



COMMONS REGISTRATION ACT 1965

Reference Nos. 45/D/29
45/D/30
45/D/31
45/D/32

In the Matters of (1) Weets Hill, Brogden
and (2) part of Weets, Middop, Craven D.,
North Yorkshire

DECISION

These four disputes relate to registrations in the Register of Common Land maintained by the North Yorkshire County Council and are occasioned by Objections made as follows:- (i) D/29: Entry Nos. 5 and 13 in the Rights Section of Register Unit No. CL.54: Objection No.370 made by Mr J.R. Peel, Mr T. Carter and Mr J.W. Parsons and noted in the Register on 21 September 1970. (ii) D/30: Entry Nos. 9 and 16 in the said Rights Section of Register Unit No. CL.54: Objection No.369 made by the said Objectors and noted in the Register on 12 March 1971. (iii) D/31: Entry No. 1 in the Land Section of Register Unit No. CL.55: Objection No. 134 made by Mr T. Carter and Mrs D. Carter and noted in the Register on 12 November 1970. And (iv) D/32: Entry Nos. 2, 5, 6, 7 and 12 in the Rights Section of the said Register Unit No. CL.55: the said Objection No. 134.

I held a hearing for the purpose of inquiring into these disputes at Skipton on 4, 5 and 6 April 1974. At the hearing: (1) Mr I. Leeming of Counsel (instructed by Farnworth and Watson, Solicitors of Nelson) represented (A) T. Parkinson & Sons a firm comprising Mr Thomas Parkinson the elder, Mr Robert Parkinson, Miss Ellen Parkinson, Mr John Parkinson and Mr Thomas Parkinson (all of Coldweather House Farm and hereinafter together called "The Parkinson Firm"); (B) Mrs M.S. Cock; and (C) Mr John Parkinson, Mr Joseph Parkinson, Mr William Parkinson and Miss Alice Parkinson (all of Middop Hall Farm and hereinafter together called "Messrs Parkinson"). (2) Mr R. Hurst articled clerk with Steel & Co. Solicitors of Clitheroe represented Mr J.R. Peel, Mr J.W. Parsons and Mr T. Carter. (3) Mr. D. Carson, solicitor of Walker Charlesworth and Foster, Solicitors of Skipton represented Mr N.H. Fullalove and Mrs J.M. Fullalove. The following attended in person (not being professionally represented):- (4) Mr G. Lawson and Mrs E. Lawson and (5) Mr K. Barrett.

The land ("Big Weets") comprised in Register Unit CL.54 is a tract containing (according to the Register) 190.907 acres in Brogden parish formerly/in Skipton Rural District. The land ("Little Weets") comprised in Register Unit CL.55 is a tract containing (according to the Register) 49.464 acres, in Middop parish, formerly in Bowland Rural District.

The rights registered in the Rights Section of these two Register Units are summarised in Appendix 1. The Ownership Section of the Big Weets registration (CL.54) is blank. In the Ownership Section of the Little Weets registration (CL.55) Mr and Mrs Carter are registered as owners, and this registration being undisputed has become final.



- 2 -

The grounds stated in Objection No.370 are:- "The rights do not exist". The grounds stated in Objection No.369 are:- "The rights are excessive in number ... No.9 should not exceed 2 Horse gaits and No. 16 should not exceed 2 Horse gaits". The grounds of Objection No.134 are:- "It is not admitted that the land has been common land at the date of registration or since. It is not admitted that there are any rights of common".

At the hearings oral evidence was given by (1) Mr Thomas Parkinson the elder (2) Mr John Parkinson (of Middop Hall Farm; Messrs Parkinson are three brothers and a sister), (3) Mrs M.S. Cock, (4) Mr G. Cock, (5) Mr Lawson, (6) Mrs E.A. Peel, (7) Mr J. Parker, (8) Mrs C.M. Nicholson, (9) Mr J.R. Peel, (10) Mr J.W. Parsons and (11) Mr T. Carter. A statutory declaration made by Mr G. Parker on 9 October 1967 and a statutory declaration by Mr J. Ellison made on 10 October 1967 were produced as written evidence by them. After the hearing I inspected the land being attended part of the time by Mr Hurst and part of the time by Mr Thomas Parkinson the elder, and I had a short conversation with Mr Lawson.

The Parkinson Firm under a conveyance dated 23 January 1970 became the owners of Coldweather House Farm and accordingly succeeded to the interest in these proceedings of Mrs Hargreaves and are now concerned to support Entry No. 9 in the Big Weets Right Section and Entry No. 2 in the Little Weets Rights Section. Mr and Mrs Fullalove under a conveyance dated 26 November 1970 (produced by Mr Carson) became the owners of Newfield Edge Hall Farm, and accordingly succeeded to the interest in these proceedings of Mr Molyneux and are or could be now concerned to support Entry No.21 in the Big Weets Rights Section and Entry No.12 in the Little Weets Rights Section.

In the course of the proceedings the following concessions or agreements were made:- (i) Mr Leeming said that The Parkinson Firm were willing to reduce their claim (as successors of Mrs Hargreaves) to a right attached to Coldweather House Farm over Big Weets from 4 Horse gaits to 2 Horse gaits and submitted that this reduction disposed of Objection No.369 so far as it related to Entry No. 9 in the Big Weets Rights Section. Mr Hurst agreed and it was accepted that the figures 40 (sheep), 16 (cows), 4 (horses) and 4 (gaits) in this Entry should be halved. (ii) Mr Leeming said that having regard to section 22 of the 1965 Act he could not as regards rights attached to Cragg Farm support that part of Entry No.13 in the Big Weets Rights Section or that part of Entry No.6 in the Little Weets Rights Section which related to "leasehold beast gaits for 5,000 years" and that accordingly these words and the preceding words in paragraph 4 of the Entry relating to grazing "2 horses or 4 cattle or 20 sheep and their followers" should all be deleted. (iii) Mr Barrett said that he intended to apply for registration of two not four horse gaits and that the numbers stated in his application had been inserted by mistake; in view of this statement, Mr Hurst on behalf of the Objectors and Mr Barrett for himself agreed that I should modify Entry No.16 in the Big Weets Registration (which now reads: "To graze:- (a) 4 horses or (b) 8 cows or (c) 16 heifers or (d) 40 sheep with one lamb each over the whole of the land comprised in this register unit") by substituting for the figures 4, 8, 16 and 40, the figures 2, 4, 8 and 20 and that with this modification the Entry should be confirmed. (iv) Mr Carson said Mr and Mrs Fullalove had no objection to Entry No.2 in the Little Weets Rights Section being deleted provided it was made clear that Entry No.21 in the Big Weets Section had become final.



- 3 -

In my view I should give effect to the said agreements and concessions subject however as regards to (v) that I decline to give any decision about the finality or otherwise of Entry No.21 in the Big Weets Rights Section; the validity of such Entry is not the subject of the references I am now considering. I do not know why the said Entry being undisputed, is not in the Register recorded as having become final (is not so recorded in my copy); it may be that the registration authority have treated the Entry as still being provisional because of the outstanding objection to Entry No.12 in the Little Weets Rights Section and because Mr Molyneux's application pursuant to which both Entries were made, related both to Big Weets and Little Weets; if this be the reason then my non confirmation of the said Entry No.12 in the Little Weets Rights Section will remove this obstacle to making an entry in the Big Weets Rights Section that the said Entry No.21 has become final. I know no reason why such an entry should not now be made. I understood from Mr Carson that he accepted that I would give effect to the agreement made between him and Mr Hurst in this way. In considering the other questions arising under Objection Nos.370 and 134 in relation to Cragg Farm I have allowed for concession (ii) above.

There are two farms near Little Weets called "Newfield Edge Farm". To save confusion, I shall in this decision call that which lies across the A.682 road and is now owned by Messrs Parkinson, "Newfield Edge (Parkinson) Farm"; and that which lies a short distance to the east of the A.682 road and is now owned (exclusive of the former farm house) by Mr and Mrs Carter, "Newfield Edge (Carter) Farm".

As a result of the said concessions and agreements, the questions which in these proceedings I have to determine may be summarised as follows:- (A) Is Little Weets altogether free from rights of common as claimed by Mr and Mrs Carter as owners of the land or are there subsisting rights of common attached to (i) Coldweather House Farm (ii) Laneside Farm, (iii) Cragg Farm, and (iv) Newfield Edge (Parkinson) Farm as claimed by (i) the Parkinson firm, (ii) Mrs Cock and (iii) and (iv) Messrs Parkinson; (B) Are there any rights of common over Big Weets attached to Cragg Farm as claimed by Messrs Parkinson and disputed in the objection made by Mr Peel, Mr Carter and Mr Parsons; and (C) Are there any rights of common over Big Weets attached to Weets House (Stoops Farm) as claimed by Mr and Mrs Lawson and disputed in the last mentioned Objection.

Far the greater part of the evidence was directed to Question (A), and I will deal with that first.

The documents of title relating to Coldweather House Farm, Cragg Farm, Newfield Edge (Parkinson) Farm, Laneside Farm and Newfield Edge (Carter) Farm and Little Weets (the last two for many years having been conveyed together; the farm house is now separately owned) are so far as they seem to me relevant summarised in appendices 2, 3, 4, 5 and 6 hereto respectively. I have also summarised or noted in the appendices various other documents produced in the course of the hearing including the memorials obtained by Mr J.R. Peel, Mr Parsons and Mr Carter by searching in the Wakefield Deeds Registry.

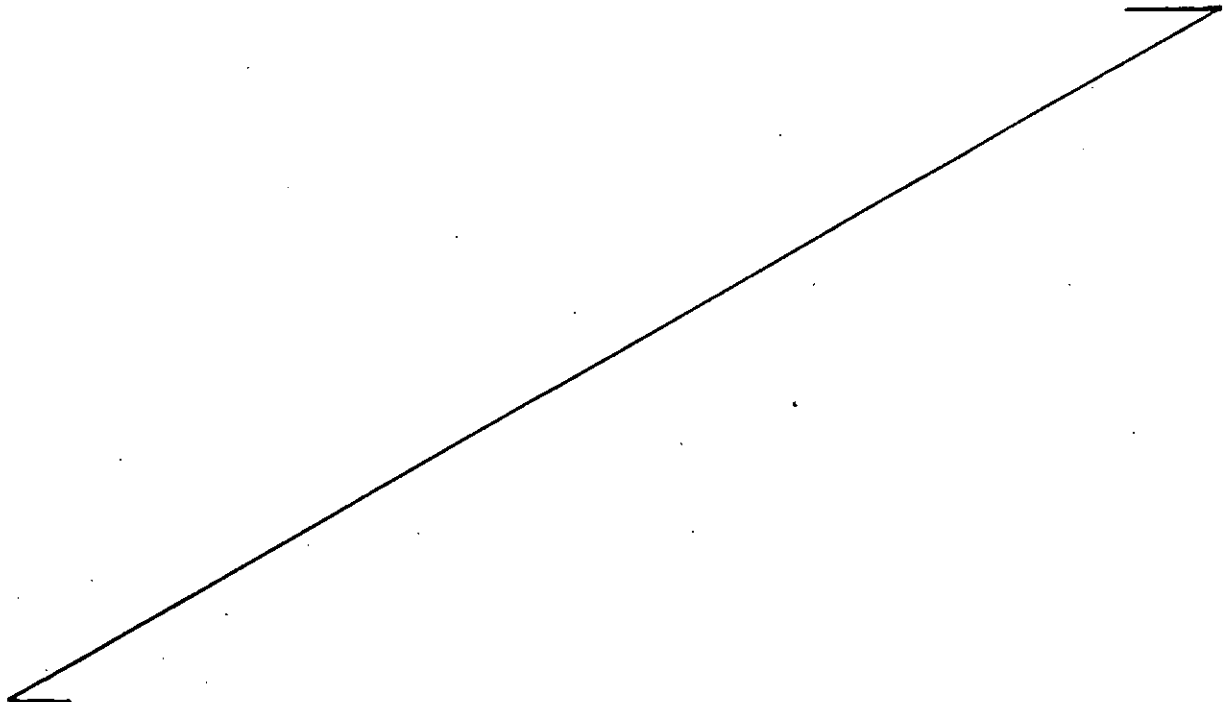


- 3A -

Of the numerous contentions made to me at the hearing, that which first gave rise to this local controversy was made by Mr Brewster (he died in 1955). In about the year 1941, he met Mr J.R. Peel and said: "You have no doubt heard people say that they have rights over my Moor; I would like you to take a look at these (pointing to a heap of documents on the table)"; Mr Peel read the top most (he told me that he did not know much about legal documents; he is a farmer) the document described the farm which Mr Brewster had bought and a Moor which Mr Peel took to be Little Weets; from then on Mr Peel believed Mr Brewster and his successors in title to be the owners of Little Weets, and that no other persons had any rights over it. On a different occasion, Mr Brewster met Mrs Cock (her mother Mrs Harrison then owned Laneside Farm) and said that he objected to her mother grazing cattle (and I suppose sheep too) on Little Weets, that if Mrs Cock produced her deeds, he would produce his (they did this), that he and Mr George Parker had gone through his (Mr Brewster's) deeds and "found this title deed relating to the Moor", and that it showed no-one but himself had any rights on the Moor; Mrs Cock and her husband looked at the title deed pointed out by Mr Brewster; she did not then accept and still does not accept that the deed showed that her mother had and that she as her mother's successor has no rights over Little Weets. Mrs Cock could not date the meeting she described; but from information I had from her and others, I infer it was about the same time as that described by Mr. Peel. I also infer that Mr Brewster at about the same time had similar meetings with the people who said "they have rights over my Moor".

I have seen Mr Brewster's title deeds (see Appendix 6). Little Weets is called "the Moor Ground commonly called the Weets". In none of the title deeds is there any reference to the Moor Ground being subject to rights of common.

As a general rule a deed by which land is expressed to be conveyed without any mention of the land being subject to the rights of any non party, is some evidence that the land was at the date of the deed held free from any such rights. But the cogency and weight of any such evidence has to be determined from the intention of the parties, to be deduced not only from the terms of the deed itself, but also from all such surrounding circumstances at the time when the deed was made, as may be relevant.





The most important surrounding circumstance in relation to any deed dealing with land is the appearance of the land when the deed was made.

1301 The highest point of Big Weets (Weets Hill, a short distance from the southwest boundary) is ~~472~~ feet above sea level and is the highest point for some miles around. On the west, north and east, the slope down is for the most part plainly visible, as also are the surrounding farms and further away the well populated area of Barnoldswick. The view is splendid. Big Weets and Little Weets are obviously Moor Ground quite distinct from the surrounding farms.

Big Weets (CL.54) and Little Weets (CL.55) as drawn on the Register map are separated by the boundary between the parishes of Middop and Barnoldswick. Big Weets (CL.54) is crossed by a well marked and apparently ancient through track ("the Old Road"). Practically Big Weets and Little Weets are divided by a wall ("the Dividing Wall") which from its north end, (near this end there is a gate "the D.W. North Gate") for about two thirds of its length until it reaches a gate ("the D.W. Central Gate") runs along the east side of the Old Road (the Parish Boundary being on the west side of the Old Road). After the D.W. Central Gate, the Dividing Wall turns southwest towards Coldweather House Farm and for this third of its length coincides with the parish boundary. At the hearing everybody assumed that the Dividing Wall was the boundary wall everywhere; I shall make the same assumption; the inclusion or non inclusion of the Old Road where it runs along the west side of the Dividing Wall is without any relevant significance.

After passing through the D.W. Central Gate, The Old Road turns southwest and leaves Big Weets through a gate ("Stoops Gate"). From there on it runs south-east, becoming by Stoops House (a few yards from Stoops Gate) a tarmacadam motor road. Turning about and going north, the Old Road leaves Big Weets and Little Weets through a gate, continues as a track for about 500 yards until it reaches a tarmacadam cross road near Laneside Farm. The Old Road is known as the Old Gisburn Road (on the north it is called "Coal Pit Lane") and the map shows it as joining the A.648 near Gisburn. Notwithstanding that the Old Road where it crosses Big Weets and Little Weets is now quite unsuitable for ordinary motor traffic (I saw a motor cycle go along it easily and a tractor would have no difficulty), I find (and this was not I think disputed) that the Old Road has from time immemorial been a public highway for vehicles and animals. The A.648 road which runs parallel with it and now carries much north-south motor traffic was at the hearing called "the New Road"; nevertheless I can I think properly assume that as a highway it has existed for at least 150 years.

The Dividing Wall when I saw it was in good repair and would keep out all but the ~~most~~ determined sheep. Mr Lawson said when he was a boy the wall was in many places flat and sheep could get through easily. Mr Carter said that there was on the gate post of the D.W. Central Gate an inscription "P DAVID" with a date at least 100 years back. When I saw the wall, there were numerous places where it had apparently been repaired, some repairs being from near ground level. The Dividing Wall is not so well constructed as the other walls enclosing Little Weets. Notwithstanding that Mr Carter said that the wall had never been lower than now to his knowledge, I prefer the evidence of Mr Lawson and conclude that during the existence of the wall there have been long periods, during which, by



- 5 -

reason of its disrepair sheep could have got through quite easily. The marks on the stone post of the D.W. Central Gate might have originally been "F DAVE 1786", equally there might be no inscription at all, no more than a casual doodle made at any time. The parish boundaries are in places incorporated in the wall and I infer that it is of substantial age; I cannot say how old; but I shall think be doing no injustice if I assume it goes back at least 150 years.

Notwithstanding the state of the Dividing Wall, with gaps from time to time as I concluded to have been, Big Weets and Little Weets should I think be regarded as having been from time immemorial two different pieces of land, over which different rights of common could subsist. Nevertheless the grass and other vegetation on Big Weets and Little Weets where they adjoin, are essentially similar, and anybody who knew that one was a common pasture would reasonably expect to find that the other was a common pasture but not necessarily with the same grazing rights. By contrast the grass near to and outside the other boundary walls of Little Weets is generally much better than that within, so that the land within could properly be described as "Moor Ground" and that without by contrast as "Farm".

Part of Little Weets when I saw it had been wired in. Mr Carter produced some documents which showed that he had, for work which he had done there in 1973 received a Hill Land Improvement Scheme grant of £420.47 (50% of the cost of lime, slag, fertiliser and seeds less £104.64 subsidy). Mr J. Parkinson, said he had telephoned Mr Carter objecting to this wiring in. I shall assume that at all times before 1972, the wired in part of Little Weets appeared much as the surrounding part now does.

The New Road is now much more important than the Old Road, so that all the farms surrounding Little Weets would now be much more concerned with vehicular access to the New Road. This would not I think have been so before 1920. On the O.S. map a track leading from Coldweather House Farm across Little Weets to the D.W. Central Gate is marked, and when I walked there, the line of such track (although now dis-used) was plainly visible. The slope of the hill is such that it is not possible from Newfield Edge (Carter) Farm to see part of Little Weets near the track, and on appearance alone it would be most extraordinary if the occupiers of Coldweather House Farm had for over 250 years resisted the obvious temptation of grazing sheep around this track.

Some of the farm houses and buildings showed signs of having been improved or abandoned during the last 100 years. Generally I conclude that the surrounding farms and farm buildings have for the last 200 years and upwards been much as they now are.

The 1762, 1871, 1891 and 1921 deeds all make a distinction between what is "farm" and what is "Moor Ground"; a distinction which as I have said above, is still evident and which I would apart from the deeds infer. The question is whether those who made the deeds, notwithstanding that they thought that the "Moor Ground" looked different from the Farm, nevertheless considered that they were as regards grazing rights by non parties legally identical.



Under the deeds the liability of those who made them was the same whether or not the land expressed to be conveyed was subject to rights of common, because none of the covenants to title therein expressed or implied could be applicable to such rights.

In recent years it has become more and more common for deeds by which land is conveyed to include a statement sometimes with particularly and sometimes in general terms of the rights of non parties then subsisting. This was not the general practice 100 years or even 50 years ago, at any rate as regards as agricultural land. It was not unusual for a conveyance of agricultural land to make no mention of rights of way and other rights which would be apparent or known to those living in the locality.

On the considerations outlined in the preceding paragraphs, I think the makers of the four deeds now under consideration would have been astonished to learn that they were thought to be saying that the Moor Ground was free from grazing rights attached to the surrounding farms; if questioned they would I think have said: "we have described it as Moor Ground, if you want to know about grazing rights, the possibility of which is plain and obvious, go round the adjoining farms and ask the occupiers". If to the above considerations, be added the circumstance that Big Weets has been (this was assumed by all at the hearing) a gaited pasture from time immemorial and that the title deeds of the farms surrounding Little Weets include references to rights over Little Weets, an ~~o~~ description to the makers of these deeds of an intention to record for posterity their considered view that the Moor Ground mentioned was free from grazing rights would I think seem to them absurd. Technically the deeds may be some evidence of the absence of such rights, but the weight of such evidence when it comes to be balanced against the weight of contra evidence from other sources, cannot I think amount to more than a few straws.

At the hearing Mr Hurst (on behalf of Mr and Mrs Carter) also relied on the matters below mentioned as showing that there are not now any rights of common over Little Weets.

Mr G. Parker in a statutory declaration made on 9 October 1967 said: "I am eighty five years of age ... there have never been any adverse rights by any farmer or other person in respect of Little Weets".

Mr Thomas Parkinson the elder said (in effect):- After leaving school (he is 59 years of age) he worked for about 7 years (he was not very precise, perhaps from 1929 to 1941) for his uncle Mr G. Parker who lived and farmed Little Middop Farm (a little to the north of Little Weets and in part on the other side of the A.682 road; it includes land around Stocks House). While working for his uncle, he took sheep onto Little Weets. On the declaration being put to him, he said his uncle put the sheep on Little Weets because he had rights and not because he had the permission of Mr Brewster; he indicated that his uncle when he made the declaration could not by reason of his age have realised what he was saying (he himself having adverse rights such as he had declared never had been).



- 7 -

Mr J. Parkinson on the first day of the hearing said (in effect):- He too on leaving school (he is 54 years of age) for 2 years worked for his uncle Mr G. Parker and took sheep onto Little Weets; he had never before heard of the declaration made by Mr G. Parker. On the second day of the hearing he produced the 1924 Particulars of Auction Sale and the 1924 Abstract of Title which I have so far as they appear to be relevant summarised in Appendix 7 hereto; he had these documents because they also related to "our own Middop Hill Hall Farm (meaning I suppose that either he or Messrs Parkinson now own it, being Lot 90 in the 1924 Particulars; Little Middop and Stocks Farm formerly owned by Mr G. Parker being Lot 94).

Mr J. Parker said (in effect):- He worked for his father after he left school (he is 58 years of age). His father (Mr G. Parker) put sheep on Little Weets regularly in July and August. Mr Brewster allowed this. They were very friendly. His father never made any payment to Mr Brewster. From time to time he said: "Tell your father to put sheep on". On being asked about the 1924 Particulars, he said he remembered his father buying Little Middop and Stocks Farm (Lot 94). There had always been disputes about who could graze on Little Weets; Mr Brewster had to stand up for his rights. He and his father had together looked at his (his fathers) title deeds at the time just before Mr Brewster got an injunction (dated 1955) against Mr Taylor. These did not specifically mention Little Weets as the 1924 Particulars did, but the deeds did show that the rights over Little Weets amounted to a twenty sixth; he and his father both thought that the rights being only a twenty sixth were not worth bothering about. His father died on 17 November 1967. As successor of his father he is now the owner of Little Middop Farm; he did not think that he had any rights over Little Weets. His father's vendor was Walter Pollard. (Mr J. Parker)

It is perhaps unfortunate that Mr J. Parker did not produce the conveyance by Walter Pollard to his father and his other documents of title to Little Middop Farm. The 1924 abstract produced to me is apparently genuine, and I infer that (i) Mr G. Parker had among his documents of title a similar abstract from the indenture of 21 October 1879 to the indenture of 15 August 1918 and knew of the 1924 Particulars, and (ii) when Mr J. Parker said his father's deeds show a right over Little Weets being only a twenty sixth he was referring to the 20/546 parts of the Edge mentioned in the indenture of 21 October 1879. The words in the abstract "Then Edge", are I think clearly a typist error for "the Edge" mentioned on the following page. The 1924 Particulars shows the boundary of Little Middop Farm almost as if it had been drawn so that Little Weets could be conveniently grazed from it; the farm includes a tapering piece which ends about 100 yards north of Newfield Edge (Carter) Farm House and which is now mostly road side verge. From what Mr J. Parker said, and from my own observation, I infer that both Mr G. Parker and Mr J. Parker identified (correctly as I think plainly appears from the below mentioned abstract) that the Edge and Little Weets were the same piece of land. In my opinion Mr G. Parker and Mr J. Parker were mistaken in thinking that the 20/546 parts (the twenty sixth mentioned by Mr J. Parker) were not worth bothering about. Even if Mr G. Parker concluded that there were no adverse rights over Little Weets he should nevertheless in his statutory declaration have qualified the statement of this conclusion by mentioning and so far as he could explaining, the 20/546 parts, the reference to Little Weets in the 1924 Particulars and the grazing he had himself done on Little Weets. I conclude therefore that as regards these proceedings his said declaration is unreliable. (1769)



Mr J. Ellison in a statutory declaration made on 10 October 1967 after saying he was the owner and occupier of Newfield Edge Hall Farm from March 1953 to March 1967 said that during such period "Walter James Brewster who was the former owner of Newfield Edge Farm and subsequent owner together with Sarah Winifred Whitham and the said John Stanley Whitham enjoyed the exclusive use of the land commonly known as Little Weets ... and that no other farmer had exercised any rights of grazing or otherwise over that land".

In the ¹⁹⁵² ~~1952~~ and ¹⁹⁶⁷ ~~1967~~ conveyances relating to Newfield Edge Hall Farm and summarised in Appendix 8 hereto Mr Ellison refers to "common rights on Little Weets now enjoyed with Newfield Edge Hall Farm". His statement in the statutory declaration "no other farmer has exercised any rights" may be true as regards himself, because in the two conveyances he is described as an electrical engineer; and it may also be true, because whether or not he had any rights, he may never have exercised them. As evidence that there were no rights (which is the purpose for which the declaration were produced in these proceedings) I consider it to be unreliable.

My conclusion that the said declarations of Mr G. Parker, Mr Ellison are unreliable, should not be regarded as reflecting on them or anyone else. Neither they nor those responsible for preparing the declarations have had an opportunity of explaining how they come to be made. Mr J. Parker's insistence that the declaration made by his father was right, was I think out of respect to his memory. Although the declarations were made before Mr and Mrs Carter purchased, it was clear from his evidence that he then knew that claims were being made that Little Weets was not free from rights such as were mentioned in these declarations.

The meetings Mr Brewster had in 1941 presuppose that up to that time many persons had been grazing sheep as he thought as of right, and that he had "found" by looking at his deeds that they might (so he thought or hoped) be wrong. He realising (farming conditions in 1941 being what they were) that it would be ~~advantageous~~ advantageous to him if they were wrong, somehow convinced himself that he had a good case. I accept the statement of his grand-daughter Mrs E.A. Peel (she is 44 years of age):- "My grandfather and my father stated at all times that nobody had rights over Little Weets as it was freehold and therefore private property". But I do not accept her statement (made in answer to a question: did your grandfather let people graze with permission?); "If he had a neighbour who was short of grass he may have told them that you could put sheep on Little Weets if you taken them off when I tell you: a neighbourly act"; this statement and other similar statements she made about grazing being with her grandfather's permission were I think deductions she made from what she had been told by her grandfather and father about the ownership position; she was unable to describe any occasion on which anybody had ever asked for or received any permission from her grandfather to graze sheep.

Mrs Cock (whose evidence I accept) said that her mother after the 1941 meeting continued to graze sheep on Little Weets and Mr Brewster and she (as Mrs Cock put it) played a cat and mouse game. Mr Cock (whose evidence I accept) said that in 1951 after the death of his mother-in-law (she died in 1949: in 1951 he started to farm Laneside Farm for his wife and has done so ever since), he put sheep on



- 9 -

Little Weets during the rest of the lifetime of Mr Brewster for about 3 weeks every year. Mr Thomas Parkinson the elder (whose evidence I accept) said that in September 1952 when he became tenant of Coldweather House of Mr Hargreaves (he died in 1963), he grazed sheep on Little Weets. Mr Parker may have decided to support Mr Brewster's claim that he could prevent anybody else putting sheep on Little Weets, but I am not persuaded that as between them it was ever accepted by Mr Parker, that he Mr Parker had no right of any kind to graze sheep there. Mrs E.A. Peel described how she helped to drive sheep onto Big Weets; she did this when her father asked her; the only sheep that she was not told to move were, those not belonging to Mr G. Parker or her father. He lived not far away at High Clough Farm and they frequently visited Mr Brewster. Mrs E.A. Peel knew her grandfather had had trouble with Mr Taylor and produced an office copy of an injunction dated 7 November 1955 which he had obtained against Blackburn County Court; she knew nothing about the proceedings. I infer that she frequently put sheep back onto Big Weets which had strayed from there onto Little Weets, but I am not persuaded by her evidence that sheep from Coldweather House Farm, from Little Middop Farm and from Laneside Farm were so put off or that Mr Brewster was ever in possession of Little Weets free from sheep being grazed there as of right by others.

Mrs C.M. Nicholson who has lived at Newfield Edge Farm since 1956 and whose father Mr J.S. Whitham was the owner from October 1956 to his death in July 1967 (he was in negotiation for the sale of the farm before he died) said (in effect):- Her father had never had any sheep of his own. Her understanding was that her father allowed Mr G. Parker (above mentioned) and three other farmers she named to graze on Little Weets, for which they paid grazing fees; and that he did not allow Coldweather House Farm, Cragg Farm, Newfield Edge (Parkinson) Farm or Laneside Farm to graze. She could not say whether her father ever put sheep off. Sheep often strayed from all the neighbouring farms onto Little Weets, and whether they were put on the Moor or jumped themselves on she did not know.

By the time Mr Whitham acquired Newfield Edge Farm (Carter) and Little Weets, the grazing rights over Little Weets had become a matter of local controversy. Mr Cock mentioned his wife's claim to graze Mr Lee the auctioneer selling on behalf of Mr Brewster's executors; Mr Whitham after he had bought told different people (so Mr Cock said, including himself) that nobody had any rights on it. Mr Cock did not agree; up to about 1957 he Mr Cock continued to put sheep on Little Weets (between 1951 and 1957 he put them there 3 or 4 times during that 7 years; but after 1957 he did not keep so many sheep and it was not worthwhile making a bother. Mr Whitham told Mr T. Parkinson (the elder); (he was then tenant of Coldweather House Farm) that he had no rights; he did not agree and continued to graze sheep on Little Weets; a man whom he thought was employed by Mr Whitham put the sheep off and when this happened Mr Parkinson did not put the sheep on again during that year but put them on again the next year. Mr Lawson who had lived at Stoops House since 1958 (which overlooks both Big Weets and Little Weets) said that he had often seen sheep from Coldweather House grazing there. Mrs Cock said that when the Moor was occupied by Mr Whitham, she and her husband became friendly with him and his daughter.



I accept that Mrs Nicholson was at the hearing trying to be as helpful as she could be; nevertheless I conclude that she had never been much interested in or concerned with the manner in which Little Weets was grazed or in the arrangements her father made about it. I am not persuaded by her evidence that Mr Whitham was ever in possession of Little Weets free from sheep being grazed as of right by others.

There was much discussion at the hearing as to whether on the deeds produced at the hearing and summarised in the appendices hereto, I ought to presume that by some grant now lost, rights of common over Little Weets had been granted.

In the Coldweather House Farm deeds (Appendix 2) the rights over Little Weets were expressed to be conveyed "subject to tithe and Lord of the Manor Chief Rent". This does not I think show that any grant which might be presumed to contain such words was conditional upon tithe or such a rent being paid.

In the Laneside Farm deeds (Appendix 5) there are references to "a certain common or stinted pasture called the Weets". The Farm is wholly in Middop. The most convenient way to take sheep from it to either Little Weets or Big Weets is to go along the track (the Old Road) through the gate leading into Little Weets, and then to go from Little Weets into Big Weets through the D.W. North Gate. It would be natural with sheep to stop on Little Weets and leave them to graze there without bothering to take them onto Big Weets. Mr Cock said that this is what he did. In the deeds relating to the adjoining Newfield Edge (Carter) Farm (Appendix 6), Little Weets is described as "the Weets" (without the word "Little"). In my opinion the words above quoted from the Laneside Farm deeds refer to Little Weets and not to Big Weets. I read the words "in one fifteenth part (the whole in fifteen equal parts to be divided)" in the 1949 conveyance as referring to the "House" next mentioned and not to the "Stinted pasture" previously mentioned; the fifteenth is not I think a reference to two out of the 30 horse gaits mentioned (as stated below) by Mr J.R. Peel in his evidence about Big Weets.

By the Newfield Edge Hall farm deeds (Appendix 8), the common rights expressed to be conveyed are stated in two parts: (i) cattle gates on the Weets in Barnoldswick, and (ii) other common rights on Little Weets (and Big Weets); I accept the argument that Weets in Barnoldswick cannot properly be read as extending to Little Weets which is in Middop; but in my view it does not follow that the "other" common rights secondly described must be rights other than grazing, such as for example taking stone.

I am impressed by the references in the 1614 and 1621 indentures (Appendix 4) and in the 1879 indenture (Appendix 7) to the division of the Edge into 546 parts, the parts dealt with amounting to 60, 22 and 20 respectively. The Edge is described as in Middop. I identify the Edge so described with Little Weets, because the 1769 abstract so identifies it, because Mr G. Parker (as I understood from the evidence of Mr J. Parker) thought the words in the 1879 indenture referred to Little Weets, because the occurrence of the words "Newfield Edge" in the names of the farms surrounding Little Weets suggests the Edge is nearby and because on my inspection I could imagine what other land the words could possibly refer to.



- 11 -

It seems to me both possible and likely that at some time before 1614 there was some instrument by which the farms in Middop now surrounding Little Weets were all set out from what was then waste land and each was given a share in the Moor remaining, which thereupon became a divided (or stinted or gaited) common as indicated in the 1614 and 1621 and 1879 indentures. Provision for the same sort of pasture may be found in some of the local Inclosure Acts most of which were passed in a period commencing about 1740; general provision for such a pasture was made by section 13 of the Inclosure Act 1803 (now repealed) and is now made by sections 113 et seq of the Inclosure Act 1845.

The existence of some such pre-1614 grant would explain and be confirmed by the references to Little Weets in the Coldweather House Farm deeds (Appendix 1), in the 1924 Particulars relating to Little Middop and Stocks Farm (Appendix 7) and in the Newfield Edge Hall Farm deeds (Appendix 8). It would also explain and be confirmed by the Newfield Edge (Parkinson) Farm deeds (Appendix 3); I read the 1769 indenture as including in the lands conveyed to the curate of Horton, the 82/542 parts mentioned in the 1769 abstract; I read the reference in the 1902 deed to "Weets Common adjoining or near the said premises" as a reference to Little Weets (a right over Big Weets without any right over Little Weets would in relation to the land conveyed be inconvenient and require some particular description); the description of the right as "a pasture right for two horses" does not I think prevent my conclusion that the right being conveyed was essentially the same as the 82/542 parts conveyed in 1769. Similarly I think a pre-1614 deed would explain and be confirmed by the Laneside Farm deeds (Appendix 4); the description of the right as being "two horse gaits" is not I think inconsistent with the right having originated as some number out of 542 parts.

Mr T. Parkinson (the elder) said (in effect):- In September 1952 he became a tenant of Coldweather House Farm of Mr H. Hargreaves (he died in 1963) and of his widow Mrs H.M. Hargreaves. In 1970 he and his children (the Parkinson Firm) purchased Coldweather House Farm; but he continued to farm it. During all this time he grazed sheep on Big Weets and Little Weets. After his brothers and sisters (Messrs Parkinson) purchased in 1962 Cragg Farm and Newfield Edge (Parkinson) Farm (Mr E. Marsden was tenant of the latter until November 1965), he rented from them the parts of these two farms which are east of the A.648 road and which can conveniently be farmed with Coldweather House Farm. Sheep from these parts were grazed on Big Weets and Little Weets along with those from Coldweather House Farm. While Mr Brewster was the owner of Newfield Edge (Carter) Farm, he (Mr Parkinson) had no trouble. While Mr Whitham was the owner he told Mr Parkinson that he had no rights and his man put the sheep off as above described. When Mr and Mrs Carter became owners in 1967, sheep of the Parkinson firm were dogged off; Mr Parkinson and Mr Carter gave conflicting accounts of this incident. It is clear that by then both knew they differed as to their legal rights, and no useful purpose would be served by my making any finding about it. Whatever may now be the legal position, the evidence of Mr Parkinson satisfies me that in 1952 he took possession of grazing rights over Little Weets then reputed to be attached to Coldweather House Farm.



Mrs Cock said (in effect):- She has been living at Laneside Farm for almost 60 years; she went to school from there (she must I suppose have left on her marriage in 1936 and returned in 1951, but I infer~~red~~ she visited her parents frequently). The farm was owned successively by her father Mr C.H. Harrison (the conveyance to him dated 1915; he died in 1936) and her mother Mrs A.M.M. Harrison (she died in 1949) and herself; and they (or her husband Mr G. Cock on her behalf) always farmed it. From her earliest years sheep were taken from the farm onto Little Weets. After the 1941 meeting with Mr Brewster her mother and she continued to do so as above described. On her evidence I am satisfied that her father, her mother and she were successively in possession of a grazing right over Little Weets reputed to be attached to Laneside Farm.

Mr E. Marsden who was up to 1965 tenant of Newfield Edge (Parkinson) Farm, at the auction Newfield Edge (Carter) Farm conducted by Mr Lee on behalf of the executors of Mr Brewster; stood up (so Mr Cock said in his evidence) and told the auctioneer and the others then present (in effect) that they at Newfield Edge (Parkinson) Farm had always run sheep on Little Weets. Mr J. Parkinson said that after they bought the farm in 1962, Mr Marsden enjoyed grazing rights both on Little Weets and Big Weets.

On the considerations set out in the preceding paragraphs, I conclude that I should presume that a grant was made sometime before the year 1614 such as I have above stated to be possible and likely, and that at least rights attached to Coldweather House Farm, Newfield Edge (Parkinson) Farm and Laneside Farm (and perhaps to others of the farms above mentioned) were subsisting in and for many years before 1941.

Although Mr Brewster and after him Mr Whitham and Mr Carter may have persuaded Mr G. Parker as owner of Little Middop and Stocks Farm and possibly persuaded others who owned other farms to abandon their rights over Little Weets, I am not persuaded that any of them ever persuaded the owner and occupiers of Coldweather House Farm, Newfield Edge (Parkinson) Farm or Laneside Farm to abandon their rights over Little Weets. The circumstances in which a right of common can properly be said to have been abandoned are set out in *Tehidy v. Norman* 1971 2QB. 528 at page 553, and in relation to the three last mentioned farms such circumstances do not in my opinion here exist. It follows that the rights which I have found subsisted over Little Weets before 1941 still subsist.

As regards Cragg Farm:- It is both possible and likely that by the grant which I have presumed to have been made before 1624, a right of common attached to Cragg Farm over Little Weets was granted. However the deeds relating to this farm (Appendix 3) do not refer to any such right; the words in the 1836 indenture "a certain pasture or common called the Weets" are qualified by the words "in the Parish of Barnoldswick"; I cannot I think properly regard the words when so qualified as extending to Little Weets in the parish of Middop, however inconvenient it may be for sheep to be taken to Big Weets from Cragg Farm otherwise than by crossing over Little Weets and however probable it may be that sheep put on Big Weets on their way there grazed on Little Weets. I have no evidence as to the circumstances in which the injunction obtained by Mr Brewster against Mr Taylor on 7 November 1955 was made; I do not therefore regard it as a judicial decision which has any conclusive effect between Mr and Mrs Carter and Messrs in title of Mr Brewster and Messrs Parkinson as successors in title of Mr Taylor; I have no reason to suppose that any claims such as were put in issue before me were then determined; the production of the 1955 order



establishes I think no more than that as against Mr Brewster, ~~and~~ Mr Taylor for some reason (which may have been his lack of title or which may have been something quite different) had no right to graze on Little Weets. However I have the evidence of Mr J.R. Peel and Mr Parsons that before Cragg Farm was in 1962 purchased by Messrs Parkinson they saw no sheep from there grazed on Little Weets. In 1962 the Parkinson firm were (as I have stated above) entitled to graze on Little Weets sheep from Coldweather House Farm and I cannot therefore I think attach any weight to the evidence of Mr Thomas Parkinson the elder that after 1962 the sheep he put on Little Weets included sheep from Cragg Farm. In short, I have no evidence at all that at any time grazing rights over Little Weets were ever enjoyed by or considered to be attached to Cragg Farm. I conclude therefore that the rights of common attached to Cragg Farm over Little Weets as now registered do not exist.

As to the "Right to take stone" registered as attached to Laneside Farm and Newfield Edge (Parkinson) Farm:- Mr J. Parkinson explained that stone is needed from time to time to rebuild walling, but they had never taken any off Little Weets. Mrs Cock described how many years ago her father with the help of Mr Brewster built a coal place and wash house (an addition to Laneside Farm House, so I understood) with stone from Little Weets. On the Ordnance Survey map "Old Quarries" are marked. On my inspection, I walked over these: they were for the most part overgrown; although it is obvious that stone had been taken, it was also obvious that any quarrying must have been long ago. In the Laneside Farm deeds (Appendix 5), there is no express reference to any right of common other than Horse Gaits (the 1788 memorandum mentions turbarry). In the Newfield Edge (Parkinson) Farm deeds (Appendix 4), there is in the 1902 conveyance a reference to other common rights, and of course the 82/546 parts might include rights other than grazing. Although a right to take stone is recognised by law, it must be reasonable and certain, see Heath v. Deane 1905 2 Ch.86. I am unable on the evidence summarised above to formulate a right which would fulfil both these conditions, and I conclude therefore that over Little Weets it does not exist.

I have no evidence that anybody had ever done anything which could be ascribed to the existence of any "Right of Estovers" (similarly registered). There is now no timber or underwood on Little Weets, and I think it unlikely that there was ever any sufficient quantity to be the basis of any grant actual or presumed. I conclude therefore that these rights do not exist.

Notwithstanding that under the pre-1624 grant which I have presumed was made, it is most unlikely that the grazing rights attached to these three farms was exactly equal or exactly accorded with the rights as now registered, the registration ~~now~~ I think in this respect stand unaltered. The description is near enough to the "pasture right for 2 horses annually" and "the two horse gates", by which such rights were described in the 1902 conveyance mentioned in Appendix 4 and in the 1787 indenture and the 1915 conveyance mentioned in Appendix 5, and to the "two horse grasses" recited in the 1849 indenture mentioned in Appendix 2. Further the grounds of objections do not expressly challenge the description of the rights, and it would I think be unjust on this point not to allow the Parkinson firm, Messrs Parkinson and Mrs Cock to take advantage of regulation 26 of the 1971 Regulations. In the result, as regards Little Weets, the objection of Mr and Mrs Carter wholly fails as to the land not being common land, wholly fails as regards the right (grazing only) registered as attached to Coldweather House Farm, and partly fails as regards grazing rights registered as attached



- 14 -

to Newfield Edge (Parkinson) Farm and Laneside Farm. Notwithstanding that they have been successful wholly as regards the rights registered as attached to Cragg Farm and partially as regards the rights of estovers and taking stone registered as attached to Newfield Edge (Parkinson) Farm and Laneside Farm, they are in my opinion in substance the losers in these proceedings because their purpose from first to last has been to establish that Little Weets is free of rights of common, a purpose which at very considerable cost and expense has been defeated by the Parkinson Firm, Messrs Parkinson and Mrs Cock. Further in my opinion the inclusion in the register of a rights attached to Cragg Farm and of rights of estovers and of taking stone attached to Newfield Edge (Parkinson) Farm has not prolonged or increased the costs of these proceedings in any significant way. I shall therefore order Mr and Mrs Carter to pay the Parkinson Firm, Messrs Parkinson and Mrs Cock the costs which they have incurred in respect of the proceedings relating to Register Unit No. CL.55 (Little Weets) occasioned by Objection No. 134 and I shall direct that such costs be taxed according to scale 4 prescribed by the County Court Rules 1936 as amended.

On looking over Little Weets, I was impressed by the possibility (which Mr Carter had considered) of increasing its productivity. I fear my decision will not make this easier. I can only hope that some arrangement can be reached by which the ancient rights which I have found still exist can be exercised in modern conditions for the greater benefit of all concerned, and regret that the law does not make it easier than it does for this to be arranged.

As to Question (B):-

Mr J.R. Peel who has lived at Lower Clough Farm Brogden since 1939, was for 25 years from 1949 chairman of the Parish Meeting and attached to whose farm is registered 1 horse gait over Big Weets said (in effect):- Mr T. Briggs, a local farmer used to keep a register of the Big Weets Stinted pasture, which recorded the number of gaits and the names of those who owned them. The register was found to be missing in 1945. He, Mr Peel had never seen it, but he understood that 30 gaits were registered. The number registered under the 1965 Act (I make it about 38) suggests that *Some persons have registered more than they should have.* He had never seen any sheep from Cragg Farm grazing on Big Weets.

Mr J.W. Parsons who had lived at Manor House Farm Brogden for 28 years and attached to whose farm is registered 10½ gaits said (in effect):- He is the largest Stint holder. No sheep from Cragg Farm had been grazed on Big Weets, at least not before Messrs Parkinson (in 1962) acquired it.

Mr J.R. Peel and Mr J.W. Parsons explained that the number of gaits registered under the 1965 Act were too many for the Moor. They had with Mr Carter spent three days at Wakefield Deeds Registry searching for deeds which might show that the rights reference were in excess of those set out or mentioned in the deeds. They had not during their searches discovered the 1836 deed mentioned in Appendix 3.



- 15 -

Save that Mr Thomas Parkinson the elder had since Messrs Parkinson in 1962 acquired Cragg Farm farmed the parts let to him with Coldweather House Farm and taken sheep from the land he was farming onto Big Weets, there was no evidence of an exercise of any grazing right over Big Weets attached to Cragg Farm as such.

The information I have about Big Weets Stinted pasture does not amount to much, and I can I think only decide this dispute on narrow and technical considerations.

I infer that the gaits over Big Weets as originally granted were attached to the surrounding farms in Barnoldswick but that over the years some of these gaits were purchased in gross (the 1746 indenture for example) by persons whose farms were in Middop. The 1836 indenture treats Cragg Farm as one property and the gaits thereby conveyed as separate property. By being conveyed together the gaits do not in my view become appurtenant to the Farm; the building mentioned in the 1836 indenture as being appurtenant to the gait must I think have been something quite small on Big Weets itself.

Although the gaits comprised in the 1836 indenture were conveyed with Cragg Farm by the 1960 conveyance by Mr Taylor to Mr Schofield, they were not expressly so conveyed in the 1962 conveyance by Mr Schofield to Messrs Parkinson. Nobody explained this omission, and I must I think assume that it was intentional. If the gaits were in the 1962 conveyance was made "reputed to appertain to the land ... or occupied or enjoyed with or reputed or known as part or parcel of or appurtenant" to it they would under section 62 of the Law of Property Act 1925 passed by the conveyance to Messrs Parkinson. There was no evidence that the gaits came within the words above quoted from the section.

I conclude therefore that Mr Schofield for some reason decided not to include the gaits in his sale to Messrs Parkinson either because he had sold them to somebody else, or wished to retain them or had concluded that they did not exist. → I conclude that the gaits as registered by Messrs Parkinson do not exist.

As to Question (C):-

Mr G. Lawson said (in effect):- He had lived in Stoops House Farm (Weets House Farm) since 1958. His rights over Big Weets were different from all others; as far as anybody could remember anybody who lived at Stoops House had been allowed grazing on Big Weets for keeping the gate (Stoops Gate) shut. There was nothing about this on his title deeds.

Mrs Cock, on being recalled at the request of Mr Lawson, said (in effect):- The farmer who occupied Stoops House (she knew it as Weets House) had one horse gait for closing the gate. This was so right back to her school days.

Mr J.R. Peel said:- "It was always said that the occupier of Weets House has one gait allowed for closing the gate. I think he also had a portion of walling to keep in repair. This is all heresy, handed down as local custom".



- 16 -

In R. v. Whixley (1786) 1 T.R. 137, the High Court considered a case stated by West Riding Quarter Sessions: " ... (R. Potter) ... occupied two cattle gates ... in a stinted pasture in consideration that the said (R. Potter) ... being a carpenter should keep in repair this common highway gate which the persons having a right to have cattle gates were bound to sustain". Lord Mansfield C.J. held that the cattle gate occupied by R. Potter was a tenement within the meaning of the Poor Act 1662. The report although very short, shows that the Court disregarded the argument that because there were persons bound to repair the highway gate, the right was only a license to depasture cattle in consideration of repairing the gate. I can I think infer that the West Riding Justices thought that a conditional cattle gate such as they described was regular in the county and that the Lord Chief Justice accepted its legality.

It is obviously advantageous to the owners of horse gaits on Big Weets that the Stoops Gate should be kept shut (whether or not they are liable to anybody for any animals straying through) for if the gate was left open, animals might stray for miles to the south. I conclude therefore that there is attached to Stoops House (or Weets House) one horse gait exercisable as long as the owner or occupier keeps the gate in repair and shut against animals straying from Big Weets.

For the following reasons I do not think fit to make any order as to the costs of the proceedings relating to Big Weets. It was in the interest of all those entitled to gaits that somebody should investigate as well as they could the registrations which had provisionally been made and that there should be public inquiry into such rights. Although Mr J.R. Peel and Mr Parkinson have by their objection got for the benefit of all the gait holders, some alteration in the 4 entries which they challenge, I cannot I think fairly hold the persons responsible for the entries either collectively or separately responsible for the costs. Even if I had jurisdiction, I cannot in the absence of notice to all the gait holders, charge them collectively with the costs and expenses incurred by Mr Peel and Mr Parsons. All I can say is that I think they should be (as I am) grateful for the trouble and expenses taken and incurred by Mr J.R. Peel and Mr Parsons. I have no note of why Mr Carter joined in the objections relating to Big Weets; whatever his reasons, he is I think as regards costs relating to the Big Weets proceedings, in the same position as Mr J.R. Peel and Mr Parsons.

Because I am dealing differently with the costs relating to the Big Weets proceedings and the Little Weets proceedings, I shall in the order I make about the costs of the Little Weets proceedings direct how items incurred by the Parkinson firm, Mrs Cock and Messrs Parkinson in respect of both proceedings shall be apportioned.

Summarising as a whole this decision, for the reasons appearing above I give effect to my conclusions as follows:-

As regards Register Unit No. CL.54 (Big Weets):-

I confirm Entry No. 5 (Stoops House) in the Rights Section with the modification that there be added in column 4 the words:- "Conditionally upon the owner or occupier of the land (Weets House) described in column 5 keeping Stoops gate in repair and shut against animals so as to prevent them from straying from the land comprised in this register unit". I confirm the Entry No. 9 (Coldweather



- 17 -

House Farm) in the Rights Section with the modification that the figures 40 (sheep) 16 (cows) 4 (horses) and 4 (gait) be halved. I refuse to confirm Entry No. 13 (Cragg Farm) in the Rights Section. And I confirm Entry No. 16 (Mr Barrett) in the Rights Section with the modification that there be substituted for the figures 4 (horses) 8 (cows) 16 (heifers) and 40 (sheep) the figures 2, 4, 8, and 20.

As regards Register Unit No. CL.55 (Little Weets):-

In the Land Section I confirm Entry No. 1 without ^{any} modification. In the Rights Section I confirm Entry No. 2 (Coldweather House Farm) without any modification. I confirm Entry No. 5 (Laneside Farm) with the modification that in column 4 the words "Right of Estovers" and "Right to take stones" and the paragraph numbers "1, 2 and 3" be deleted. I refuse to confirm Entry No. 6 (Cragg Farm). I confirm Entry No. 7 (Newfield Edge Parkinson Farm) with the modification that in column 4 the words "Right of Estovers" and "Right to take stones" and the paragraph numbers "1, 2 and 3" be deleted. And I refuse to confirm Entry No. 12 (Newfield Edge Hall Farm).

I shall order Mr and Mrs Carter to pay costs as hereinbefore specified.

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.

APPENDICES (over)

TURN
OVER



-18-

APPENDIX 1

| <u>Entry No.</u> | <u>Applicants</u> | <u>Gaits (horse)</u> | <u>Rights other than grazing</u> | <u>If over other Weets</u> | <u>Attached to</u> | <u>Final or objected to</u> | <u>Remarks</u> |
|------------------------------|--|----------------------|----------------------------------|----------------------------|---------------------------------------|------------------------------------|---|
| <u>A. Big Weets - CL. 54</u> | | | | | | | |
| 1 | H.E. Duckworth A. Moorhouse | 1 | - | | Kirk Clough Farm, Brogden | F | |
| 2 | H.E. Duckworth T. Whittaker | 1 | - | | Jack House Farm, Brogden | F | |
| 3 | H.E. Duckworth A. Moorhouse | 2 | - | | Horrocks House Farm, Brogden | F | |
| 5 | G. Lawson E. Lawson | 1 | - | | Weets House Farm, Blacko | 0.370 Rights do not exist | Numerical description of rights equals 1 horse gait |
| 6 | J. Smith W. Pilkington | 1 $\frac{3}{4}$ | - | | Brogden Hall Farm, Barnoldswick | F | |
| 7 | J.R. Peel | 1 | - | | Lower Clough Farm, Brogden | F | |
| 8 | J.W. Parsons M. Parsons | 10 $\frac{1}{2}$ | - | | Manor House Farm, Brogden | F | |
| 9 | H.M. Hargreaves (succeeded by the Parkinson firm) | 4 | - | Also CL 55 | Coldweather House Farm, Middop | 0.369 right excess- ive | |
| 12 | M.S. Cock | 2 | Estovers & to take stones | Also CL 55 | Laneside Farm, Middop | ?F See CL 55 | Numerical description of rights equals 2 gaits |



- 19 -

| <u>Entry No.</u> | <u>Applicants</u> | <u>Gaits (horse)</u> | <u>Rights other than grazing</u> | <u>If over other Weets</u> | <u>Attached to</u> | <u>Final or objected to</u> | <u>Remarks</u> |
|------------------|--|----------------------|-------------------------------------|----------------------------|--|-----------------------------|--|
| 13 | John Parkinson Joseph Parkinson William Parkinson Alice Parkinson (Messrs Parkinson) | 2 | Estovers & to take stones | Also CL 55 | Cragg Farm Middop | 0.370 Rights do not exist | Registered description 4 beast gaits for 2 horse gait Registered for leasehold 5000 year beast gaits not claimed at hearing |
| 14 | John Parkinson Joseph Parkinson William Parkinson Alice Parkinson (Messrs Parkinson) | 2 | Estovers & to take stones | Also CL 55 | Newfield Edge Farm Middop | ?F See CL 55 | Numerical description equals 2 gaits |
| 16 | K. Barrett | 4 | | | Gross | 0.369 Rights excessive | Numerical description 4 gaits |
| 21 | G. Molyneux (Succeeded by Mr and Mrs Fullalove) | $\frac{1}{2}$ | Graze 1 cow & 5 sheep and followers | Also CL 55 | Newfield Edge Hall Farm, Middop | ?F See CL 55 | Numerical description equals $\frac{1}{2}$ gait |
| 28 | J. Hindley AR M.K. Hindley S.L. Mason | $1\frac{3}{4}$ | Graze $12\frac{1}{2}$ sheep | | Hesketh Farm Barnolds-wick | F | Numerical description as $1\frac{3}{4}$ gait approx. |
| 32 | S.F.G. Burniston | $3\frac{3}{4}$ | Including in gait 75 geese | | Far Newfield Edge Farm | F | Numerical description equals $3\frac{3}{4}$ gaits |
| 35 | W. Livesey | 1 | | | Higher Clough and Coppey House Broughton | F | |



- 2 -

| <u>Entry Applicants</u> <u>No.</u> | <u>Gaits</u> <u>(horse)</u> | <u>Rights other</u> <u>than grazing</u> | <u>If over</u> <u>other</u> <u>Weets</u> | <u>Attached</u> <u>to</u> | <u>Final or</u> <u>objected</u> <u>to</u> | <u>Remarks</u> |
|--|--------------------------------|---|--|--------------------------------------|---|---|
| <u>B. Little Weets - CL.55</u> | | | | | | |
| 2 Mrs H.M. Hargreaves (succeeded by the Parkinson firm) | 2 | - | has 4 gaits over Big Weets | Coldweather House Farm Middop | 0.134 Not common land and no rights | |
| 5 M.S. Cock | 2 | Estovers & to take stones | Also CL 54 | Laneside Farm Middop | Ditto | |
| 6 John Parkinson Joseph Parkinson William Parkinson Alice Parkinson (Messrs Parkinson) | 2 | Estovers & to take stones | Also CL 54 | Cragg Farm Middop | Ditto | Description 4 beast gait equal 2 horse gaits. Registratic of 4 lease- holds 5000 year gait not claimed at the hearing |
| 7 John Parkinson Joseph Parkinson William Parkinson Alice Parkinson (Messrs Parkinson) | 2 | Estovers & to take stones | Also CL 54 | Newfield Edge Farm Middop | Ditto | Numerical description equals 2 gaits |
| 12 G. Molyneux (succeeded by Mr and Mrs Fullalove) | $\frac{1}{2}$ | graze 1 cow or 5 sheep and followers | Also CL 54 | Newfield Edge Hall Farm Middop | Ditto | Numerical description equals $\frac{1}{2}$ gait |



- 21 -

APPENDIX 2

Coldweather House Farm (Parkinson firm)

- (1) An indenture dated 27 February 1849 being on the outside endorsed "Reassignment on redemption of a Mortgage affecting an Estate called Cold Weather Houses in the Township of Brogden in the West Riding of the County of York", contains a recital that by an indenture dated 9 September 1847 after reciting that J.T. Oddie by his will dated 18 March 1826 devised to F. Pearson and to R.H. Brown "All his Freehold and real Estate situate at Middup in the Parish of Gisburn in the West Riding aforesaid with two horse grasses in and upon an undivided pasture called the Weets ..." certain shares therein mentioned were assigned to F. Pearson.
- (2) A conveyance dated 18 August 1898 by which G.M. Robinson and another conveyed to R. Foulds, J.H. Foulds, R. Foulds, lands described as follows:- "ALL that estate or farm called "Coldweather House" situate in the township of Middop in the said West Riding and containing ninety six acres three roods and thirty seven perches and now in the occupation ... and comprising and consisting of the closes or parcels of land set out in the Schedule hereunder written Together with all rights easements and appurtenances thereto belonging and in particular all rights of common and other privileges on Little Weets and Weets Commons respectively subject to Tithe and Lord of the Manor's chief Rent".
- (3) A conveyance dated 1 November 1920 by which J.H. Foulds and others conveyed to H. Jackson lands described in words substantially the same as those above quoted from the 1898 conveyance.
- (4) A conveyance dated 4 May 1931 by which H. Jackson and another conveyed to H. Hargreaves lands described in words substantially the same as those above quoted from the 1898 conveyance.
- (5) An assent dated 30 June 1965 by which Mrs H.M. Hargreaves as personal representative of H. Hargreaves (he died 20 November 1965) assented to the vesting in herself in fee simple of Coldweather House as described in the 1931 conveyance "TOGETHER with all rights easements and appurtenances thereto belonging and in particular all rights of common and other privileges on Little Weets and Weets Commons respectively BUT subject to tithe and Lord of the Manor's Chief Rent".
- (6) A conveyance dated 23 January 1970 by which Mrs H.M. Hargreaves conveyed to the Parkinson Firm the estate or farm called Coldweather House Farm describing it by reference to the said conveyance of 4 May 1931 and concluding with the words "TOGETHER with all rights easements and appurtenances thereto belonging and in particular all rights of common and other privileges on Little Weets and Weets Common respectively but subject to tithe and the Lord of the Manor's chief rents".

Note:- A memorial was produced of an indenture dated 19 October 1906 by which R. Foulds conveyed to his daughter H. Foulds a third share in Coldweather House Farm described in words similar to those above quoted.

APPENDIX 3Cragg Farm (Messrs Parkinson)

(1) An indenture dated 12 May 1836 by which H. Wilkinson and another conveyed to J. Duckworth "Firstly ALL those two messuages ... called the Higher and Lower Craggs and all the cottages ... closes ... Pieces ... of land ... both of which said messuages ... are situate ... in the Township of Middop and in the parish of Gisburn Secondly ALL those four whole Beast Gates and the herbage and pasturage Four made Beasts or two Horses or Geldings or Mares or twenty sheep and the ground and soil thereof as the same hath been formerly had used and accustomed in or upon a certain pasture or Common called the Weets or Weets Pasture within the parish of Barnoldswick ... And All such pasturage tithes ... and interest of or belonging to them the said ... Wilkinson ... relating to or in respect of the said four whole Beast Gates of in or upon the said pasture or Common called Weets or Weets Pasture and of in and to a certain dwelling house ... outbuildings... situate and standing at or near Weets Gate upon or adjoining the said pasture or Common ..."

(2) A conveyance dated 15 February 1960 by which H. Taylor conveyed to S. Schofield a freehold messuage known as Cragg Farm, Middop with closes containing 53.418 acres and "TOGETHER with the rights of common or pasturage mentioned or referred to in an Indenture of Release and Conveyance dated the Twelfth day of May One thousand eight hundred and thirty six and made between the trustees under the will of John Parr deceased of the one part and James Duckworth of the other part".

(3) A conveyance dated 3 December 1962 by which S. Schofield conveyed to Messrs Parkinson "the messuage ... known as Cragg Farm, Middop ... with the several ... pieces of land ... belonging containing the whole 53.418 acres or thereabouts ... described in the Schedule ... delineated on the plan hereto annexed ..." Note:- This 1962 conveyance contains no words relating to the 1836 indenture such as are quoted above from the 1960 conveyance.

APPENDIX 4Newfield Edge (Parkinson Farm)

(1) An indenture dated 10 February 1746 by which John Smith granted to "Christopher Oddie his heirs executors administrators and assigns for ever three whole Beast Gates and erbig (?herbage) and pasturage for three made Beasts or any other Cattol of whatt age so ever three beasts of three years owld or above one horse mare or gelding (interlined in original: "and half a horse gate") or ten sheep to go ly down and depasture att any or all times of the year in and upon all the Close Closure piece and parcell of ground called and known by the name of weets lying and being within the Manor or Lordship of Barnoldswick in the county of York and such share part and proportion of the soil of the said weets as the erbig (? herbage) and pasturage thereof as will bee soficient to feed and keep three made beasts and three whole gates or won Gelding or mare (interlined in original: "and half a horse gate") or ten sheep as aforesaid and such forder rights, privileges share and proportions of the said clow (?) and pastures called the weets and the soyl thereof as the John Smith or his heirs or any of them have usually had or do now enjoy as belonging or appertaining to the said weets or common of pasture and all and singular mines and ... advantages whatsoever unto the said soyl of the said common of pasture belonging or ... reputed ... or known as part ... thereof".



apparently

- 13 -

(2) An abstract of title/made after February 1769 (the date of the last abstracted indenture) and before 31 August 1769 (as appears from the endorsement thereon) headed "An Abstract of several deeds evidences & writings relating to a certain messuage ... known by the name of Newfield Edge ... in Middop in the parish of Gisburne and four Beast Gates and (? "two" document torn) horse gates on Weets within Brogden in the parish of Barnoldswick ... late of the estate of Christopher Oddie the younger and purchased of him by Josias Morley Esquire consisting of ... and 82 parts 546 parts to be divided of the common upon the Weets belonging to the said premises all situate lying and being within the township of Middop aforesaid and also the said four Beasts or two horse gates on Weets within Brogden aforesaid". The said abstract under the heading "Deeds relating to the Higher Tenement" commenced with an indenture dated 15 June 1614 by which was conveyed a messuage or tenement" and also threescore parts of all the Common Moors & Wastes & of the soil & ground of the same with their appurts of & in Middop commonly called the Edge all the same Common Moors & Wastes & the soil thereof in five hundred forty & six parts to be Divided", and under the heading "Deeds which relate to part of Lower Tenement an indenture dated 19 July 1621 by which was conveyed some houses and land "And also Twenty & Two Parts of One Moor common or waste situate in the Lordship of Middop in the County of York called the Edge the whole into 546 parts to be divided and so much of the ground or soil of the said Moor common or waste called the Edge as any other the purchasers of the same Moor Common or waste called the Edge have or ought to have for so many parts. The abstract includes an abstract of the said above quoted grant dated 10 February 1746 which abstract is followed by "NB". The said John Smith had been long seized of this Gate".

(3) A conveyance dated 12 November 1902, by which Rev. F.W. Whaley conveyed to W. Hartley in pursuance of the Glebe Lands Act 1888 lands by the following description "All that messuage or farmhouse ... and the several closes ... of land thereto belonging known as "New Field Edge" situate in the township of Middop in the parish of Gisburn ... and containing thirty four acres three roods and twenty seven perches or thereabouts ... Together with the pasture right for two horses annually on Weets Common adjacent or near the said premises and all such other common and commonable rights easements and appurtenances as appurtenant to the said premises and have heretofore been enjoyed in connection therewith".

(4) A conveyance dated 21 June 1962 by which the Public Trustee conveyed to Messrs Parkinson, Newfield Edge Farm by reference to the said 1902 conveyance "TOGETHER with the pasture right for two horses annually on Weets Common adjacent or near the said premises and all such other common or commonable rights easements and appurtenances as appertain to the said premises and have heretofore been enjoyed in connection therewith".

Note:- A memorial was produced of three indentures dated 7, 8, and 8 December 1769 to which Rev. W. Paley curate of Horton was a party of "All that messuage ... within ... Middop ... with all the Common lying upon the Weets to all or any of the beforementioned premises belonging all which said ... premises are situate ... and being at Newfield Edge within the township of Middop ... and all that three Beast Gates or herbage and grazing for three full made Beasts to go feed and depasture in or upon a certain stinted pasture called the Weets formerly purchased of John Smith of Barnoldswick and also one other Beast Gate ... etc ... upon the said stinted pasture ... within the Manor of Barnoldswick".



- 24 -
APPENDIX 5

Laneside Farm (Mrs Cock)

- (1) Memorandum of agreement made in 1788 in Court at Westminster between Henry Dean plaintiff and Timothy Lister and others defendants "of one messuage ... twenty acres of land eight acres of Meadow five acres of pasture, pasture for two horse common of pasture common of turbarry with appurtenances in Middop in the parish of Gisburn ... (the Defendants) ... acknowledged the aforesaid tenements pastures and common with the appurtenances to be ... (right of the Plaintiff) ..."
- (2) An indenture dated 25 October 1787 by which J. Cockshott and others released to H. Dean "All the messuage and tenement ... situate in Middop ... commonly called and known by the name of Newfield Edge ... and formerly called Watsons of Lane Tenement and all those several closes ... containing ... eighteen acres ... together with two Horse Gates upon a certain Common or stinted pasture called the Weets ..."
- (3) A conveyance dated 4 January 1915 by which T. Hayes and others conveyed to C.H. Harrison lands by the description of "all that messuage ... commonly called and known by the name of Newfield Edge and formerly called Watsons of Lane Tenement with all those several closes ... containing the whole ... 18 acres of land or thereabouts ... Together particularly with all such estate and interest as conveying parties or any of them have or have power to convey in two Horse Gates upon a certain Common or stinted pasture called the Weets ..."
- (4) A conveyance dated 22 August 1949 by which C. Waddington (surviving trustee of the Will of C.H. Harrison: he died 29 October 1937 and his widow Mrs A.M.M. Harrison died on 3 June 1949) conveyed to Mrs M.S. Cock (their daughter) lands described as "ALL THAT messuage ... (now occupied as two) ... in Middop ... commonly called and known by the name of Lane Side Farm or Newfield Edge and formerly called Watsons of Lane Tenement together with ... closes ... containing ... eighteen acres ... Together particularly with all such estate and interest as the Testator had at the time of his death and had power to convey in two Horse Gaits upon a certain common or stinted pasture called The Weets and in one fifteenth part (the whole into fifteen equal parts to be divided) of a certain house called Stoops Gate House ..."

APPENDIX 6

Newfield Edge (Carter) Farm and the soil of Little Weets

- (1) An indenture dated 2 October 1762 by which C Oddie in consideration of the marriage of his son W. Oddie covenanted that he would stand seized to the uses therein mentioned of the lands described as "ALL that his messuage or tenement and Farm with the appurtenances situate and lying and being in the township of Middop in the parish of Guisburn in the said county of York with all the arable lands meadow and pasture ground thereunto belonging containing by estimation in



- 25 -

the whole Twenty acres be the same more or less (formerly in the Tenure ...) And all those two closes ... belonging ... containing six acres And all those five closes ... containing seven and a half acres ... lying and being within the township of Barnoldswick in the said county of York AND ALL that Moor ground commonly called The Weets lying and being in the township of Middop aforesaid ..."

(2) An indenture dated 21 March 1871 by which B. Price conveyed to H. Allen lands described as "ALL that messuage ... and several closes ... of arable meadow and pasture land ... (34a. 3r. 13p.) ... in the township of Middup in the parish of Guisburn in the county of York AND also all ... (15a. 2r. 37p.) ... within Brogden in the parish of Barnoldswick AND also all that Moor Ground commonly called the Weets lying and being in the Township of Middup aforesaid ... And the said messuage or tenement and the whole of the said several closes or parcels of land and hereditaments (except the Moor Ground) are now called or known by the name of Newfield Edge Estate ..."

(3) An indenture dated 2 May 1891 by which W. Collinge and others conveyed to J. Sutherland lands described in substantially the same words as those above quoted from the 1871 indenture.

(4) An indenture dated 13 May 1921 by which J. Sutherland and others conveyed to W.J. Brewster lands described in substantially the same words as those above quoted from the 1871 indenture.

(5) A conveyance dated 12 October 1956 by which E. Brewster and R. Brewster as personal representatives of W.J. Brewster (he died on 30 November 1955) conveyed to S.W. Whitham (as sub-purchaser from A. Watt) lands described as "ALL THAT freehold messuage Farm lands and tenement known as Newfield Edge Farm situate in the Townships of Middop and Brogden in the West Riding of Yorkshire containing fifty acres two roods ten perches or thereabouts TOGETHER with a piece or parcel of Moor Ground (containing about forty nine acres) commonly called the Weets lying and being in the Township of Middop aforesaid ... are ... delineated ... in the plan annexed".

(6) A conveyance dated 25 October 1967 by which C.M. Nicholson and J.H. Whitham as personal representativ of J.S. Whitham (he died on 31 July 1967) conveyed to T. Carter and D. Carter land described in words substantially the same as those above quoted from the 1956 conveyance. Note:- Because the annexed plan was different than that annexed to the 1956 conveyance, the lands conveyed by this 1967 conveyance did not include the farmhouse which was retained by the Vendors C.M. Nicholson and J.H. Whitham.

Note:- A memorial was produced of an indenture dated 13 November 1744 by which W. Lawson conveyed to C. Oddie the lands described in the 1762 indenture in words substantially the same as those above quoted *from the 1762 indenture*.



-28-

APPENDIX 7Little Middop & Stocks Farm (Mr G. Parker's declaration)(A) The 1924 Particulars

Particulars Plans & Conditions of Sale of the Rimmington and Middop Estates extending over 2,600 Acres for sale by auction on March 18 1924.

.

Lot 94

LITTLE MIDDOP AND STOCKS FARM MIDDOP

| | |
|---------|---------------------|
| Tenant | Mr Geo. Parker |
| Tenancy | Yearly February 2nd |
| Area | Acres 135.394 |
| Rent | £160 per annum |

(with grazing rights on Little Weets)

.

Note: The particulars include two plans, the larger of which shows that part of Lot 93 adjoins what is now Laneside Farm and extends (a tapering piece) towards Little Weets to a point on the track leading to and about 100 yards north of Newfield Edge (Carter) Farm.

(B) The 1924 Abstract

The Abstract is headed: "Title of Messrs Isaac Sowerby & William Parlour to the Manor of Middop and farms known as the Whyth, Middop Hall, Higher Craven Laithe and Little Middop and Stocks ..." The first subheading is headed the Manor of Middop, Whytha Farm, Middop Hall Farm and Craven Laithe Farm and commences with an indenture dated 1 December 1862 and ends with an indenture dated 1 May 1877. The second subheading is headed "AS TO THE WHOLE OF THE PROPERTY" and continues as follows:-

By an indenture dated 21 October 1879 W. Bracewell conveyed to W. Bairstow by way of mortgage "the Mill and all the messuages ... descrd in the 2nd & 3rd Schedules ..." The Second Schedule was "ALL that messuage farm ... being at Middop Rimmington & Howgill ... commonly called Little Middop with the lands ... closes ... contg ... sixty seven acres ... And also twenty parts of all the Commons Moor and Wastes and of the soil and ground of the same with their appurts of and in Middop afsd commonly called Then Edge (all the same Commons Moors and Wastes into 546 pts to be divided) AND ALSO ALL THAT messuage ... closes ... all which said premises were commonly known by the name of Stocks ... and the same were more minutely specified & described in the particulars following that is to say:- (here follows a description in 12 items of "Little Middop" by reference to the "Tithe Rent Chge. Comm. map", quantity 106a. 3r. 14p.) And also twenty parts of all the Commons Moors & Wastes and of the soil and ground of the same with their appurts of and in Middop afsd commonly called the Edge (all the same Commons Moors and Wastes to be 546 parts to be divided ... (here follows a description of 12 items of "Stocks" by reference as before, quantity 29a. 2r. 30p.)



- 27 -

By an indenture dated 15 April 1918 (being the last abstracted document relating to the legal estate) by W. Bairstow (as mortgagee in possession) conveyed to Walter Pollard "first all that Manor ... of Middop otherwise Midhop otherwise Middop ... AND FOURTHLY all that messuage ... known as Little Middop and Stocks ... contd (135a. 1r. 23p.) ... on the said land ... coloured yellow ... partly described in the 4th part of the Schedule. (The 4th part of the Schedule includes the 22 items containing 135.394 acres did not include words relating to "twenty parts" as above quoted). The abstract included a copy of the plan annexed to the 1924 indenture.

APPENDIX 8

Newfield Edge Hall Farm Conveyances

(1) 24 September 1952, T Ratcliffe and F.M. Ratcliffe conveyed to J. Ellison the land described as "ALL THAT messuage ... called Newfield Edge ... TOGETHER with ... closes ... described in the Schedule containing eighteen acres two roods and five perches ... AND ALSO ALL THAT beast or cattle gate on Weets in the Parish of Barnoldswick aforesaid and all other common rights on Little Weets pasture or Big Weets pasture now enjoyed with or appurtenant to the said farm or tenement.

(2) 10 April 1967 J. Ellison conveyed to R. Walker and R.A. Walker land described in words which (so far as now material) were identical with those above quoted.

Note:- The Schedule of the said conveyances indicates that the lands thereby conveyed were those now known as Newfield Edge Hall Farm.

Note also:- A memorial was produced of a conveyance dated 19 December 1968 by G.K. Walker and R.A. Walker to G. Molyneux similarly expressed; as also was the conveyance dated 26 November 1970 by Mr G. Molyneux to R.A. & R.M. Fullalove produced.

Dated this 9th day of August 1974

a. a. Baden Fuller

Commons Commissioner