



COMMONS REGISTRATION ACT 1965

Reference No.20/U/110

In the Matter of Darwen Moor (a piece west and southwest of and a piece southeast of Darwen Hill) in the Borough of Darwen and in Tockholes, Blackburn R.D., Lancashire

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") of the land ("the Unit Land") which is part of land known as Darwen Moor in the Borough of Darwen ~~North of the Borough of Darwen~~ and in Tockholes, Blackburn Rural District, which is in two pieces one ("the West Piece") west and southwest and the other ("the East Piece") southeast of Darwen Hill and which is the land comprised in the Land Section of Register Unit No.CL.156 in the Register of Common Land maintained by the Lancashire County Council. The Referred Part is the part of the Unit Land which has not been registered at H.M. Land Registry under Title No.LA226270 and of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Darwen Corporation claimed and then withdrew their claim to be the owners of part and Fylde Water Board claimed to be owners of part; no other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Preston on 20 February 1974. At the hearing (i) the Mayor Aldermen and Burgesses of the Borough of Darwen ("the Darwen Council") were represented by Mr. D. G. Watson solicitor of Messrs. Roebuck Solicitors of Darwen, (ii) Fylde Water Board were represented by Mr. J. A. Spencer solicitor their clerk, and (iii) Mr. N. Sharples attended in person.

The West Piece and the East Piece are situate on either side of the land ("the CL.13 Land") which is the land comprised in Register Unit No.CL.13 which is open unfenced moorland (another part of Darwen Moor) containing about 275 acres and including Jubilee Tower, which was in question at the hearing immediately before this hearing and about which I have given a decision dated 1 March 1974 stating that I was satisfied that the Darwen Council is the owner. Of the East Piece (containing as I estimate from the Register map at least 50 acres), the west part (about half the area) on the west side of the line A - B coloured red on the Register map (marked uncoloured on the plan annexed to this decision) is comprised in the said Land Registry title; at the hearing Mr. Sharples claimed ownership of another part ("the East Claimed Part"), being the part of the East Piece which is on the east side of the fence which I have marked with a line B - K - L - M on the said annexed plan (such plan being copied from the extract from the Register map supplied for my use by the County Council) the point K being on the line A - B marked on the Register map and the point M being on the northeast boundary of the East Piece. Of the West Piece (containing as I estimate from the Register map at least 200 acres), at the hearing Mr. Spencer on behalf of the Board claimed ownership of the part ("the West Claimed Part") being the part of the West Piece (considered as divided into two parts) which is on the north and east side of the fence marked on the said annexed plan by the line P - Q - R - S - T.



Mr. Watson suggested that there might be some inaccuracy in the registration. The Register shows that the Unit Land has been registered as common land in consequence of an application dated 18 December 1968 by Mr. A. Greenwood to register a right attached to Higher House Farm to graze 300 sheep and 20 head of cattle on the Unit Land and the CL.13 Land; it is possible Mr. Greenwood should have limited his registration to the CL.13 Land. Mr. Watson understood that Mr. Greenwood had before his death disposed of Higher House Farm to Mr. Brown.

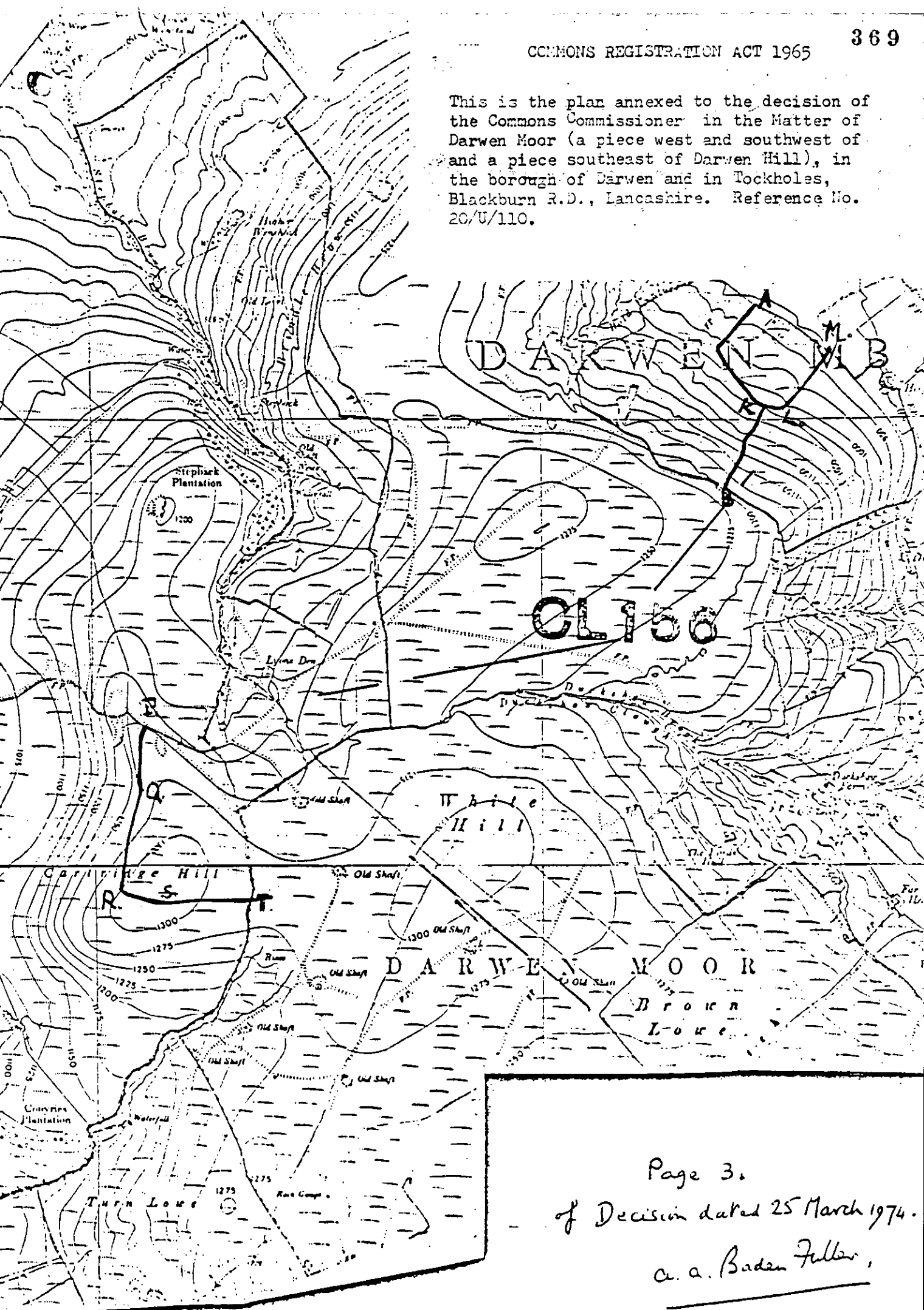
By section 4 of the Fylde Water Board (Darwen Borough) Order 1962 (made under the Water Act 1945), the water undertaking of the Darwen Council was transferred to and vested in the Board and by section 2 "undertaking" was defined as including "all the lands ... and other property ... vested in or enjoyed by the Darwen Council in relation to their water undertaking". Mr. Spencer said (in effect):- The West Claimed Piece in 1962 was part of the water undertaking (part of the gathering ground) of the Darwen Council, and was shown in their records as such. For many years before 1962 and ever since the West Claimed Piece has been a fenced in part of an agricultural holding; in 1962 such holding was included in the land let to Mr. F. W. Bland as Higher Wenshaw Farm (the farmhouse is on the north part of the West Claimed Piece); recently a new tenancy agreement has been negotiated with Mr. J. Bland; ever since 1962, the Board have received the rent from this holding. The documentary title is in three parts:- (i) by a conveyance dated 10 August 1899 the south part (being the north east slopes of Cartridge Hill) was conveyed to the Darwen Council; (ii) by an assignment dated 13 September 1892 and a conveyance dated 21 June 1951 the central part (known as Lyons Den) was assigned for a term and conveyed subject to the term in fee simple to the Darwen Council; and (iii) by a conveyance dated 30 March 1972 the north part (more than half of the West Claimed Piece including the farmhouse) was conveyed by Darwen Council to the Board. Mr. Spencer (when producing these deeds) explained that as evidence of the ownership of the Darwen Council of the north part he relied on the conveyance dated 23 February 1900 (mentioned in the 1972 conveyance as being that by which the north part with other land was conveyed to the Darwen Council), that the 1972 conveyance was made for the purpose of defining the boundaries of the north part as between the Board and the Council (the ownership passed under the 1960 Order) and that no definition deed was considered necessary for the central and south parts (they being obviously water gathering).

Mr. Sharples in support of his claim produced:- (i) a conveyance dated 20 October 1920 by which land containing 61.621 acres delineated on the plan drawn thereon and known as Height Side Farm was conveyed to Mr. E. G. Clegg, (ii) a conveyance dated 28 September 1949 by which the same land was conveyed by Messrs. E. and D. S. Dewhirst to Mr. S. Farrow, and (iii) a conveyance dated 7 October 1954 by which the same land was conveyed to him Mr. Sharples and Mrs. A. Sharples jointly. Mr. Sharples said (in effect):- Mrs. Sharples (his wife) died in November 1968. The East Claimed Piece ~~was~~ in 1954 (when he purchased) and ever since has been a fenced in part of the Farm, a field which has been occupied with the rest. He identified it with part of the land delineated on the 1920 plan.

On the above evidence I am satisfied that the Board and Mr. Sharples are respectively the owners of the West Claimed Piece and the East Claimed Piece, and I shall accordingly under section 8(2) of the 1965 Act direct the Lancashire County Council as registration authority to register The Northwest Water Authority (formerly Fylde Water Board) (Mr. Spencer said that the Authority will on 1 April 1974 be the successor of the Board) of

Note:- Page 3 of this decision is the annexed plan above referred to.

This is the plan annexed to the decision of the Commons Commissioner in the Matter of Darwen Moor (a piece west and southwest of and a piece southeast of Darwen Hill), in the borough of Darwen and in Tockholes, Blackburn R.D., Lancashire. Reference No. 20/U/110.



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of Decision dated 25 March 1974.
a. a. Baden Fuller,



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Sefton Street, Blackpool, Lancashire as the owner of the part of the West Piece (considered as divided into two parts) which is north east of the fence marked on the plan annexed to this decision by the line P - Q - R - S - T, and to register Mr. Norman Sharples of Height Side Farm, Darwen, Lancashire as the owner of the part of the East Piece which is south east of the fence marked on the plan annexed to this decision by the line B - K - L - M.

I have I think no jurisdiction to deal with any possible inaccuracy in the Register such as was mentioned at the hearing, although I record that as to this I share the uneasiness expressed by those who attended the hearing. Quite apart from the possibility that the Unit Land should not have been registered under the 1965 Act at all, it seems strange that nobody attended the hearing to claim ownership of the small piece (perhaps about 5 acres) which is the part of the East Piece north east of the line A - K - L - M on the annexed plan, or to claim ownership of the far larger piece (perhaps 100 acres) west of the line P - Q - R - S - T on the annexed plan extending from somewhere near the top of Cartridge Hill westwards down to the road from Tockholes to Belmont. I can do no more than record that I am not satisfied that any person is the owner of the remainder of the Referred Land, and that it will therefore (save ~~as~~ so far as it will not under this decision be registered in the name of the Authority or Mr. Sharples) be subject to protection under section 9 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 25th day of March 1974.

A. A. Baden Fuller

Commons Commissioner