



COMMONS REGISTRATION ACT 1965

Reference Nos. 272/U/280-
272/U/281

In the Matter of (1) Plumstone Mountain, Camrose; and
(2) Part of Plumstone Mountain, Camrose

DECISION

This reference relates to the question of the ownership of (1) land known as Plumstone Mountain, Camrose, being the part of the land comprised in the Land Section of Register Unit No. CL.84 in the Register of Common Land maintained by the Dyfed County Council of which no person is registered under Section 4 of the Commons Registration Act 1965 as the owner: and (2) land known as Part of Plumstone Mountain, Camrose, being the land comprised in the Land Section of Register Unit No. CL.270 in the same Register of which no person is registered under the said section 4 as the owner.

Following upon the public notice of this reference Mrs Joan Iris Savoy and Mrs Joan Swaffield claimed as successors in title of J V S Bennett deceased to be the owners of the northern part of Plumstone Mountain Unit CL.84, and James Shelburne Henry and Katherine Jessie Ashbrook claimed as successors in title to James Griffiths to be the freehold owners of the remainder of Unit CL.84 and of Unit CL.270. No other person claimed to have information as to the ownership of the land.

Hearings were held on this reference by the then Chief Commons Commissioner Peter Langdon-Davies on 10 October 1989 and by the Chief Commons Commissioner Mr Martin Roth on 21 September 1993. At these hearings the claims of the claimants were put forward, but Mr Harris their Solicitor was unable to proceed until his enquiries and investigations were complete.

I held a further hearing for the purpose of inquiring into the ownership of the land at Fishguard on 19 May 1994.

At the hearing Mr Edward Harris, Solicitor, of Messrs. E Harris & Son of Swansea, appeared for all the above claimants and Mr W Lewis represented the Dyfed County Council the Registration Authority.

Ownership of parts of CL.84 has been registered pursuant to (i) a decision of Mr Peter Langdon-Davies Chief Commons Commissioner made on 25 April 1986 and (ii) a further decision of Mr Peter Langdon-Davies made on 13 October 1989. This decision does not affect those registrations, though in the course of it I shall be dealing with the "paper title" to the land comprised in decision (i) above, where ownership registration was based upon claims to possessory titles.

Plumstone Mountain is shown upon the Tithe Map for the Parish of Camrose dated 1841 (the Commissioner's copy of this map is in the Public Record Office and a photocopy is held by the National Library of Wales: the copy map which is annexed to this decision is taken from the latter's copy) as divided into two parts: the northern part parcels 1154 and 1179 is according to the Schedule, owned by Thomas Charles (sic) Reynish, and the southern part parcel 1061 (which includes Unit CL.270 as well as part of CL.84) is owned by James Griffiths.



I shall deal first with the title to the northern part, which forms part of an estate known as "Mountain Cott".

By a Marriage Settlement dated 27 March 1748/9 (sic) made on the marriage of Thomas Reynish to Catherine Crowther lands called Wolfsdale and Mountain Cott were entailed upon the children of the said marriage in tail male and thereafter in tail female. It appears that by deeds of 11/12 February 1836 those estates were conveyed to Thomas Crowther Reynish in fee simple: Thomas Crowther Reynish was, according to the pedigree produced by Mr Harris, the great-great-grandson of Thomas and Catherine Reynish, and on 17 January 1852 Thomas Crowther Reynish mortgaged Wolfsdale and Mountain Cott to J M Church and R James. The source for the above statements is the Francis Green manuscripts (copies of deeds made by Francis Green now in the County Record Office Haverfordwest). I am therefore prepared to accept that the Thomas Charles Reynish mentioned in the Tithe Map Schedule and the said Thomas Crowther Reynish were one and the same person.

T C Reynish and his younger brother Charles Crowther Reynish both died childless, and the assumption is made that the land passed to their sister Lettice, (born 1816 died 1866), who married John Bennett (born 1817 died 1884), though whether by succession under a family settlement, or by will is not clear. (I pause to remark that John and Lettice Bennett are concurring parties to a mortgage recited in the mortgage mentioned above, which indicates the former alternative). The elder son of John and Lettice Bennett survived his mother but died in 1882 before his father: their younger son Charles Vaughan Simmons Bennett died in 1898, leaving one son John Vaughan Stamper Bennett born in 1871 died 16 February 1954. I am prepared to accept that the land descended via Lettice Bennett to Charles V S Bennett and thence to J V S Bennett because (1) J V S Bennett was assessed to Land Value Duty under the Finance (1909-10) Act 1910 on Mountain Cott including (hereditament 223) land at Plumstone Mountain amounting to 61a Or.24p. and (2) on 13 November 1920 Mr J V S Bennett put up Wolfsdale and Mountain Cott estates for sale by auction at the Swan Hotel Haverfordwest. Lots 3 and 4 in that sale (both farms called Mountain Cott, respectively 79.969 a. and 43.804 a) are described as having grazing rights over Plumstone Mountain: and (3) a copy Conveyance on Sale dated 9 February 1921 made between J V S Bennett (1) and James Morgans (2) describes J V S Bennett as seised in fee simple of Mountain Cott of 43.804 acres which he conveys to the said James Morgans "together with all grazing rights appertaining to the said hereditaments.... over the lands adjoining or near to the said hereditaments known as Plumstone Mountain; and (4) the Schedule to the latter Conveyance seems to me to show that in 1901 J V S Bennett was a limited owner, but by 1921 (when the Trustees made a Conveyance in his favour) he had become absolutely entitled. On this evidence I conclude that J V S Bennett owned the northern part of Plumstone Mountain in 1921, and when he sold the two Mountain Cott Farms granted grazing rights over that part of the Mountain to the purchasers, retaining fee simple ownership himself. (The land, burdened with grazing rights, could scarcely be saleable separately). However, since the whole Mountain Cott estate with this sole exception, was sold at the auction (according to the Pembrokehire Telegraph of 17 November 1920) I can readily assume that the title deeds were no longer regarded as of any value and (despite the acknowledgement for production and undertaking for safe custody contained in the Conveyance of 9 February 1921 and doubtless other conveyances following the sale) were lost or destroyed.



In a Statutory Declaration made on 17 September 1993 Mrs Savoy deposes to her visits to Plumstone Mountain with her grandfather J V S Bennett between 1933 and 1939 for picnics on land which, Mr Bennett told her, belonged to him: this is evidence that Mr Bennett's part of the Mountain was not sold in 1920. Furthermore it seems to me as a matter of probability that had Mr Bennett sold his part of the Mountain, the likely purchaser would be a person whose land lay adjacent thereto, who - or whose successor in title - would have been likely to have come forward during the protracted course of this inquiry. I therefore find that the land in question remained in the ownership of Mr J V S Bennett until his death.

Mr J V S Bennett by his will dated 17 March 1953 left his residuary real estate to his daughter Belle Absalom: he died on 16 February 1954 and his will was proved by Midland Bank Executor and Trustee Co. on 14 May 1954. Belle Absalom died on 5 July 1986 having by her will dated 20 February 1980 left all her residue to the claimants Joan Iris Savoy and Joan Swaffield in equal shares. Her will was proved by Midland Bank Trust Company Limited on 6 March 1986. By an Assent dated 20 August 1993 Midland Bank Trust Company Limited assented to the vesting of the land in the above named claimants.

On this evidence I conclude that the claimants are the owners of the land and I shall accordingly direct the Dyfed County Council as registration authority to register Joan Iris Savoy of 24 Martingale Lane Andover Massachusetts U.S.A and Joan Swaffield of 3 West Row Wimborne Dorset as the owners of the northern part of Unit CL.84.

Turning now to the land shown on the above mentioned Tithe Map as owned by James Griffiths (the southern two-thirds of CL.84 and the whole of CL.270), the title is as follows:

James Griffiths (Mr Harris told me) married the only child and heiress of Lord Milford and from him inherited substantial land holdings in Pembrokeshire and elsewhere. A copy of an examined abstract of title shows that by his will dated 21 May 1851 James Griffiths devised his real estate to his executors (the Rev James Thomas and Richard James) to the use of Evan James Henry (grandson of his sister Mary) for life with remainder to his eldest son in tail with remainders over. James Griffiths died on 21 October 1852 and his said will was proved on 30 March 1852.

Evan James Henry's eldest son James Griffiths Henry ("J G Henry Senior") was born on 8 August 1856, and therefore attained 21 on 7 August 1877. By a Disentailing Deed dated 4 September 1877 Evan James Henry and J G Henry Senior barred the entail and resettled the land on such trusts as they should jointly appoint (no such appointment appears to have been made) and subject thereto as to one undivided moiety in trust for Evan James Henry absolutely and as to the other undivided moiety in trust for J G Henry Senior absolutely. By a Conveyance dated 5 September 1877 James Griffiths' Executors conveyed the legal estate to Evan James Henry and J G Henry Senior on the above trusts.

In the meantime, a sale of all these estates so inherited had been arranged to take place on 26 September 1877. Lot 13A in that sale consists of the Roblestone Estate of 701 acres including "The Extensive Mountain called Plumstone", which was to be offered first as a whole, and then in 6 Lots, of which Lot 19 - a farm of 41 acres called "Blackwell", a farm of 34 acres called "The Rath" and a cottage and two fields - also includes "mountain" in joint occupation of the tenants of Blackwell and The Rath extending to 165 acres 2r. 1p. The plan of the Lot clearly includes the southern part of CL.84 and



the whole of CL.270. This clearly corroborates the evidence of the Tithe Map and shows that James Griffiths was owner of the land at his death. Unfortunately the sale was not successful. The report in the "Pembrokeshire Herald" of September 28 1877 shows that Lot 13A, the Roblestone Estate, was withdrawn after the bidding reached £11,200, Lots 14 15 and 16 were bought in, and Lots 17 18 and 19 were not put up for sale. I can therefore find as a fact that in September 1877 this part of Plumstone Mountain was vested in Evan James Henry and J G Henry Senior in equal shares as tenants in common at law and in equity. J G Henry Senior died on 28 September 1883 having by his will dated 15 March 1883 left his real estate in Wales to his wife Sarah M Henry (who afterwards remarried and became Sarah M Boner) and his son James Griffiths Henry Junior equally and absolutely. Sarah was the sole Executrix and proved the will on 16 April 1884. So the half-share of J G Henry Senior is now divided into two one-quarter shares.

In the meantime Evan James Henry on 25 September 1895 made a settlement of his undivided one-half share, which he conveyed to Thomas Maxwell Henry and Francis Henry as trustees upon trust for sale in trust for his six younger children, viz. Caroline, Lucy Maxwell, Sarah, William, Thomas Maxwell and Francis in equal shares as tenants in common.

By 1903 James Griffiths Henry Junior had come of age and was at Downing College Cambridge, where he had incurred debts "not exceeding" (sic) £80. By a Deed of 31 October 1903 he and his mother conveyed their respective quarter shares to themselves and one Charles Browning Fisher, a Land Agent, upon trust for sale. The abstract does not recite the beneficial trusts, which are described only as "trusts in favour of the said James Griffiths Henry and his issue and otherwise as thereafter declared"; Sarah paid off her son's debts of £80 as part of the consideration for the said settlement. She died on 27 September 1908.

In 1922 the bulk of the Roblestone Estate was sold, but in a letter written by way of record by Francis Henry dated in 1936 he states that farms called "The Rath" and "Twmpath" were not sold. "Twmpath" was Lot 18 in the 1877 sale, and I am prepared to accept that his reference to "The Rath" is a reference to Lot 19 in that sale and includes the Henry family's part of Plumstone Mountain. The Solicitors acting for the family in 1922 were Messrs. Price and Son, and they appear to have lost or mislaid the deeds: apart from the copy examined abstract, a copy of James Griffiths' will and a copy of the Settlement of 25 September 1895, there is nothing more to go on, except that in the assessments under the Finance (1909-10) Act 1910, Plumstone Mountain is No.82 shown as 165a 3r 2p and is shown as owned by "Messrs. Henry".

Thus the position at 31 December 1925, immediately prior to the commencement of the Law of Property Act 1925, was that one undivided moiety of the land was vested in Thomas Maxwell Henry and Francis Henry on trust for sale upon the trusts of the Settlement of 25 September 1895, while the other undivided moiety was vested in J G Henry Junior and Charles Browning Fisher on trust for sale upon the trusts of the Settlement of 31 October 1903. That Act provided, in Schedule 1 Part IV, for the subjection of land held in undivided shares to a trust for sale, and Part V provided for "open spaces"; accordingly the question for my decision is, which provision of Schedule 1 Parts IV and V is applicable in this case. Since Plumstone Mountain is clearly an "open space", it seems logical to start with Schedule 1 Part V sub-paragraph 2 which reads as follows:-
"2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall



vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the court, and, subject to any order of the court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting." However, it was held in *Re Cotherstone Moor* (1961) 179 E.G.11, and in *Re Brotherton Marsh Pasture* (1965) 112 S.J.48, that the paradigm case dealt with by this provision is the "stinted pasture", i.e. a pasture owned in common by a number of persons each having defined grazing rights over the whole area. Here, however, none of the trustees had any special rights of access and user over the land "in right of" their ownership of the legal estate: on the contrary, it was the beneficiaries under the trusts who - if anyone - had rights of access and user - *Jones A E v Jones F W* 1977 1 WLR 438 C.A.

I therefore consider that Part V sub-paragraph 2 does not apply to this case.

Mr Harris's submission was that Part IV sub-paragraph 1(1) is the applicable provision, and hence that on 1 January 1926 the entirety of the land vested in the four surviving trustees of the two settlements upon trust for sale and hence that the land eventually vested in the last survivor of those four (who in the event was J G Henry Junior who died on 31 October 1963) and that his personal representative James Shelburne Henry was entitled to appoint himself and Katherine Jessie Ashbrook as trustees of the land, as he did by an Appointment dated 26 October 1993. Sub-paragraph 1(1) reads as follows:-

"(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, than -

(a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

(b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts;

subject in the case of personal representatives, to their rights and powers for the purposes of administration."

However, there are two objections to this view of the law. The first is, that the imposition on the two sets of trustees of trust duties as regards all the beneficiaries of both settlements is unlikely to have been the intention of Parliament, even though, read literally, the sub-paragraph could be so construed. The second objection is, however, that in the notes to the sub-paragraph in *Wolstenholme and Cherry's Conveyancing Statutes* 13th ed. Vol. I p.360 we find the following "It is conceived that this paragraph does not apply where A holds one moiety as trustee and B holds the other moiety as trustee (cf *Re Stanford and Warrington (Earl)* 1927 2 Ch.217, 224-233." To the same effect is *Re Hayward* 1928 1 Ch 367, where it was assumed that in such a case sub-paragraph 1(4) applied. I accordingly decide (having given Mr Harris 6 weeks in which to make submissions as to the law applicable) that in this case the entirety of the land was not vested in anybody, whether on trust or otherwise: two undivided moieties were vested in two separate pairs of trustees, which in my opinion is quite a different situation, to which sub-paragraph 1(1) does not apply.



Sub-paragraph 1(4) is in the following terms:-

(4) In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts: provided that -

(i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in more than an undivided half of the land or the income thereof;

(ii) After the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;

(iii) Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and thereupon the land shall by virtue of this Act vest in the persons so appointed (free as aforesaid) upon the statutory trusts; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees of the land, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall by virtue of this Act, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(iv) If the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed the same shall by virtue of this Act, vest (free as aforesaid) in the trustees upon the statutory trusts."

In my opinion this is the applicable sub-paragraph, and accordingly I propose to direct the Dyfed 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 Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

21st

day of

July

1994

Commons Commissioner

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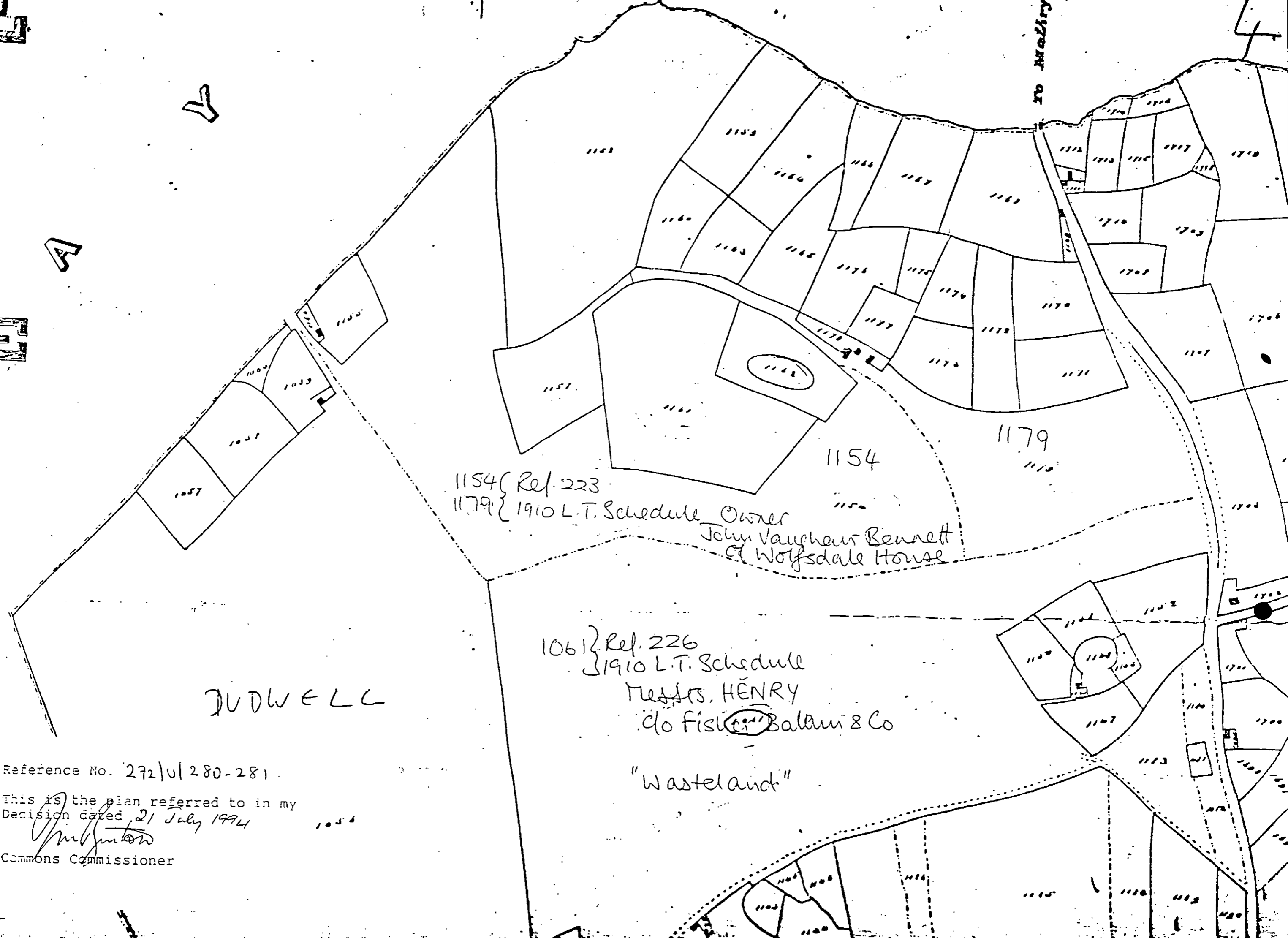
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WOLFSDALE



1154 } Ref. 223
 1179 } 1910 L.T. Schedule Owner
 John Vaughan Bennett
 of Wolfsdale House

1061 } Ref. 226
 1910 L.T. Schedule
 Messrs. HENRY
 & FISHER ⁽¹⁹⁴¹⁾ Ballam & Co
 "Wasteland"

DUDWELL

Reference No. 272/U/280-281

This is the plan referred to in my
Decision dated 21 July 1994

John G. ...
 Commons Commissioner