



## COMMONS REGISTRATION ACT 1965

Reference No. 11/U/19

In the Matter of Ireshope Moor, Stanhope,  
Wear Valley D., Durham

DECISION

This reference relates to the question of the ownership of land known as Ireshope Moor, Stanhope, Wear Valley District (formerly Weardale Rural District) being the land comprised in the Land Section of Register Unit No. CL.7 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.

The Rights Section of this Register Unit contain 32 entries which I have summarised in the First Appendix hereto. These registrations being undisputed became final on 1 October 1970. Entries Nos. 1-16 are of grazing rights each to a limit of so many stints; such stints amount altogether to 104 and 23/36 stints.

Following upon the public notice of this reference the persons named in the second column of the said Appendix excluding (4) Mr J.C. Carrick, (5) Mr H. Coulthard and (10) Mrs C. Milburn but including Mrs C.M. Coulthard, claimed, in respect of the stints set out in a letter dated 21 December 1972 from their solicitors, a freehold interest in a portion of the Moor subject to the right of the other stintheolders thereover. 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 30 April 1974. At the hearing the said persons who as above mentioned claimed a freehold interest were represented by Mr L. Pattinson, solicitor of Geo. W. Hodgson & Angus Solicitors of Stanhope. From the evidence given it appeared that (3) Mr J.G. Carrick had by a conveyance dated 1 January 1970 conveyed his stints to (3) Mr J. Carrick, that (10) Mr C. Milburn had by a conveyance dated 6 April 1971 conveyed her land to (14) Mr G.R. Rowell and that Mrs C.M. Coulthard is under a grant dated 21 January 1969 one of the personal representatives of (5) Mr H. Coulthard (he died intestate on 14 May 1968).

Mr Pattinson referred me to the Weardale Park and Forest (Stanhope) Inclosure Act 1799 (39 Geo. 3 cap. lxxix), and produced a certified copy of the relevant parts of the Award dated 29 September 1815 made under the 1799 Act and now held in the Durham Chancery Records. Evidence was given by (11) Mr F. Peart, (1) Mr C. Birkbeck and (13) Mr K. Robinson, and also by Mr Pattinson himself; in the course of their evidence they produced the documents (among others) specified in the Second Appendix hereto, being documents by which the stints were conveyed or otherwise dealt with. On 2 May, I inspected the land ("the Unit Land") comprised in this Register Unit, it having been agreed that I might do so unattended.



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The Unit Land is known as Ireshope Moor, and is a tract of (according to the Register) about 1,020 acres, in, and near the head of, Weardale. The southwest and southeast boundaries of the Unit Land follow (approximately perhaps) the line of the watershed between the Rivers Wear and Tees, the Unit Land being there more than 2,000 feet above sea level. It is intersected by numerous streams (Broad Sike, West Grain, Cutthroat Sike, Pencil Cleugh, Grooves Cleugh, Frances Cleugh, and Deep Cleugh) which join together to become Ireshope Burn (this flows out of the Unit Land to the northeast). The northwest boundary and northeast boundary of the Unit Land are straight lines at a right angle to each other about  $1\frac{1}{4}$  miles and  $1\frac{1}{2}$  miles long respectively.

Mr Pattinson claimed that every stint carried an individual portion of the soil of the Unit Land in shares proportionate to the number of stints held, that accordingly the persons ("the Claimants") who he represented are the owners in common of the Unit Land, and that having regard to the Law of Property Act 1925 (this Act, among numerous other alterations in the law, abolished ownership in common of a legal estate in land, and provided how legal estates before the Act held in individual shares were after the Act to devolve), I should direct the registration of the Public Trustee as owner of the Unit Land, so that it would in accordance with the Act be held by him on trust for the Claimants. Mr Pattinson relied on the documents specified in the Second Appendix as showing the title of the claimants to the stints, and on the 1799 Act, the 1815 Award, and the other evidence below mentioned as showing that each stint carried a share of ownership. He referred me to Harris and Ryan on Common Land (1967) paragraphs 1-17, 1-19, 1-52 and 1-53. Mrs J.L. Drury, Assistant Keeper (manuscripts) of the Palaeography Department of the University of Durham, on the day after the hearing referred me to the articles on "Commons" in Jacob's New Law Dictionary (1782 edition) and in Blackstone's Commentaries (1768 edition) Book III chapter 16 and to the meanings given to the word "Stint" in the Oxford English Dictionary volume X (1970 edition). Subsequently Mr Pattinson wrote a letter to me, the relevant parts of which are in set out the Third Appendix, and in which he offered to obtain for me if I would like it, copies of such of the documents mentioned as might appear to be material.

A submission, similar to that made in this case by Mr Pattinson, was made to me on 21 February 1974 in respect of Longton Out Marsh, Little Hoole and Longton South Ribble District, Lancashire; when writing my decision in that case (the reference and date are 20/U/81 and 15 July 1974), I had in mind the circumstances of, and the helpful submissions made by Mr Pattinson in this case. I shall arrange for Mr Pattinson and Mrs Drury and anybody else concerned with this case to have a copy of my decision in the Longton case, and I need therefore do no more than record that for the reasons set out in that decision, I am of the opinion:- (A) There is now, or at any rate was before the 1925 Act, a form of ownership ("combined grazing and soil ownership") recognised by law \* under which persons can have rights to graze cattle (or other animals) by virtue of which they together own the land and at the same time can own the land in common by virtue of which they each have a right to graze cattle

\* Note: To the statutes and authorities mentioned in my decision, I may add that this form of ownership is I think recognised in section 101 of the Lands Clauses Consolidation Act 1845 and in paragraph 3 of Schedule 4 of the Compulsory Purchase Act 1965 and that Lord Goddard emphasised that a new species of incorporeal hereditament cannot be created at the will and pleasure of a landowner; *Paine v. St. Neots* (1938) 4 All E.R. 592; see SC (1939) 3 All E.R. 812.



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(or other animals). (B) The following considerations are relevant to the recognition of such as ownership:- (i) the mere fact that the rights of grazing are called "cattle gates" provides no evidence that the owners are tenants in common of the land over which such rights can be exercised; (ii) the mere fact that a right of grazing is described as a cattle gate is no evidence that the persons entitled are not also entitled to an interest in the soil; (iii) grazing or any other act for the better enjoyment of the pasture by the grantee of a cattle gate cannot be relied upon as supporting a claim of ownership; (iv) where there has been an inclosure award and the conflict is between the Lord of the Manor who was the owner before the Award and persons taking under an allotment, the position depends on the construction of the award; the Lord may after the award retain his interest in the legal estate; or contra, the award may extinguish every estate and interest of the Lord; (v) that a cattle gate is in a deed described as part of a manor is some evidence that the ownership of the soil is in the Lord; (vi) generally the principles of law applicable to determine whether in relation to any particular piece of land a combined grazing and soil ownership exists are the same as those applicable to determining the existence of any other estate or interest in land; the relevant deeds must be considered along with the evidence as to the nature of the land and as to its use; and (viii) although in a deed or other instrument each individual expression is probably capable of being applied to a right of common (not including an interest in the soil), upon the whole reading of the instrument it may be proper to conclude that all the expressions taken together show that a corporeal hereditament<sup>being</sup> dealt with rather than an incorporeal hereditament". And (C) when a combined soil ~~and~~ grazing ownership exists before the 1925 Act, the legal estate in the Land by paragraph 2 of Part V of the First Schedule of the 1925 vests in the Public Trustee, but so that (stating the effect of the parahraph shortly) each person continues to have rights of user corresponding to that which would have subsisted if the tenancy in common had remained subsisting.

I now apply the principles outlined above and in my said decision to the evidence in this case.

The 1799 Act recites:- "... there are within the Park and Forest of Weardale and Parcel of the Manor and Parish of Stanhope ... certain Stinted Moors and Stinted Pastures, containing ... (25,000 acres) ... And ... the ... Lord Bishop of Durham ... is the Lord of the Manor of Stanhope aforesaid, and the said Lord Bishop ... is ... entitled to the Mines of Lead and Lead Ore, as well opened as unopened, within and under the said several Stinted Moors and Stinted Pastures: And ... the said Lord Bishop and also Francis Tweddell Esquire, ... (~~the~~ other persons named) ... and several other Persons, are the Owners and Proprietors of the Lands and Grounds lying within the several Stinted Moors and Stinted Pastures, subject to the Right of the said Lord Bishop ... to the Mines of Lead and Lead Ore as well opened as unopened within and under the same ...". By the 1799 Act it is (among other things) enacted (Section XVIII) that the Commissioners shall set out "such Part and Parts of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively as shall in the judgement of the said Commissioners appear to be best situated and most capable of Cultivation and Improvement to be divided and allotted as hereinafter mentioned, and they are hereby required to estimate ... the Extent and Value of the Right and Estate of the several Person or Persons ... in the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively, and in like Manner to estimate ... the value of the soil and ground of the said Parts of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively; and the said Commissioners ... shall ... allot ... the said



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Parts of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively in the manner following ...", (section XXIII)" ... the said Commissioners ... (after the necessary Roads and Highways, Quarries, Peat Places and Watering Places shall have been deducted,) shall set out ... such Part or Parts of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively in the Part or Parts best situated and most capable of Cultivation and Improvement as they ... shall ... think proper to be ... allotted ...; and the ... Commissioners are hereby required ... to ... allot ... such Part or Parts ... unto and amongst the said Lord Bishop of Durham, Francis Tweddell ... (here follows the five names recited as aforesaid) ... and the several other Person and Persons ... Owners and Proprietors of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively ...", (section XXX) " ... after such Part and Parts of the said Commissioners ... shall deem ... to be improveable of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively shall have been set out and allotted in a manner hereinbefore directed, the Residue and Remainder of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively shall be held and enjoyed as Stinted Pasture or Pastures; and the said Commissioners ... are hereby ... required ... to estimate ascertain and fix the Number and Nature of Stints to be enjoyed upon the said Parts of the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively, and shall allot and award the Stints so to be set out upon the said Stinted Moor or Moors and Stinted Pasture or Pastures respectively as aforesaid to the said Lord Bishop of Durham Francis Tweddell ... (here follow the five names recited as aforesaid)... and the several other Persons ... having any Estate Right or Interest in the said Stinted Moor or Moors and Stinted Pasture or Pastures by this Act directed to be divided or stinted as aforesaid, in proportion to the estates, rights and interests of such several persons in to the said Stinted Moor or Moors and Stinted Pasture or Pastures so directed to be divided as aforesaid". (Section XXXI) "the said Commissioners are hereby required in their ... Award ... to set forth the nature of a Stint ... and what the same ~~shall~~ consist of, also to prescribe Rules Orders and Regulations ... to be observed in the enjoying of such stints ..." (section XXXVIII)"... the ... Award shall be binding ... upon ... every person having ... any Estate or ... Interest ... in ... the said Stinted Moor or Moors or Stinted Pasture or Pastures respectively intended and hereby directed to be divided and inclosed or stinted respectively ... and after the execution of the said Award ... all other Rights and Interests in lieu of such Allotment or Allotments, Stint or Stints shall be made and set out as aforesaid shall cease and determine and be for ever extinguished ..." (section XLXI)" ... the said Bishop of Durham shall have ... and enjoy ... the Mines of Lead and Lead Ore as well opened as not opened within and under the said Stinted Moors and Stinted Pastures hereinbefore directed to be severally divided or stinted respectively ... as he ... might have done in case this Act had not been made". (Section LXI) ... it shall be lawful for the several Owners and Proprietors of the several Allotments on the said Stinted Moors and Stinted Pastures to dig for win and get Peats Turves and Coals Freestone and Limestone, Clay and Slates in and upon such Parts of the Stinted Moors and Stinted Pastures respectively as may not be divided and inclosed, but to be stinted as afcresaid ..."

By the 1815 Award the Commissioners under the heading "Ireshope Moor" <sup>After determining</sup> (that 21 persons (counting a ~~four~~ holding as one) therein named were then entitled to cattle gates or stints in or upon the Moor as therein stated (the stints so stated amounted altogether to 307), and after allotting the Parts of the said Moor which were intended to be thereby divided and inclosed among such 21 persons as therein mentioned; ~~continued~~ "all which said several allotments herebefore by us set out ... constitute and form such part of the same Moor as in our judgement is most capable of cultivation and improvement, and we do hereby award order and direct that ... nine hundred and forty four acres and sixteen perches of land being the residue and remainder of the said



Ireshope Moor which is not hereinbefore set out and allotted by us as aforesaid and being so much and such part of the same Moor as in our judgement is least capable of cultivation and improvement shall for ever hereafter be and remain as and for a stinted pasture and shall continue to be stinted and co-pastured occupied and enjoyed in future by the said several and respective claimants his/her or their heirs successors or assigns, accordingly to the number of stints or cattle gates parts or shares of a stint or cattle gate hereinafter particularly mentioned and set forth ...". Then follow the names of 20 persons (the same as the 21 above mentioned with the omission of the name of one person who was entitled to 4 out of the 307 stints: I assume that this omission was a clerical error) who were allotted stints or parts of a stint equal to one third of their original holding, such newly allotted stints amounting altogether to 101 stints.

From the plan of Ireshope Moor annexed to the 1815 Award, I identify the 944 acres 16 perches thereby continued as a stinted pasture with the Unit Land (1,020 acres) as marked on the Register map. There are slight differences in the boundary, particularly on the southeast and southwest, where the land is now wild and open. In the absence of any evidence about the differences, on what I saw on my inspection, I consider that any conclusions I reach as to the ownership of the 944 acres 16 perches can properly be applied to the whole of the Unit Land.

I am concerned to consider whether I can from the 1779 Act and the 1815 Award determine whether the allottees of the 101 stints newly thereby allotted held the "residue and remainder" in combined grazing and soil ownership.

The claimants have by their registrations under the 1965 Act established a right to exercise rights of grazing as registered; practically this is all any of them at the present moment need. So whether they have in addition rights as owners of the soil (the question I am now considering) is or may be of no immediate practical consequence, the value of such additional rights may in present circumstances be very small. But such rights might become of value; although the lead mines have not for many years been worked (there are on the Unit Land the remains of many such mines) and are perhaps never likely to be re-opened, there is a chance that other workable minerals will be found; some distance down the valley ~~fluorspar~~ is being worked; near at hand there is a cement works using the local limestone; mineral investigations now being undertaken by the Government may result in some unexpected discovery. Further, persons walking over the Unit Land often have little knowledge of sheep, and by their lack of consideration cause injury and damage; such persons might be more easily controlled by the stintheolders if they were in law owners of the land. On my inspection I saw near Grass Hill Causeway Road (a track crossing and near the northwest boundary of the Unit Land) a shooting box (as marked on the Register map) and some butts; these appeared to have been recently used, and it seems to me that the shooting may be of value. I have no evidence about the shooting, and nobody before me claimed to be interested in it; accordingly in this decision I have treated the use made of the Unit Land for shooting as altogether irrelevant.

At the date of the 1779 Act and the 1815 Award, the Unit Land would I think have appeared much as it does now, except that the lead mines would I suppose be then being worked and perhaps there would then be no sign of any shooting. The adjoining land at that time would ~~like~~ like the Unit Land now is, not have been inclosed; the Award Plan indicates that such uninclosed land extended very nearly to the Turnpike Road (now the A 689 from Stanhope to the top of Weardale and beyond).



In the circumstances as they existed in 1799 it is I think unlikely that those responsible for the Act and the Award subsequently made, once they had dealt particularly with the lead mines, would have been concerned or bothered much about the ownership of the soil; so ~~that~~ it may perhaps be somewhat unrealistic to seek to discover their intention. Nevertheless the Act and Award I think contains some important indications. From the 1799 Act I infer that the Bishop was not the owner of the soil as Lord of the Manor of Stanhope; if he had been the recitals would have been quite differently expressed; if as Lord of the Manor he had been entitled to the soil he would have owned all the minerals and there would have been no need to mention lead particularly. In the Act sometimes a distinction is made between the "soil and ground" of parts of the lands to be inclosed and "Estates ... etc" of the persons interested in the "Stinted Moor ... etc"; but there is no suggestion anywhere that anyone had any interest in any part of the Moor etc "subject" to the rights of the stinholders. The recital of the ownership of the Bishop, Francis Tweddell, five named persons and of others is more consistent with the land being owned by them as, rather than being owned by them subject to rights of, stinholders; the Bishop would have I suppose have been the owner in the ordinary way of some land in Weardale and his tenants would graze the Moors, so that in this capacity the Bishop could be the owner of ~~the~~ stints. The Act makes no provision for an allotment to any owner of the soil in right of his ownership of the soil as such as distinct from his ownership of a stint. An essential part of the scheme of the Act appears to be that part of the Moor would continue to be stinted and yet the Act makes no special provision for the ownership of this part. The 1815 Award when allotting parts of the Moor intended to be inclosed and when directing who shall have stints the part intended to remain uninclosed (apart from a clerical error above mentioned) ~~make~~ no distinction between the persons interested, and in particular contains no allotment of any part of the land intended to be inclosed in respect of any persons ownership of the soil. Further the Award contemplates that the stints shall thereafter "occupied and enjoyed".

Although the language of the Act and the Award is consistent with the stints thereby set out being incorporeal hereditaments, reading the Act and the Award as a whole I conclude that those concerned contemplated that the stinholders were before the Act and would after the Award continue to be entitled (or alternatively at least would after the Award become entitled) to a corporeal hereditaments. I conclude therefore that under the 1815 Award those who thereby became entitled to stints over the Unit Land held them in combined grazing and soil ownership.

Having reached this conclusion, it is unnecessary for me to consider the interesting question raised by the evidence of Mr Peart whether the entries in the Land Tax Assessments (copies of which he produced) for the years 1802, 1803, 1817 and 1824 can be identified with persons who before and after the Award owned stints on Ireshope Moor and that because there was no change in their assessment following the 1815 Award, it followed that throughout the period of these assessments they held corporeal hereditaments. Further having reached this conclusion, I declined Mr Pattinson's offer to obtain for me the documents mentioned in the Third Appendix; ~~could not I~~ <sup>they</sup> think affect my conclusion based on the 1799 Act and the 1815 Award; although such documents are of considerable intrinsic interest, I would not I think be justified in putting the Claimants to the expense of providing me with copies for this reason only.



To give effect to Mr Pattinson's contention as to the present ownership of the Public Trustee, it is not I think necessary for me to consider what each claimant has shown a title to ~~the~~ stints as set out in 1972 letter; if I had to be satisfied as to the title of each claimant, maybe I should make some requisitions about some of the documents listed in the Second Appendix. I have no reason to suppose that the claimants could not deal with these requisitions, but I make no finding as to the ownership of each claimant of the stints he claims because in my view all I need to consider is whether the evidence about the stints as now occupied and enjoyed shows that the Unit Land is still, or was at least up to the commencement of the Law of Property Act 1925, held in the same combined grazing and soil ownership as I have concluded resulted in 1815 from the Award then made.

The 1815 Award contains regulations to be applicable to the stinted pastures therein set out, e.g. Any person with more cattle or stints upon the said stinted pasture than therein set out must pay a penalty to the herd and/or inpounder; such herd and/or inpounder must be appointed by the majority present at a meeting of the occupiers for the time being of the stints. Further the Award directed that for preventing disputes as to the nature of a stint" ... each and every horned beast such as are commonly called black cattle above two years shall be reckoned and accounted one stint, that each and every mare and gelding above two years old should be reckoned two stints, that five sheep above one year old shall be reckoned and accounted one stint, that eight lambs under one year old shall be reckoned and accounted one stint, that each and every colt or filly from half a year old to two years shall be reckoned and accounted one stint and that each young beast commonly called black cattle under two years old be accounted half a stint". The Award further directed that the occupiers of the stints shall be liable to such rules orders and regulations respecting the depasturing thereof as should be made by the majority of the occupiers of the stints at any meeting to be held as therein provided.

Mr Birkbeck who has farmed since 1930 and owned Earnwell Farm since 1964, in the course of his evidence said in effect:- He had been secretary of the Ireshope Moor Stint-holders Association for the last 12 years. They met every year on the Friday on or before 13 May. As secretary he had a lot of documents relating to meetings some of which went back for nearly 200 years. He produced (i) a stint bill dated 1798 endorsed "We the proprietors of Ireshope Moor do agree that any person having 10 stints or under shall be allowed to have 1 stint over and above 10 to have only 2. This to take date from 21 May 1799"; (ii) an agreement dated 30 March 1805 "We the proprietors of Ireshope Fell this day appoint Mr Thos. Emerson and Mr George Watson as sole conductors of roads, on the said Fell ... whatever expens~~ive~~ ... according to the number of stints belonging to each Proprietor"; (iii) an agreement dated 30 March 1805 "We the proprietors of Ireshope Fell agree to pay Joshua Dawson £5 for keeping a good Bull ... for the purpose of Bulling the Cows grazing on the said Fell ...; (iv) an agreement dated 12 November 1806: "We the proprietors of Ireshope Fell do agree that the grass let between November 12th and 12th May is to be 2d per stint, whatever cattle is put on by any of the proprietors that is not given in before November 12th is to pay 6 ~~per~~ stints and ~~to~~ go to the Informer".

Mr Peart who is 66 years of age and has resided for 44 years at Wam Farm (very near to and in part adjoining the Unit Land) said in effect:- The stintheolders have always contributed to the cost of fencing the Moor and he produced letters dated 1936 showing that the Ecclesiastical Commissioners contributed to the cost of the fence between the Unit Land and Burnhope Moor. All those who claimed at these proceedings, be entitled to stints, exercised their stints. He remembered that some time ago horses were stinted; and



at one time 10 geese counted as one stint; now it is always sheep (formerly Scotch now Swaledale), four sheep being reckoned as one stint. Under the surface of the Moor is mostly peat; on the top are rushes and so forth and of course grass. In practice each farmer being a stinthead puts his sheep together on one part of the Moor which is called "his heft". The right to put sheep anywhere on the Moor is accepted. Sheep are commonly left out on the Moor all the year round although they may be brought in by reason of a storm or for extra feeding etc.

Of the conveyances mentioned in the Second Appendix, all (except No. 19, which did not, expressly include any stint) described the stints conveyed in some such words as "two stints or cattlegates and one half of another stint or cattlegate in or upon Ireshope Moor". In some of the conveyance the stints or cattlegates were described as "held" and/or as "occupied" (e.g. Nos. 22, 23, 24 and 25). The 1928 abstracted conveyance No. 5 offered when No. 4 was made) includes a declaration to the effect that the cattlegate and stints thereby conveyed should include a share in the land and any statutory trust applicable under the Law of Property Act 1925, but the 1955 conveyance (No.4) contains no such declaration. The 1936 conveyance is the only one describing the stint or cattlegate in Ireshope Moor expressly as having been "allotted" ... under the Weardale Park and Forest Enclosure Act". Mr Pattinson said that in this area, land was formerly held in customary tenure and conveyed" according to the ancient and laudable custom of tenant right used and allowed within the Park and Forest time out of memory of man", but this expression (so I understood) was applied to land generally and not to cattlegates or stints particularly. He also produced an indenture dated 20 November 1756 which after conveying some fields and 15 gates or stints in Ireshope Fell included "a rateable part of the soyl upon any division thereof.

The Second Appendix conveyances considered by themselves do not I think indicate with any distinction that the cattlegates mentioned include a share in the soil. But the conveyances when considered with the oral evidence of Mr Birkbeck and Mr Peart do in my opinion show that the cattlegates or stints now enjoyed on or over the Unit Land are substantially the same as those set out by the 1815 Award. The circumstance that the Award provides for 101 stints at the rate of 5 sheep per stint and that the registration under the 1965 Act provides for 104 23/36 at 4 sheep per stint and the possibility that the stinting may in other respects be now different from what it was when the 1815 Award was made, does not I think prevent me now concluding that the present ownership of the Unit Land is still the same as that provided by the 1815 Award.

My conclusion is supported by the absence of any claim at this hearing by the Bishop of Durham or the Church Commissioners as Lord of the Manor of Stanhope or by anyone other than the Claimants, and also by the participation of the Church Commissioners in some of the conveyances mentioned in the Second Appendix without any express exception or reservation of soil ownership.

From this conclusion it follows that upon the legal considerations above set out that the Unit Land at the commencement of the Law and Property Act 1925 became vested and is still vested in the Public Trustee. There was no suggestion that the Public Trustee has ever been asked to act.

For the above reasons I am satisfied that the Public Trustee is the owner of the land, and I shall accordingly direct the Durham County Council, as registration authority, to register the Public Trustee as the owner of the land under section 8(2) of the Act of 1965.

I am required by regulation 30(1) of the Commons Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.



FIRST APPENDIX

Entry No.	Name	Land to which right attached	Description of right	Stintag
1	Mr C. Birkbeck	Earnwell Farm	graze 42 sheep or 10 cattle	10½
17	"	"	cut & take peats	-
2	Mr J.P. Bowes of Laneshill	O.S. Nos. 1594 & 1608	graze 2 sheep or ½ beast	½
8	"	"	cut & take peats	-
3	Mr Jesse Carrick	Ireshope Plains Farms	graze 48 sheep or 12 cattle	12
9	"	"	cut & take turfs & peats and to take stone for building & repairing stone walls	-
4	Mr John George Carrick	High Hotts Farm	graze 11 sheep or 3 cattle	2.2/3
20	"	"	cut & take turfs and peats and take stone for building & repairing of stone walls	
5	Mr H. Coulthard	Low Burn	graze 50 sheep or 12 cattle	12½
21	"	"	cut & take turfs & peats and take stone for building & repairing walls	
6	Mr T.D.H. Dawson (tenant)	Gate House Farm	graze 25 sheep or 6 cattle	
22	"	"	cut & take peats	
7	Mr T.E. Dawson	Dallison's Field Walls Pasture & Mary's Pasture	graze 14 sheep or 3 cattle	3½
23	"	"	cut & take peats	
8	Mrs O. Featherstone of Ireshope Plains	C.S. Nos. 1709, 1710 & 1711	graze 11 sheep or 2 cattle	2.2/3
24	"	"	cut & take peats	
9	Mr J.W. Gardiner	Hole Farm	graze 5 sheep or 1 beast	1.1/3
25	"	"	cut & take peats	
10	Mrs C. Milburn of Old Vicarage	O.S. Nos. 1323, 1589, 1690 & 1693	graze 4 sheep or 1 beast	1
26	"	"	cut & take peats	

1	Mr F. Peart	(a) High Wham (2.2/9)	graze 68 sheep or 17 cattle	17.5/36
		(b) High Rigg & Rigg (5)		
		(c) Whitehills (2½)		
		(d) Wham (7.5/12)		
7	"	"	Turbary & Piscary	3
2	Mr T.N. Peart	(a) High Ling Riggs (1)	graze 12 sheep or 3 cattle	
		(b) High Wham (2)		
8	"	"	cut & take peats and take minerals and take fish	
3	Mrs A. Robinson of Ling Riggs Messrs T. & K. Robinson of Low Ling Riggs	O.S. Bo. 1510, 1609, 1600, 1597, 1598, 1531, 1530, 1596, 1586, 1587, 1320, 1321, 1322, & 1318	graze 48 sheep or 12 cattle	12
9	"	"	cut & take turfs & peats and take stone for repairing walls	
4	Mr G.R. Rowell of High Rigg Farm	O.S. 1327, 1572, 1579, 1561, 1562, 1560, 1556, 1557, 1326 & 1367	graze 20 sheep or 5 cattle	5
0	"	"	cut & take peats	
5	Mr N. Rutherford	Ires <sup>t</sup> one Farm	graze 44 or 11 cattle	11
1	"	"	cut & take turfs, and take stones for repairing of walls and also minerals	
6	Miss M.A. Allinson of Slack House	O.S. No. 1684, 1585 & 1584	graze 14 sheep or 3 cattle	3½
2	"	"	cut & take peats and also take minerals	
			Total	104.23/36

SECOND APPENDIX  
(Documents produced)

Document No.	Claimant	Register Entry No.	Document	No. of stints conveyed
1	Mr N. Rutherford (? and Mr P. Rutherford)	15	31 December 1968 conveyance on sale to claimant Second Schedule parts 1 and 4	10 1
2	Mr J.P. Bowes	2	24 March 1934 assent <i>in favour of claimant</i>	1½
3	Mr F. Peart	11(c)	15 March 1955 conveyance sale by Church Commissioners to claimant	2½
4	"	11(d)	15 March 1955 conveyance <i>ditto</i>	7.5/12
5	"	-	2 October 1928. Abstract of conveyance to Church Commissioner	-
6	"	11(b)	13 December 1960. Conveyance on sale to claimant	5
7	"	11(a)	20 October 1956 Conveyance on sale	2.2/9
8	Mr T. Robinson & K. Robinson	13	17 June 1955 Conveyance on sale to T.F. Robinson & T Robinson on Trust for themselves & K Robinson at 21 years.	9½
9	Mr A. Robinson	13	19 February 1971, Conveyance on intestacy of T.F. Robinson to claimant	3
10	T & K Robinson	14	11 November 1969 Conveyance on sale to claimants by G.R. Rowell of rights he registered	5
11	Mrs C. Featherstone	8	2 March 1970 assent by claimant as p.r. of V.R. Featherstone of one stint in favour of herself	
12	"	8	5 April 1924 Conveyance on sale to V.R. Featherstone	1
13	"	8	28 January 1966 Conveyance on sale to claimant of stint in her occupation as tenant	5/6

14	Miss M.A. Allinson	16	11 September 1948 Conveyance on sale to claimant	$3\frac{1}{2}$
15	Mr T.E. Dawson	7	12 July 1954 Conveyance on sale by Church Commissioners to Claimant	1
16	"	7	13 May 1938 Conveyance on sale to Claimant	$1.2\frac{2}{3}$ $\frac{1}{2}$
17	Mr T.N. Peart	12	12 August 1936 Conveyance on sale to claimant of stint	1
18	"	12	19 June 1941 Conveyance on sale to claimant	All held & now exercisable with <del>land</del> conveyed
19	Mr G.R. Rowell	10	6 April 1971 Conveyance on sale by G. Milburn as p.r. of W.H. Watson (he died on 10 February 1959)	No mention of stint.
20	"	10	21 January 1918 Conveyance on sale to W.H. Watson	1
21	Mrs C.M. Coulthard	5	1 May 1953 Conveyance on sale by Church Commissioner to H. Coulthard	$11\frac{1}{2}$
22	"	5	21 January 1965 letters of administration to <del>the</del> estate of H. Coulthard	
23	"	5	10 June 1959 Conveyance on sale to H. Coulthard	1
24	Mr J. Carrick	3	15 April 1955 Conveyance on sale by the Church Commissioners to the Claimant	12
25	"	4	1 January 1970 Conveyance on sale by Mr J.C. Carrick to claimant	$2.2\frac{2}{3}$
26	Mr D. Dawes (tenant of Mr W. Ridley)	6	25 March 1955 Conveyance on sale by Church Commissioners to W. Ridley	$6.1\frac{1}{3}$
27	Mr C. Birkbeck	1	28 February 1964 conveyance on sale of share to Claimant	$10\frac{1}{2}$
28	Mr J.W. Gardiner	9	28 February 1953 conveyance on sale by Church Commissioners to Claimant & Mrs A. Gardiner	$1.1\frac{1}{3}$

THIRD APPENDIX

A considerable quantity of the ancient records from Durham County and particularly records of the old manorial courts and bishopric records are held by Durham University at their palaeography department, and Mrs Drury a senior assistant in that department in charge of records was particularly interested in the problems now under inquiry, and indeed attended the hearing because of such interest.

... We now learn that Mrs Drury has made research and has turned up a bundle of correspondence (we believe about 200 letters) formerly held by the Lord Bishop at the time of the Inclosure Act ...

Amongst the papers is an expression of an opinion by Mr Robert Hopper Williamson, who appear to have been an eminent Barrister practicing at Newcastle upon Tyne, and indeed was recorder at Newcastle in 1799 (when the Inclosure Act concerned was passed) that the Stinted Moors and Pastures do not partake anything of the nature of what are usually called commons, as the proprietors claimed the soil as well as the herbage, which they hold by a freehold tenure subject to certain small rents for the Bishop of Durham as Lord of the Manor, and is also entitled to the Lead Mines under such Stinted Moors or Pastures, so that in fact they are in the nature of common pastures or parcels of land held by the proprietors in individid shares. It appears also from the correspondence of the Lord Bishop's Agents sent him a summary of an opinion expressed by Mr John Milford (at that time Solicitor General) and Mr J. Mansfield of Lincoln's Inn in 1798, to the effect that the Bishop of Durham was not entitled to any allotment as Lord of the Manor upon a division of the Stinted Pasture by an Act of Parliament in respect of any interest in the soil of these pastures, except that he appeared to be entitled to the Mines of Lead under the Stinted Pastures as well as under the copy hold and customary freehold lands and commons. If it should be proposed to extinguish the right to the Lead Mines under the Stinted Pastures, the Bishop would be entitled to compensation for the same.

Dated this 10<sup>th</sup> day of October 1974

a. a. Baden Fuller

Commons Commissioner