GLP/6) to Mr George Peart was by reference to a plan, the area delineated as 1,121 was the same piece as that shown as the allotment to Joseph Harrison and XY on Bibby/103 which was the same as Moss Unit Plot 12. Mr Keenan disputed the identification. My attention was drawn to re Pasture End, Myrton, —————→ 262/D/277-279.

Just before the conclusion of the hearing (22 October) I was informed that none of the persons represented at it made any claim against any of the others for costs. I said that in these circumstances I did not and would not think fit to make any order for costs.



### The Burnhope question

By section 8 of the 1965 Act, I am required to say whether I am satisfied that any person is the owner of the Burnhope Unit.

As appears from the 1815 Award map (S/4), all the Burnhope Unit was by it to some extent dealt with, one part ("the Allotted Parts") as "... the best situated and most capable of Cultivation and Improvement ... to be divided and allotted ..." as specified in Section XVIII of the 1799 Act (S/I), and the other part ("the Residue Part") as "... the Residue and Remainder ..." specified in Section XXX. The Residue Part is by far the larger. The markings on the Award map of the Allotted Parts are itemised in the Fourth Schedule hereto. Later in this decision I conclude that the ownership of some of these items is the same as of the Residue Part, so this expression where the context allows should be read as including them.

I find that the Residue Part is now and has been from some time before 1799 a stinted moor or stinted pasture within the ordinary meaning of these words. It is and always has been a grazeable area, and such grazing is now and always has been by persons described as stint holders, or as owners of stints; nobody at the hearing suggested otherwise.

In Section 11 of the Inclosure Act 1845, stinted pastures are treated as being of two different kinds:- those "in which the property of the soil or some part thereof is in the owners of the ... stints or any of them", and those "in which no part of the property of the soil is in the owner of the ... stints or any of them". So in law a right of grazing may be combined with a share in the ownership of the soil. As to such combined ownership, Mr Fryer-Spedding cited my decisions (S/10 and S/8) dated 15 July and 10 October 1974 re Longton Out Marsh and re Ireshope Moor; what I then said about it should be treated as repeated herein. Since these two decisions, I have had other similar cases in which in various circumstances I have concluded that such combined ownership exists, and have learnt of the possible relevance of *Hilton v Bowes* (1866) 1QB 359, re Cotherstone 1961 Estates Gazette, vol 179 page 11, and —→ sections 99 and 101 of the Lands Clauses Consolidation Act 1845.

So I start by considering whether the Residue Part is in such combined grazing and soil ownership of the stint holders (or the Public Trustee for them) as submitted by Mr Fryer-Spedding. The residue part is the part of the Burnhope Unit shown on the Burnhope Decision Plan west and southwest of the area "7 Yellow hatched blue" and southwest and south of the approximate line DEFGHJKLMN.



## BBL, paper title

Mr Keenan submitted (in effect) that the 1959 conveyance (BBL/1.14) showed a title in BBL which a purchaser from them of the Residue Part for an estate in fee simple would under an open contract be bound to accept, and that it followed that by such title I ought to be satisfied, and that I not only need not but ought not to consider the 1799 Act or the 1815 Award or any other matter before 1959, such being the position under sections 44 and 45 of the Law of Property Act 1925, as amended by the Law of Property Act 1969.

If the open contract supposed is with vacant possession, the paper title is not enough, because BBL as supposed vendor could not on completion so deliver up: the Residue Part is now and has for many years been grazed by stint holders who are under no obligation to BBL to deliver up.

If the open contract supposed is for the Residue Part subject and except as in the 1959 conveyance expressed to the conveyed, then I must suppose the sale to be "SUBJECT to ... all stintage rights ..."; the supposed vendor would be then obliged at least to explain the rights: impossible without asking them what rights they claimed and leading to a consideration of the 1799 Act and the 1815 Award. So if a specific performance action is to be supposed, a trial similar to my hearing would result.

In the great majority of sales of land, the vendor being in, or able on completion to give, possession is the most important part of the ownership evidence needed by a would be purchaser; title deeds are subsidiarily important as negating the possibility that the possession is under a title for less than an estate in fee simple. The title deeds of a person not in and not able to give possession, are not by themselves enough on an open contract. In the instant case, the 1959 conveyance by itself is not satisfactory evidence that the stint holders have a greater interest than an incorporeal right of grazing.

So I reject this submission.

## Limitation Act 1980

Mr Keenan while not conceding that the ownership of the Residue Part was ever in the ownership of the stint holders or any trustee for them, submitted (in effect) that any such ownership was extinguished by section 17 of the 1980 Act (or section 16 of the 1939 Act replaced by it).

The relevant words of the sections are:- "No action ... by any person to recover any land ... after twelve years ...". The proceedings before me were not such an action. But I agree that if any ownership of the stint holders has been so extinguished, BBL would have gone some way towards establishing their ownership.



I have no evidence that Mr R N Burton or BBL or the Church Commissioners ever objected to grazing by the stint holders: considered by itself their grazing is evidence that they are now and always have been in possession. I find that from 1937 to 1959 Mr R N Burton and thereafter BBL and persons authorised by him or them have shot grouse over the Residue Part as continuously as practicable: shooting considered by itself is evidence that BBL are now and they and Mr Burton before them have been in possession of the Residue Part: see *Red House v Catchpole*, 1976 12 Sol Jo 136, 1977 EGG 798, referred to in *Powell v McFarlane* (1977) 38 P&C 452 at page 471. Being there together there is now and has been for a long time room for argument and dispute as to the rights and interests of each: possibly one having no more than an incorporeal right to shoot or to graze, the other having the legal estate in fee simple, or possibly some other rights and interests. There have been arguments and disputes not as to the actual shooting but to some ancillary matters as the making or improving of the butts, gripping and heather burning.

In these circumstances, while the stinholders could perhaps be criticised for not commencing an action against BBL for a declaration as to their respective rights and interests and/or for an injunction restraining BBL from improving their butts, burning heather and gripping in the way they have done or have wanted to do, I find it difficult to criticise them in any way for not bringing an action (to use the words of section 15) "to recover" the Residue Part. Assuming as I am under this heading that the stinholders have at some time been in possession of the Residue Part, I am unable to find that they are a person who "has been in possession of the land, and has while entitled to the land been dispossessed or discontinued in possession" within paragraph (1) of Part I of the First Schedule of the 1980 Act.

My general conclusion is therefore that the part of the law enacted in these 1939 and 1980 Limitation Acts has nothing to do with anything I have to decide.

Exceptionally, I think BBL may have been in exclusive possession of the Cabin at the head of Todd Sike, and possibly also of the Cabin newly erected by the now dilapidated and sheep occupied Redan Cabin, for long enough to extinguish under section 17 the title if any of the stinholders to the very small areas on which these cabins stand. The evidence and use of these cabins may be some evidence that BBL are the owners of all the Residue Part (as to this see below); but I decline to attribute their possession of either Cabin as actual or symbolic possession of any area outside that on which the Cabin actually stands. Similar considerations are applicable to the Car Park by the head of Todd Sike and the areas on which the butts stand. Neither counsel suggested that these areas could be separately owned and as such required my consideration; so I say no more about them.



The cases cited show that the applicability of the 1939 and 1980 Acts is subject to principles of some complexity, particularly as to what acts constitute possession and what intention (*animus possidendi*) must the alleged squatter have to establish his title, see *Powell v McFarlane* supra at page 471. About these matters there was conflict between the evidence of Mr R N Burton, particularly paragraphs 17 and 19 above quoted from his February 1986 declaration (RNB), and the evidence of Mr A E Peart, Mr G A Lonsdale, Mr G L Peart, Mr W A Walton and Mr R S Rutherford. About the more important of these conflicts I make the following findings.

As to: "the practice of the Company's keeper to warn the stinholders of the time and place of any drive likely to affect grazing rights":- I find that neither Mr Egle nor Mr Colclough ever gave any consideration to drives affecting "rights", it may be the numerous drives in which they participated might under the law relating to prescription, presumed grant and limitation of actions affect the "rights" of the stinholders, and both Mr Egle and Mr Colclough knew of and must have thought about the grazing activities (as distinct from "rights") of the stinholders. The making and maintenance of the butts, the burning of heather and the gripping affected such activities, but the drives did not, or at least in the absence of some extraordinary happening did not, affect the actual grazing by the animals in any way not easily and readily tolerable. Mr Egle mentioned Mr Arnold Lonsdale contacting him when he was intending to gather, and said he knew when the sheep sales were on, and gathering was likely; but neither said anything about any "practice" of warning stinholders generally by regular postal or telephonic communications or in any other systematic way. My guess is that neither keeper ever gave any warning of a drive (he may have conversationally mentioned a drive) because neither thought a drive as arranged by him could affect grazing in any way that mattered; further a drive arranged for the next day might when the day came owing to unexpected weather not be convenient; however this may be, I find that there was "no practice ... to warn stinholders" within any of the possible meanings of the words "practice" and "warn" in ordinary English usage.

As to "the stinholders would then move the animals elsewhere":- I read the word "then" as linked to a preceding warning in accordance with the alleged practice. Mr W A Lonsdale, Mr G P Peart and Mr W A Walton said (in effect) this never happened. Neither Mr Egle nor Mr Colclough described any occasion when any such movement followed anything which could be a warning of an intended drive. I find the words above quoted are untrue.

As to "... there has been a good deal of give and take between them (the stinholders of Burnhope) and the Company":- It might I suppose be said that by the stinholders taking no legal proceedings and by not otherwise protesting about the shooting parties, BBL was given and took from the stinholders something of value (eg by enabling BBL in legal proceedings to claim perhaps successfully a profit a prendre to shoot. Contra it might be said that by the members of a shooting party by not harrassing those helping with the grazing, the stinholders were given and

took





from BBL something of value (eg by enabling them in legal proceedings to claim a right to graze). If the words quoted mean no more than when shooting parties and stinholders came together, the former did as little as they could to interfere with the grazing and the latter did as little as they could to interfere with the sport, and both were polite to each other and behaved in a civilized way, I have no reason to think otherwise; but a finding by me to this effect could not affect my decision. The words with any other meaning are confusing; I can make no finding — about them.

The most important words in paragraph 19 are:- "The Stinholders on Burnhope ... have consistently recognised the Company's rights as owner". If for this general statement the words following in paragraph 19 are intended as expository, ——— in my opinion such words being in the respects above mentioned either untrue or only half true, do not justify the words quoted. If the words "Company's rights as owner" are intended to mean that the Company is the owner of the legal estate in fee simple as defined in section 22 of the Commons Registration Act 1965, and the word "recognised" is intended to mean that someone or more of the stinholders (or someone acting for them) to Mr Burton or Mr Egle (or someone acting for BBL) said (in formal or informal language) that he accepted that the Company owned such a legal estate, I find that the words are not true. Mr Burton said he did not go about saying he was the owner and Mr Egle said that ownership was nothing to do with him; so neither requested and I can see no reason why it should be given unasked, any such recognition. I have not overlooked that maybe Mr Burton was at the November 1970 meeting by himself or Major Farrant described as "the owner of Burnhope Moor" or as "the owner of the Grouse Moor" (as stated in the minute AF/2:36 and GAL/2) but I decline to infer that any of the others present then recognised such ownership with any meaning of this word which could now be relevant. For the reasons given below under the heading: He was (or they) were the owner(s)", I consider the privately expressed views of the stinholders as to ownership irrelevant at least as regards the Residue Part.

As to the words in paragraph 17: "Since 1959 the Company has continued to take game and to exercise all the rights of an owner of the freehold in respect of ... Burnhope". That BBL had taken grouse and had done many things incidental to having shooting parties which an owner of the legal estate in fee simple as such owner could lawfully do, was not disputed. In law ownership of such an estate is one right enabling the owner to do a great number of different things; so I read the word "rights" meaning the things which a person who is an owner can by virtue of his ownership rightly do. In this sense I find that BBL has not exercised all the rights of an owner of a freehold because important rights of and incidental to grazing were exercised by the stinholders.

The purpose of the attack made at the hearing on paragraphs 17 and 19 was, so I understood, to repel the submission expressly or impliedly based on them, that the



activities of Mr Burton and BBL of and incidental to shooting were intentionally as owner in some relevant sense. As regards the Burnhope Unit, the main and only concern of Mr Burton was with the shooting, and with things incidental to the shooting, meaning generally that he was concerned that it should be the best possible for the persons who joined his parties; he was not much interested (there was no reason why he should be) in the grazing beyond stressing to his keeper and others employed by him that they should (like he himself) treat the stinholders with every consideration consistent with his main concern. Apart from the November 1970 meeting (GAL/2) and a meeting (mentioned by Mr G L Peart) between Mr George Peart, Major Farrant and himself, Mr Burton had no meeting with any of the stinholders at which there was any relevant conversation. In popular language the activities of Mr Burton and BBL on the Burnhope Unit were intentionally done under the 1937 lease and under the 1959 conveyance: I decline to ascribe any greater intention to either. As to whether such a limited intention is enough for the purposes of the Limitation Acts I have the judgment of *Powell v McFarlane* supra: "the animus possidendi involves the intention ... to exclude the world at a large including the owner with the paper title ... so far as is reasonably practicable and so far as the processes of the law will allow". Under this heading I am assuming the stinholders have the paper title. I find that neither Mr Burton nor BBL ever intended to exclude the stinholders within any ordinary meaning of these words; —————→ Mr Burton for himself and BBL clearly never intended to exclude the stinholders from grazing.

Apart from some general observations of Major Farrant, I had no expert evidence as to how grazing and shooting on a moor could or might co-exist. I accept his statement that the Burnhope Unit can only with advantage be used for grazing and shooting. If a person primarily concerned with shooting —————→ does everything he can to promote shooting and stops everything which could adversely affect shooting, there will on the Burnhope Unit still be grass enough to be worth grazing; equally if a person does everything he can to promote grazing regardless of shooting and stops everything he can which could adversely affect grazing, there will still be heather and other vegetation to be worth shooting over; but the results will not be the same. I doubt whether in relation to the Limitation Acts there can as a matter of law be an intention to do actions which do not adversely affect grazing but do adversely affect anything someone an owner might like to do; but however this may be, Mr Burton at the hearing never said he, and I find that he never in fact, had any such complex intention.

Having criticised the February 1986 declaration of Mr Burton, I record:- As is shown by the length of my hearing and the variety and complexity of the questions raised, Mr Burton may when making his declaration have had some excuse for failing to consider carefully enough exactly what he was saying: at the beginning of his oral evidence he said he relied on his instructions to his keepers. My criticism is mainly of his failure to consider whether his instructions either had been or could be carried out by his keepers and must not be taken as reflecting on him personally.



Much of his declaration was helpful as setting out the effect of documents inferences sought to be drawn from them. But as to the facts within his knowledge therein set out and the inferences to be drawn from them so far as they relate to things relevant to the Limitation Acts, I prefer the evidence of Mr A E Peart, Mr G A Lonsdale, Mr G L Peart, Mr W A Walton and Mr R S Rutherford, and consider for the reasons above set out the declaration in these respects is unreliable.

#### Equitable estoppel

Mr Keenan towards the end of the hearing in his skeleton submissions (see Part XXII of the Third Schedule hereto) elaborated his preliminary submissions (see above) by saying that the estoppel arose between the commencement of Mr Burton's shooting in 1935 and the first claim by any stinholder to ownership being by Mr F Peart in May 1973 by: (1) the taking of the 1937 lease, (2) the purchase in 1959 of the land on the basis that no claims to ownership by the stinholders up to that time had been made, (3) the BBL long-term expenditure between 1959 and 1973 being (a) professional care of the Moors by the employment of the services of professional gamekeepers and (b) initiation of schemes as owner such as the proposed gripping schemes referred to in B4 (specified in Part IV of the Third Schedule hereto) and the employment of a land agent (Major Farrant's firm) for that purpose; and (4) the absence of any claim when it was known that first the Church Commissioners and then in 1959 BBL were known by the stinholders to be acting as owners.

Mr Keenan did not suggest that anything said or done by any stinholder was relevant under this heading: the estoppel alleged was that the Church Commissioners and BBL relied on their silence.

Counsel cited *Crabb v Arun* 1976 Ch 179, *Taylor Fashions v Liverpool* 1982 1QB 133 and *Snell on Equity* (28th edition) pages 558 et seq.

Mr Fryer- Spedding contended that equitable estoppel was a matter over which I had no jurisdiction, and I should therefore leave all questions about it to be determined by the High Court (or some other court having jurisdiction). The judgments cited show that the High Court when satisfied there was an equitable estoppel have granted relief in a variety of ways (including for example the payment of money or the granting of a right) quite outside anything by the Commons Registration Act 1965 contemplated as within the jurisdiction of a Commons Commissioner. But it does not follow that a Commons Commissioner should never consider circumstances which might give rise to an equitable estoppel, for example the simple case of an allegation that X was equitably estopped unconditionally from denying the ownership of Y.

As to (4) above:- I have under the heading: Limitation Acts found that the stinholders have never recognised BBL's rights as owners. I decline to find that first the Church Commissioners and then in 1959 BBL were known to the stinholders to be acting as owners in relation to the Residue Part. Mr R S Rutherford thought



that Mr Burton was shooting under a lease from the Church Commissioners: he was the only witness who admitted so much knowledge of the 1937-59 position: I decline to infer that he or any other stinholder knew any of the terms of the July 1937 lease (BBL/3) particularly that term from which it could, or might be deduced that the Church Commissioners thought they were the owners.

The position in relation to equitable estoppel is complicated by there being not just two possibilities: (i) BBL are the owners of the legal estate in fee simple, or (ii) BBL have no interest either at law or in equity. There are at least two other possibilities, (iii) BBL have under the Prescription Act 1832 or under a grant to be presumed in accordance with the legal principles set out in *Tehidy v Norman* 1971 2QB 528 or otherwise, an exclusive profit a prendre to shoot, or (iv) BBL have no more than one or more undivided shares in land equal or corresponding to the stints owned by them like the shares to which all the other stinholders are (so they claim) entitled, or (v) BBL have some other interest at law or in equity. Mr Fryer-Speding submitted, rightly that I have no jurisdiction to determine between these 5 possibilities, and said that for this reason he called no evidence and made no submission about them. Mr Keenan made no submissions as to BBL being possibly entitled to any interest less than a legal estate in fee simple. So under this heading I am concerned not with the question whether BBL under an equitable estoppel can get something less than the ownership of, but whether BBL have the ownership of, the legal estate in fee simple.

As to this and as to (4) above particularly, Mr Fryer-Speding cited *Lyell v Hothfield* 1914 3KB 911. In reply Mr Keenan said he did not accept that this case was correct and reserved a right to argue this elsewhere (in the High Court or Court of Appeal) and for BBL (as I understood him) submitted (in effect):- It would be unreasonable to infer from the exercise by BBL of an exclusive right of shooting that they did this as a stinholder. As matters now stand they could not so argue because there is unity of possession. It might be otherwise if *Lyell v Hothfield* supra was reversed by the Court of Appeal. Unless it was so reversed, my decision as to ownership (subject of course to appeal) is likely to be decisive as to whether BBL has any meaningful shooting right on these moors. Alternatively as to equitable estoppel, I was not only concerned (as Mr Fryer-Speding suggested) with the legal estate, but must consider equitable interests, because if the stinholders owned the land they did so under the Law of Property Act 1925 as having an equitable interest under a statutory trust for sale, see section 34, and equitable estoppel qualifies such equitable interests (like qualifying like).

As to (4), I understand the combined grazing and soil ownership contemplated by section 11 of the Inclosure Act 1845, each stinholder has a several legal right to graze (a profit a prendre in law) combined with a legal ownership of a share (as a tenant in common at law). It may be that —→ the Commons Registration Act 1965 has —→ separated these legal rights from each other, and it may be that before 1965 all the stinholders by together executing and appropriate deed could effect such a separation: however this may be, in my opinion the sections about



undivided shares in the Law of Property Act 1925 did not in any way which could now be relevant effect any such separation. So I am against (4).

As to (3)(a), the detriment alleged is expenditure of a "long-term nature" being care by gamekeepers. In my opinion the expenditure on gamekeepers is not for the most part or for the larger part or for more than a very small part expenditure of a long-term nature such as is mentioned in the judgments cited about equitable estoppel; the things done by Mr Egle and Mr Colclough were of a short-term nature, the benefit being taken by BBL during the then current or the next coming shooting season. I accept that they have spent some of their time improving the butts, gritting and doing other things for which BBL and those who join their shooting parties will benefit in the more remote future; it may be that if the stinholders in legal proceedings as owners claim an injunction or like relief stopping any further shooting by BBL that the Court would under an equitable estoppel make such relief conditional on the plaintiffs for these benefits paying compensation or granting a right of shooting; but I decline for my part to infer from the judgments cited that it would then seem equitable that BBL should have nothing less than ownership of a legal estate in fee simple.

As to (3)(b):- As appears from the B4 correspondence and the evidence of Major Farrant the gripping scheme which he was employed to initiate was never put into effect because some of the stinholders objected to it. The stinholders by attending the November 1970 meeting (see above under the heading: Limitation Acts) or by before or after discussing the scheme did not, give Mr Burton any reason for supposing that they accepted BBL as owner: negotiations proceeded on the basis that the gripping would benefit both BBL and the stinholders; so ownership did not matter. BBL had no reason to deduce about ownership anything from the silence of the stinholders. I am under this heading assuming that but for a possible equitable estoppel, the stinholders (or the Public Trustee for them) are the owners of the Residue Part. It may be that if the B4 gripping had been done at the expense of BBL, the stinholders' ownership might have been affected; however this may be, it —————> would I think be inequitable to deprive them of —————> ownership merely because while the possibility of doing the gripping was discussed —————> they were all silent about ownership.

As to (2):- I have no evidence that any stinholder (excepting the Church Commissioners) had before the February 1959 conveyance any knowledge that any such transaction as was by it completed, was contemplated. On the information now before me I think it unlikely and I decline to infer, any of them had any such knowledge. I also decline to infer that either the Church Commissioners or Mr Burton or anyone acting for BBL ever thought stinholders knew about it the 1959 conveyance until after it was made.

As to (1):- I have no note or recollection of any evidence being directed to the silence of the stinholders having any relevance to the taking by Mr Burton of the July 1937 lease, and I decline to infer that Mr Burton or the Church Commissioners before the lease was granted were in any way influenced by such silence. Further if the Church Commissioners were not entitled to grant this lease, I have no evidence that Mr Burton or BBL suffered any detriment as a result.



So under this heading my decision is that the stinholders these proceedings are not subject to any equitable estoppel which precludes them from claiming against BBL that the legal estate in fee simple in the Residue Part is vested in them or in the Public Trustee as trustee for them. I consider I have jurisdiction so to decide as necessarily incidental to my duties under section 8 of the 1965 Act. But I record that I am not deciding or expressing any opinion as to the applicability of equitable estoppel or any other question which might arise should proceedings be brought with the High Court or any other Court about the shooting activities of BBL. And I am not expressing any opinion about any contention they might make (I am not encouraging them to make it) that BBL should in some way short of being granted the legal estate in fee simple be compensated for any expenditure they have made in permanently improving the Residue Part.

He was (they were) the owner(s)

At the hearing many of the witnesses were asked questions as to who owned what and why; and I had a great variety of answers.

Major Farrant assumed that BBL were the owners of the land by the February 1959 conveyance expressed to be conveyed to them. The opinion of Mr R N Burton was the same although not explained in so much detail. Mr A E Peart insisted that the stinholders owned the Burnhope Unit (or the Residue Part at least). Mr G A Lonsdale at one moment accepted without any qualification that the Church Commissioners owned the Burnhope Unit, but later explained in words which I was unable wholly to record and which at the time I found confusing that he did not accept that the Church Commissioners owned all that he had previously spoken about. The ownership ideas of Mr G L Peart and Mr W R Walton were something between those of Mr A E Peart and Mr G A Lonsdale.

Mr Keenan in his final submissions emphasised that they accorded with the evidence of Mr Lonsdale about ownership and, urged me to act on it. So I must consider the weight I should attach to the views of these witnesses generally, and of Mr Lonsdale particularly about ownership.

First as to Mr Lonsdale, his evidence was given in the context of the Burnhope Unit having been grazed by the stinholders and shot over successively by Mr Burton and BBL in the manner which he and other witnesses described. The usual context in which in legal proceedings witnesses are asked about ownership, is where one person is in possession of land and his documents show that this possession accords with the assurances dealing with the legal estate in fee simple: so any evidence given is almost entirely on matters of fact, and has only a small legal content. The context in the instant case was quite different: the land practically has only two uses, grazing and shooting; it is now and for a long time has been so used by at least two persons independently of each other; the definition of their mutual rights is very largely (although not exclusively) a matter of law. So, is the opinion of witnesses as to the nature and origin of their legal rights relevant?



On this question I am bound by the judgments in *De la Warr v Miles* (1881) 17 ChD 535 where persons claiming rights of common said they did so pursuant to a decree made in 1693 which the Court held did not grant the rights claimed. Of these persons Brett LJ said at page 594: "His claiming to exercise the right, which he did in fact exercise, in respect of some alleged title which could not be supported, is, in my opinion wholly immaterial ...", and Cotton LJ, at page 596, having said "... and it said here, that these acts, if they are made out in fact to have been done ... were done, not under what the Court thinks would give a good defence, but as under a customs which the Court holds incapable of proof and not proved", said (stating his own contrary view): "will see whether the acts which the defendant claims a right to do ... are such as could be supported as lawful by custom, prescription or grant ...", and "it is said however that nearly all the persons who cut litter did it not in respect of their own particular farms but under a general supposition that (1693) decree gave them a right to do so and that there was some custom which justified it. In my opinion as I have already said it is not necessary ... that the acts done should at the time have been attempted to have been justified in a way in which we think they can legally be justified ...". The Court awarded the claimants rights of common based on acts they had done notwithstanding that when doing them it had not occurred to them that they had any such rights.

I think these above quoted observations although made in circumstances in many respects different from those with which I am concerned, guide me to the conclusion that in determining ownership, I must regard, not the thoughts of the witnesses about the acts done on or in relation to the Burnhope Unit, but the acts themselves; the thoughts of the doers (except possibly in the context of the Limitation Acts and of equitable estoppel) are irrelevant.

Applying this conclusion to the evidence of the witnesses generally and of Mr Lonsdale particularly, I am concerned with what they and others said about what was happening on the Burnhope Unit and with the documents they and others produced, but their views as to who owned it or the various parts of it at any particular time are not directly relevant; and it follows, that at the time when it first occurred to a witness that he or his predecessors might own a share of the soil of the Burnhope Unit is also not directly relevant.

I am not saying that the questions asked of the witnesses about ownership were a waste of time. They might have, and sometimes did lead to the witness mentioning some relevant act. The questions put to Major Farrant who in the course of his profession must be familiar with much of the relevant law, were helpful at the beginning of the hearing in directing my mind to the legal and factual questions likely to require my decision. And similar questions put to other witnesses were indirectly relevant in this sense.

Further the questions put about ownership were permissible as going to the credit of the witness. Although as herein appears, I did not agree with many of the views expressed by witnesses about ownership and their views to me seemed somewhat confused, I am happy to say that nothing they said about their views as to ownership led me to doubt the reliability of their evidence about other matters.



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For the benefit of those witnesses who may think that what they said about ownership has by me been incompletely or confusingly recorded, I explain that I while they were giving evidence, had in mind the above quoted Court of Appeal observations, and concentrated on the aspects of what they were saying which might be directly relevant. If I had paused to ascertain their views more precisely, the hearing would have been longer and many concerned would have been put to expense which would have served no useful purpose.

So under this heading my decision is that I have no need to express any view as to the comparative reliability of the witnesses about ownership, I am concerned with the acts which were done and with documents produced so far as they are by law relevant to ownership.

#### Possession

A person's exclusive possession of land is by law some evidence that he is of it the owner for an estate in fee simple. My difficulty is that all the time BBL and Mr Burton shot over the Burnhope Unit others independently of them were grazing it; and also all the time the present stinholders (excepting BBL who were also possibly stinholders) were grazing it others independently of them were shooting over it.

I am in this difficulty because much of the evidence was apparently given on the assumption that it is in law possible (a) to define shooting so as to say that such things as building and maintaining butts, laying out and making a car park, building and maintaining a lunch cabin and gripping are not shooting but can only be done in exercise of an ownership right, and (b) to define grazing so as to say that such things as building and maintaining sheep shelters, gathering pens, roads or tracks or a boundary fence, and gripping are not grazing and can only be done in exercise of an ownership right. But there are no such definitions; and never can be if lawfully two persons are independently shooting and grazing; one of them at least must be doing so pursuant to an actual or presumed grant and the terms of any such grant are infinitely variable according to the wording of any actual grant and the circumstances leading to any presumed grant.

So I conclude that all such evidence is valueless because it can be regarded as pointing either way.

But even if I am mistaken in so concluding the difference between these things are I think quantitatively so immeasurable (eg is maintaining a butt more or less significant than maintaining a sheep shelter) as to be irrelevant to the question am I "satisfied" that as to ownership the claims of either those who have been shooting or those who have been grazing should be preferred to the other.





Even if I assume that the things done incidentally to shooting and the things done incidentally to grazing must up to say 1970 in the absence of any overt objection be presumed to have been done, as between those concerned lawfully, such things considered by themselves give no precise indication as to ownership; for, although some of these things are consistent with the doer being an owner they are also consistent with a variety of less interests including the smallest interest known to the law.

So under this heading, I conclude that if I am to be "satisfied", it must be primarily from the documents produced and the circumstances which existed when they were made so far as was proved or can be inferred from the evidence.

#### The 1815 Award and earlier documents

Mrs Drurey's Articles entitled Weardale Chest and Tenant Right in the Tudor Period and the extract from her Article on Stanhope Park (Part XXV of the Third Schedule hereto) are of much interest, but their matter is too far from the present day to be helpful about the present ownership of the Burnhope Unit. And I think the same of Manwood Forest Law and Lapsley's History.

So I start with the September 1797 observations of A Mowbray, the November 1798 opinion and the April 1799 Hopper Williamson 1799 letter (S/5). From the then current Law List I identify those who signed the opinion as Sir John Mitford therein described as "King's Solicitor General" and Mr James Mansfield then (also) of King's Counsel. I infer (the contrary was not suggested) that these documents came into existence in contemplation of the 1799 Act which received the Royal Assent on 13 June 1799, and that at the time they were made, important and respected persons who had considered seriously whether the stinholders were owners of the soil of the Burnhope Unit, had decided that they were such owners and that their decision would be generally known by those in the County concerned. Next came the 1799 Act. I doubt whether for the purpose of establishing the intention of Parliament the documents last mentioned and the inference I have drawn from them could be relevant. Disregarding such documents, and giving the best consideration I can to the sections to which my attention was drawn, they, in my opinion, show that Parliament proceeded on the basis that before the Act was made, the Bishop of Durham was not the owner, and the stinholders were the owners, of the soil of the Burnhope Unit. No useful purpose would be served by my now identifying the words which influence me. The effect of the 1799 Act was at my 1987 hearing much more fully argued than it was at my 1974 hearing re Irehope when about the same Act I gave the same opinion (S/6 in Part II of the Third Schedule hereto). I have not overlooked *R v Inclosure 1871 23LT 778* cited by Mr Keenan; this was about an Act dealing with land previously owned by a Lord of a Manor and was not applied in *Attorney-General v Meyrick 1893 AC1* and applied differently in *Simcoe v Pethwick 1898 2QB 555*; the case made by Mr Fryer-Spedding was that I should deduce from the 1799 Act that the Bishop did not before it was made own the Burnhope Unit. The said cases and also the Crossley Act 1810 (K/10) are I



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think not a satisfactory guide as to the meaning of the 1799 Act; "The effect of each Inclosure Act and Award depends on its particular terms" per the High Court in *Booker v James* 1968 19P&CR 525 at page 529. So I conclude that the 1799 Act is some evidence that the Bishop was not before 'the owner' of the soil.

The 1815 Award (S/3) after declaring the areas of the stinted pastures directed to be allotted or stinted (Burnhope Moor 3,995 acres 1 rood 14 perches and Moss Moor 367 acres 2 roods 30 perches) and providing for public and private roads and like matters, continued with allotments relating to each pasture. That relating to Burnhope Moor begins by declaring that 22 persons (I have specified them in column 1 of Part I of the Fourth Schedule hereto) who have claimed stints (in all 339½ specified in column 2 of the said Part) and saying "all such said several claims were admitted and allowed by us accordingly". The Award continues with 22 allotments to such persons (as summarised in column 3 of such Part) some (9 persons) in full satisfaction and the others (13 persons) in part satisfaction of their pre-existing stints.

So in the result under the award 9 persons lost all their stints (total 67) and received allotments in complete satisfaction and ceased to hold any stints on the Residue Part; and 13 persons lost part of their stints (total lost 49 and received allotments in satisfaction of such part and continued to have stints (total 223½) on the Residue Part; the allotments represent 116 (67+49) stints, and the 339½ before Award stints were reduced to 223½.

The Award continued by declaring that the part of Burnhope Moor not allotted (3,151 acres 17 perches: being the Residue Part) should remain a stinted pasture "to be occupied and enjoyed" according to the stint (in column 5 of Part 1 of the Fourth Schedule hereto specified) and declaring that it should still be lawful for all who had stints to continue to cut and take peats, so the 9 who had lost all their stints could still take peats. The Award concluded with Regulations of the stinted pastures remaining by ordering the nature of the stints and the situation of the allotments and stints (some in The Park Quarter and the rest including Burnhope and Moss, in the Forest Quarter) and saying all stints and allotments were claimed and made "according to the ancient and laudable custom of tenant right used and allowed within the Park and Forest of Weardale from time whereof the memory of man is not to the contrary" and providing for ———→ exchanges and for the fencing of allotments.

That the Bishop had no Burnhope allotment except in respect of his 17 stints, is a straight forward result which accords with the 1797 observations, the 1798 Mitford-Mansfield opinion, 1799 Williamson letter and my understanding that the 1799 Act, was on the basis that before it ———→ the Bishop had no estate or interest in the soil of Burnhope Moor.

I will now suppose the contrary and consider how the Award would appear if before the 1799 Act the Bishop ———→ in addition to being entitled to 17 stints also owned the soil of Burnhope Moor. The Award nowhere expressly gives anything in respect of such



ownership. The words of the Bishop's allotment:-"in full for his proportion share or interest of or in the said Burnhope Moor"are wide enough to include a share in the soil but similar words are used in the other allotment for the benefit of those who (in accordance with my supposition) owned no part of the soil. If the Bishop's 48 a 2 r 37 p (Burnhope Area 8 on BDP west) is for 17 stints the rate for each stint is 2 a 3 r 2½ p. The adjacent allotment of 95 a 2 r 32 p to John Harrison of Wearshead for 13½ stints ( Area 4 on BDP west) the rate for each stint is 7 a 8 p. During my inspection I did not look particularly at these allotments; my recollection of them as viewed by me from a distance is that there was nothing to show that Area 8 was essentially different from Area 4; however this may be if the Bishop 48 acres was intended to compensate him for his ownership of the soil of 844 acres (3995 acres less 3151 acres) allotted, he did very badly, particularly if the 844 acres were (as they now appear to be) the best of the Burnhope Moor stinted pasture dealt with by the Award. I reject the idea that the Bishop was somehow compensated because the Residue Part (3151 acres) was subject to fewer stints; the stints were reduced because the grazing area was reduced.

So if I am to suppose that the 1965 Act was enacted in 1816 and I was then considering whether the Residue Part was owned by the Bishop and not by the stinholders, my answer would be, the Bishop would have failed because having been advised in 1798 by eminent Counsel that he was not "entitled to any allotment as Lord of the Manor ... in respect of any interest in the soil ..." and the Award conferring on him no such interest, he would almost certainly have given up at the start of any such supposed proceedings.

#### The date for consideration

As to the weight to be attached to such an answer, I consider I should be guided by the ruling ———→ of Parker J in *Copestake v West Sussex* 1911 2Ch 331, when considering the dispute as to whether there was a public highway and how far old maps were relevant; he said at page 340: ———→ "any presumption as to the extent of a public right of way ought to be drawn by reference to all the circumstances existing at the time when the question as to the extent of the right arises ... it would not be right to raise any presumption from a state of circumstances proved to have existed 30 or 50 years ago ignoring all that has happened since". ———→ Applying the ruling ———→ to the ownership question arising in the instant case, I consider I must apply to it "all the circumstances existing at the time when the question ... arises".

The October 1975 letter (14 of Watson Lewis & Co file) from Mr Peart to BBL was the first time Major Farrant knew that a stinholder was claiming ownership of the soil; his consideration of the stinholders rights (generally) arose he thought, out of the 1965 Act.



Mr R S Rutherford when questioned by Mr Keenan in many of his answers used words such as "I expect so", "I think so", and "I think he did"; from these answers I decline to infer (Mr Keenan did not suggest I should) that Mr Rutherford was agreeing with the facts put to him in the questions; but although in this respect his evidence was confusing, he was trying to be as helpful as he could and his answers were otherwise reliable. He agreed "definitely" that between 1959 and 1979, Brackenbank went on shooting and the stinholders went on grazing in the usual way. He did not recall any trouble until about 15 years ago (1972). As to who owned the Moor, "when this registration of Commons came in the doubt arose; before then I expect we owned the section we had bought and then the doubt came in ... I expect Mr Burton's Company owned what they got and we owned what we got... they had the right to shoot, I don't know whether they were owners or not: the same as we had, the right to graze".

The differences between BBL and the stinholders about ownership started at the latest with the 1975 letter from F Peart (14 of the Watson Lewis & Co file). For the purpose of the above quoted 1911 High Court ruling, it is enough that there were questions about their rights, even although neither may have clearly particularised to the other any differences about ownership. The Burnhope Rights Section registrations were made on applications mostly dated June 1969, so at that time there was information publicly available to all that under the 1965 Act ownership would have to be determined.

Upon these considerations, my conclusion is that for the purpose of the said ruling the questions between the parties first arose between 1969 and 1975. So that about the questions I have to determine, nothing happening after 1975 is of any significance unless it throws light on something which happened before 1969. Between 1969 and 1975 is precise enough for the instant case, because I have no note or recollection of anything happening in these years which could be significant.

#### 1816 TO 1930

Of the 1815 Award allotments those edged blue on the Plan S/1 are on the ground now distinguishable: —————> there are stones which might be the remains of walls or otherwise intended to mark boundaries. Mostly —————> the allotments are without the Award map, not distinguishable at all. And so it has been during living memory, as was to me explained during my inspection.

In the 1815 Award each allotment is described: "as the same is now staked and set out by stakes and land marks". By reference to the Award map some of the



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allotments, particularly Burnhope Areas 1 to 6 as marked on BDP, are identifiable (perhaps a little more or less).

As to how long it has been thus, I have the Stint Book (RSR/3) in which the numbers in the column headed "grass" to each farm in 1861 add up to 319½ and continue to 1981 when they add up to 320. In the 1815 Award the before stints add up to 339½ and the after stints add up to 223½, see the Fourth Schedule herto. I conclude that the indistinguishable state of the allotments as they now appear has existed at least as far back as 1861 and that the purpose of the 1799 Act and the 1815 Award so far as many parts of the Burnhope Unit were then intended to be allotted in severalty, failed, it being economically and practically impossible to make any worthwhile use (save as in this decision otherwise appears) of the parts so allotted as enclosed lands to be held in several ownership; in forming this conclusion I disregard the difference between 320 and 339½ (much less than that between 320 and 223½), it having in some way not now ascertainable, been extinguished.

From this conclusion it does not follow that the persons to whom allotments were made and their successors necessarily lost the ownership conferred on them by the 1799 Act and the 1815 Award. Nevertheless they may have lost their ownership under one of the Limitation Acts by adverse possession or as a consequence of some other events which by law persons may lose their ownership of land.

But from this conclusion it does I think follow that from sometime before 1861, the words "stint on Burnhope Moor" or any like words where they appear in the Stint Book or in any indenture, conveyance or lease are latently ambiguous in that they may describe either a stintage right as existing immediately after the 1815 Award, or the ownership (or a share of the ownership) of land allotted by the Award in respect of a stint by it extinguished, or a stinted right since 1815 acquired under the Prescription Act 1832 or under some grant presumable in accordance with the law set out in *Tehidy v Norman supra*. The resolution of this latent ambiguity depends on the context of these words in the document containing them and the circumstances so far as they can be inferred or proved, at the time the document was made. For this reason later in this decision under headings such as Burnhope Area 5, I construe any such words in a conveyance of the whole or any part of farm land which can be identified with any such land particularly mentioned in the 1815 Award as passing the whole (or a share of) the ownership of any area now identifiable with the allotment.

The conveyances made between 1854 and 1909 as listed at the end of this paragraph are all of some farm land near to the Burnhope Unit (B) and/or the Moss Unit (M) and include stints over one of these Units: I so list them because each contains or refers to an habendum in these or like words:-



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"... heirs and assigns for ever according to the ancient and laudable custom of tenant right used and allowed within the Park and Forest of Weardale ... subject to customary rents payable to the ... (EC for E) ... and to all other rights belonging to the see of Durham".

In the 1865 and 1867 conveyances the rents are specified at 1½d. and 6s.2d. respectively. The conveyances are:-

- (1) 24 February 1854 (WRW/17bis); Stonedrass; to W Rain: recites 23 April 1847; (B and M).
- (2) 14 October 1865 (GLP/4): Benthead; to EC for E; (B).
- (3) 16 February 1867 (BBL/1.6); Pryhill; to EC for E; (B).
- (4) 17 August 1869 (BBL/1.8); ? ; to EC for E; (M).
- (5), (6) and (7) 2 December 1871 (WRW/15); Stripehead otherwise Blackclough; to William Bell relevantly on a partition; 9 October 1880 and 3 September 1887 (also WRW/15); ditto; by William Bell to Joshua Dawson; (B).
- (8) 11 November 1874 (WRW/3); Benthead; mortgage by William Peart; (B).
- (9) and (10) 12 August 1888 and 12 November 1889 (Bibby/26 and 25); Wear Villa; to William Stephenson; (B).
- (11) 13 May 1907 (WRW/9); ¼ share of Bents; to O Monkhouse; (B).

For the period 1854 to 1909 while for like farm land conveyed simply as customary freehold, I have the conveyance of 23 March 1870 (BBL/2); Stonedrass; to EC for E subject to a "customary annual rent of 6/-". And for the same period for Burnhope and Moss Moor stints devised as customary freeholds, I have the will of 27 June 1888 (Bibby/25 and 26) of Joseph Harrison; Wear Villa; (B). For this period I have only one other conveyance, being that dated 23 September 1885 (BBL/1.5); land at Burtree Ford to EC for E; the plan attached to it shows land at Cowshill to the northeast of the Moss Unit; so it is in this paragraph irrelevant.

The references in the 1865, 1867 and 1870 said conveyances above to specified rents (1½d, 6s:2d and 6/-) is some confirmation of the 1799 conclusion of Mr Hopper Williamson (S/5) "freehold tenure subject to certain small rents to the Bishop".

By the Law of Property Act 1922, all copyhold land as from 1 January 1926 was enfranchised, see section 128; copyhold land includes "land commonly known as customary land and customary freehold land where the freehold is in the lord and not in the customary tenant, see section 189. But land may still be "wasteland of a manor", see Commons Registration Act 1965 section 22(1), and a person can still be "Lord of a Manor", see re Box 1980 Ch 109.

So I now consider the submission made by Mr Keenan and not accepted by Mr Fryer-Spedding that in some now relevant way the unallotted land is or was manorial, with the consequence that there is some presumption in favour of BBL that such land was in or before 1926 owned in some now relevant way by EC for E as successor of the Bishop.



The 1799 Act begins with a recital that:

"There are within the Park and Forest of Weardale and Parcel of the Manor and Parish of Stanhope... certain stinted Moors and Stinted Pastures... and... the Bishop... is Lord of the Manor of Stanhope aforesaid..."

I can in the Act find no other mention of the Manor, although the Park and Forest are mentioned in sections LXI and LXII.

From Scriven on Law of Copyholds (7th edition 1896) it appears that before 1926 every manor properly so called had to have at least two freehold tenants, so that the Bishop (or EC for E as his successor) could be the freehold owner in chief of farm lands within the manor of Stanhope and at the same time other persons (as farmers or lessors of farmers) as customary tenants could be the freehold owner subject to manorial incidents payable to or enforceable by the freeholder in chief. It also appears that although there might be differences between the customary freeholders and the (also customary) copyholders of a manor as to the incidents (the former might be more free than the latter), the other differences were small and technical.

As to whether the farm lands were ever manorial, I have the habenda none of which mention a manor. "Tenant Right" is mentioned in these habenda, a phrase explained in Scriven supra at page 16 in a manorial context, which in these habenda does not exist. I have no evidence that EC for E ever demanded compensation for loss of these manorial incidents. So I infer that the farm lands to which the stints specified in 1815 were appurtenant were not, or at least have not been proved to have been, then (or since) held manorially.

But assuming I am mistaken in so inferring, for the reasons next stated, I am not helped with the problems now confronting me. From the said habenda I infer that before 1926 the farm lands were then held of the Bishop (or EC for E as his successor) as freeholder in chief as customary freeholder according with the said "ancient and laudable custom". The question with which I am concerned is not whether before 1926 there were appurtenant to the farm lands held as customary freeholds stints which were combined with shares in the soil held for a freehold estate in common socage free from any estate or interest of the Bishop (or as EC for E as his successor). The question is whether before 1926 there were appurtenant to the said farm lands and held as customary freeholders, stints which were then combined with shares in the soil held of the Bishop for a customary freehold estate subject to the freehold estate in chief of the Bishop. So finding that these farm lands and the stints appurtenant to them were manorial would not necessarily answer the question favourably to Mr Keenan.

My conclusion that the farm lands with which I am concerned and the stints held with them (whether or not they included a share of the soil) were before 1926 held as customary freeholds necessarily carries with it that there was a freeholder in chief. The information I have (nobody suggested otherwise) indicates that such freeholder in chief was the Bishop of Durham as Lord of the Forest (or perhaps as Lord of the Manor) and that his title as such in



1856 passed to the EC for E. Apart from possible monetary rents, I have no evidence of the Forest and/or manorial incidents to which these customary freeholds were subject; my guess is that the Bishop was at least entitled to the deer. Whatever these manorial incidents may have been, they ceased to exist under the 1922-1925 Property Acts.

From the Stint Book (S/7, RSR/3) and what Mr R S Rutherford said about it, I conclude that for the greater part of the 1816-1930 period and afterwards was a regular practice for the stinholders to grant themselves over stints. This practice is some evidence against stints being no more than a right to graze limited by number and for it being a combined grazing and soil ownership.

By the Law of Property Act 1925, after 31 December 1925, a legal estate could no longer be held in undivided shares. So if in accordance with the submissions of Mr Fryer-Spedding the legal estate in the unallotted part as a customary freehold was then held for the stinholders, thereafter it vested in the Public Trustee in accordance with the First Schedule to such Act, either Part IV or Part V; as to the difference between these two parts, see below under the heading Residue Part decision.

#### 1931 TO 1953

During this period the 1937 lease (BBL/1.3) was made.

In accordance with *Blandy-Jenkins v Dunraven* 1899 2Ch 121 the lease is an act of possession and is therefore some evidence that the EC for E when they made it owned the land therein described for an interest by the lease expressed to be granted and that by it they effectively leased such interest as in it expressed. The preceding statement is subject to some qualification similar to those I have mentioned below under the next heading; so under this heading I need only mention those applicable to the lease.

The weight of the lease as evidence of the then freehold title of EC for E as against the freehold title of the Public Trustee as trustee for the stinholders is much reduced by the circumstances that by Section 44 of the Law of Property Act 1925 an intending lessee in the absence of a contractual contrary intention, is not entitled to call for the title to the freehold. I have no evidence that in 1937 on behalf of Mr R N Burton the freehold title was either called for or investigated; having no evidence of any possibly relevant surrounding circumstances, that Mr R N Burton or his advisers ever called for or investigated such title is in my opinion unlikely.





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Additionally against the lease being weighty against the submissions of Mr Fryer-Spedding I have the circumstance (emphasised by him) when the lease was made the EC for E owned many of the stints which on his submission carried with them a share of the freehold ownership and which were before the 1959 conveyance (BBL/1.14) by them disposed of under the eight conveyances below listed:-

- (1) 23 April 1954 (RWD/2, Bundle 6) to Minister of Agriculture and Fisheries of Firstly and Secondly Wallhope Moor etc and lands containing 3,838 a., and 548 a. and 20 p., and a sixthly 6 stints on Burnhope Moor.
- (2) 29 September 1954 (Lonsdale Bundle 1, no. 4) to Charles Russell Lonsdale of Pry Hill Farm containing 63 a. 5 p., and 35½ stints on Burnhope Moor.
- (3) 28 February 1955 (RSR/2) to Richard Stephen Rutherford of West Black Dene containing 32.706 acres and 10 stints on Burnhope Moor.
- (4) 15 March 1955 (Bundle 3 of F Peart, no. 5) to Frederick Peart of (a) Wham, (b) High Whinsike and the Haggs and (c) High House and Far High House containing 16 a., 58 a. 1 r., and 20 a. 3 r. 16 p., and also 75½ stints on Burnhope Moor.
- (5) 15 March 1955 (Bundle 3, no. 7) to Frederick Peart of land near Ireshope Burn containing 18 a. 3 r. 17 p. and 24 stints on Burnhope Moor.
- (6) 16 December 1957 (WRW/16) to William Craig, of land OS 1538 (north of Stonedrass) and a cottage containing 1 a. 1 r. 36 p., and 1 stint on Burnhope Moor.
- (7) 19 December 1958 (GLP/6) to George Peart of Mount Healey and Benthead Farms containing 37 a. 2 r. 23 p., and 29½ stints on Burnhope Moor.
- (8) 28 October 1960 (WRW/22) to Joseph Edgar Rowell of Hollin Hill Farm containing 58 a. 37 p., and allotment on Burnhope containing 6 a. 3 r. 11 p., and also 44 stints on Burnhope Moor.

These stints on Burnhope Moor by the 8 conveyances above listed add up to 225½, which is more than the 223½ totalling in column 5 of the Fourth Schedule hereto. The only allotment expressly mentioned in any of the said conveyances (in no. 8 of 6 a. 3 r. 11 p.) can for from the plan be located in Burnhope Pasture (outside the Burnhope Unit); so some of the stints specified in these conveyances must relate to those extinguished by the 1815 Award, but as explained above under another heading by the graziers treated as continuing. But however these 8 conveyances be construed, I accept the submission made by Mr Fryer-Spedding that before 1937 and until 1954-1958, the EC for E were, on his submission, beneficially interested in more than an undivided half of the land which he submitted in 1926 became vested in the Public Trustee.



So in considering the weight of the 1937 lease as evidence against the Public Trustee vesting, I must suppose that it was made when EC were at least beneficially entitled to more than half of the freehold estate. By the 1939 tenancy agreement of Mr Frederick Peart ( Bundle 3, No 10), shooting rights were expressly reserved. Mr A E Peart said that such a reservation was made in all the tenancy agreements granted by the EC for E; this cannot be wholly correct because the 1943 tenancy agreement (GLP/3), being the only other I have contained no such reservation. I need not now I think make any finding as to the other tenancy agreements, because it is unrealistic to suppose that in 1937 any of the then tenants of the EC for E would have objected to any shooting by Mr George Gore or any person authorised by him or by Mr Amos Johnstone.

→ Pending any sale or lease by the Public Trustee, as trustee under the statutory trusts applicable, those beneficially interested had all the rights before 1926 exercisable by tenants in common at law see Jones (AE) v Jones (FW) 1977 1WLR 438; so the 1937 lease was valid at least until some beneficiary objected to it and it was in 1937 very probable that there would be (and there was in fact none for at least 20 years) any such objection.

So the weight of the lease as evidence against Public Trustee vesting is not great, and might in some contexts be very small.

#### 1954 and afterwards

By the 1959 conveyance (BBL/1.14), the Residue Part (with other land) was expressed to be conveyed by the CC to BBL in fee simple.

Clearly the conveyance was effective to convey such fee simple estate as the CC then had. I have to consider its evidentiary value as showing that the CC when it was made had such an estate and consequently first that a "stint on Burnhope Moor" was then no more than a right to graze and did not include a share in the soil, or in the proceeds of sale of the soil should it be sold under the statutory trust for sale applicable to land held in shares held with such a right; and secondly that a share in the soil or in such proceeds of sale did not pass to the stint holders under the eight 1954-1960 conveyances above listed.

The law applicable to the evidentiary value of a conveyance (or any like grant) against "anybody who ever they may be" was stated in Blandy-Jenkins v Dunraven 1899 2 Ch 121; such a grant is "an act of ownership". The usual way of showing ownership is by evidence of acts of ownership, and one act may be of such significance and may be done in such circumstances as to be satisfactory proof of ownership. The 1899 judgment is based on Malcolmson v O'Dea (1863) 10 HLC 593 in which the House of Lords adopted answers given by six of the Judges. Bristow v Cormican 1878 3AC 641 was in 1899 cited in argument. These cases and others are summarised in Taylor on



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on Evidence (12th edition 1931 ) at pages 421 et seq. Under the heading "Ancient Possession ", those considered in the said cases being between 1659 and 1676.

The thinking introduced by the Law of Property Act 1969 reducing the statutory period of commencements of Title which a purchaser can require from 30 years to 15 years, may justify some revision of the meaning of the word "Ancient". But however this may be in 1975 by which at the latest ownership came in question, 1959 conveyance was not "Ancient" within any possibly relevant meaning of the word. I reject the suggestion that in considering the evidentiary value in the 1959 conveyance it is not permissible to have regard to the circumstances in which it was made so far as there is evidence about them.

The before 1959 documents offered to BBL as the paper title in support of the right of the CC make the conveyance where: (a) 16 February 1867 (BBL/1.6), (b) 17 August 1869 (BBL/1.8), (c) 23 September 1885 (BBL/1.5), (d) 28 August 1918 (BBL/1.10), (e) 26 October 1922 (BBL/1.1) and (f) 25 July 1935 (BBC/1.2). Of these (a) includes two allotments on Burnhope of 181 a. 3 r. 8 p, and 50 a. --, not identifiable with any of the Residue Part; (b) relates to Moss plot; (c) relates to land north-east of the Moss Unit; (d) are mineral leases made by the CC; (e) by the CC of land outside the Burnhope Unit, and (f) does not deal with the Residue Part. So apart from what can be produced from the 1799 Act, the 1815 award and the 1935 lease, the CC before 1959 conveyance had no paper title to the Residue Part.

So importantly I should consider the evidentiary value of the 1959 conveyance.

The land in the 1959 conveyance was expressed to be conveyed subject to "all rights of stintage, rights of common ...", a form of words capable of including rights in the soil being part of a stint.

The conveyance is expressed to include 25 stints on Burnhope Moor and to except 244½ stints on Burnhope Moor, thus showing that it was prepared on the basis that there were at least 269½ stints, a figure well beyond 223½ stints preserved by the 1815 award and much nearer 339½ which before it existed or the 320 recorded in the Stint Book. Smith Gore & Co as agents for the CC in their letter of 2 March 1954 (bundle 6, Hodgson & Angus) lists with details the 244½ stints intended not to be included and the 25 stints intended to be included.

As to the before conveyance contract (or lack of it) I have not only the said March 1954 letter but that from the CC Official Solicitor dated 28 September 1954 (same bundle) which includes:-

"The sale is subject ... to all the rights of stintage ... a Schedule is enclosed setting out the stintage rights as known to the Commissioners. There may be however stintage rights exercisable over the moors of which the Commissioners are not aware. The sale is subject to all such other rights and the Purchaser shall not raise any requisition in respect thereof ... Abstract of the Commissioners' title is enclosed herewith and the Purchaser shall raise no requisition or objection in respect thereof ... unless you see any (reason to the) contrary I would suggest that a formal (contract may be) dispensed with and that the enclosed draft conveyance, when approved between us can form the basis of a contract ..."



The file (the said bundle) contains no later extract document other than details dated 8/5/56 of sporting rents paid by CC in respect of Allotments on Burnhope, Moss and Ireshope.

To determine the weight of the 1959 conveyance as evidence of facts not otherwise proved, I have to consider the chance of such facts having been investigated when it was made. Great weight is usually attached to a conveyance on sale or by way of mortgage made to person having no previous knowledge of the land, because ordinarily such conveyance is not made without a detailed investigation by the intending grantee; less weight is attached to a voluntary conveyance or an assent; all are of some weight. It is significant in this case that the CC having given information through their Surveyors, precluded (so I infer from the said 1954 letters) any investigation, supposing, so I guess, that Mr R N Burton having been active on the land for more than 20 years and paid rent for his activities would know the risks. So the substance of the matter is that to treat the conveyance as evidence of weight for the purposes for which it was produced, I must suppose that there was in the office of the CC official solicitor information showing that the stinholders on Burnhope Moor did not (as many stinholders do) share in the ownership of the soil and (or perhaps consequentially) the CC as the Bishop's successors were the owners of the Residue Part. My guess is that someone in the office not realising or forgetting that stinholders could have a share in the ownership of the soil and persuading himself that a stint could not be more than a right of grazing, concluded, without much consideration either of the 1799 Act or the 1815 Award that because he could think of no other owner and because the Bishop had owned much land in the County, the whole of the Burnhope Unit (except so much of it as had between 1867 and 1885 been acquired by conveyance) must have been in some Seignorial capacity owned by the Bishop; and I guess that for this conclusion he had no more evidence than I have. In the absence of any evidence as to the papers in such office, I can make no finding as to my guess; that I can make such a guess greatly diminishes the weight of the 1959 conveyance as evidence of the facts on behalf of BBL sought to be deduced from it.

As to the eight 1954-1960 conveyances above listed, it was suggested (as I understood Mr Keenan) that because those of the ECE for E concerned with the 1959 conveyance thought that the stints with which they were dealing were no more than a right of grazing and because the conveyances did not mention a share in the proceeds of sale to arise from the statutory trusts by the Law of Property Act 1925 made applicable, it necessarily follows that under such conveyances the grantee got no more than a grazing right and the said share could consequentially pass to BBL under the 1959 conveyance. I reject this construction of the eight conveyances. Their parcels all included a specified number of stints, impliedly referring to a totality of stints on Burnhope Moor the nature of which could be established from evidence outside the conveyance. If such evidence establishes that such stints before 1926 included a share of the soil, in my opinion the omission of words referring to the statutory trusts for sale did not narrow the scope of the parcels. Further as regards at least seven of the conveyances neither the 1959 conveyance nor anything thought of or done in connection with it could alter the meaning of any conveyance previously made.



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The March 1962 statutory declaration (BBL/1.16) is too imprecise to be of any evidentiary weight beyond that of the 1959 conveyance itself in respect of any matter with which I am concerned. The deponent does not particularize "The rents and profits" to which he is referring in paragraph 6; I am unable to guess what they were.

In my opinion such evidence as I had of things said and done after 1975 throw no light on any relevant event happening before 1969.

#### Residue Part, decision

Because I have evidence that the Burnhope Unit and the nearby farm lands with which I am concerned were before 1926 held as customary freeholds according to the said ancient and laudable custom, I record that in this decision about the 1779 Act, the 1815 Award and elsewhere except where the context otherwise requires, when I refer to the ownership before 1926 of the Bishop or of the EC for E as his successors, I am not meaning ownership as freeholder in chief subject to a customary freehold ownership of someone else. The dichotomy is between the possible ownership of the stinholders as customary freeholders (tenants in common or otherwise) and the possible ownership of the Bishop or his successors for any freehold estate not subject to any customary or other freehold estate. Any freehold estate of the EC for E before 1926 held so subject was by the Law of Property Act 1922 extinguished and I am therefore not concerned with it.

If I concluded that the Stinholders were before 1926 the owners in common, so that their land on 1 January 1926 vested in the Public Trustee, formally I am not concerned with what after 1925 happened to the equitable interests under the statutory trusts for sale. But what happened afterwards and before 1975 is relevant to the determination of the before 1926 position. So I must determine the question much discussed at the hearing whether a stint on Burnhope Moor ever and if so when, and for how long, means an ownership such as I in my July 1974 Longton decision (S/10) called "combined grazing and soil ownership".

On this important question, in the instant case the documents are conflicting. Some of the earlier being for and of the later being against a stint on Burnhope Moor having, or necessarily having such a meaning, so I must balance the conflicting considerations as best I can.

For combined grazing and soil ownership, the 1799 Act and the 1815 Award contain nothing expressly. Under the heading: the 1815 Award and earlier documents,



I have set out why I have inferred such ownership then existed and was then recognised. I presume that Private Acts of Parliament were in 1799 made (as they now are) after investigation of the circumstances and consideration of the rights affected. The 1815 Award was apparently made after a full investigation. My inferences based on such investigation and consideration, and supported as they are by the only contemporary documents available, are weighty.

The contra events, particularly the 1937 lease and the 1959 conveyance for the reasons set out under the headings: 1931 to 1953, and 1954 and afterwards, are of doubtful weight.

There are important differences between the positions before and after 1816, in that before all concerned thought and proceeded on the basis that the Alloted Parts could advantageously be enclosed and economically farmed in severalty; some time before 1861 all concerned concluded that they were mistaken, and therefore many things were done or not done such as before 1816 would not have been expected by those then concerned. But whatever may have been the consequence of these doings or not doings, they in my opinion could not necessarily affect the meaning of "stints" on Burnhope Moor, and they are not therefore of any weight either way in the balance.

From the appearance of the Burnhope Unit now, I conclude that it is not now relevantly different than what it was in 1799.

What those at the hearing said they thought or their predecessors had thought in the balance is I think of negligible weight. Nevertheless I thank them for telling me. ————— I consider I am by law required to make up my mind on the documents produced and the acts and events which have or have not been done.

Balancing the conflicting considerations set out in the headings preceding this one and under this heading summarized, I consider that the scale tips in favour of stints on Burnhope Moor now being and having always been a combined grazing and soil ownership, and my decision is accordingly, that is that the Residue Part on 1 January 1926 became and still is vested in the Public Trustee for a legal estate in fee simple.

As to whether such vesting should be under Part IV or Part V of the Law of Property Act 1925, Mr Fryer-Spedding submitted Part IV was applicable Citing re Bradford 1928 1 Ch 139 and re Townsend 1930 2 Ch 318 and asking me to distinguish or not follow re Cotherstone 1961 EG vol 179 page 11. Mr Keenan while not conceding that there was any vesting in the Public Trustee, was for Part V. The facts of re Cotherstone are more like those of the instant case than the facts of the two other cases cited; this in my opinion is reason enough for my decision being for Part V.

For these reasons my decision about the Residue Part is as set out in paragraph 1 of Part 1 of the Fifth Schedule hereto.



Burnhope Peat Moss, Quarries

Under this heading I consider the part of the Burnhope Unit on the 1815 Award Map marked "Part of Burnhope Moor left undivided for Public Peat Moss, Common Quarries, &c.". This part is on the Burnhope Decision Plan (east and west) marked "9 Yellow". The ownership of it like that of the Residue Part is claimed both by the Stinholders (as vested in the Public Trustee) and by BBL under the 1959 conveyance.

By section LXI of the 1799 Act it is provided that

"it shall ... be lawful for the several Owners ... of the ... allotments ... to dig for, win and get Peats, Turves and Coals, Freestone and Limestone Clay and Slates in and upon such Parts of the said Stinted Moors and Stinted Pastures ... as may not be divided and inclosed ... and to take lead and carry away the same ... as well for the Use of the Grounds so to be allotted to them respectively as of their ancient Estates within the Park and Forest of Weardale aforesaid".

By the 1815 Award, the allotments specified in the Fourth Schedule those which are in column 4 said to have been allotted "in full", were so allotted "(except as hereinafter mentioned)"; it is so mentioned against the marginal word "peats", that "it shall be lawful ... for all and every the ... persons ... to whom any Allotments ... are hereinbefore set out ... and also all and every persons entitled to stints ... in or upon such parts ... as is hereinbefore us declared to be and remain as and for a stinted pasture ... to enter into and upon and to cut and take peats from such parts of the said Burnhope Moor so set out and declared to be a stinted pasture as aforesaid ... PROVIDED ALWAYS ... take care to bed the turf on the bottom ... whence any peats shall be cut, dug or gotten ..."

Neither the Act nor the Award contains anything to suggest that as regards ownership this area be different from that of the Residue Part. I have no evidence indicating that it has been treated differently. So for the reasons set out under the eleven preceding headings my decision as to this Area is as above stated about the Residue Part, that it is to say it is now vested in the Public Trustee in accordance with paragraph 1 of the First Part of the Fifth Schedule hereto.



### Burnhope allotted parts

These parts as expressed to be allotted are listed in the Third column of the Fourth Schedule hereto. On the Burnhope Decision Plan (east and west), they are Areas 1 to 13, excepting "9 Yellow", but together with all other of the Burnhope Unit which is east or northeast of a line the approximate position of which is on BDP marked "ABCDEFGH JKLMN". At the hearing these parts were claimed or not claimed as appears under the headings next hereinafter contained.

Under the 1799 Act and the 1815 Award, these allotted parts became vested in the allottees specified in the Award and the stintage rights over them before 1799 were extinguished. There were 22 allotments (listed in the Fourth Schedule hereto) made up as follows: 1 for the Bishop, 5 wholly as customary freeholds, 14 wholly for leaseholds for lives held of the Bishop, and 2 partly one and partly the other. So, it matters not (except perhaps indirectly) whether earlier in this decision I rightly rejected the submission of BBL that the Residue Part after the Award became vested in the Bishop subject only to a right of grazing.

The 1959 title of EC for E is not necessarily helped by the allotment being a customary freehold because their in chief ownership will have been extinguished by the Law of Property Act 1922, or by the allotment being leasehold for lives because the reversion may have been got in, or the lease may have been perpetually renewable.

To be satisfied as to ownership, a claimant need not trace his title back to the 1815 Award, although in some cases it has or nearly has been so traced. Much of what I have said about the Residue Part is also applicable to all the allotted parts, but it is not decisive about any, so I must consider the information available to me about the circumstances of each. Further, from the wide local representation at my hearing, I consider I can as against any person not present or represented at it, draw reasonable inferences from the documents and oral evidence I have had.

### Burnhope Area 1

This Area is "1 Black" on BDP east. On the 1815 Award Map (S/4) it is marked "Thos Featherstone of Bentheads, 10.3.38."; as such it is No. (12) in the Fourth Schedule hereto allotted leasehold for 3 lives for 2 stints. It is included in the land verged red on the plan annexed to the 1959 conveyance (RNB.2 and BBL/1.14), is coloured black on RNB.4; at the hearing ownership of it was not claimed by BBL. By Mr Fryer-Spedding it was claimed for Mr W R Walton alone.

About it Mr W R Walton (in effect) said, (WRW/1):- It is included in the 1874 mortgage by William Peart; on his death it passed to his two sons Thomas Peart and Caleb Peart; on the death of Caleb (being the survivor), it passed to his three beneficiaries who under the 1931 conveyance (WRW/4) passed it to one of them, namely George Albert Peart. On his death it passed to his widow who by a 1959 conveyance





(WRW/6) sold it to the Rutherfords (JNR and JLR) whose successor he (the witness) now is under the 1970 assent (WRW/7), being within the 4th Schedule to it. He contended that the Area passed by the 1959 conveyance it having to his knowledge been occupied every since by the Rutherfords and himself. For the shooting over it Mr Burton paid him rent with no written agreement.

Mr Fryer-Spedding submitted that the 2 stints on Burnhope Moor specified in the assent and conveyance of 13 and 14 October 1931 (WRW/4 and 5) and in the 4th Schedule to the 1970 assent (WRW/7) referred to the land allotted by the said 2 stints at a No. (12) in the Fourth Schedule hereto.

The 10a.3r.8p as an identifiable allotment is particularly mentioned in the 1874 mortgage (WRW/3) and the 1877 mortgage (transfer of, WRW/4), together with other stints on Burnhope Moor, and is granted for lives and such other interest as the grantor may have. Without any such identification two stints on Burnhope Moor are mentioned in the 1931 Assent, the 1931 conveyance, the 1958 Assent and the 1959 conveyance (all under RWR/6) and the Fourth Schedule to the 1970 assent (RWR/7). However other land at Benthead is expressed to be granted by the said 1931 and after documents and is or may be identifiable with that described in the 1874 and 1877 mortgages. But quite apart from this perhaps unsatisfactory identification, I have the identification of Mr W R Walton personally, the statement that he and the Rutherfords have been in occupation of the area, and that BBL paid him rent for it and notwithstanding they are successors of EC for E make no claim.

From the above considerations I am satisfied that Mr W R Walton is the owner of Area 1, and my decision about it is therefore as stated in paragraph 2 of Part I of the Fifth Schedule hereto.

#### Burnhope Area 2

This Area is "2 black" on the BDP (east). On the 1815 Award Map (S/4) it is marked "Mary Coulthard: 17.1.14."; it is no. (4) in the Fourth Schedule hereto allotted leasehold 3 lives for 2 stints. It is included in the land verged red on the plan annexed to the 1959 conveyance (RNB.2 and BBL/1.14) but is coloured black on RNB.4 and was not by BBL claimed at the hearing. Mr Fryer-Spedding claimed it for Mr W R Walton alone.

About it Mr W R Walton (in effect) said (WRW/1):- He contended he acquired this Area through Messrs Rutherford (see above under Burnhope Area 1 heading), who acquired it from the Trustee in Bankruptcy of Octavius Monkhouse (the 1928 conveyance) WRW/11). He referred to the 1907 conveyance of a quarter share (WRW/9), the 1922 memorandum of deposit (WRW/10) and the Second Schedule to the 1970 assent (WRW/7). He had had exclusive grazing on the area since he acquired it (1970); it is not fenced. For shooting rights over it Mr Burton pays him on an informal basis.



The before 1928 documents produced although consistent with Octavius Monkhouse owning all the lands by the 1928 conveyance (WRW/11) expressed to be conveyed, are incomplete in that the 1907 conveyance (WRW/9) comprises only a quarter, or confusing if read with the 1905 conveyance specified in Part XXVII of the Third Schedule hereto.

The copy indenture of 10 May 1787 between Arthur Carrick and Mary Coulthard included in Bundle 10 does not help to identify the stints included in the 1928 conveyance with those to which an allotment was made to Mary Coulthard. However Mr Fryer-Spedding relied on the words quoted from the 1928 conveyance specified in Part XVI of the Third Schedule hereto.

The words "are wide enough to include lands by the 1815 Award allotted to Mary Coulthard notwithstanding that neither she nor her allotment nor the Award are mentioned in the conveyance. As to identification, I have the evidence of Mr W R Walton as to his grazing, as to the paying of rent to him by Mr Burton and the absence of any claim by BBL as successors EC for E to be the owner of this Area.

Upon the above considerations I am satisfied that Mr W R Walton is the owner of Burnhope Area 2, and my decision about it is therefore as stated in paragraph 2 of Part I of the Fifth Schedule hereto.

### Burnhope Area 3

This Area is "3 White" on BDP (east). On the 1815 Award map (S/4) it is marked "Josp Rutherford: 21.2.12.: for 5 Stints". Mr W R Walton and Mr Bibby identified it with no. (21) in the Fourth Schedule hereto allotted customary freehold to James Vickers (in the introductory declaration "Matthew Vickers"). It is not included in the land verged red on the 1959 conveyance (RNB.2 and BBL/1.14) and is uncoloured (white) on RNB.4. Mr Fryer-Spedding claimed it for Northumbrian Water Authority and Mr W R Walton.

As to one moiety, I am satisfied that East Durham County Water Board under the October 1922 conveyance (NW/1 also BBL/1.1) became the owners of one moiety, as claimed by Mr Bibby, who relied also on the answers and replies given by EC for E to requisitions and observations (NW/2).

As to the other moiety, Mr W R Walton (in effect) said (WRW/1):- He had exclusive grazing on this Area, although he shared the ownership with the Northumbrian Water Authority who are successors of the Durham County Water Board. The Area is not fenced. He also grazes the adjoining land to the south (Area 13 White on BDP east) which he believed is owned by the Northumbrian Water Authority; they in about 1935 erected some markers as indicated by crosses on the Ownership Plan (S/1, being along the west boundary of Area 13). Neither Area was included in the original registration (Land Section made in November 1968) and he contended that they should



not have been added (as they were in April 1972) and hatched green on the Register Map. There is a recital of a lease dated 18 July 1850 made by the Bishop of Durham and others leasing an undivided moiety in "allotment ... containing 21a.2r.12p ... on Burnhope Moor ... by the Award ... allotted ... unto James Vickars in part of his share ... being 17½ stints was declared to be in right of 5 stints ... whereof 2½ being one moiety of customary freehold tenure bounded as in the said Award was mentioned which said allotment did then belong to Joseph Rutherford ... the holders therein mentioned" (meaning that the recital was in the 1854 conveyance to William Raine, WRW/15 and WRW/17 bis). On the death of William Raine (August 1871) there was in 1871 a deed of partition (WRW/15) under which 2½ stints passed to J Vickers (2nd part 2nd schedule) and the other 1½ stints passed to William Bell (2nd part 3rd Schedule). William Bell died 1891 and his property devolved on his grandson John Henry Bell. It is possible that the leases (?) fell in and that these are the 2½ stints which are now leased by the Water Authority to him (the witness). He had always assumed and believed the remaining 2½ stints belonged to him and had always treated the land as his in co-ownership with the Water Authority. He could not trace which of his stints represented his share of ownership, but it is clear that the Church Commissioners assumed that they only owned one half of the area (1922 conveyance NW/1 and BBL/1.1).

Questioned by Mr Fryer-Spedding Mr W R Walton said (in effect):- The Area is not fenced from the rest of the Unit Land. On this Area 3 and the area to the south (Area 13) he grazed sheep; about 30 were heafed on it.

The 1922 conveyance (NW/1) is by reference to a plan on which the land coloured pink comprises Burphope Area 13 and much land to the east (now mostly reservoir) and the land coloured green comprises Burnhope Area 3. The parcels of the conveyance identify Area 3 with that by the 1815 Award allotted to James Vickars and in Part IV of the First Schedule it is described as "fractional interest of Commissioners in unenclosed allotment of 21a.2r.12p." So from this conveyance I conclude this Area 3 was immediately before the commencement of the Law of Property Act held in undivided shares of which one at least was held by the NWA at law vested in possession, so paragraph 1 of Part IV of the First Schedule to the Act applied to the entirety of the Area.

The 1854 conveyance (WRW/14 and 17 bis) by recited the 1850 lease as quoted by Mr W R Walton was by reference to the 1815 Award by which 21a.2r.12p. was for 5 stints allotted to James Vickars leaving (out of his before 1815 17½ stints) 12½ stints remaining, and by the conveyance one moiety of such allotments in the said 12½ stints were conveyed to William Raine, so he got 15 stints altogether being the 12½ as they were before and continued after 1815 and 2½ which represented a moiety of the allotment.

By the 1871 deed of partition (WRW/15) Joseph Vickers under the Second Schedule took 7½ stints on Burnhope Moor with a proportionate part of the allotments set out in respect of such stints being part of those comprised in the 1850 lease and William Bell under the Third Schedule took 7½ stints in Burnhope Moor and also 1½ stints in the allotments in respect of them being another part of that comprised in the 1850 lease. So the moiety mentioned in the 1854 conveyance became 2/10ths to J Vickers and 3/10ths to W Bell and the 12½ stints assumed to be part of the 15 was divided between them equally.



It appears from the 1927 Further Charge (WRW/15) that by the therein recited 1880 mortgage made by William Bell all his interest in the premises was charged and that there were in 1927 still some money due under this mortgage and that the land so further charged included  $7\frac{1}{2}$  stints on Burnhope Moor with a proportion of any allotment set out in respect thereof.

So from the 1927 Further Charge, I conclude that at the commencement of the Law of Property Act 1927 the said moiety of Area 3 or at least some share of such moiety was subject to an incumbrance within the meaning of sub-paragraph (2) of the said Part IV paragraph 1 and that accordingly in law the entirety of Area 3 pursuant to sub-paragraph (4) of the said Part IV paragraph 1 vested in the Public Trustee.

Under section 22 of the Commons Registration Act 1965 ownership means the legal estate in fee simple; so I am concerned to say whether since 1925 the estate of the Public Trustee has been displaced, but I am not concerned to name or otherwise identify all the persons who are now beneficially entitled under the statutory trusts applicable.

As to the possible displacement of the Public Trustee:- By the 1952 conveyance (Bundle 12 including WRW/15 etc) the personal representatives of John Henry Bell conveyed to John Norman Rutherford and John Lloyd Rutherford that lands therein specified and  $7\frac{1}{2}$  stints on Burnhope, with the proportionate part of the allotments set out in respect of the same "which property ... is now occupied by the Purchasers". And their interest under the 1970 Assent (WRW/7) passed to Mr W R Walton. So his activities (as above summarised) can be attributed to the beneficial interest in 1926 owned by J H Bell; this is enough to show the legal estate of the Public Trustee has not been displaced.

Upon the above considerations I am satisfied that the Public Trustee under sub-paragraph (4) of paragraph 1 of Part IV of the Law of Property Act 1925 is now the owner of Area 3, and my decision is accordingly as specified in paragraph 3 of Part I of the Fifth Schedule hereto. I have no jurisdiction in these proceedings to determine whether this area in April 1972 should or should not have been included in the Land Section.

#### Burnhope Area 4

This Area is "4 White" on BDP (west). On the Ownership map (S/1) it is edged red and marked "4". On the 1815 Award map it is that part marked "John Harrison of Wearshead, 1 :95.2.3. For  $13\frac{1}{2}$  Stints". On the 1815 Award map there is another part (adjoining Area 4 on the north) marked "John Harrison of Wearshead, 2 :21.0.8.:for 2 stints, Leasehold"; I consider this part below under the heading "Burnhope Area 11 Green-yellow/white". Both these parts comprise no. (13) in the Fourth Schedule; John Harrison after the 1815 Award had no stints. This Area is not included in the land verged red in the 1959 conveyance plan and is on RNB.4 uncoloured and marked "Featherstone Lot owned by W R Walton". At the hearing Mr Fryer-Spedding claimed it for Mr W R Walton and for the estates of C R Watson and J H Walton (a Public Trustee case).



About this Area Mr W R Walton (in effect) said (WRW/1):- This is partly owned by him and partly by the Estates of C R Watson and J H Walton; each Estate owns 2 stints in relation to this area. It was allotted to John Harrison in respect of  $13\frac{1}{2}$  stints (part of No. 13 in the Fourth Schedule hereto); an area to the north (part of Area 11) was also awarded to John Harrison in respect of 2 stints but that was leasehold; these leasehold stints were not transferred to J N and J L Rutherford by the conveyance dated 13 December 1961 made by J H Rutherford. (Bundle 12). He purchased the property on 5 August 1921 (conveyance, Bundle 12) from John Peart as surviving personal representative of John Harrison (he died 2 November 1912). This John Harrison was a descendent of John Harrison mentioned in the Award and the later John Harrison acquired his ownership rights from the estate of Joseph Harrison who died 12 August 1888 and from whose will also derived ( ? ) the titles of J H Walton and C R Watson. He (the witness) charged rent for shooting to Mr Burton under an informal agreement. The  $9\frac{1}{2}$  stints ( $13\frac{1}{2}$  less 2 and 2) represented the ownership of this Area. The stints are those mentioned in the 5th Schedule to the 1970 Assent (WRW/7).

Mr W R Walton in effect claimed  $9\frac{1}{2}$  of  $13\frac{1}{2}$  undivided shares of this Area. Bundle 12 includes the 1961 conveyance on sale by J N Rutherford and J L Rutherford of land including " $9\frac{1}{2}$  freehold ... stints on Burnhope Moor ... hitherto used and occupied with the property therein before described (Blackcleugh), and the 1921 conveyance by John Peart as trustee to John Harrison Rutherford as beneficiary under the will of John Harrison in 1912 of "the property in before abstracted deed". These include the release and conveyance dated 23 November 1848 which recites the will of John Harrison dated 10 January 1816 and the will of his brother Thomas Harrison dated 2 October 1817 and mentioning his brother John Harrison as then deceased and including  $9\frac{1}{2}$  stints or a proportionate part in respect of  $9\frac{1}{2}$  stints in any allotment set out by the Commissioners by the Weardale Park and Forest Enclosure Act for  $13\frac{1}{2}$  stints.

On these documents and on his evidence I consider Mr W R Walton as established beneficial owner to the  $9\frac{1}{2}$  stints which he claims. It appears from the Bundle 12 documents that these shares were immediately before the commencement of the Law of Property Act 1925 subject to an incumbrance; so by sub para. (4) of Part IV paragraph 1 of the First Schedule, the legal estate in the entirety vested in the Public Trustee. I am not concerned to investigate the beneficial interests after 1925 except so far as they might show such Estate of the Public Trustee to have been displaced.

Bundles 8 and 7, (Bibby/25 and 26) both start with the 1888 will of Joseph Harrison who died on 12 August 1888; the Watson Bundle with a specific devise to his son Nicholas Harrison and the Wilton Bundle starting with another specific devise to his daughter Hannah Harrison during her life after her death to her children. Both devises include 2 stints on Burnhope Moor. I doubt whether Joseph Harrison who died in 1888 can upon a consideration of any papers I have, be identified with or as a relation of the Award John Harrison or any Harrison mentioned in Bundle 12; perhaps W R Walton in making this identification had in mind a family tradition.



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Bundle 8 includes the will of Nicholas Harrison in favour of his children John Joseph Harrison, Sarah Jane Harrison (S J Watson), Mary Hannah Harrison (Mary Heslop), Mary Elizabeth Harrison (Mary Coulthard); John Joseph Harrison died in 1925, by an appointment dated 6 August 1935 and made by (among others) Sarah Jane Watson and Elizabeth Coulthard, there were appointed as trustees Pattison Heslop and Ernest Wilfred Coulthard of property which included 2 stints on Burnhope Moor. By an appointment 7 September 1946 Charles Raymond Watson was appointed a trustee in the place of Pattison Heslop (deceased), Charles Raymond Watson. Ernest Wilfred Coulthard died 14 February 1953 so if the 2 stints dealt with in Bundle 8 can be joined with the 2 stints mentioned in Bundle 12, Charles Raymond Watson at his death was concerned in Area 4 at least in a fiduciary capacity.

Bundle 7 shows that Hannah Walton by her will appointed in exercise of the power conferred on her by the 1883 will of her father Joseph Harrison: subject as firstly and secondly specified by her thirdly for her daughter Reine Florence Allison, her daughter Ella Raye Walton and her son John Harrison Walton in equal shares. After her death on 3 February 1926 by an assent dated 12 June 1931 and made by her Executors a dwellinghouse and other land and also two stints on Burnhope Moor were vested in her said three children (the beneficiaries) on trust for sale for themselves in equal shares. Reine Florence Allison died on 27 August 1963, Ella Raye Peart died on December 1971 and John Harrison Walton died on 18 December 1972. So if the 2 stints mentioned in this Bundle can be joined with those mentioned in Bundle 12, of the Executors of John Harrison Walton in at least a fiduciary capacity are concerned with Area 4.

There is nothing in Bundles 8 and 7 to displace the legal title of the Public Trustee which I have deduced from Bundle 12. The oral evidence of Mr W R Walton of his recognition of the title J H Walton & C R Watson is consistent with such legal ownership. On these considerations I am satisfied that the public Trustee is the owner of Burnhope Area 4 under paragraph 1(4) of Part IV of the First Schedule to the Law of Property Act 1925 and my decision is as stated in paragraph 4 of Part I of the Fifth Schedule.

#### Burnhope Area 5

This Area is "5 Yellow" on BDP(east). In the 1815 Award map (S/5) it is marked as "Joseph Dawson of Stonedrass: 24.1.27: leasehold". It is No. (5) in the Fourth Schedule hereto allotted for 3 lives for 2 stints out of 15, before 1815 stints, leaving Joseph Dawson with 13 after 1815 stints. This Area is included in the land verged red on the 1959 Conveyance Plan and its ownership was on behalf of BBL claimed by Mr Keenan. Mr Fryer-Spedding claimed it for Mr W R Walton and Messrs Olive Peart, George Leonard Peart and Alfred Lloyd Peart, the widow and sons of George Peart who died 23 January 1978.

About this Area, Mr G L Peart (in effect) said (GLP/1):- His mother Olive Peart, himself and his brother Alfred Lloyd Peart owned 29½ stints on Burnhope Moor, all at one time owned by the predecessors of the CC who had purchased Stonedrass with its stint rights and then resold Stonedrass partly to his father George Peart (conveyance 19 December 1958, GLP/6) and the remaining to Mr William Craig (conveyance



16 December 1957, WRW/16) through whom Mr Walton claimed. The conveyance to the said predecessor was dated 23 March 1870 (WRW/15bis being also BBL/2) they also purchased other stints by a deed of 15 October 1865 (GLP/4). His father's conveyance (1958, GLP/6) refers to both deeds of 1865 and 1870. The plan attached to his father's conveyance shows the area of the original Stonedrass as including the fields Numbers 1364, 1365, and 1366 together with the smaller field shown uncoloured and in the middle of the other fields. He believed on the basis of the relative areas of holdings of Stonedrass his father would have been entitled to  $1\frac{1}{2}$  of the 2 stints which were translated to the allotment on Burnhope Moor in the name of Joseph Dawson of Stonedrass in the 1815 Award. So he claimed that his mother, he and his brother were entitled to at least a  $\frac{1}{2}$  share of this Area. He stated his belief as to the effect of the 1870 and 1958 conveyances.

About this Area Mr W R Walton (in effect) said (WRW/1):- This Area is he believed owned jointly by himself and the family of Olive Peart. Under the 1815 Award it was allotted to Joseph Dawson of Stonedrass for 2 stints (No. 5 of the Fourth Schedule hereto). One of the stints was purchased from the EC for E by William Craig on 16 December 1957 (WRW/17) and he (the witness) purchased the stint with Stonedrass to which it was historically attached on 13 March 1959 (conveyance, WRW/17); the remaining of this Area passed to the family of Olive Peart. The Area is not walled or fenced.

By the 1870 conveyance (BBL/2 and WRW/15) there was conveyed to the EC for E as delineated on a plan OS Nos. 744 etc containing 12 a. 3 r. 23 p. Old Stonedrass OS No. 56 containing 45 a. 3 r. 15 p. (Sedling) a Moss allotment containing 16 a. 1 r. 2 p., a Burnhope allotment containing 24a. 1r. 27p. and "two stints ... pasture (without any identification) and 13 Burnhope Stints; the Burnhope stints are so described as to be identifiable with the allotted 2 stints and 13 stints as specified in the 1815 Award allotment to "John Dawson of Stonedrass". By the 1957 conveyance (WRW/16) there was conveyed by the CC to William Craig by delineation on a plan land at Stonedrass being the south part of Old Stonedrass containing a little more or less 745 part, 746 and 746a, 746b and without any delineation one stint on Burnhope Moor and one half of a stint on Moss Moor.

By the 1958 conveyance (GLP/6) there was conveyed by the CC to George Peart by delineation on Mount Healey and Bentley Farm, the plan showing as including therein the north part of Old Stonedrass continue a little more or less than 747, part 746 and without any delineation  $29\frac{1}{2}$  stints on Burnhope Moor and  $3\frac{1}{2}$  stints on Moss Moor.

By the 1965 conveyance (WRW/17), Olive Featherstone and Laura Craig as administrators of William Craig who died ————— on 12 July 1964 conveyed to William ————— Rutherford Walton by reference to the said 1957 conveyance (WRW/16) the premises by it conveyed.

Being of the opinion (as explained earlier in this decision) that the words stints on Burnhope Moor are capable of describing an allotment such as Area 5 by the 1815 Award made for two stints there are two possible views as to the effect of the 1957 and 1958 conveyances. The first supported by Mr Fryer-Spedding is that the one stint mentioned in the 1957 conveyance passed the half share in this Area 5 and the 1958 conveyance passed the other half share together with  $28\frac{1}{2}$  after 1815 stints on the Residue Part; the other possible view (supported by Mr Keenan) is that these two conveyances — passed only after 1815 stints on the Residue Part leaving the whole of the Area to pass to BBL under the 1959 conveyance. I prefer the first view because I think



bearing in mind the historical connections mentioned by Mr G L Peart of this Area with Stonedraass I can properly ascribe that intention to the parties to the 1957 and 1958 conveyances.

As I construe these two conveyances, each purported to convey an undivided share in the Area apparently without any regard to section 34 of the Law of Property Act 1925 which prohibits the creation of any such share. Under the section (stating its effect shortly) any such purported conveyance notwithstanding the prohibition, passes the beneficial interest which the parties intended to pass, so I conclude that before 1959 the Church Commissioners had no beneficial interest in the Area which could under their 1959 conveyance pass to BBL; and may be that these stints were within the therein exceptions. The definition of "ownership" in section 22(2) of the Commons Registration Act 1965 requires me to consider how the ownership of the legal estate in the entirety (before 1957 in the ownership of the CC) has devolved. This question is technical and without any substance, because I find that the only persons beneficially interested in the ownership of the Area are Mr W R Walton and those claiming under Mr George Peart who died in 1964, and they are not in dispute with each other. In these circumstances in accordance with the legal principles established in *Tehidy v Norman* 1971 2QB 528, I presume that the Church Commissioners have by a deed which has been lost and which I have no reason to suppose they would ever have been likely to have made, have divested themselves of any legal estate in the Area which after 1959 remained in them, in favour of the persons best entitled to it, being Mr W R Walton and the personal representatives of Mr George Peart.

BBL if they have no beneficial interest in the ownership of the Area could have no use for the bare legal estate. So I am satisfied that Mr W R Walton, Mrs Olive Peart, Mr George Leonard Peart and Mr Alfred Lloyd Peart own this Area for legal estate in fee simple upon the statutory trusts for sale in the said 1925 Act mentioned for the persons entitled thereto under the said 1957, 1958 and 1965 conveyances. Upon these considerations, my decision is as stated in paragraph 5 of Part I of the Fifth Schedule hereto.

#### Burnhope Area 6

This Area is "6 Black" on BDP east. On the 1815 Award map (S/4) it is marked "Thos Featherstone of Newcastle: 15.0.7."; it is no. (9) in the Fourth Schedule hereto allotted customary for 2 stints in full. The Area is within the land verged red on 1959 conveyance plan, but its ownership was not at the hearing claimed by BBL. Mr Fryer-Spedding claimed it is owned by Mr G A Lonsdale.

About this area Mr Lonsdale (in effect) said (GAL/1, para 4 and some of para 7 struck out):- He confirmed that the lines shown blue on the Ownership Plan (S/1) indicated the site of walls some ancient and some more recent. His wife (? mother)





and he had the same rights of ownership over the Area as Mr Walton may have over Areas 1, 2, 3 and 4 (? 1 and 2). His father Charles Russell Lonsdale purchased Benthead Farm and Cleugh House Farm from F Douglas and J Douglas by a conveyance of 11 July 1964 (Bundle 1) in Part XII of the Third Schedule hereto.

Questioned by Mr Fryer-Spedding, Mr Lonsdale said (in effect):- Since his father purchased in 1964, his father (now deceased) or he (the witness) had received the rent for the shooting. He had his sheep on the land, about 10 sheep were heafed there but they do wander because the Area is not fenced, and the sheep of other people wander onto the Area; generally his sheep are there sometimes and sometimes the sheep of others. Shooting rent is now £20 per annum. His father Charles Richard Lonsdale, died in December 1979 leaving his half share (under the 1964 conveyance) to him (the witness) so he is now tenant in common in equal shares with his mother Janet Lonsdale (March 1977 deed of gift by his father to himself and his wife). The walls he had described had been derelict from his earlier recollection; they would not constitute a sheep boundary. Mr Peart's sheep on Area 5 are heafed there but they do tend to wander.

Questioned by Mr Keenan and Mr Lonsdale agreed that the rent paid by Mr Burton for shooting rights was for exclusive shooting rights and that he divided such rent between himself and his mother.

The 1964 conveyance of the two farms included "all the estate right title and interest (if any) on the vendors in or to (1) 4½ (Benthead) stints and (2) 3 (Cleugh House) stints (each stint representing the right to graze 5 sheep) on the adjoining or adjacent Burnhope Moor". Mr Fryer-Spedding did not suggest that these stints could be identified with the 2 stints mentioned in 1815 Award Allotment, and relied on a possessory title. No claim to this Area was made by BBL or anyone else claiming under the CC. My hearing was well attended by persons locally interested, and I infer that it is likely that any person able to claim as the successor of Thos Featherstone of Newcastle named in the 1815 Award would have heard of it.

On the evidence above summarised by Mr C R Lonsdale, his wife and son have been in possession since 1964 and I conclude that the estate or interest of any such successor has been barred by the Limitation Act 1980. Because the Lonsdale possession has been by doing things from Benthead and Cleugh House farms, any right so acquired accrues to the persons interested in such farms. By the March 1957 deed of gift and section 34 of the Law of Property Act 1925, the legal estate in the farms passed to Mr C R Lonsdale and Mrs Janet Lonsdale as joint tenants upon the statutory trusts for sale in the Act mentioned. On these considerations I conclude that following the death of Mr C R Lonsdale and in the absence of any appointment of a new trustee in his place, this Area 6 is now vested in Mrs Janet Lonsdale upon such statutory trusts.



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Although I noted that Mr C R Lonsdale died on 17 September 1979 having appointed executors as stated on page 2 of this decision, I have no note of recollection of seeing the probate of his will. So I make no finding as to the succession under it to his half share under such statutory trusts, although it may well be that Mr J A Lonsdale is now as he said the successor.

Upon the above considerations, I am satisfied that Mrs Janet Lonsdale as sole surviving trustee of such statutory trusts is the owner of Burnhope Area 6 and so my decision about it is as set out in paragraph 6 of Part I of the Fifth Schedule hereto.

#### Burnhope Area 7

This Area is "7 Yellow hatched blue" on BDP (west). On the 1815 Award Map, (S/4) it is marked in 2 parts: north "John Featherstone of Newcastle 2 : 50.0.0.: For 4 stints Leasehold"; and south "John Featherstone of Newcastle 1.:181.2.18.: for 18½ stints"; as such it is No. (7) in the Fourth Schedule hereto. It is included in the land verged red on the 1959 conveyance plan (RNB.2 and BBL/1.14); on RNB it is yellow hatched blue, and on behalf of BBL its ownership was claimed by Mr Keenan. Mr Fryer-Spedding put BBL to the proof but made no claim to it or to the greater part of it, being that edged blue on the Ownership Plan (S/1).

Mr Keenan by reference to the plan drawn on February 1867 conveyance (BBL/1.7) identified the area with one of the two plots thereon in part coloured red and in part coloured green.

Although the 1922 conveyance (BBL/1.1) recites this 1867 conveyance, none of the Area is thereby conveyed. All the Area is included in the 1959 conveyance (RNB.2 and BBL/1.14). So the title is regularly deduced and I have no reason to doubt the claim of BBL. Upon the above considerations I am satisfied that BBL are the owners of this Area and my decision is as set out in paragraph 7 of Part I of the Fifth Schedule hereto.



## Burnhope Area 8

This Area is "8 Yellow" on BDP (west). On the 1815 Award it is marked "Bishop of Durham: 48.2.37.:47 stints"; it is No. (1) in the Fourth Schedule hereto. It is included in the land verged red on the 1959 conveyance plan and it is coloured yellow on RNB.4. Mr Fryer-Spedding included it in the land by him generally claimed to be unenclosed and owned by the stinholders (or the Public Trustee on their behalf); Mr Keenan claimed it as owned by BBL.

The title of BBL to this Area from the 1815 Award is regularly deduced being the 1856 Orders, the 1947 Measure (BBL/1.4) and the 1959 conveyance (BBL/1.14). Contra I have the circumstance that it is not apparently in any way distinct from Burnhope Area 9 and nobody suggested that it was grazed any differently from such Area.

Balancing these conflicting considerations as best I can, I accept the claim made by Mr Keenan. So I am satisfied that BBL are the owners of this Area, and my decision is as set out in paragraph 7 of Part I of the Fifth Schedule hereto.

## Burnhope Area 9

See under heading, Burnhope Peat Moss, Quarries

## Burnhope Area 10

This Area is "10 White" on the BDP east. On the 1815 Award map (S/4), it is marked, "Joseph Hodgson: 6.3.12.: customary", "Josp Hodgson 2: 4.0.0.: Leasehold" and (as part of) Joseph Peart: 12.0.0."; as such they are nos. (15), (15) and (19) in the Fourth Schedule hereto. It is included in the verged red on the 1959 conveyance plan, but the part allotted to Joseph Peart is hatched blue; on RNB/4 it is uncoloured, although the blue hatching appears on the same part; its ownership was not by Mr Keenan claimed for BBL. It is unnumbered on the Ownership Plan (S/1) and not edged with any colour.

Because it is surrounded by parts of the Burnhope Unit and of the Moss Unit ownership which has been successfully claimed either at my Burnhope hearing or at the



1985 Moss hearing, it may be there has been some mistake or misunderstanding; I therefore consider I should give any person concerned an opportunity of offering evidence or argument directed particularly to its ownership. For this reason my conclusion as next below stated is subject to the liberty to apply as set out in paragraph 1 of Part III of the Fifth Schedule hereto.

In the absence of any evidence or argument directed particularly to this Area, I conclude that my decision about it should be the same as that below set out under the heading: other Burnhope allotments, but subject to such liberty to apply. Accordingly my decision about it is as set out in paragraph 1 of the Fifth Schedule hereto.

#### Burnhope Area 11

This Area is "Green/yellow: 11 white" on the BDP west. On the 1815 Award map (S/4) it is marked "John Harrison of Wearshead 2 : 21.0.8.: For 2 Stints: Leasehold"; as such it is part of No (13) in the Fourth Schedule hereto. On the map RNB/4, only a small part of the Area on the north is coloured, such colour being green but apparently intended to be co-extensive with the yellow, so only a part of this Area was claimed by Mr Keenan for BBL. On the Ownership Plan (S/1), the other part of this Area is darkly shaded but is not included in the part on it edged red, so this Area was claimed by Mr Fryer-Spedding as stinted like the Residue Part.

Because I cannot remember seeing on my inspection, and have no note or recollection (except as below mentioned) of any evidence to distinguish this Area wholly or partially either from Burnhope Area 4 White, it may be there has been some mistake or misunderstanding; for this reason my conclusion as next below stated is subject to the liberty to apply set out in paragraph 2 in Part III of the Fifth Schedule hereto.

In the absence of any evidence or argument directed particularly to this Area, I shall act on the sentence in paragraph 10 of the Statement of Mr W R Walton: "I assume that the leasehold stints have passed to Burton", and conclude that in some way which was not proved (perhaps the leasehold for 3 lives was somehow got in by the Bishop as lessor), this Area was before 1959 vested in the EC for E, and passed under the 1959 conveyance (BBL/1.14) to BBL. So until the contrary appears as a result of any application under the liberty to apply, I am satisfied that BBL are the owners of this Area and my decision about it is as set out in paragraph 7 of the Fifth Schedule hereto.



## Burnhope Area 12

This Area is "12 White" on the BDP west. On the 1815 Award map (S/4) it is marked (from east to west) "Jas Carrick: 14.0.32.: For 4 Stints"; "Wm Bell: 14.0.32.: For 3½ Stints"; "S Lonsdale: 12.0.22.: For 3 Stints"; "J Lonsdale: 15.3.11.: For 3 Stints"; and "J Featherstone of Burnhope : 13.1.12.: For 3 Stints".

As such they are nos. (3); (18) as Thomas Nattras; (16); (17) as John Nattras; and (18) of the Fourth Schedule hereto. This Area is not included in the land verged red on the 1959 conveyance plan or in the land coloured yellow on RNB/4 and was not claimed by Mr Keenan for BBL.

I have no note or recollection of anything being said about this Area during my inspection or at the hearing, and I am under the impression that it appears much like the nearby parts of the rest of the Burnhope Unit. It may be that some of the documents in G A Lonsdale, Bundle 1 relate to one or more of these allotments, but nothing was said at the hearing as to the documents being possibly relevant.

If all concerned treated this Area as part of the Burnhope Unit and they were correct in so treating it, my conclusion is that my decision as to ownership under the heading: "Other allotments" is applicable to it.

But having since the hearing looked at the Land Section of the Register and compared it with my copy of the Register map (on my copy this Area is hatched red), I incline to the view that it was not included in the registration at Entry No. 1 made on 7 November 1968 but cannot say for certain because I have no copy of the application of Mr R S Rutherford mentioned in the Entry. It is not hatched green on the Register map, so cannot be within the Entry No. 3 made on 3 April 1972. But I have been unable to discover why the Area was hatched red on the Register map. Because I may have no jurisdiction to consider the ownership of this Area, my conclusion as next below stated is subject to liberty to apply set out in paragraph 3 of Part III of the Fifth Schedule hereto.

In the absence of any evidence or argument directed particularly to this Area I conclude that my decision about it should be the same as below set out under the heading: Other Burnhope allotments, but subject to such liberty to apply. Accordingly my decision about it is as set out in paragraph 1 of Part I of the Fifth Schedule hereto.



## Burnhope Area 13

This Area is "13 White" on the BDP west. On the Award map (S/4) it is marked as part of (about 1/25th on the east) of "Thomas Hodgson : 123.0.0.: For 15 Stints": and as part of "Joseph Dawson of Spring Well : 17.3.24.: For 2 Stints"; they are nos. (14) and (6) in the Fourth Schedule hereto. It is not included in the verged red on the 1959 conveyance plan, and being uncoloured on RNB/4, its ownership was not claimed by Mr Keenan on behalf of BBL.

The evidence of Mr W R Walton in support of his claim to a moiety of Burnhope Area 3 White dealt incidentally with this Area 13 White in that (the entirety not only a share) was conveyed by EC for E to Durham County Water Board ("DCWB") being included in the coloured pink on the annexed plan and in the Schedule as "Pt 1181" (twice), totalling 24 a. 2 r. 22 p..

I infer that DCWB would in 1922 have investigated the title of the EC for E, and in accordance with the probabilities to be inferred from the situation of the Area relative to the now existing reservoir, I am satisfied that NWA is the owner of this Area and but for the matters next below mentioned, would have said no more about it.

Area 13 is not specified in the Ownership Plan (S/1) as one of the parts of the Burnhope Unit of which individual ownership was claimed, and I understood Mr Fryer-Spedding on behalf of the "Commoners" he represented to claim that it was vested in the Public Trustee along with the Residue Part. But against this, neither Mr Bibby nor anyone else challenged the evidence of Mr W R Walton that this Area was owned by NWA. Thinking that there may be some confusion resulting from Mr Fryer-Spedding on the instructions of Mr Bibby's firm representing at the hearing both NWA and many of the Commoners, about this Area I give liberty to apply. I am not criticising such joint representation because the trouble and expense thereby saved must have far exceeded any trouble and expense consequential on the matters mentioned in this paragraph. Also I draw attention to the boundary between Area 3 White and the Area 13 White as drawn on the BDP being in some minor respects not the same as the boundary between the Pink and Green land drawn on the 1922 conveyance plan; perhaps the BDP boundary should be preferred as being more in accordance with modern usage; however this may be paragraph 1 of Part IV of the Fifth Schedule hereto will be applicable.

Upon the above considerations, my decision about this Area is as set out in paragraph 8 of Part I of the Fifth Schedule hereto.



Burnhope other allotments

Between the Burnhope Areas 1 to 13 and the line CDEFGHJKLMN marked on the BDP are the parts of the Burnhope Unit which by the 1815 Award were allotted as specified in the Fourth Schedule hereto and which are not delineated and marked with any number on the BDP. These parts ("Burnhope other allotments") are all included in the land verged red on the plan annexed to the 1959 conveyance (RNB.2 and BBL/1.14) and their ownership was by Mr Keenan claimed on behalf of BBL. Mr Fryer-Spedding claimed these parts were owned by the Public Trustee as being indistinguishable from the Residue Part.

There was no evidence that the Burnhope other allotments were grazed or shot over or used in any other way relevantly different from the Residue Part. During my inspection I noticed no difference. I find that within living memory there has been no relevant difference.

Immediately after the 1815 Award, the Burnhope other allotments under the 1799 Act conclusively came into the ownership of the persons to whom they were allotted. At my hearing no person claimed title under such persons. I find, stating the position in informal language, that in respect of the Burnhope other allotments, the 1799 Act and the 1815 Award was as country planning a failure and this was apparent at least along ago as 1861, being the beginning of the Stint Book (S/7 and RSR/3).

TURN OVER



But there is I think no principle of law such as was in 1921 put forward on behalf of the EC for E (NW/3) that the before 1799 position "accordingly" continued. The principle applicable is I think that where a state of affairs has been found to exist for a long time (from 1861 until today) the law presumes if possible a lawful origin.

In accordance with such principle, I conclude that the Burnhope other allotments have accrued to the Residue Part and are now held at a law and in equity for the same legal and equitable estates and interests as those upon which Residue Part are now held. In the absence of any submissions by counsel as to there being any difference, I need not go into the question whether my conclusion can be supported under the Limitation Act 1980, or any Act which it replaces, or any presumed grant such as I have mentioned above or otherwise.

In accordance with this conclusion I am satisfied that the Public Trustee is the owner as he is of the Residue Part, and my decision is as stated in paragraph 1 of Part I of Fifth Schedule hereto.

#### Re-opening March 1985 Moss hearing

To the notices given on behalf of Mr W R Walton of his June 1985 application for the re-opening of as regards plots 10 and 13, the March 1985 hearing, nobody except BBL replied, and their solicitor in their July 1985 letter had no objection. So in July 1985 I decided that the hearing so applied for would be re-opened. Nobody at my 1986-87 hearing suggested that such re-opening was irregular or that Mr W R Walton is not as he claimed owner of these plots.

At my hearing Mr Keenan for BBL submitted (repeating their Solicitor's said letter) that the March 1985 hearing should be re-opened as regards plots 3, 4, 12 and 15; and Mr Bibby (a) for Mr and Mrs Maddison and (b) Mr W R Walton and Messrs Peart made a like submission as regards (a) plots 3 and 4 and (b) plot 15.

Mr Bibby said (in effect):- The March 1985 hearing was at Durham and took a fairly short time, being listed among many other cases. Mr G Peart and Mrs Maddison were present but were not represented by solicitor or counsel; they were not called upon to speak or invited to speak and as a result the inquiry proceeded without the Commissioner having any representations from them. It so happened that he (Mr Bibby) was present, being concerned with another case, and was requested by Mrs Maddison to invite the Commissioner to hear representations against those made on behalf of BBL. Accordingly he spoke to the Commissioner who gave Mrs Maddison leave to file an affidavit before he made his decision. Subsequently he gave Mr Peart similar leave.





To somebody (like himself) newly come to the problems involved in these proceedings, it was practically impossible to present a proper case (within the time limited), bearing in mind the legal discussion needed.

Enclosed with letters dated 13 and 15 March 1985 were the statutory declarations made on 13 and 15 March 1985 by Mrs M Maddison and Mr G L Peart (MM/1 and GLP/6). The reply 15 and 19 March was that the hearing would not be reopened for reasons which would be (and subsequently were) set out in the decision (subsequently dated 23 April).

Mr Bibby made submissions by reference to the documents Bibby/101, 102 and 103 specified in Part XXVI of the Third Schedule hereto.

Mr Keenan said (in effect):- BBL claimed to be the owners of plots 3, 4, 12 and 15 and submitted that I should give a decision on the evidence before me. However if the evidence offered on behalf of Mrs Maddison before me was in the same form as her affidavit (MM/1), he submitted that for their benefit the hearing should not be reopened.

At the hearing I said that for the reasons I would give in my decision I considered that I should reopen the March 1985 hearing as regards plots 3, 4, 10, 12, 13 and 15 and would therefore hear evidence and submissions offered about them.

My reasons are:- (1) The Commons Commissioners are subject to the law applicable to other tribunals as stated in *R v Cripps, Ex p Muldoon* 1984 1QB 686 that is: "a final and regular decision" once it has been perfected (although subject to appeal or judicial review by the High Court) cannot by the tribunal be set aside; so neither the then Chief Commons Commissioner who made the instant 1985 decision nor I as another Commons Commissioner can correct it merely because he might have, or I may think he, made a mistake. (2) The hearing and decision were not regular in that as appears from the evidence of Mr Bibby there was some misunderstanding by Mrs Maddison and Mr Peart, and it was overlooked that they might wish to make oral representations about their statutory declarations. (3) The hearings were not final in that:- Both before and since 1985, registration authorities have referred the question of ownership to Commons Commissioners and such references have been heard by the Commons Commissioners notwithstanding that under an earlier reference a Commons Commissioner has given a formal decision saying he was not satisfied that any person was the owner of the land in question. So in this sense the instant 1985 decision was not as regards plots 3, 4, 10, 12, 13 and 15 final. Knowing of the practice, the then Chief Commons Commissioner in giving his 1985 decision must have proceeded on the basis that it would be open to Durham County Council as registration authority to refer the question of the ownership of these plots to a Commons Commissioner. Different considerations may apply to a decision of a Commons Commissioner stating that he is satisfied that X is the owner or to a decision in which after a hearing at which the ownership of Y has been contested, the Commons Commissioner has decided that Y is not the owner. A reopening by myself of the March 1985 hearing as regards these plots is in substance in no way different from a hearing following a new



reference by a registration authority. (4) If the hearing was reopened at the request of BBL as regards Plots 3 and 4, Mr and Mrs Maddison should be free not only to give evidence against BBL, but also themselves to claim ownership. (5) No one at my hearing otherwise objected to the 1985 hearing being reopened.

Moss Plots 1, 2, 5, 6, 7, 8, 9, 11, 14 and 16

About these Plots, the 1985 decision is fully effective.

I have letters dated 3 and 24 January 1986 from Durham County Council enclosing copy letters from Hodgson and Angus about Plot No. 8 and two appointments dated 10 December 1985 and made between Harry Bell Rutherford and George Bell Rutherford appointing themselves Trustees in the place of the Public Trustee of the two properties (10 8a. 23p., the NorthEastern half, and (2) 8.531 acres the SouthWestern half of a plot containing 16a. 2r. 18p. on Moss Moor near to The Hill. I have no note or recollection of being asked at the hearing to consider these letters and appointments. As I read them, it is suggested that I should for the direction to register the Public Trustee as the owner specified at page 7 of the 1985 decision, substitute a direction to register Messrs H B and G B Rutherford as owners. In my opinion I have no jurisdiction to do this because nobody has suggested that this part of the 1985 decision was when it was made incorrect and because I cannot alter a decision merely because the sending out of the direction has been delayed for an unusually long time, or because under events happening since —————→ the decision, the ownership has changed. But to prevent confusion I will in my direction about these Plots indicate that the direction is pursuant to the 1985 decision.

From these considerations I shall implement the 1985 decision as regards these plots as stated in paragraphs 2 and 3 of Part II of the Fifth Schedule hereto.

Moss Plots 10 and 13

On the 1815 Award map these two Plots are marked as allotted to Mary Coulthard for  $1\frac{1}{2}$  and  $\frac{1}{2}$  stints as set out in the second column of Part II of the Fourth Schedule hereto. They are both within the verged red on the 1959 conveyance plan (No. 13 is thereon hatched green); on the 1937 lease plan, No. 10 is not coloured but No. 13 is coloured green (among those therein referred to as "the allotment lands"); at the hearing Mr Keenan to these Plots made no claim to ownership on behalf of BBL. By Mr Bibby they were claimed for Mr W R Walton on the basis of the documents specified in Part XXVII of the Third Schedule hereto.



Mr W R Walton in the course of his oral evidence said (in answer to questions by Mr Bibby) that he owned these two plots, identifying them with the said two allotments to Mary Coulthard.

The title to two stints on Moss Moor as shown in the documents specified in Part XXVII is essentially the same as the title to the Area by me above considered under the heading: Burnhope Area 2. Upon like considerations to those set out under such heading, I am satisfied that Mr W R Walton is the owner of Moss Plots 10 and 13 and my decision about them is therefore as set out in paragraph 5 of Part II of the Fifth Schedule hereto.

#### Disputed Moss Plots

These are Moss Plots Nos 3, 4, 12 and 15. By Mr Keenan they were all for BBL claimed under the 1959 conveyance (BBL/1.14). By Mr Bibby (1) Nos 3 and 4 were claimed for Mr M and Mrs W Maddison under the 1953 and 1976 conveyances (MM/1: W.M.1 and 2), (2) the entirety of No. 12 and one undivided quarter of No. 15 for Messrs O, G L and A L Peart under the 1958 conveyance (GLP/6), the 1978 letters of administration (GLP/7) and the 1980 assent (GLP/8); and (3) three undivided quarters of number 15 for Mr W R Walton under the 1957 and 1965 conveyances (WRW/16 and 17).

Except as mentioned particularly below under the next two headings, Mr Keenan and Mr Bibby relied generally on the evidence and submissions made about the Burnhope Unit, of which that requiring most consideration was Mr Bibby's submission that the ownership of the Church Commissioners of these Plots passed from them under the 1953, 1958 and 1957 conveyances (MM/1, GLP/6 and WRW/16) and could not therefore have by them been passed to BBL by the 1959 conveyance made later.

In one important respect, the considerations generally applicable to the Moss Unit are simpler than those generally applicable to the Burnhope Unit in that any latent ambiguity there may be as to the meaning of a "stint on Moss Moor" in any document is more easily resolved; the whole of the Moss Unit was allotted by the 1815 Award, and none was left undivided and subject to pre-existing stints (therefore for the Moss Unit there is no "Residue Part"); nobody suggested that the "Moss Moor Peat Moss" (Plots 1, 2 and 3 and part of Plot 4) has any present ownership relevance. So as matters stood after 1815, the only possible meaning of a "stint on Moss Moor" in any document was the plot of the land by the 1815 Award allotted in severalty for stints such as existed before 1815. Further the plot referred to might not be within the Moss Unit, because of the Moss Moor allotments more than 73 acres are outside, mostly to the north, and (as I infer from the maps I have) now enclosed.

It is possible that someone after 1815 by prescription, presumed grant or otherwise acquired a grazing right describable as a stint. But apart from what might be deduced from the Rights Section registrations, I have no evidence of there ever



having been any such right. So I construe 'stint on Moss Moor' in the said 1953, 1958 and 1957 conveyances as intending to convey a corporeal estate or interest in one or more of the Moss Plots, and I reject the submission that these words in any of these conveyances passed in respect of the Moss Unit no more than an incorporeal right of grazing, leaving the ownership to pass to BBL under the 1959 conveyance.

I also reject the submission that for the benefit of BBL, in respect of these Plots, the 1985 decision is *res judicata* against Messrs Maddison, Messrs Peart or Mr W R Walton; having accepted the July 1985 submission of BBL that the matter of these Plots should be reopened for hearing, it follows that all questions relating to them are once more at large for all concerned.

As to the effect of a final Rights Section registration on a claim made by the applicant for it, under section 8 of the 1965 Act to be the owner of the whole or part of the land included in the relative Land Section:- It has often happened that a person in or before 1970 learning about the registration requirements of the 1965 Act has been uncertain or confused as to whether his interest in a piece of land was merely as a person entitled to a right of common over it or as a person who owned it; and such a person has applied for a registration in both or either of the Land Section and the Rights Section. I accept that it is clear law that a person (apart from the 1965 Act) cannot have a right of common properly so called over land of which he is the owner. However in my opinion the conclusiveness by section 10 of the 1965 Act given to a final registration in a Rights Section does not in every possible circumstance absolutely preclude a Commons Commissioner under section 8 being satisfied that the applicant is the owner of the land to which his final registration relates. In addition to the possible circumstance that the Rights Section registration may have been a mistake or have been precautionary in circumstances by the applicant considered to be doubtful or to its finality having resulted from section 7 in the absence of any objection, leaving the applicant unable to explain, there are special considerations applicable to quasi rights of common mentioned in my 1981 decision cited by Mr Bibby; *re Pasture End* (ref 262/D/277-279); I refer also to my views on such quasi rights set out at greater length after submissions by leading counsel in my 1986 decision, *re West Anstey* (ref 209/D/234-245) at pages 106 et seq.

But it is not necessarily irrelevant that the registrations at Rights Section Entry Nos. 1 (replaced by 16 and 18), 7 (modified by 20) and 14 have been made on the application of Messrs W and J E Graham, Mr W R Walton and Mr G Peart. That these persons successfully applied for these registrations may, or may not (as to which see below) qualify their evidence or the inferences to be drawn from their evidence.



## Moss Plots 12 and 15

On the 1815 Award map these two Plots are marked as allotted to "Joseph Harrison's (of Chapel): Second Allotment on Moss Moor (for Two Stints: 21a. 1r. 18p."; and "Joseph Dawson's (of Stonedrass): Allotmt on Moss Moor (for 2 Stints): 16a. 1r. Op."

Questioned by Mr Bibby about these Plots, Mr G L Peart after confirming his 1985 declaration (GLP/9), said (in effect):- They (he, his mother and brother) owned Plot 12, and they and Mr W R Walton owned Plot 15 in respect of  $1\frac{1}{2}$  stints for themselves and  $\frac{1}{2}$  a stint for Mr Walton. They tried to graze plot 12 exclusively, but there had in his lifetime been no walls around these Plots. He had never asked for permission from anyone (apart from the Ministry) to burn heather on Plot 12, or for permission to dig ditches: they had dug ditches. There is no shooting from Plot 12. About shooting and ditching over Plot 15, he consulted Mr Walton and nobody else: in co-operation with Mr Walton they had ditched on Plot 15. He had never encouraged Mr Burton or BBL to think they owned Plot 15.

Questioned by Mr Keenan, Mr Peart (in effect) said (among other things):- As to when the ownership of the Plots first arose, they always thought they owned the Harrison's second allotment under the 1958 conveyance, and Plot 15 was identified (by the Award) with Stonedrass on the 1958 Conveyance plan (witness marked it PQ). As to the sheep wandering, they tried to keep theirs on the two plots, but they do wander! Everyone tries to keep their sheep on their own Plot; they did nothing about sheep of others wandering, because it will be put right the next time their owners are around. (Further as to this questioning, see page 22 above).

Questioned by Mr Bibby about these plots, Mr W R Walton said (in effect):- He owned in respect of Plot 15 a  $\frac{1}{2}$  stint, and Mr L Peart owned  $1\frac{1}{2}$  stint. Plot 15 is historically part of Stonedrass of which he (the witness) owns one field and his (Mr Peart's) family owned the rest, and which is mentioned in the Award ("Joseph Dawson of Stonedrass"). Peat rights under the 1815 Award on Moss Unit have not been exercised. He collected rent for shooting on the Moss Moor under the March 1939 agreement (WRW/19).

Questioned by Mr Keenan about Moss Moor, Mr Walton answered as set out at page 24 above.

For the ownership of BBL Mr Keenan relied primarily on the 1937 lease and the 1959 conveyance (BBL/1.3 and 14). The Moss Buts so called on RNB.4 are all (or nearly all) on Plot 15 and have been used there for a long time.

The CC had before 1957 a title to Plot 15 appears from the 1870 conveyance (BBL/2 and GLP/5) on the plan of which this Plot is delineated and edged red: also so edged are numbers 743, 745, 746, 746a, 746b and 747. Of these numbers the plan on the conveyance of 19 December 1953 (GLP/6) includes all except 745 and 746; the plan on the conveyance of 16 December 1957 -----



(WRW/16) includes 745; neither conveyance includes 746 which seems to be (or have been) a house (several houses) with lands held with it (them). I have no note or recollection of any document (apart from the 1946 endorsement) on the 1943 tenancy agreement (GLP/3) that the CC before 1957 that any title to plot 12, or any other Moss Plot except Nos. 1, 2, 3 and 4 included in the 1869 conveyance.

I reject the submission that Plots 12 and 15 were not effectively conveyed by the words about stints on Moss Moor in them because from a consideration of the conveyances by themselves the Plots referred to cannot be identified. The words come in the context of the words "AND TOGETHER", implying that the stints (being one of the Plots) must somehow be connected with the land therein particularly described and expressed to be conveyed; of this connection extrinsic evidence is admissible. About Plot 15 I have the Stone Drass connection apparent in the 1815 Award and the plan annexed to the 1870 conveyance. About both plots I have the oral evidence of Mr Peart and Mr Walton; and this evidence together with the 1946 endorsement on the 1943 tenancy agreement, connects Plot 12 also with Stone Drass. I reject the suggestion that the 1959 conveyance (BBL/1.14) was against any such connection; being after the 1958 and 1957 conveyances, it cannot affect their operation. Further because the plan on 1959 conveyance includes so many of the Moss Plots which were at the hearing admitted or which were in the 1985 decision or in this decision held not to be in CC ownership, I am unable to deduce from it any 1958 or 1957 circumstances which could affect the construction of the 1958 and 1957 conveyances.

It may be that the grantees under the 1958 and 1957 conveyances took subject to such shooting rights as were then subsisting under the 1937 lease. Moreover the possible exception of such right cannot affect my decision as to the fee simple ownership of the Plots with which I am concerned.

The Rights Section registrations at Entry Nos. 7 and 14 are consistent with the applicants for them being generally honestly uncertain as to their estate or interest in the Plots; nobody suggested otherwise. I have therefore no reason for treating the evidence of Mr G L Peart or Mr W R Walton as in any way qualified by these registrations.

As to the possible application of the Limitation Acts and/or equitable estoppel to these plots, I repeat what I have said above under the relevant headings. I have not overlooked that the "Moss Butts" are relatively to the rest of Plot 15 much more prominent than are any of the Butts on the Burnhope Residue Part are relative to such Part. In my view this greater prominence is not large enough to render inapplicable what I have so said.

Upon the above considerations I am satisfied: (1) that the successors of Mr George Peart deceased are the owners of Plot 12; and (2) Mr W R Walton and such successors are the owners of Plot 15. The ownership position of Plot 15 is essentially the same as those set out above under the heading Burnhope Area 5. So my decision is that Mrs Olive Peart, Mr George Leonard Peart and Mr Alfred Lloyd Peart are the owner of Plot 12 as trustees of the assent dated 9 January 1980 and made by themselves and that they and Mr Rutherford Walton are the owners of Plot 15 as trustees of the statutory trusts for sale in the Law of Property Act 1925 applicable to persons entitled thereto under the said 1957 and 1958 conveyances. Accordingly my decision is as stated in paragraph 6 of Part II of the Fifth Schedule



## Moss Plots 3 and 4

On the 1815 Award Map, Plot 3 is part of that marked "Esther Peart's Allotment on Moss Moor for 3 Stints; 34.1.0."; and Plot 4 is the whole of that marked "Thomas Coulthard's Allotment on Moss Moor for 4 Stints; 53.0.14.

Questioned by Mr Bibby and Mr Keenan, the answers of Mr M Maddison made in the course of his oral evidence are summarised at pages 24 and 25 above.

As supporting the identification of the "three Stints" mentioned in the 1953 conveyance with Plots 3 and 4 while the inferences by Mr Bibby sought to be drawn from what Mr Maddison said of the circumstances as they existed when the conveyance was made are open to the following criticisms. First by the 1815 Award, Plot 4 was allotted for 4 Stints and Plot 3 was with Plots 1 and 2 and other land not within the Moss Unit allotted for 3 Stints, so the three Stints mentioned in the conveyance could not unless the "three" can somehow be disregarded, be enough to pass the whole of Plots 3 and 4. Secondly, Messrs Graham, being the 1953 purchasers, applied in 1970 for the registration in the Rights section of 6½ Stints over the whole of the Moss Unit, and this registration being undisputed became final in 1972; I had no explanation of the number "6½" or as to why in 1983 when the registration at Entry Nos 16 and 18 replaced that at Entry No 1, the Stints registered were limited to Plots 3 and 4. Thirdly Mr Maddison associated the Stints about which Mr Graham spoke to him, with grazing that he and his wife shared with Mr J M Morgan. Fourthly the registration of 6½ Stints shows that Mr Graham must have had in mind some right independent of his 1953 conveyance and thus negating any inference I might make that he was uncertain in 1970 as to the estate or interest he might have in these plots. For these reasons I find nothing said by Mr Maddison is for (or against) the Stints mentioned in the 1953 conveyance then being connected with the lands described by reference to the plan annexed and thereby expressly conveyed.

However in support of their claim for ownership BBL relied on the 1869 conveyance (BBL/1.8) the plan of which includes as one piece of land, Moss Plots 1, 2, 3 and 4 as OS Nos 451, 452, 453 (Low Moss), 454, 487, 488, 489, 490 (Moss House) and 491. I identify these OS Nos with Nos 1057, 1058 and 1062 of the 1953 conveyance plan, which numbers relate to land which adjoins Plot 4 on its north side. So I find that there is an historical connection between Moss Plots 1, 2, 3 and 4 (awarded for at least 7 Stints) and at least some of the land comprised in the 1953 conveyance.

I have no information as to the title offered by the EC for E when they under the 1953 conveyance sold Burnt Hills Farm and Moss and Middle and High Rush. But however this may be the 1869 conveyance is history properly admissible as evidence in considering the meaning of 3 Stints in the 1953 conveyance.

I reject the suggestion that the words "3 Stints" in the 1953 and 1976 conveyances are void for uncertainty. Plot 4 adjoins the land described by reference to a plan in these conveyances. The plans I have indicated that Moss Plot 3 although near perhaps does not adjoin such land; however this may be, I conclude (as seems convenient) that the 3 Stints specified in the conveyance refer to Plot 4, and that accordingly an undivided three quarters of Plot 4 passed under it.



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As to the entirety of Plot 3 and the remaining quarter of Plot 4:- The EC for E had the entirety of both under the 1869 conveyance. I have no evidence that they subsequently (apart from the 1953 conveyance) ever made any conveyance of either. So I conclude that this entirety and this quarter passed to BBL under their 1959 conveyance.

Upon the above consideration I am satisfied that Mr and Mrs Maddison are entitled to three quarters and BBL are entitled to one quarter of Plot 4 and having regard to section 34 of the Law of Property Act 1925 and the legal principles applicable to it as set out above under the heading Burnhope Area 5, I conclude that the legal estate in this plot is now held on the statutory trusts by Mr and Mrs Maddison and BBL upon trust for themselves in unequal shares, three quarters to Mr and Mrs Maddison and one quarter to BBL; and I am satisfied that BBL are the owners of Moss Plot 3. Accordingly my decision is as set out in paragraph 4 of Part II of the Fifth Schedule hereto.

#### Final

Agreeing with what was said at the end of the hearing (22 October 1987), see under the heading: Course of proceedings, I do not think fit to make any order as to costs.

On the questions arising in these proceedings the decisions about each of them hereinbefore set out are summarised in the Fifth Schedule hereto, which Schedule should be treated as part of this decision. So far as such Schedule is by reference to the Burnhope Decision Plan, these decisions are, as at page 9 above it is indicated that they would be, subject to any variation of the BDP which may be made by a Commons Commissioner on an application under the liberty to apply specified in paragraph 1 of Part IV of such Schedule.

Because much of this decision is long and complicated and may therefore contain mistakes or errors which I can and should correct without putting the parties concerned to the expense of an appeal to the High Court, about them I give any person concerned liberty to apply.

Where under any heading of this decision there is liberty to apply, the applicant should in the first instance make his application in writing (it may be by letter) and send it to the Clerk of the Commons Commissioners in London. A copy of the application should be sent to any person who might be adversely affected by the granting of a relief claimed. If the application is for or might result in a re-opening of the hearing, the applicant should send to any such person a summary of the all evidence he might adduce at any such hearing and a copy or abstract of the documents which might then be relied on. Any such application should be made within THREE MONTHS of the day on which this decision is sent out to those concerned to have it or within such extended time as a Commons Commissioner may allow.

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.





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FIRST SCHEDULE  
(Rights Section)

Part I: Burnhope Unit

NOTE:- Each of the Entry Nos. relating to stints contains the words "(ie. to a limit of ... stints, each stint counting as 5 sheep or 1 cow and 2 stints counting as one horse)". Every registration is "over the whole of the land contained in this Register Unit".

- (1) George Peart; Mount Healey, Bent Head and Stonedrass Farms; owner; graze 29½ stints.
- (2) Frederick Peart; the Wham Farm; owner; graze 75½ stints.
- (3) Frederick Peart; White Hills Farm; owner; graze 24 stints.
- (4) Frederick Peart; (not attached to any land); tenants (stints are owned by Bracken Bank Shooting and Fishing Co.); graze 18 stints.
- (5) Richard Stephen Rutherford; West Black Dene Farm; owner; graze 10 stints.
- (6) Richard Stephen Rutherford; land at Wearhead as shown ... map ..; tenant (stints are owned by J Walton); graze 4 stints.
- (7) William Rutherford Walton; land at or near Black Cleugh Farm, Wearhead; owner; to graze 61 stints.
- (8) William Rutherford Walton; (not attached to any land); tenant (stints owned by R N Burton); graze 6 stints.
- (9) William Rutherford Walton; (not attached to any land); tenant (stints owned by J H Rutherford); graze 2 stints.
- (10) William Rutherford Walton; (not attached to any land); tenant (stints owned by Durham County Water Board); graze 2½ stints.
- (11) William Burdess Dalton and Doris Marion Dalton; Holedam & Wellhope Farms, near Wearhead; owners; graze 6 stints.
- (12) Jennie Walton; land at Hollin Hill, Wearhead; owner; graze 20 stints.
- (13) George Peart; (as in No. 1 above); turbary and piscary.
- (14) Frederick Peart; (as in No. 2 above); turbary and piscary and to take stones for the repairing of fences.
- (15) Frederick Peart; (as in No. 3 above); turbary and piscary and to take stones for the repairing of fences.



- (16) Richard Stephen Rutherford; (as in No 4 above); turbary and piscary and to take stones for repairing fences.
- (17) Charles Russell Lonsdale; Pry Hill Farm, Wearhead; owner; graze  $35\frac{1}{2}$  stints, also turbary, piscary and right to take stones for repairing of walls.
- (18) Charles Russell Lonsdale; Stripe Head Farm, Wearhead; owner; graze 7 stints, also turbary, piscary and right to take stones for the repairing of walls.
- (19) Charles Russell Lonsdale; Cleugh House Farm, Wearhead; owner; graze 1 stint, also turbary, piscary and right to take stones for the repairing of walls.
- (20) Charles Russell Lonsdale; Bent Head Farm, Wearhead; owner; graze  $1\frac{1}{2}$  stints, also turbary, piscary and right to take stones for the repairing of walls.

#### Part II: Moss Unit

Altogether 4 registrations: to graze so many stints "ie to a limit of ... X ... stints, each stint counting as 6 sheep during the period 1 June to 31 October and 20 sheep during the period 1 November to 31 May over the area ... Y ...".

- (7) Modified 20 October 1982 at (20):- William Rutherford Walton: Black Cleugh Farm: half a stint: over area 15.
- (14) On 6 July 1983 replaced by No. 9 which being undisputed became final on 1 August 1972:- George Peart: Mount Healey and Stone Drass Farms: graze  $3\frac{1}{2}$  stints over areas 12 and 15.
- (16) On 6 July 1983 replaced in part No. 1 (William Graham & James English Graham) which being undisputed became final on 1 August 1972:- Malcolm Maddison and Wendy Maddison: Burnt Hills Farm: 3 stints over areas 3 and 4.
- (18) On 6 July 1983 replaced in part No. 1 (see above): John Malcolm Morgan: in gross:  $3\frac{1}{2}$  stints over areas 3 and 4.



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SECOND SCHEDULE  
(Inspection 17 July 1986)

Part I: Burnhope Unit

Present:- (1) Mr R N Burton and his grandson Mr R R S Burton, managing director and employee of BBL, their gamekeeper Mr A W Colclough and Mr D Mellor their solicitor; and (2) Mr F Peart of the Wham Farm and Mr W R Walton of Black Cleugh, stint holders.

Start near gate at southwest end of made up public road running from Ireshopeburn to Whinsike Quarry Road (marked on Register map, near east side of Unit Land).

Cross (in Argocat) boundary of Unit Land by West Grain: thence south of Far High House and within Unit Land (road recently put in there by Mr Peart's father). Went as far as sheep shelter (3 walls at 120 degrees) a short distance west of Limekiln Sike.

Return eastwards, seeing Haggs Sunken Butts and going by Galloway Butts.

Leave Unit Land (and Argocat) for track uphill to Causeway Cabin (marked "Shooting Box" on Register map) and Ireshope Butts; seeing Limestones Butts.

Thence south of Unit Land and of watershed by Grass Hill Farm up to and recross south boundary of Unit Land by head of Todd Sike.

In Argocat go by Tod Syke Cabin car park go by Todd Syke butts (two lines forming an X).

Descend by Redan Butts to Redan Cabin (marked "Redan" on Register map); cabin dilapidated and used as a sheep shelter; sheep fold at back. See much of Scraith Burn and dry stone wall sheep shelter near it, diameter about 35 feet. See distantly Sally Grain Butts (by "White Edge" marked on Register map).

Down to where Sally Grain joins Scraith Burn, see sheepfold (Peart's Fold) about 25 feet square with stone wall about 5 feet high. See also circular fold about 30 feet in diameter made last year near "1420" on Register map.

Saw sheepfold between "1370" and "1394" on Register map, in good repair.

Saw butts next north end of "Smithy Hush" marked on Register map by Langtae Burn.

Saw sheepfold a short distance lower down (northeast) used to be a washfold.

Next left Unit Land north of Burnhope Burn not far from where it joins the west end of the Reservoir.



## Part II: Moss Unit

Present:- (1) Mr R R S Burton, grandson of Mr R N Burton and employee of BBL, their gamekeeper Mr A W Colclough and Mr D Mellor their solicitor; and (2) Mr W R Walton of Black Cleugh, Mr A L Peart of Eastville, Wearhead and Mr M Maddison of Burnt Hills.

Started from point on road from Cowshill southwards to the Reservoir; entered the Moss Unit by track leading to southeast corner of plot 10.

Plot 16 now enclosed from the rest of Moss Unit: other plots open to each other.

Saw track (much of it with sleepers) near to and outside the north boundary of plot 16 and continuing westwards as marked by double dotted lines on Register map.

Saw butts, line all or nearly all on plot 15.

Track continues westwards.

Viewed, in places distantly, the rest of the Moss Unit.

## THIRD SCHEDULE

(Documents produced or referred to)

## Part I: for Bracken Bank Lodge Ltd

RNB.4      4 February 1986

Exhibit to statutory declaration by R N Burton: map showing position of butts on the Burnhope Unit and the Moss Unit and showing coloured yellow or yellow hatched blue parts of the Burnhope Unit and coloured brown or brown hatched parts of the Moss Unit the ownership of which is claimed by BBL.



## Part II: by Mr Fryer-Spedding

- S/1      --      Ownership plan showing Burnhope Unit and parts numbered 1 to 6 by Mr W R Walton either solely or with Northumbrian Water Authority, the personal representatives of C R Watson or the personal representatives of J H Walton or by Mr G A Lonsdale.
- S/2      13 June 1799      Stanhope Inclosure Act: 39 Geo. 3 c.69 (private), particularly sections XVIII, XXI, XXIII, XXX, XXXVIII, XLII, XLV, LX and LXI; section LI.
- S/3      29 September 1815      Stanhope Inclosure Award (extract) "Stinted Moor called BURNHOPE MOOR ... contains 3,995 a. 1 r. 14 p. ... Stinted Moor called MOSS MOOR ... contains 367 a. 2 r. 30 p. ..."  
"... DECLARE ... persons ... claim ... Cattle Gates or stints ... upon ... Burnhope Moor ... that is to say the Lord Bishop of Durham seven stints ..."  
Summarised in the Fourth Schedule hereto.
- S/4      --      Extract Award map (red lines not on original).
- S/5      --      General documents not included in other lists.
- 11 April 1799      Transcript of first part of letter of Mr Hopper Williamson: "... usually called Commons as the proprietors claim the Soil as well as the herbage which they hold by a freehold tenure subject to certain small rents to the Bishop of Durham as Lord of the Manor ..."
- 3 September 1799      Copy two claim forms to 20 stints and 25 stints on Ireshope Moor.
- 1810      Board of Agriculture Report: Account of Commons divided and enclosed in the County of Durham:  
"... 1799: Weardale stinted moors and pastures ..."
- 12 May 1939      Tenancy agreement by J N and J L Rutherford to EC for E letting yearly from 12 August 1939 shooting over 4 allotments on Moss Moor and Burnhope Moor with agreement on request to grant a lease of said shooting for 11 years from 12 August 1939.



- 14 & 28 September 1797 Observations by A Mowbray as to a division of land within the Park and Forest of Weardale, whereof the Bishop of Durham is Lord of the Manor with copies of two Letters, asking a Meeting for the purpose, by some of the Principal Land Owners, including two letters of 19 September 1797 from R B Sedgfield and Robt. Curry.
- 9 November 1798 Copy (8 lines) of paper (? opinion) of John Mitford and J Mansfield of Lincolns Inn.
- S/6 -- Documents of Northumbrian Water Authority.
- 1920 Ecclesiastical Commissioners for England to Weardale & Consett Water Company of Site for Burnhope Reservoir. Requisitions on title and replies thereto. "No. 2. The Commissioners interest in the 21a. 2r. 12p. is an undivided moiety, represented by 2½ Stints exercised on Burnhope Moor ..."
- 26 October 1922 Conveyance by Ecclesiastical Commissioners for England to Durham County Water Board of "Thirdly All the estate and interest of the Commissioners in the unenclosed allotment described in part IV of the First Schedule hereto delineated and coloured green on the said plan (also BBL/1.1 and NW/1 below).
- S/7 -- Stint Book (MS Quarto bound: about 100 pages). First part: the amount of grass to "each Proprietor on Burnside Moor"; also Rules Second Part: register of holders May 21 1861 to 1981. Note: Bishop has 7 stints to begin with.
- S/8 10 October 1974 Decision of Commons Commissioner: re Ireshope Moor, Stanhope, Wear Valley; register unit CL7.
- S/9 22 October 1980 Decision of Chief Commons Commissioner re Chapel Fell, Stanhope and re Windyside Moss, Stanhope references 211/U/67 and 65 following re Ireshope supra.
- S/10 15 July 1974 Decision of Commons Commissioner re Longton Out Marsh, reference 20/U/81.



## Part III: by Mr Keenan on behalf of BBL

BBL/1      --      Bundle 1: documents relating to Moss Moor and Burnhope Moor, CL73 and CL25.

(1)      26 October 1922      Conveyance by Ecclesiastical Commissioners for England (see (see "EC for E") to Durham County Water Board ("DCWB") NW/1) (after reciting their ownership in fee simple of the hereditaments comprised in Parts I, II and III and of undivided part of the hereditaments in Part IV of the First Schedule thereto under a conveyance to them dated 16 February 1867 (see BBL/1.6 below) and under a conveyance to them dated 2 December 1898 made by Henry Featherstone and John Thompson, there was conveyed First described in Parts I and II of said Schedule coloured pink and hatched red on plan annexed, Secondly Part II coloured yellow in reversion on a lease in such Schedule mentioned, Thirdly all their estate in the unenclosed allotment described in Part IV coloured green awarded to James Vickers under an award pursuant to 39 Geo. 4., and Fourthly mines and minerals coloured blue; being the pink lands, the hatched red lands, the yellow lands, the green lands and the blue lands.

## First Schedule

## Part I (pink lands)

...	...	...
pt 1181	Unenclosed allotment	16.2.22
pt 1181	Ditto	8.0.0.
...	...	...
		<hr/>
		351.1.2
		<hr/>

Part II (hatched red lands)  
(east of the Burnhope Unit)      3.1.3

Part III: (yellow lands)  
leases of 3 February 1890 and  
3 May 1890

Part IV: (green land)



Fractional interest of Commissioners  
in unenclosed allotment containing  
2la. 2r. 12p. and mines and minerals  
under the whole of the said allotment. 21.2.12

Part V  
Mines and minerals under Wesleyan  
Chapel. 0.0.3

Note: Pt 1181, 16.2.22 and 8.0.0 in  
Part I are same as (or a little less than)  
BDP no. "13 WHITE"; and Part IV is  
same as (or a little less than) BDP  
no. "3 WHITE". Most of Part I is  
now Reservoir).

(2) 25 July 1935

Grant by EC for E to DCWB of perpetual easement  
for pipe for a perpetual yearly rent of fl.  
Note: line of pipe: from Tolley Well  
northeastwards to a point east of High Whinsike;  
part of this line crosses the northeast corner  
of the Burnhope Unit.

(3) 29 July 1937

Lease by EC for E to R N Burton for 14 years from  
13 May 1936 of "the right ... of sporting ...  
First the unenclosed lands called ... Burnhope  
Moor, Moss Moor ... which said unenclosed lands  
are together referred to as the said Moors and are  
coloured red on the plan annexed ... Secondly  
the enclosed lands adjoining the said Moors ...  
coloured red and hatched red on the said plan  
and are hereinafter referred to as the enclosed  
lands ... Thirdly the lands adjoining the said  
Moors ... coloured green ... Fourthly two  
undivided third shares of and in Craig Pasture ...  
and of and in an allotment situate on Moss Moor ...  
coloured green and cross-hatched red ... Fifthly  
one undivided third share of and in an allotment  
on Moss Moor ... coloured green and hatched  
red on the said plan ... Sixthly one undivided  
fourth share of and in an allotment on Moss  
Moor ... coloured green and hatched blue on the  
said plan all which said allotment and other  
lands thereinbefore thirdly, fourthly, fifthly  
and sixthly ... referred to as the allotment  
lands.

Note: Hatched red on copy is red on the original  
and includes all lands claimed as specified in  
RNB.4.





- 11 May 1940 Deed endorsed on said 1937 lease and made between EC for E and R N Burton varying lease for year ending 13 May 1940.
- (4) April-May 1856 Abstract of Orders in Council relating to Estates formerly belonging to the Bishoprick of Durham:-  
1947 4 and 28 April 1856 published in London Gazette on 22 April and 6 May 1856; and Church Commissioners Measure 1947.
- (5) 1959 Abstract of title of Church Commissioners to land at Burtree Ford:-  
23 September 1885 Conveyance by John Steele pursuant to a High Court order, re Estates of Thomas Head (he died 7 June 1883) to EC for E of farm house and land at Burtree Ford containing 9a. 26p. as described in Schedule and 7 stints also described in Schedule ("an allotment of 14 stints numbered 284 on plan and containing 40 acres"). (Not relevant except as land northeast of Moss Unit included in February 1959 conveyance).
- (6) 1959 Abstract of title of Church Commissioners to customary-hold hereditaments and grant and surrender of 1-hold hereditaments for lives in Stanhope:-  
16 February 1867 Conveyance by Thomas Watson and Featherstone Thompson, and John Muschamp with the consent of Thomas Thompson and Isaac Thompson to E C for E of (a) closes particularised in First Schedule and on plan coloured red ... hold according to ancient custom of tenant right used and approved within the sd park and forest of Weardale free from all incumbrances except the said customary annual rent of 6s. 2d. payable to the said Ecclesiastical Commissioners owners of the estates late belonging to the See of Durham; and (b) parcels particularised in the Second Schedule on plan coloured green to the said EC for E for lives to the intent that the interest be extinguished and merged in their freehold reversion.



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## First Schedule

Cottage and Buildings at Pryhill	- - 6
Ditto Stripeland	- - 9
...	...
Allotment on Burnhope Moor	181.3.8
	<hr/>
	A.205.3.36

## Second Schedule

Allotment on Burnhope Pasture	16.3.11
Allotment on Burnhope Moor	50.0.0
	<hr/>
	A. 66.3.11

Note: The 181.3.8 plus 50.0.0 together make up Burnhope Area "7 yellow hatched blue".

- (7) 16 February 1867 Photocopy of original conveyance abstracted at (6).
- (8) 1959  
17 August 1869 Abstract of title of Church Commissioners being:-  
Conveyance by Thomas Hood Henderson at the request of Thomas Henderson and others to EC for E of First ... several messuages ... parcels of land ... undivided sheep stints ... first part of schedule ... hold ... "forever according to the aforesaid ancient and laudable custom of tenant right used and approved within the park and forest of Weardale aforesaid free from all incumbrances except the yearly Lord rents payable in respect thereof and except also the rights of the said Ecclesiastical Commissioners as owners of the estates late belonging to the See of Durham.  
Schedule first part (coloured round red) with much other lands includes "allotment on Moss Moor 52.2.26.  
Note: plan shows such allotment as including Moss Plots 1, 2, 3 and 4.
- (9) 17 August 1869 Copy of original of (8) above.
- (10) 1959  
28 November 1918 Abstract of mineral leases etc:-  
Lease to Weardale Lead Company Limited, with lists of 9 supplementary leases 1922-1958.



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- (11) February 1959 Area search for local land charges and under Land  
(12) Charges Act.  
(13)
- (14) 12 February 1959 Conveyance by Church Commissioners for England to Bracken Bank Shooting and Fishing Company Limited of all the land more particularly described in the First Schedule except and reserving ... TO HOLD in fee simple subject ... (b) The existing tenancies of stintage rights and ... particulars whereas ... Third Schedule ... (c) the rights exceptions and reservation ... in Parts I and II of the First Schedule ... (d) all rights of stintage rights of common profits rights of way water light and all other rights easements and quasi easement (if any) affecting the said land or any part thereof.  
First Schedule: Part I: "ALL THOSE three several moors ... Ireshope Moor Burnhope Moor and Moss Moor and ... Featherstone Lot containing ..." 5,331.81 acres delineated on the plan A annexed verged red ...  
AND TOGETHER ALSO with 25 stints in or upon ...  
Burnhope Moor Except and reserving unto the Commissioners and their successors in title or other the owner or owners thereof first ... (65 stints on Ireshope) ... Secondly ... 244½ stints upon Burnhope Moor ... "Thirdly all those ten stints or cattle gates in or upon Moss Moor ... Subject to the rights of stintage of Third Parties and to all rights of common and other rights exercisable in over or upon the said several moors and allotments or affecting the same or any part or parts thereof ..."
- (15) 23 February 1962 Acknowledgement by Church Commissioners for England of right of Bracken Bank Shooting and Fishing Company Limited for production of indenture of 23 September 1885.



- (16) 2 March 1962 Statutory declaration by Donald Adolphus Collenette:  
"6. I have caused a search to be made in the rent books and records maintained by the Commissioners and such search indicates that for a period of upwards of 30 years immediately preceding ... (12 February 1959) ... no person or persons or bodies claimed to have any title to or interest in the said lands and premises other than the Commissioners or their said predecessors ... lessees or tenants and the Commissioners and their predecessors were in receipt of the rents and profits thereof".
- (17) 14 January 1977 Certificate of incorporation on change of name "Bracken Bank Lodge Limited".
- BBL/2 -- Abstract of title of the Church Commissioners:  
being
- 23 March 1870 Conveyance and grant by John Thompson with the consent of Edward Dawson as to the hereditaments firstly described and by John Muschamp as to the hereditaments secondly described with the consent ... to EC for E of "FIRST ... customary freehold messuages ... parcels of land ... allotments stints ... within the sd. Park and Forest of Weardale the particulars whereof were set forth in the first part of the Schedule thereto and which ... delineated so far as the same were capable of delineation on the plan ... thereon coloured Pink AND SECONDLY ALL those the allotment ... stints ... particulars whereof were set forth in the second part of the sd. Schedule ... which ... delineated so far as capable of delineation on the aforesd. plan ... coloured green ... HOLD ... hereditaments firstly ... according to the aforesd. ancient and laudable custom of tenant right used and allowed within the sd. Park and Forest ... subject to the customary annual rent of 6/- payable to the said EC and to all other rights of the EC as Owners of the



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estates of late belonging to the see of Durham ...  
hereditaments secondly ..."

## First Schedule

744, 745, 746, 746a, 746b, 747 and 748	Closes homestead and garth	12.3.23
563	allotment on Sedling	45.3.15
Unenclosed allotment on Moss Moor	Pasture	16.1.2
Two Stints or Cattlegates	Pasture	--
		<hr/> 75.0.0

## Second Schedule

Unenclosed allotment on Burnhope Moor	Pasture	24.1.27
Thirteen stints and Cattle gates on unenclosed part of Burnhope Moor	--	--

Note:- Plan 1/2,500, shows (left side) edged red 744 to 748 including house at 746 (12a. 3r. 23p), southwest of road and south of "Bents Pasture" and a house "Mount Haley"; (middle) edged red "16a. 1r. for 2 Stts", and edged green "24a. 1r. 27p. for 2 Stints"; (right side) edged red "Burtree Pasture Mine: Sedling Vein: 45.2.16"; and (bottom) "13 stints on Burnhope Moor on unallotted portion".

Note:- 16.1.2. red is same as Moss Plot no. 15; 24.1.27 green is same as Burnhope Area No. "5 Yellow".



## Part IV: by Major A Farrant

(himself 8 October 1986)

AF/1	--	Statement of evidence.
--	5.4.1968 to 15.7.1981	Bundle 4: Watson Lewis & Co, file of papers.
(1)	5 April 1968	Letter G W Hodgson & Angus: 25 stints included in conveyance.
(14a)	23 May 1974	Letter to W R Walton "how the 6 stints you exercise are made up".
(3, 4, 7 & 8)	7, 17 and 21 Aug 1973	Letters R N Burton to W Walton, W Heskett to W R Walton and C O Humble, and replies. Only land you have rented from me is on Moss Moor.
10, 10a, 11 and 11a	13, 26 and 20 June and 10 August 1974	Letters to Mr R Rutherford as Secretary of the Stint Holders Association for Burnhope Moor.

(Mr Keenan 9 October 1986)

Nos. 15 to 20, 26 to 33, 35 to 52, 57 to 61, 66, 70 to 74

(himself 9 October 1987)

(15) to (34)	9 December 1969 to 24 December 1970	Ministry of Agriculture application for grant for a gripping scheme, leading to meeting 25 November 1970 and further correspondence up to 7 March 1973.
(52)	4 September 1974	Letter from Hodgson & Angus about construction of roadway across Burnhope Moor.
(59) and (60)		Letters about Moss Moor claim consequent on meeting on 10 October 1973.
AF/2	23 November 1973	Copy plan of Moss Moor enclosed with letter of 22 November 1973 (Bundle 4 No. 61) showing parts numbered 1 to 16.



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## Part V: by Mr G Egle

GE/1                    --                    Statement of evidence of Gunars Egle.

## Part VI: by Mr A W Colclough

AWC/1                18.6.86                    Statement of evidence of Alfred William Colclough.

## Part VII: by Mr R R S Burton

RSB/1                --                    Statement of evidence of Richard Reginald Stewart Burton.

## Part VIII: by Mr R N Burton

RNB/-	4 February 1986	Statutory declaration by Richard Nicholas Burton; with exhibits.
RNB.1	29 July 1937	Lease: same as BBL/1(3) in Part III above.
RNB.2	12 February 1959	Conveyance: same as BBL/1(14) in Part III above.
RNB.3	16 January 1867 17 August 1869 25 July 1935	Abstracts of conveyances and deed: same as BBL/1 (6), (8) and (1) in Part III above.
RNB.4	--	Map, same as in Part I above.
RNB.5	2 March 1962	Statutory declaration: same as BBL/1(16) in Part III above.



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RNB.6	--	Map of CL73 land showing Moss Moor divided into 16 plots.
MM/1	13 March 1985	Statutory declaration by Wendy Maddison, see Part XXI below, put to witness.
--	28 September 1954	Letter from Official Solicitor of Church Commissioners to Hodgson and Angus, see Part XXII below, read to witness by Mr Keenan.

## Part IX: by Mr A A Young

S/12	4 July 1986	Photographs sent to Little & Shepherd with location sketch map (all as at 21 June 1986).
	(1)	Dipping Folds High House.
	(2)	Sheep Shelter High House.
	(3)	Square Fold Langtae Burn. Gap between enclosed pastures and Burnhope Moor Boundary.
	(4)	Eastern end of enclosed pastures on Burnhope Moor. Ruined wall of Featherstone Lot can be seen above.
	(5)	Round Fold Langtae Burn.
	(6)	No. 1 New Fold Burnhope Burn.
	(7)	No. 2 New Fold Burnhope Burn.
	(8)	No. 3 New Fold Burnhope Burn.
	(9)	Square Fold Sally Grain.
	(10)	Redan Cabin Todd Syke - front.
	(11)	Redan Cabin Holes in roof of 'good' half of cabin.





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- |      |              |                   |
|------|--------------|-------------------|
| (12) | Redan Cabin  | Todd Syke - Rear. |
| (13) | Round Fold   | Scraith Burn.     |
| (14) | Wooden Cabin | Top of Todd Syke. |

## Part X: by Mr A E Peart

- |          |                                     |   |
|----------|-------------------------------------|---|
| S/13     | --                                  | Statement of evidence by Mr Alexander Eadington Peart.  |
| RNB/20   | --                                  | Contra statement by Mr R N Burton.  |
| RNB/21   | 17 November 1970<br>8 December 1970 | Letters from Fred Peart to BBL: "I am still very much in opposition to the drainage scheme as these ditches become death traps for sheep and lambs". "I am sorry to be absolutely against the drainage scheme and I also know that the 2 largest stint holders who attended your meeting are also against it ..." |
| Bundle 3 |                                     | Documents of Mr F Peart, of them those mentioned by Mr A E Peart were   |
| (10)     | 3 May 1939                          | Tenancy agreement by E C for E to Frederick Peart the elder and Frederick Peart the younger of Wham, Whinsyke and High House containing 194a. 3r. 34p. from 6 April 1940 from year to year.<br>"4. The Landlords reserve (A) (subject to the Ground Game Acts 1880 and 1906) all game,                            |



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wildfowl, woodcock, snipe, landrail (including the nest and eggs of the same) hares, rabbits, foxes and fish with the exclusive right of preserving hunting coursing, shooting, sporting and taking the same and authorising others to do so. (B) ...".  
Schedule ... "62½ stints on Burnhope Moor" ...

- (5) 15 March 1955 Conveyance by CC for E to Frederick Peart of land described in First Schedule: (1) 16a. known as Wham; (2) land containing 15a. 1r. known as High Whinsike and The Haggs; (3) land containing 20a. 3r. 16p. known as High House and Far High House (all delineated on plan); also 75½ stints on Burnhope, all said stints immediately before execution of these presents held or occupied by the purchasers as tenants thereof.
- (7) 15 March 1955 Conveyance by CC for E to Frederick Peart of land described in Schedule: fields numbered 1555, 1573 and 1687 containing 18a. 3r. 17p.: delineated on plan together with 24 stints upon Burnhope Moor.
- (13) 2 October 1928 Abstract (much cut up!) conveyance by Alan Jared Gray as trustee in bankruptcy of Octavius Monkhouse and others to EC for E. "In the case of the several stints include ... such part share or interest ... on to any lands or of in the proceeds of sale under any statutory trust ...  
Schedule (1) 16a. known as Wham, (2) Whinsyke containing 8a. 2r. and one stint on Burnhope Moor.



## Part XI: by Mr Robert William Dalton

RWD/1	--	Statement by R W Dalton (aged 39):- William Burdess Dalton (he died 11 October 1970) and Doris Marion Dalton (she died 15 December 1982) were applicants for 6 stints at CL25 Rights Section Entry No. 11. They acquired them under conveyance of 27 April 1966.
RWD/2; Bundle 6, No. 2	23 April 1954	Conveyance by EC for E to Minister of Agriculture and Fisheries of lands described in the First Schedule: "...FIRSTLY Wellhope Moor Killhope Moor and Puddingthorn Moor ... 3,838 acres on the plan marked A and verged purple, SECONDLY ... land ... comprising ... 540a.20p. ... described in Part II of this Schedule ... FIFTHLY ALL THOSE six stints in or upon Burnhope Moor ..."
RWD/3; Bundle 6, No. 5	3 March 1954	Statutory declaration by Alfred Christopher Dicker, senior partner of Smiths, Gore & Co, Chartered Surveyors: for 90 years surveyors and agents to the DC for E and their successors Church Commissioners.
RWD/4; Bundle 6, No. 3	27 April 1966	Conveyance by Minister of Land and Natural Resources to William Burdess Dalton and Doris Marion Dalton jointly of properties and rights described in the First Schedule: "FIRST ... pasture land ... area 260.845 acres ... known as Wellhope Farm and Hole Dam Farm described ... on the said ... yellow and blue ... SECONDLY 1,405.600 acres adjoining and known as Wellhope Moor ... Plan ... coloured pink ... described in the sub-Schedule ...". SUB-SCHEDULE "Hole Dam Farm ... 142.380 acres ... together with seventy-nine sheep stints on Wellhope Moor and six sheep stints on Burnhope Moor ... Wellhope Farm ... 118.465 acres ..."
Bundle 6, No. 4	13.10.70	Certificate of death of William Burdess Dalton.
Bundle 6, No. 5	15 July 1985	Probate of will of Doris Marion Dalton granted to Robert William Dalton and John Richard Dalton executors therein named.



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## Part XII: by Mr George Arnold Lonsdale

- GAL/1      --                      Statement by George Arnold Lonsdale (in form a draft).
- Bundle 1   --                      Documents of Mr and Mrs G A Lonsdale, Burnhope Moor, Nos. 1-24.
- (2)        16 February 1867           Same as EBL/1.6, Part III above.
- (3)        26 February 1884           Conveyance by Rev Harry Slater and others to EC for E of leases for lives of two closes and two dwelling houses barns ... at Dykehead.
- (4)        29 September 1954          Conveyance by CC for E to Charles Russell Lonsdale of 63a. 5p. from a pink converged red on plan together with Farmhouse Pryhill Farm and 35½ stints on Burnhope Moor.
- (5)        17 March 1975              Deed of gift endorsed on (4) above by Charles Russell Lonsdale to himself and Janet Lonsdale as beneficial tenants in common in equal shares.
- (20)       11 July 1964                Conveyance by Fred Douglas and James Douglas to Charles Russell Lonsdale of "First ... Benthed Farm ... (14.841 acres) ... verged red ... TOGETHER ... (4½) stints ... on ... Burnhope Moor ... SECONDLY ... farmholding ... Clewgh House Farm ... (10.191 acres) ... TOGETHER ... (3) stints ... Burnhope Moor ...".
- (21)       17 March 1987              Deed of gift endorsed on (21) by Charles Russell Lonsdale to himself and Janet Lonsdale as beneficial tenants in common in equal shares.
- GAL/2      25 November 1970          Memorandum of meeting on 25 November 1970 (put to witness by Mr Keenan); see Bundle 4 specified in Part IV above, page 36 (memorandum of meeting at Cowshill Hotel).
- GAL/3      4 September 1974          Letter from Geo W Hodgson & Angus to Watson & Farrant (put to witness by Mr Fryer-Spedding) see Bundle 4, in Part IV above at page 52.



## Part XIII: by Mr Bibby for Richard Stephen Rutherford

## Bundle 2 Documents, R S Rutherford, Burnhope Moor.

RSR/1	11.7.1986	Statement signed by Richard Stephen Rutherford: "... Burnhope Moor ... own 10 stints ... Entry No. 5 ... rent my remaining 4 stints ... Entry No. 6 from J Dalton ... who himself rents two of the stints in the estate of J Walton and the other two from the estate or successor C Watson ... the Secretary of the stinholders Committee ... meet every year ... keep the record book ... statutory declaration of R N Burton dated 4 February 1986 ... not accept all the statements.
RSR/2	28 February 1955	Conveyance by CC for E to Richard Stephen Burton of land described in First Schedule. "... land at West Black Dene containing 32.706 acres TOGETHER with dwellinghouse and cottage ... AND ALSO ten stints or cattle gates in or upon Burnhope Moor or Common ... all of which said stints or cattle gate were immediately before the execution of these presents held or occupied with the property herein before described ...".
RSR/3	21 May 1861-1981	Stint book (original produced).
--	21 May 1861	First pages of: "A stint bill for Burnhope Fell: five columns, names and farms farmed, "grass to each farm", "BE.S (meaning ? beast)", horses", and "sheep" ... "surplus money £9.s14.d6.
--	1980 1981	Stock Stints Burnhope Moor F Peart, Wham Farm 117½ G Peart, Wearhead 29½ C R Lonsdale, Prye Hill 45 W Walton, Stripe West Black Dene 14 Mrs D Dalton, Wellhope 6 320
RSR/4	1977, 1980 1982	Accounts (3 sheets).

Note: see Part XXII below by Mr R S Rutherford in person.



## Part XIV: by George Leonard Peart

- GLP/1      --                      Statement by George Leonard Peart.
- GLP/2      29 September 1813      Weardale Inclosure Award (S/3) side note "Joseph Dawson of Stonedrass 24a. 1r. 27p. in one plot". "Burnhope Moor ... being in right of two stints. Plan S/4 "Joseph Dawson ... 24.1.27 ...".
- Bundle 5                      Mrs O Peart and others: documents re Burnhope Moor.
- GLP/3      22 January 1943      Tenancy agreement by EC for E to George Peart: year to year: of "Mount Healey, Stonedrass and Bent Head ... containing 32a. 1r. 28p.. Schedule includes "20½ stints on Burnhope Moor and 2½ stints on Moss Moor. Endorsed memorandum of agreement dated 8 March 1946 adding 5a. 3r. 38p. and "9 stints on Burnhope Moor: 1 stint on Moss Moor".
- GLP/4      1956                      Abstract of title of EC for E to land in Stanhope containing:-
- 14 October 1865      Conveyance by George Featherstone to EC for E, after reciting grant to him dated 9 May 1846 of the described in the first part of the first schedule to him and his heirs and assigns forever according to the ancient and laudable custom of tenant right and allowed within the Park and Forest of Weardale for time whereof the memory of man is not to the contrary subject to the payment of the customary rent of 1½d. to the Bishop of Durham ..., of the dwellinghouse closes stints or cattle gates ... at Benthead within the ... Park and Forest ... set forth in the First Schedule ..." "Customary hold: Part I (Benthead) ... and also one Cattle Stint and one quarter of a Cattle Stint upon the unenclosed part of the Moor or Common called Burnhope Fell".
- FIRST SCHEDULE: Customaryhold: Part 1 (Benthead) 356, 357, 358, 359; Pasture formerly Moss Moor, dwellinghouse, cowbyre, meadows: 4. 6.; also "one Cattle Stint and one quarter of a Cattle Stint upon the uninclosed part of the Moor or Common called Burnhope Fell.
- SECOND SCHEDULE, Leasehold  
"Five cattle Gates or Stints upon the undivided part of Burnhope Common or Fell".
- GLP/5      --                      Abstract of the title of the CC for E:-
- 23 March 1870      Conveyance and grant by John Thompson and others: same as BBL/2.



- GLP/6      19 December 1958      Conveyance by **EC for E** to George Peart "(i) ... the property described in Part I of the First Schedule ... (ii) ... one equal half part ... Part II of the First Schedule ... (iii) ... five equal undivided ninth parts in Part III.
- First Schedule Part I "FIRST piece or parcels of land ... (37a.2r.23p) ... delineated on Plan numbered 1 ... verged red and coloured pink, and also (as to the parts thereof situate at Stonedrass ... Plan numbered 1A verged red and coloured pink ... which said premises are together known as Mount Healey and Bent Head Farms, Wearhead aforesaid TOGETHER ... AND TOGETHER ALSO with twenty-nine stints or cattle gates and one half of another stint in or upon Burnhope Moor or Common ... and three stints or cattle gates and one half of another stint or cattle gate in or upon Moss Moor ... which said stints or cattle gates were immediately before the execution of these presents held or occupied by the Purchasers as tenants of the Commissioners.
- On Plan No. 1 Nos. 1359, 1364, 1365 and 1366 are apparently the same as 744, 747, 746a and 746b on plan attached to 1870 conveyance and grant (BBL/2 and GLP/5).
- GLP/7      24 April 1978      Letters of administration to the estate of George Peart (he died 23 January 1978) granted to Olive Peart, George Leonard Peart and Alfred Lloyd Peart.
- GLP/8      9 January 1980      Assent by **O Peart, G L Peart and A L Peart** as personal representatives of G Peart in favour of themselves.
- GLP/9      15 March 1985      Statutory declaration (with exhibits) by George Leonard Peart sent to Commons Commissioners after March 1985 Moss Unit hearing.
- G.P.1, copy plan Moss Moor Nos. 12 and 15 verge read.
- G.P.2, 1958 conveyance same as GLP/6 above.
- G.P.3, 1978 letters of administration, same as GLP/7.
- G.P.4, 1980 assent, same as GLP/8 above.
- GLP/10      29 September 1815      Weardale Inclosure Award, copy of part relating to Moss Moor: also copy part Award plan so relating.



## Part XV: for Northumbrian Water Authority (by Mr R A Bibby)

- NW/1      26 October 1922      Conveyance by EC for E to Durham County Water Board ("DCWB"): same as DBL/1.1
- NW/2      16 September 1920      EC for E to Weardale and Consett Water Company.  
22 November 1920      Requisitions on title and replies.
- 22 November (2): "The Commissioner's interest in the unenclosed allotment of 21a. 2r. 12p. is an undivided moiety represented by  $2\frac{1}{2}$  stints exercised on Burnhope Moor viz: Mrs E Bell  $1\frac{1}{2}$  stints, J Rutherford 1 stint." The unenclosed allotments of 16a. 2r. 32p. and 8a. 0r. 0p. are similarly represented by 2 stints (G Robinson) and one stint (Weardale and Consett Water Co.) respectively".
- NW/3      10 December 1920      Observations on replies. Further replies.  
4 February 1921
- 4 February (2): "The Commissioners owns an undivided moiety of the surface of the 21a. 2r. 12p. ... The explanation of our previous reply is that the Allotments above referred to have never been enclosed from the remainder of the Moor and the stintage rights which existed prior to the date of the Inclosure Award have accordingly continued".

Note: 1922 conveyance plan, the 21a. 2r. 12p. is No. 3 on Ownership Plan (S/1) and the same as "Josp Rutherford: 21.2.12: for 5 stints on Award plan (S/4).





## Part XVI: by Mr William Rutherford Walton

- WRW/1      --      Statement by W R Walton
- WRW/2      29 September 1815      Weardale Inclosure Award (S/3): Burnhope Moor allotments: with side note "Thomas Featherstone of Benthead 10a. 3r. 38p. in one plot" (in right of two stints or cattle gates).
- Bundle 9      Documents, W R Walton, Burnhope Moor.
- WRW/3      --      Abstract of title, 1874 to 1959.
- 11 November 1874      Mortgage by William Peart to John Watson of "FIRSTLY customary freehold at Benthead being a close called Pryfield containing 6 acres also West Part of an allotment on Moss Moor set out by Commissioners ... Act ... Forest of Weardale containing 1 acre; SECONDLY customary freehold called Green Pit and  $\frac{1}{2}$  (?  $1\frac{1}{2}$  see 1877 mortgage below) a stint on Moss Moor. Hold ... laudable custom of tenant right ... subject to the customary yearly rent ... also WITNESSED ... assigned ... plot ... 10a. 3r. 38p. situate on Burnhope ... awarded unto Thomas Featherstone ... in right of two stints or cattle gates upon Burnhope Moor bounded as in the award as mentioned ... also 3 stints on Burnhope Moor hold for lives and all other estate.
- WRW/4      13 October 1931      Assent, reciting mortgage of 16 May 1877, by George Albert Peart (Grantor) as personal representative of Caleb Peart (he died 15 January 1930) to vesting in Eliza Hannah Peart, George Albert Peart and Brown Peart (beneficiaries) of dwellinghouse etc at Benthead and Green Pit on plan annexed coloured round with pink, Benthead and Green Pit containing 4.71 and 15.875 acres together with two stints or cattle gates on Burnhope Moor and all other if any property comprised in recited transfer of mortgage.



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WRW/5	14 October 1931	Conveyance by Eliza Hannah Peart and Brown Peart George Albert Peart of premises in the 1931 assent (WRW/4).
WRW/6	16 May 1877	Transfer of mortgage (or mortgage) by John Watson at the request of William Peart to Joseph Hill of premises in 1874 mortgage including 10a. 3r. 38p.
	13 November 1878	Transfer of mortgage.
	1 August 1916	Transfer of mortgage.
	1 August 1916	Transfer endorsed on 1877 transfer in favour of Caleb Peart.
	23 August 1958	Assent by Hilda Peart and Ralph John Peart as executors of George Albert Peart (he died 18 June 1958) in favour of his widow Hilda Peart as devisee, of 4.713 acres with dwellinghouse at Benthead as comprised in an assent dated 13 October 1931 (WRW/4 above) and delineated on plan annexed thereto together with 2 stints on Burnhope Moor.
	19 October 1959	Conveyance on sale by Hilda Peart to Joseph Norman Rutherford and John Lloyd Rutherford of 4.713 acres etc as comprised in said 1931 assent.



WRW/7

17 June 1970

Assent and deed of gift between (1) Robert Stobbs Walton and William Rutherford Walton (Administrators), (2) said R S Walton (Donor) and (3) W R Walton (Beneficiary).

Recitals: at death of Joseph Norman Rutherford 1st, 2nd, 3rd, 4th and 5th Schedules vested in J N Rutherford and John Lloyd Rutherford on trust for sale equally, J N R died 4 June 1962 intestate leaving kin J L R, Sarah Emmerson and Mary Jane Walton (wife of Donor), J L R died intestate 19 December 1962 leaving sole kin (sister) M J Walton, she died 5 January 1963 leaving husband (Donor) solely entitled, and having given all her entitlement under said intestacies to her son the Beneficiary. WITNESS, Administrators such of said deceaseds with confirmation of Donor convey all the legal and equitable estates of the deceaseds in the scheduled properties to the Beneficiary.

Second Schedule: Dwelling house situate at Bents with land containing 7a. 28p. also allotment of 14a. 3r. 23p. on plan verged green: and also 5 stints and all other if any stints held in respect of property hereinafter described on Burnhope Moor and also 2 stints upon Bents and Far Bents Pasture verged green and hatched violet ... ALSO 2 stints on Moss Moor and all or any allotment set out on Moss Moor in respect of said stints "TOGETHER with all such part share or interest or right of in or to any lands or of in or to any proceeds of sale under any statutory trust or other such property rights or interest as may under any Inclosure Act or Award or under by virtue of the Law of Property Act 1925 represent any of the stints or cattle gates described in this Schedule.

Third Schedule: First dwelling house at Stripehead (otherwise Blackcleugh) AND ALL close of 4a. 3r. and another close 3a. 2r. on plan verged blue, and secondly 7½ stints or cattle gates on Burnhope Moor with a proportionate part of the allotment set out in respect thereof.

FOURTH SCHEDULE, TURN OVER



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Fourth Schedule: Two pieces of land containing 4.713 acres with dwelling house at Benthead verged yellow together with 2 stints on Burnhope Moor.  
Fifth Schedule: Closes containing 11a. 2r. 10p. known as Black Cleugh verged violet ... also 9½ stints on Burnhope Common or Fell hitherto used and occupied with the property herein before described ... except as expressed in a conveyance dated 13 December 1961 and made between (1) John Harrison Rutherford and (2) Joseph Norman Rutherford and John Lloyd Rutherford (see below, Bundle 12).

WRW/8	29 September 1813	Weardale Inclosure Award (S/3), Burnhope Moor, allotment with side note "Mary Coulthard, 17a. 1r. 14p. in one plot" (in right of two stints).
	Bundle 10	Documents W R Walton, Burnhope Moor.
--	10 May 1787	Indenture between Arthur Carrick and Mary Coulthard.
WRW/9	13 May 1907	Conveyance by Jane Lowes to Octavius Monkhouse of undivided fourth share of dwellinghouse at Bents and also of "five stints or cattle gates held with or in respect of the said hereditament on the adjoining Burnhope Moor or Common and all or any allotment set out upon the same moor or in respect of the said stints or cattle gates ....".



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- WRW/10      1928      Abstract<sup>4</sup> documents relating to freehold (formerly customary freehold) to be sold by ... the Trustee in Bankruptcy of Octavius Monkhouse to Joseph Norman and John Lloyd Rutherford including:-
- 29 March 1922      Memorandum of deposit by Octavius Monkhouse with the Bank of Liverpool and Martins Limited including "13 May 1907 Convce of one undivided fourth share of custy heres sit at or near to G O Bents ... 25 Nov 1905 convce of undivided eighth shares of heres sit at or near Bents ... deeds relating to ... 2 stints on Moss Moor.
- WRW/11      29 September 1928      Conveyance by A J Gray (trustee in bankruptcy or Octavius Monkhouse and Martins Bank Limited) to Joseph Norman Rutherford and John Lloyd Rutherford of property described in Schedule.
- SCHEDULE:-
- dwelling house ... haybarn ... field 7a. 28p. ... plan attached to conveyances of 25 November 1905 and 13 May 1907 AND ALSO 5 stints and all other (if any) stints held with or in respect of conveyed property on the adjoining Burnhope Moor and all or any allotments set out upon the same Moor or in respect of the said stints or cattle gates ... AND ALSO ... two stints or cattlegates in or upon the adjacent Moor called the Moss and all or any allotment set out upon the said Moor for or in respect of the said stints or cattlegates ... TOGETHER ... share ... proceeds of sale ... under the statutory trust for sale ... as might under any Inclosure Act or Award or under or by virtue of the Law of property Act 1925 represent any of the stints or cattlegates described in the Schedule.
- WRW/12      --      Sheet giving contents of Bundle 10 and saying "property then devolves in accordance with the Rutherford title, see Bundle 9".
- WRW/13      29 September 1815      Weardale Inclosure Award (S/3) Burnhope Moor: allotment with side note "James Vickars 21a. 2r. 12p. in one plot" (in right of five stints or cattlegates). NOTE: more recent documents being Bundle 11, W R Walton: re Burnhope Moor.



- WRW/14      24 February 1854      Conveyance by Elizabeth Hind, John Page, John Robinson, George Robinson, John Emmerson Featherstone, Emmerson Smith and John Emmerson Muschamp to William Raine after reciting indenture of 26 April 1840 to John Page according to laudable custom and a lease dated 18 July 1850 by the Bishop of Durham of a half part of a plot of 21a. 2r. 12p. on Burnhope Moor by the Award allotted to James Vickers for part of his share being 17½ stints in the said Moor in right of 5 stints, there was conveyed to William Raine the customary freehold south of the Burn called Blackclough or Blackslough being Slate Gate Dale, High Close, Low Close with 15 pasture gates on a fell called Burnhope Fell and the cattle stints or gates and the privileges on the Moss belong the same with all and every allotment for the said premises ... all within the Park and Forest of Weardale.
- WRW/15      2 December 1871      Conveyance on a partition by Joseph Vickers, John Stobbs, John Peart the elder and John Peart the younger to William Bell of " ... heredts comprised in the first and third parts of the said 3rd Schedule... Wm Bell ... ancient and laudable custom ... subject to payment of a proportionate part of the ancient customary yearly rent payable to the Ecclesiastical Commissioners for England in respect of the same together with other heredts ... ". Third Schedule first part "... Messuage ... Stripe Head otherwise Blackclough ... AND ALSO ... seven customary freehold stints or cattle gates and one half of a stint or cattle gate upon Burnhope Fell or Common ..."
- Also      9 October 1880      Conveyance (or mortgage) by William Bell to Joshua  
WRW/15      3 September 1887      Dawson.  
Ditto
- 1952      Abstract of title of executors of John Henry Bell:-
- 4 June 1927      Further charge between John Henry Bell to R O B R Biggin and Frederick Henry Thompson, reciting among other deaths that of William Bell on 8 July 1891.
- 6 October 1952      Conveyance by John Henry Bell and Thomas Vickers Harrison as executors of John Henry Bell (cousins of J H Bell party thereto) who died 30 March 1952 to John Norman Rutherford and John Lloyd of first dwelling house with 4a. 3r. at Stripe Head otherwise Blackcleugh and also Pasture 3a. 2r. all verged red next plan. Secondly 7½ stints on Burnhope with proportionate part of allotment set out in respect thereof.
- 17 June 1970      Assent and deed of gift (same as WRW/7).



- Bundle 12 Documents W R Walton Burnhope Moor.
- 23 November 1848 Release and conveyance by Joseph Beck (heir at law of John Beck), Emmerson Featherstone and Thomas Dawson (trustees and executors of Thomas Harrison now beneficially entitled under the will of his brother John Harrison, Nicholas Harrison and Joseph Harrison (children of the said Thomas Harrison) to John Harrison (another child of the said Joseph Harrison) of customary freehold messuage and land, Blackcleugh and also 9½ freehold stints on Burnhope Common as a proportionate part of the allotment set out by the commissioners under the Weardale Park and Forest Inclosure Act of 13½ stints ... one stint on Moss Moor or proportional part in respect of 2 stints set out by the Commissioner for 4 stints.
- 25 November 1848 Mortgage by John Harrison and transfers.  
7 July 1869  
12 November 1889  
15 June 1906  
16 June 1906  
19 May 1908  
28 March 1914
- 5 August 1921 Conveyance by John Peart (the trustee) as surviving personal representative of John Harrison who died 2 November 1912 having by his will devised his estate subject as therein mentioned to John Harrison Rutherford (the beneficiary) if he should attain the age of 21 (which he did on 25 July 1920) of among other property the said premises subject to the mortgage.
- 19 November 1949 Vacating receipt endorsed on transfer of 21 November 1939.
- 13 December 1961 Conveyance by John Harrison Rutherford on sale to Joseph Norman Rutherford and John Lloyd Rutherford of property described in Schedule.  
First closes containing 11a. 2r. 10p. together with dwelling house Blackcleugh plan No 1 verged and ... 9½ ... stints on Burnhope Common ... Secondly ... (Bents Pasture)  
Except unto vendor absolutely the 2 leasehold ... stints ... Burnhope Common which have been held and heretofore occupied by the Vendor.
- Bundle 13 Documents W R Walton Burnhope Moor.
- 1986 Abstract of title to land at Stone-drass:-
- WRW/15 23 March 1870 Conveyance by John Thompson to E C for E (same as  
bis BBL/2 and GLP/5.



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- WRW/16      16 December 1957      Conveyance by CC for E to William Craig of property described in Part I of First Schedule: "FIRST ... land at Stonedrass ... field number 135 ... SECONDLY ... cottage ... adjoining ... FOURTHLY ... one stint or cattle gate in or upon Burnhope Moor or Common ... FIFTHLY ... one half of a stint or cattle gate in or upon Moss Moor Common".
- WRW/17      13 March 1965      Conveyance by Olive Featherstone and Laura Craig as personal representatives of William Craig (he died 12 July 1964) to William Rutherford Walton ... of land described in Part I of Schedule ...". Part I of Schedule is same as WRW/16.

## Part XVII: by Mr R A Bibby

- Bibby/11      —      Rules: Burnhope Stinholders:  
(5) The Secretary be allowed 1 stint on the moor.  
(6) That no overstints may be taken after May 13th.  
(8) Overstint sheep to be on the fell from May 13th to October 1st only.  
(9) No man can have more than 1 overstint.
- Bibby/12      1977,  
                 1980  
                 1982      Burnhope Stinholders: balance sheets.

## Part XVIII: by Mr W R Walton continued

- WRW/19      12 May 1939      Agreement (original): (1) Joseph Norman Rutherford and John Lloyd Rutherford (landlords) and Ecclesiastical Commissioners for England (tenants) let yearly tenancy from 12 August 1939 the shooting over four allotments on Moss Moor and Burnhope Moor.





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WRW/20	--	Statement by Mr W R Walton. The 18 stints owned by his wife Jennie Walton are within Rights Section Entry No. 12 relating to 20 stints; of these 2 were rented from NWA. His wife received 18 stints from her sister who was herself given them by her father Joseph Edgar Rowell; these stints were originally attached to Hollin Hill and Rigg Foot. These other 2 stints were originally attached to the Area now owned by NWA.
	Bundle 4	Documents, Mrs J Walton; Burnhope Moor.
WRW/21	21 December 1960	Statutory declaration by Donald Adolphus Collenette about Hollin Hill Farm, Burnhope, 58a. 37p. and also adjoining allotment 5a. 3r. 11p. prior to conveyance dated 28 October 1960 by Commissioners to Joseph Edgar Rowell.
WRW/22	28 October 1960	Conveyance by CC for E to Joseph Edgar Rowell of property and rights described in First Schedule. Schedule Hollin Hill Farm, 58a. 37p. delineated on plan and secondly allotment 6a. 3r. 11p. "AND TOGETHER ALSO with 44 stints in or upon Burnhope Moor or common.
--	17 November 1964	Memorandum of deed of gift by J E Rowell to Pamela Lily Robson of Hollin Hill and 18 stints or cattle gates on Burnhope Moor or Fell.
WRW/23	2 November 1967	Conveyance by Pamela Lily Robson to Jennie Walton of Hollin Hill Farm containing about 58 acres surrounding (but including) the dwellinghouse "AND TOGETHER ALSO" with eighteen stints ... part of 44 stints ... originally held with ... property hereinbefore described) in or upon Burnhope Moor or Common.

Part XIX: by Mr Bibby for William Lloyd Watson and Thomas Stanley Watson  
as executors of Charles Raymond Watson who died 21 April 1977

TURN OVER



Bibby/25 Bundle 8

Abstract of title to 2 stints on Burnhope Moor, claimed as part of the 4 stints at Rights Section Entry No. 6, the other 2 being claimed by Mr J H Walton deceased. The said 4 stints together with  $9\frac{1}{2}$  stints claimed by Mr W R Walton make the  $13\frac{1}{2}$  stints in 1815 allotted to John Harrison in respect of "95a. 2r. 32p."

-- 27 June 1888

Will of Joseph Harrison... appointed T Kidd and H Featherstone executors and trustees ... devised to his son Nicholas Harrison dwelling house etc and also Low Field and New Close containing 3 acres and  $2\frac{1}{2}$  acres ... "TWO customary freehold cattlegates or stints on Burnhope Moor ONE cattlegate or stint in or upon his unenclosed allotment on Moss Moor and one cattlegate or stint in or upon his enclosed allotment on Moss Moor TOGETHER with a proportionate part of the allotment or allotments of land set out or allotted in respect of the same cattlegates or stints or any other ...

Note: compare devise in Part XX below.

-- 4 February 1889

Probate of will of Joseph Harrison (he died 12 August 1888).

-- 12 November 1889

Mortgage by Nicholas Harrison to William Stephenson of Wear Villa etc "... AND ALSO all those to customary freehold ... stints on Burnhope Moor ... AND ALSO ALL that one customary ... stint in or upon an unenclosed allotment on Moss Moor ... AND ALSO all that one cattlegate or stint in or upon an enclosed allotment on the said Moss Moor TOGETHER with a proportionate part ... (as above)".

-- 15 April 1896

Will of Nicholas Harrison to Sarah Harrison for life and for his children John Joseph Harrison, Sarah Jane Harrison (in 1903 she married J Watson) Mary Hannah Harrison (in 1906 she married P Heslop) and Ethel Harrison (in 1903 she married E W Coulthard).

-- 22 September 1898

Probate of said will (he died 16 April 1896) to S Harrison (she died 1 February 1903), John Watson and John Featherstone.



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- 20 June 1906 Transfer of 1888 mortgage to George Stephenson.
- 16 December 1924 Retransfer of said 1888 mortgage to John Joseph Harrison, Sarah Jane Watson, Mary Harrison Heslop and Elizabeth Ethel Coulthard.
- 19 August 1925 John Joseph Harrison died.
- 6 August 1935 Appointment by Sarah Jane Watson, Mary Hannah Heslop, Elizabeth Ethel Coulthard with the concurrence of F H Thompson (mortgagee of a share) of Pattison Heslop and Ernest Wilfred Coulthard as new trustees in the place of the Public Trustee under paragraph 1(4)(iii) of Part IV of the First Schedule of the Law of Property Act 1925 of the statutory trusts for sale applicable to the property described in the Schedule (being same as the said 1889 mortgage).
- 7 September 1946 Appointment by E W Coulthard of Charles Raymond Watson as trustee of said statutory trust for sale in the place of Pattison Heslop who died 28 April 1936 applicable land as in schedule to the 1935 appointment.
- (illegible) The death of Ernest William Coulthard.
- 28 September 1977 Probate of will of Charles Raymond Watson (he died 21 April 1977) granted to William Lloyd Watson and Thomas Stanley Watson.

Part XX: Mr Bibby for Mrs Violet Walton and Mr John Stanley Walton as executors of John Harrison Walton who died 18 December 1972

Bibby/26 Bundle 7

Abstract of title showing title to 2 stints in the estate of J H Walton deceased (claimed as part of the 4 stints at Right Section Entry No. 6, the other 2 being claimed by Charles Raymond Watson deceased. The said 4 stints together with 9½ claimed by Mr W R Walton ... (see Bibby/25 in Part XIX above.)



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- 27 June 1888 Will of Joseph Harrison "...devised to Thomas Kidd and H Featherstone (his executors and trustees), ~~his~~ dwellinghouses near Wear Villa and closes Clover Holme and High Field containing 3 acres and 2½ acres and "ALSO his customary freehold stints ... on Burnhope Moor, one stint ... upon his unenclosed allotment on Moss Moor and one stint ... upon his enclosed allotment on Moss Moor together with a proportionate part of the allotments ... held or allotted in respect of the same ... stints", upon trust for his daughter Hannah Walton for life and then for her children as she should appoint and in default for her children equally at 21 or marriage.
- Note: compare devise in Part XIX above.
- 4 February 1889 Probate of Will Joseph Harrison (see Part XIX above).
- 12 November 1889 Mortgage by Hannah Walton, T Kidd and H Featherstone to William Stephenson of (in effect) the said devised premises.
- 20 June 1906 Transfer of mortgage to George Stephenson.



- 5 March 1925 Ditto to Mary Jane Robinson.
- 16 December 1925 Will of Hannah Walton in exercise of the power conferred on her by the 1888 will of her father *J Harrison* appointed subject therein mentioned, to her daughter Renie Florence Allison, her daughter Ella Rey Walton and her son John Harrison Walton in equal shares.
- 13 April 1928 Probate of her will (she died 3 February 1926).
- 12 June 1931 Assent by William Arthur Whitfield as surviving personal representative of Hannah Walton to vesting in Reine Florence Atkinson, Ella Rae Peart and John Harrison Walton of dwellinghouse Lanebyre AND field High Close ALSO fields Close Holme ALSO half share in Calf Close, one third of Sedling Cow Pasture and Sedling Moor allotment "AND ALSO all those two cattlegates or stints on Burnhope Moor ... and one cattlegate or stint in an unenclosed allotment on Moss Moor ... and one cattlegate or stint in an enclosed allotment in the same Moor in respect of the said four stints or the proceeds of sale thereon and the rents and profits until sale of the same stints or land" on trust for themselves in equal shares beneficially.
- 19 September 1957 Will of Reine Florence Allison to her husband William Allison for life and then to her son John Walton Allison.
- 13 March 1964 Probate of her will (she died 27 August 1963).
- 6 May 1955 Will of Ella Rae Peart leaving her share and interests in properties at Wearhead as to one half to her nephew John Walton Allison and as to the other half equally between her nephews John Stanley Walton, Thomas Robert Walton and Gordon Walton.
- February 1972 Probate of her will (she died December 1971).
- 2 July 1966 Will of her John Harrison Walton in favour of his wife Violet Walton for life and then for sons Stanley Walton, Thomas Robert Walton and Gordon Walton.
- 25 April 1973 Probate of his will (he died 18 December 1972).



## Part XXI : (5 June) by Mr M Maddison

MM/1	13 March 1985	Statutory declaration by Mrs Wendy Maddison.
WM.1	--	Plan of Moss Moor showing plots numbered (same as Moss Decision Plan).
WM.2	18 June 1976	Conveyance by William Graham and James English Graham to Malcolm Maddison and Wendy Maddison of "First ... Burnt Hills Farm, High Rush and Low Moss ... delineated ... in ... plan annexed ... Thirdly ... three stints on or upon Moss Moor near Lanehead aforesaid".
WM.3	12 August 1953	Conveyance by CC for E to W Graham and J E Graham of land described in First Schedule First (as in WM/2) ... "FOURTHLY ALL THOSE three stints in or upon Moss Moor near Landhead aforesaid".

## Part XXII: (9 October) by Mr P Keenan

--	--	Skeleton submissions on behalf of BBL.
PK/1	--	Encyclopedia of Forms and Precedents (1969) vol 19 page 1002, conveyance by tenant in common of share under trust for sale.
--	2 March 1954 28 September 1954	Letters (10) and (11) from Smith Gore and from Official Solicitor of Church Commissioners; from Bundle 6, Hodgson & Angus file, extracts.
--	15 March 1955	Conveyance, the title of Fred Peart, see Part X above.
--	28 February 1955	Conveyance, the title of R S Rutherford, see Part XIII above and Part XXIII below.
--	23 April 1954	Conveyance, the title of R W Dalton, see Part XI above.
--	28 October 1960	Conveyance, the title of Mr W R Walton, see Part XVI above.
--	29 September 1954	Conveyance, the title of Mr and Mrs G A Lonsdale, see Part XII above.
--	19 December 1958	Conveyance, title of Mr O Peart and others; see Part XIV above.



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- PK/3      17 August 1869      Conveyance to EC for E, being BBL/1.8 in Part III above.  
Note: edged red comprises six pieces one of which  
include Moss Plots 3 and 4.
- PK/4      16 February 1867      Conveyance to EC for E, same as BBL/1.6, see Part III  
above.  
Note: Coloured red on plan annexed to allotments on  
Burnhope Moor 181a. 3r.8p. and 50a. 0r. 0p.; being  
Featherstone Lot (Burnhope Area No "7" Yellow hatched  
blue).

## Part XXIII: by Mr R S Rutherford in person

- RSR/1                              Statement.
- RSR/2      28 February 1955      Conveyance by CC for E to Richard Stephen Rutherford  
of First Schedule land: being West Black Dene of 32.761  
acres, Plan No. 1 (part better identification No. 2),  
pink and verged red "AND ALSO ten stints or cattlegates  
in or upon Burnhope Moor or Common near Wearhead  
aforesaid all of which said stints or cattlegates were  
immediately before the execution of these presence  
held or occupied with the property hereinbefore  
described."
- RSR/3      21 May 1861      Extract from Stint Book being S/7 specified in Part  
II above, and RSR/3 in Part XIII above.
- 1980                      Further extract from said book showing "Stock stints  
            1981                      Burnhope Moor" being names, farms and numbers totalling  
   320 stints.

## Part XXIV: (19-20 October) by Mr P Keenan

- 23 March 1870      Conveyance to EC for E: same as BBL/2 in Part III  
above.  
Edged pink "16a. 1r. for 2 St/ts" identifiable with  
Plot 15 of Moss Moor as marked on RNB/4. Edged green  
"24a. 1r. 27p. for 2 Stints" identifiable with Burnhope Unit  
land parcel on RNB/4, the same No. 5 on S/1, (being  
Burnhope Area "5 Yellow").



--	1799	Inclosure Act, same as S/1 in Part I above.
--	1810	Board of Agriculture Report by John Bailey, No. 4 in Bundle 15; See S/5 Part I above.
K/1	--	Halsbury Laws of England ( ), volume 6, Commons: 3(1) Rights of the Lord of the Manor and Owner of the Soil, paragraph 646: Right to get minerals.
K/2	--	Hall v Byron (1877) 4ChD 667 at page 680.
--	--	Halsbury op cit paragraph 643.
K/3	--	Rigg v Lonsdale (1857) 1H&N 923, 937.
--	--	High Acomb Common, Commons Commissioners decision (myself) 23 July 1976: 27/U/69.
K/5	--	Musgrave v Inclosure (1874) LR 9QB 162.
K/4	--	Reg v Inclosure Commissioners (1871) 23 LT 778. (Distinguishing Hutton v Bowes 1866 LR 1QB 354 being under section 116 of the Inclosure Act of 1845).
K/6	--	Paine v St Neotts 1938 4 ALLER 592 at pages 596, 597 and 598.
K/7	--	Megarry and Wade: Real Property, 5th edition 1984: Co-ownership: Joint tenancy and tenancy in common, at pages 419 and 420.
K/8		Jones v Jones 1977 1WLR 438.
K/9		Dennis v McDonald 1982 Fam 63.
K/11	--	Red House Farms v Catchpole 1977 EGD 798.
K/12	--	White v Taylor (No. 2) 1969 1 Ch 160.
K/13	--	Powell v McFarlane 1977 38 P&CR 452.
K/15	--	Halsbury Statutes (3rd edition) continuation volume 50(1) 1980 Limitation of actions pages 1266 to 1269 and 1300 to 1303. Compare FS/28 in Part XXV below.
FS/31	--	Crabb v Arun 1976 1Ch 179 (not dealt with: a simple application of estoppel).
K/14	--	Taylor's Fashions v Liverpool 1982 1QB 133.





## Part XXV : 21 October by Mr Fryer-Spedding

- -- Skeleton Argument of counsel for stinholders.
- Main issue (A): title derived from Act and Award.
- 1799 Act, see S/2 in Part II above.
- FS/10 1810 Extract (first recital) from Brundholme (Crossthwaite Cumbria) Inclosure Act: 50 Geo 3. c.36.
- FS/11 1799 Section 61 of Act emphasised.
- 11 April 1799 Photographic copy of letter from Mr Hopper Williamson, certified 4 February 1986: for typed copy see No. 1 of Bundle 15, being S/5 in Part II above.
- 3 September 1799 Claim forms, No. 3 in Bundle 15, being S/5 in Part II above.
- 1810 Report to the Board of Agriculture by John Bailey, No. 4 in Bundle 15, being S/5 in Part II above.
- 1815 Award, particularly pages 1, 14 and 15, being S/3 in Part II above: "for a Stinted Pasture and continue to be stinted occupied and enjoyed in future by each respective person and persons to whom allotment ..."
- K/3 -- Rigg v Lonsdale 1857 1H&N 923.
- 28 February 1955 Conveyance by CC for E to R S Rutherford (contemplates Commissioners have a share in the land) see Part XXIII above.
- 1900 G T Lapsley: The County Pallatine of Durham: A Study in Constitutional History: Cambridge, Mass.
- 1762 Jacobs' Law Dictionary (8th Edition).
- FS/15 1980 Sir Arthur Hesilrige and the Weardale Chest: by J Linda Drury Transactions of Architectural and Archaeological Society of Durham, and Northumberland, New Series, vol 5, pages 125-137.
- FS/16 -- Article: J Linda Drury, Department of Palaeography and Diplomatic: "More Stout than Wise": Tenant right in Weardale, Co Durham, in Tudor period: 36 fcap pages plus 11 pages of notes.



- 1741 Manwood's Forest Laws (5th edition) pages 88 to 93.
- 1976 J Linda Drury, Early settlements in Stanhope Park, c.1406-79: Archaeologica Aeliana, 5th series vol IV pages 139, 140 and 141.
- FS/17 -- Lyell v Hothfield 1904 3KB 90.
- Main Issue (B)
- -- Photographs, 1, 2, 3, 5, 6, 7, 8, 9 and 13: see Part IX above.
- Burnhope Stinholders Rules, No. 2 Bundle 6, see Parts XIII and XVII above.
- FS/18 -- Treloar v Nute 1976 1WLR 1295.
- K/11 -- Red House Farms v Catchpole 1977 244 EG 295.
- FS/21 Techbild v Chamberlain 1969 20 P&CR 452.
- Jones v Pritchard 1908 1Ch 630.
- FS/24 -- Bulstrode v Lambert 1953 1WLR 1064.
- FS/28 Real Property Limitation Act 1833, Limitation Act 1939 and Limitation Act 1980: Halsbury Statutes (1986 4th edition) vol 24: Limitation of Actions pages 676 and 677: compares K/15 in Part XXIV above.
- Main Issue (C).
- FS/30 Snell: Equity: (28th edition 1982 ) pages 558 to 563: Proprietary estoppel.
- FS/31 Crabb v Arun 1976 Ch 179.
- K/14 -- Taylors Fashions v Liverpool 1982 1QB 133.
- FS/33 -- Re Bradford 1928 1Ch 139.
- FS/34 -- Re Townsend 1930 2Ch 338.



## Part XXVI: by Mr Bibby about the Moss Unit

Bibby/101 -- "Schedule" showing (in effect) correspondence between  
- "modern plan referred to in CL75 1985 decision and  
1815 Award map".

Bibby/102 23 April 1985 Moss Unit Commons Commissioner's decision, Moss Moor,  
/104 reference 211/U/92 : and page 2 particularly.

Bibby/103 -- Copy map of 1985 handed in by claimant at 1985 CL73  
hearing showing edged red all plots except Nos 7 and  
16.

Bibby/105 -- Extract 1815 Award map showing the Moss Unit.

-- 8 January 1981 Decision of Commons Commissioner: re Pasture End  
re Reference 262/D/277-279.

## Part XXVII : Moss Unit documents sent to Commons Commissioners in 1985 before hearing

11 June 1985 Letter from Hodgson & Angus to Clerk of Commons  
Commissioners on behalf of Mr W R Walton asking for  
amendment of 1985 decision: "We enclose herewith an  
abstract of title which shows the devolution of these  
two plots from 1905.

1985 Abstract of title relating to New Bent House Farm  
enclosed with said letter, including

25 November 1905 Conveyance by Thomas Cousin and Joseph Cousin to  
Octavius Monkhouse of First 5/8ths of dwellinghouse,  
Haybarn, fields etc at a Bents Nos 1125, 1127, 1128  
edged red AND ALSO ... allotment or enclosure ...  
containing 14a. 3r. 23p. numbered 1134 edged blue\*  
AND ALSO ... AND ALSO ... two stints or cattlegates  
in or upon the adjacent Moor or Common called the  
Moss and all or any allotment or allotments set out  
upon the same Moor for or in respect of the said  
stints or cattlegates thereof ...conveyed to the  
testator Thomas Cousin by an indenture dated  
10 May 1880. \*Note: Moss Plot 16 now enclosed.

29 September 1928 Conveyance by A J Gray and another to J N and  
J L Rutherford (same as WRW/11).

17 June 1970 Assent between (1) R S and W R Walton, (2) R S  
Walton, and (3) W R Walton: (same as WRW/7).



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FOURTH SCHEDULE  
(1815 Award and map)

Part I : Burnhope Unit

<u>Stints Claimed and Allowed</u>		<u>Allotment</u>			
<u>(1)</u> <u>Name</u>	<u>(2)</u> <u>Number</u>	<u>(3)</u> <u>Area and</u> <u>tenure if</u> <u>specified</u>	<u>(4)</u> <u>For</u> <u>How</u> <u>Many</u>	<u>(5)</u> <u>Stints</u> <u>remaining of</u> <u>unalloted</u> <u>residue</u>	<u>(6)</u> <u>Locality of</u> <u>allotment</u>
(1) Lord Bishop of Durham	7	48a.2r.37p.	In full 7	None	Area "8 Yellow"
(2) John Bainbridge	78	20a.3r.14p. Leasehold for 3 lives	In part 3½	74½	Southeast of Area "13 White"
(3) James Carrick	16	16a.0r.17p. Leasehold for 3 lives	In part 4	12	Part (east) of Area "12 White".
(4) Mary Coulthard	2	17a.1r.14p. Leasehold for 3 lives	In full 2	None	Part (north) of Area "2 Black"
(5) Joseph Dawson of Stonedrass	15	24a.1r.27p. Leasehold for 3 lives	In part for 2	13	Area "5 Yellow"
(6) Joseph Dawson of Springwells	2	17a.3r.24p. Leasehold for 3 lives	In full 2	None	To the south of Area "13 White" and including part of such Area
(7) John Featherstone of Newcastle	22½	231a.2r. 18p. 1st:181a. 2r.18p. plus 2nd 50a.0r.0p. Leasehold for 3 lives	In full 18½ plus 4	None	Area "7 Yellow hatched blue"



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(8)	John Featherstone of Burnhope	8	13a.1r.12p. Leasehold for 3 lives	In part for 3	5	Part (west) of Area "12 White"
(9)	Thomas Featherstone of Newcastle	2	15a.0r.7p.	In full 2	None	Area "6 Black"
(10)	Ralph Featherstone	44	24a.2r.0p. Leasehold for 3 lives	In part for 3	41	To the southwest of Area "13 White"
(11)	Joseph Featherstone	4	15a.2r.26p. Leasehold for 3 lives	In full 4	None	To the south of Area "7 hatched blue" and to the west of Area "12 White"
(12)	Thomas Featherstone of Benthead	5	10a.3r.38p. Leasehold for 3 lives	In part for 2	3	Area "1 Black"
(13)	John Harrison of Wearshead	15½	116a.3r.0p. 1st. 95a. 2r.32p. plus 2nd. 21a. 0r.8p. 2nd Leasehold for 3 lives	In full for 13½ plus 2	None	1st, Area "4 White"; 2nd, Area "11 Green yellow/white"
(14)	Thomas Hodgson	15	123a.0r.0p. Leasehold for 3 lives	In full 15	None	Mostly to the south and southeast of Area "13 White" and including part of such Area
(15)	Joseph Hodgson	6½	10a.3r.12p. 1st. 6a.3r. 12p. customary plus 4a.0r.0p. Leasehold for 3 lives	In part 1½ plus ¾	4½	Part of Area "10 White"
(16)	Stephen Lonsdale	14	12a.0r.22p. Leasehold for 3 lives	In part for 3	11	Part (middle) of Area "12 White"



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(17) John Nattras	10	15a.3r.11p. In part for 3.	7	Same as J Lonsdale Part (middle) of Area "12 White"
(18) Thomas Nattras	22½	23a.3r.7p. In 1st. 14a.0r. Part 32p. for plus 5½ 2nd. 9a.2r. (3½ 15p. plus 2)	17	1st, same as William Bell part (middle) of Area "12 White"; 2nd, included in Moss Unit, part of Plot 16
(19) Joseph Peart	2	12a.0r.0p. In full 2	None	Another part of Area "10 White"
(20) John Rutherford	25	31a.1r.9p. In 1st. 16a. part 1r.14p. for 6 plus (3 2nd. 16a. plus 3r.35p. 3)	19	To the southeast of Area "13 White"
(21) James (Matthew?) Vickars	17½	21a.2r.12p. In part for 5	12½	Area "3 White" plus a small part of Area "13 White"
(22) Elizabeth Whitfield	6½	18a.2r.1p. In 1st. 12a. part 2r.0p. 2 customary (1½ plus 6a.0r.0p. ¾) Leasehold for 3 lives	4½	Part (south) of Area "2 Black"

TOTAL	339½	116	223½
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NOTE: Area "9 Yellow" is left undivided for Public Peat Moss, Common Quarries etc.



## Part II: Moss Unit

<u>No. on Moss Decision Plan</u>	<u>As described on Award Map</u>	
(1), (2) & (3)	South part of Esther Peart's Allotment on Moss Moor for 3 stints: 34a.1r.0p.	(1) 1985 decision to Public Trustee; (2) 1985 decision to Mr W R Walton; (3) decision needed.
(4)	Thomas Coulthard's allotment on Moss Moor for 4 stints 53a.0r.14p.	Decision needed
(5) & (6)	For 1 stint, 12a.2r.29p. For 1 stint, 12a.2r.29p.	(5) & (6) 1985 decision to Public Trustee
(7)	For 2 stints, 14a.0r.0p.	1985 decision to Mr W R Walton
(8)	For 1 stint, 12a.0r.12p.	1985 decision to Public Trustee
(9)	For 3 stints, 26a.0r.11p.	1985 decision to Mr W R Walton
(10)	Mary Coulthard: First allotment on Moss Moor for 10½ stints: 10a.1r.34p; (2nd plot, 3a.0r.36p. not in this number)	Decision needed
(11)	For 2 stints, 21a.1r.18p.	1985 decision to Public Trustee
(12)	Joseph Harrison of Chapel: Second allotment on Moss Moor (for Two Stints) 21a.1r.18p.  (First plot 8a.1r.3p. not in this number)	Decision needed

Following are south of "Wellhope Public Carriage Road":-

(13)	Mary Coulthard: 2nd Allotment on Moss Moor for half of a Stint: 3a.0r.36p.  (1st plot, 10a.1r.34p. see above).	Decision needed
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|------|---|-----------------------------------|
| (14) | For $\frac{1}{2}$ a stint, 3.1.0.   | 1985 decision to<br>Mr W R Walton |
| (15) | Joseph Dawson's (of Stonedrass)<br>Allotment on Moss Moor (for<br>2 Stints), 16a.1r.0p.   | Decision needed                   |
| (16) | Thomas Nattrass's Allotment<br>on Moss Moor (for one Stint):<br>5a.2r.5p. plus<br>Thos Nattrass's Second<br>Allotment on Burnhope Moor:<br>9a.2r.15p. | 1985 decision to<br>Mr W R Walton |

FIFTH SCHEDULE  
(Decision table)

Introductory note:-

- (1) All the ownership directions in Parts I and II below will be made to Durham County Council as registration authority pursuant to section 8(2) of the Commons Registration Act 1965.
- (2) The directions specified in paragraphs 1 and 2 of Part II will be made because in his decision dated 23 April 1985 the then Chief Commons Commissioner said he was satisfied that the persons named in the said directions were then the owners.
- (3) All the other directions specified in Parts I and II below will be made because I am satisfied that the persons named in the said directions are now the owners, subject only to a possible variation of my decision pursuant to an application made under a liberty to apply specified in Parts III and IV of this Schedule.

Part I: the Burnhope Unit

1. For the reasons set out under the headings: (a) Residue Part, decision, (b) Burnhope Peat Moss, Quarries, (c) Burnhope Area 10, (d) Burnhope Area 12, and (e) Burnhope other allotments, I shall direct the registration as the owner of (a) the Residue Part being the Area west, southwest and south of the line marked (approximately) A B C D E F G H J K L M and N on the Burnhope Decision Plan (the BDP west and east, pages 8 and 9 of this decision) including all the parts of the Burnhope Unit on the west, southwest and south off such Plan; (b) the Area of





the Burnhope Unit on the Award Map map marked "for Public Peat Moss Common Quarries etc" and being the Area delineated and marked "9 Yellow" on the BDP east; (c) the Area delineated and marked "10 White" on the BDP east; (d) the Area delineated and marked "12 White" on the BDP east; and (e) the other allotments being the parts of the Burnhope Unit which on the Burnhope Decision Plan east and west are both north, northeast or east of the said line C D E F G H J K L M N, and south, southwest and west of the Areas "7 Yellow hatched Blue", "12 White" and "13 White": of the Public Trustee as trustee of the statutory trusts applicable thereto under paragraph 2 of Part V of the First Schedule to the Law of Property Act 1925; PROVIDED that as regards the said Areas 10 White and 12 White this paragraph is subject to any further decision a Commons Commissioner may make on application made under the relevant liberty to apply specified in Part III of this Schedule.

2. For the reasons given under the headings: Burnhope Area 1 and Burnhope Area 2, I shall direct the registration as the owner of the Areas on the BDP east delineated and marked "1 Black" and "2 Black": Mr William Rutherford Walton of Blackcleugh, Wearhead.

3. For the reasons set out under the heading: Burnhope Area 3, I shall direct the registration as the owner of the Area on the BDP east delineated and marked "3 White", the Public Trustee as trustee of the statutory trusts for sale applicable thereto under subparagraph (4) of paragraph 1 of Part IV of the First Schedule to the Law of Property Act 1925, the persons beneficially interested therein being or including the successors in title of Joseph Norman Rutherford, John Lloyd Rutherford and Durham County Water Board under such heading mentioned.

4. For the reasons set out under the heading: Burnhope Area 4, I shall direct the registration as the owner of the Area on the BDP west delineated and marked "4 White": the Public Trustee as trustee of the statutory trusts applicable thereto under subparagraph (4) of paragraph 1 of Part IV of the First Schedule to the Law of Property Act 1925, the persons beneficially being or including the successors in title of Joseph Norman Rutherford, John Lloyd Rutherford, John Joseph Harrison, Sarah Jane Watson, Mary Hannah Heslop, Mary Elizabeth Coulthard, Reine Florence Allison, Ella Rae Peart and John Harrison Walton (all now deceased) under such heading mentioned.



5. For the reasons set out under the heading: Burnhope Area 5, I direct the registration as owner of the Area on the BDP east delineated and marked "5 Yellow": Mr William Rutherford Walton of Blackcleugh, Wearhead, Mrs Olive Peart of Eastville, Wearhead, Mr George Leonard Peart of Six Darque, Wearhead, and Mr Alfred Lloyd Peart of Eastville, Wearhead as trustees under the statutory trusts for sale applicable thereto under the conveyances dated 16 December 1957, 19 December 1958 and 13 March 1965 under such heading mentioned.

6. For the reasons set out under the heading: Burnhope Area 6, I shall direct the registration as the owner of the Area on the BDP east delineated and marked "6 Black": Mrs Janet Lonsdale of Pry Hill Farm, Wearhead as surviving trustee of a deed of gift dated 17 March 1977 endorsed on a conveyance dated 11 July 1968 under such heading mentioned, the trusts of which are for the benefit of herself and the persons entitled under the will of her husband Charles Russell Lonsdale who died 17 September 1979.

7. For the reasons set out under the headings: Burnhope Area 7, Burnhope Area 8 and Burnhope Area 11, I shall direct the registration as the owner of the Areas on the BDP West delineated and marked "7 Yellow hatched blue", "8 Yellow" and "11 Green-yellow/white": Bracken Bank Lodge Limited of Lazonby, near Penrith, Cumbria: PROVIDED that as regard the Area 11 Green-yellow/white this paragraph is subject to any further decision which a Commons Commissioner may make on application under the relevant liberty to apply specified in Part III of this Schedule.

8. For the reasons set out under the heading: Burnhope Area 13, I shall direct the registration as owner of the Area on the BDP east delineated and marked "13 White": Northumbrian Water Authority of Regent Centre, Gosforth, Newcastle upon Tyne, NE3 3PX: PROVIDED that this paragraph is subject to any further decision which a Commons Commissioner may make on application under the relevant liberty to apply specified in Part III of this Schedule.

#### Part II : The Moss Unit

1. As being clerical mistakes or errors arising from an accidental slip or omission, I shall correct the decision dated 23 April 1985 and made by the then Chief Commons Commissioner in this matter: (a) on lines 1, 12 and 17 of page 2 by substituting "Esther Peart" for "Elizabeth Peart"; (b) on line 1 of page 4 by substituting "1½" for "10½"; and (c) on line 24 of page 4 by substituting "John Harrison for 2 stints" for "John Coulthard for half a stint".



2. The Chief Commons Commissioner having, as stated in his 1985 decision, been satisfied that Mr W R Walton is the owner of Moss Plot Nos. 2, 7, 9, 14 and 16, I shall direct the registration of Mr William Rutherford Walton of Blackcleugh, Wearhead, as the owner of Moss Plot Nos. 2, 7, 9, 14 and 16 as delineated and marked on the Moss Decision Plan (being page 5 of this decision).
3. The Chief Commons Commissioner having in his 1985 decision said that the title to the undivided shares in Moss Plots Nos. 1, 5, 6, 8 and 11 had been proved and that each such plot was now vested in the Public Trustee under sub-paragraph (4) of paragraph 1 of Part IV of the First Schedule to the Law of Property Act 1925, I shall direct the registration of the Public Trustee as the owner of Moss Plots Nos. 1, 5, 6, 8 and 11 as delineated on the said Moss Decision Plan his ownership being under the said sub-paragraph (4).
4. For the reasons set out under the heading: Moss Plots 3 and 4. I shall direct the registration as the owner of Moss Plot 3 as delineated and marked on the said Moss Decision Plan Bracken Bank Lodge Limited of Lazonby, near Penrith, Cumbria AND I shall direct the registration as owner of Moss Plot 4 as so delineated and marked the said Bracken Back Lodge Limited and Mr Malcolm Maddison and Mrs Wendy Maddison both of Middle Burnt Hills, Lane Head, Weardale as (all three) trustees of the statutory trusts for sale applicable thereto under the conveyances of 17 August 1869, 12 August 1953 and 18 June 1976 under such heading mentioned.
5. For the reasons set out under the heading: Moss Plots 10 and 13. I shall direct the registration as the owner of Moss Plots 10 and 13 as delineated and marked on the said Moss Decision Plan: Mr William Rutherford Walton of Blackcleugh, Wearhead.
6. For the reasons set out under the heading: Moss Plots 12 and 15. I shall direct the registration as the owner of Moss Plot 12 as delineated and marked on the said Moss Decision Plan: Mrs Olive Peart of Eastville, Wearhead, Mr George Leonard Peart, Six Dargue, Wearhead and Mr Alfred Lloyd Peart of Eastville, Wearhead as trustees of the trusts for sale declared by an assent dated 9 January 1980, made by themselves and under such heading mentioned AND I shall direct the registration as the owners of Plot 15 as delineated and marked on the said Moss Decision Plan: Mr William Rutherford Walton of Blackcleugh, Wearhead, the said Mrs Olive Peart, the said Mr George Leonard Peart and the said Mr Alfred Lloyd Peart as trustees of the statutory trusts for sale arising consequentially on the conveyances of 16 December 1957 and 19 December 1958 under such heading mentioned.



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Part III : Liberty to apply, special

1. Subject as stated above under the heading Burnhope Area 10, any person concerned to prove ownership of the Burnhope Area "10 White" as delineated and marked on BDP east is at liberty to apply.
2. Subject as stated above under the heading Burnhope Area 11, any person concerned to prove that the Burnhope Area "11 Green-yellow/white" as delineated and marked on BDP west is not all owned by Bracken Bank Lodge Limited is at liberty to apply.
3. Subject as stated above under the heading: Burnhope Area 12, any person concerned to prove that the Burnhope Area "12 White" is not included in the Burnhope Unit Land and, Section that for this or any other reason I should not have given any decision about the ownership of this Area, is at liberty to apply.
4. Subject as is stated above under the heading Burnhope Area 13, any person concerned to prove that Burnhope Area "13 White" as delineated and marked on BDP east is not owned by the Northumbrian Water Authority is at liberty to apply.
5. Any application under this Part of this Schedule should be made within THREE MONTHS of this decision being sent out to those concerned and otherwise as specified under the heading: Final.

Part IV : Liberty to apply, general

1. As to errors or mistakes in the delineations on the Burnhope Decision Plan (pages 8 and 9) of this decision or any other matters appearing thereon which ought to be corrected, any person concerned is at liberty to apply.
2. As to mistakes or errors which arise from an accidental slip or omission or which ought to be corrected without putting the persons concerned to the expense of an appeal, any person is at liberty to apply.
3. Any application under this Part of this Schedule should be made within THREE MONTHS of this decision being sent out to those concerned and otherwise as specified under the heading: Final.



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Part V : Costs

For the reasons set out under the heading: Final, I do not think fit to make any order as to costs.

Dated this 21st \_\_\_\_\_ day of October \_\_\_\_\_ 1988.

A. A. Baden Fuller

Commons Commissioner