



COMMONS REGISTRATION ACT 1965

Reference No. 225/U/254

In the Matter of Thwaite Common, Alby-with-Thwaite

DECISION

This reference relates to the question of the ownership of land known as Thwaite Common, Alby-with-Thwaite being the land comprised in the Land Section of Register Unit No. CL.50 in the Register of Common Land maintained by the Norfolk County Council 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 Mrs L D Jordan claimed to be the freehold owner of two small pieces of the land in question and no other person claimed to have information as to the ownership of the remainder.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Cromer on 8th November 1989.

The hearing was attended by Mr J E Richardson (a principal Administrative Officer of Norfolk County Council, the registration authority), Mr Cedric M Brown, Solicitor of Aylsham (representing Mrs L D Jordan), Mrs L D Jordan, Mr I J Jordan, Mrs A P Mackenzie (Clerk to Alby-with-Thwaite Parish Council) and Mr & Mrs G E Duffield (Rights Entry No. 2).

The land was registered as common land pursuant to a rights application. The registration became final in 1972.

There are two entries in the Rights section of the Register, relating to the grazing of horses and/or cattle and other animals, and also a right of estovers. Both these entries became final in 1972.

A previous ownership inquiry before a Commons Commissioner was held at Norwich on 15th July 1975. No evidence of ownership was adduced at the hearing, and in his Decision dated 23rd July 1975 Mr Commissioner Baden Fuller stated that he was not satisfied that any person was the owner of the land and it would therefore remain subject to protection under section 9 of the Act of 1965.

Mrs L D Jordan now claims ownership of two comparatively small areas of the land. She resides at Goose Lane Farm which abuts onto the northern boundary of the common, at approximately the centre of that boundary. The two parcels of land claimed by Mrs Jordan lie immediately to the south on the opposite side of the farm road. These parcels are shown on the plan attached to this Decision, marked with the letters A and B respectively. As regards area A, Mrs Jordan can show a lengthy paper title. As to area B however the title is possessory only.



Mr Brown produced the following documents:-

1. Probate of the Will dated 18th November 1797 of John Symonds.
2. Conveyance dated 10th October 1828 between (1) William Lubbock and (2) John Cook.
3. Conveyance dated 12th October 1923 between (1) E M Gilbert and (2) John Jordan.
4. Conveyance dated 6th October 1953 between (1) R A Jordan and F J Jordan and (2) Aubrey John Jordan.
5. Probate dated 15th July 1988 of Will of Aubrey John Jordan in favour of Lilian Dulcie Jordan.
6. Statutory Declaration dated 1st March 1989 by Mrs L D Jordan.

The Will of 1797 is of little assistance, but the description of the land conveyed by the Conveyance of 1828 is of much greater significance. This reads of follows:

"ALL THAT cottage situate and being in Thwaite aforesaid wherein Robert Spooner now doth live and with the outhouses and garden thereto belonging and adjoining between land of the Right Honourable Horatio Earl of Orford on the North part the Common Pasture of Thwaite aforesaid on the East and South parts and cottages of the overseers of the poor of Thwaite aforesaid on the West Part And Also ALL THAT small piece of garden ground heretofore parcel of the Common Pasture now in the occupation of the said Thomas Spooner and surrounded by the residue of the said Common Pasture on all sides".

The purchaser in 1828 was John Cook. The property came into the Jordan family by the Conveyance of 1923, which contains a recital of the Will of Herbert Cook. It therefore appears that the property has been in the hands of the Cook and Jordan families for 161 years.

The Conveyance of 1923 describes the small parcel included with the property thereby conveyed in the following terms:

"ALSO ALL THAT small piece of land adjoining Thwaite Common being part of Number 24 on the Ordnance Survey Map and bounded towards the West by hereditaments recently sold by the Vendor to Frank Rivett and on all other parts by Thwaite Common All which premises contain one rood and twenty four perches or thereabouts and are for the purpose of identification only and not of Conveyance more particularly described in the plan drawn on these presents and thereon edged with a red verge line such plan being a tracing from the Ordnance Survey Map".

The area shown on that plan corresponds with the area I have marked "A" on the plan annexed hereto. By the Conveyance of 1953 this piece of land was included by the same description in the property conveyed to Aubrey John Jordan (Mrs Jordan's late husband).

It follows that insofar as area A is concerned Mrs Jordan can establish a title of very long standing. It appears to me to be the same parcel of land as that described as a "small piece of garden ground heretofore parcel of common pasture...." in the Conveyance of 1828. This being so, it may well provide a suitable case for an application for the exclusion of the land from the Register under the new Common Land (Rectification of Registers) Act 1989. I should not however be taken as expressing at the present stage any opinion as to the prospects of such an application succeeding.



Area B lies between area A and the roadway outside Goose Lane farmhouse. It is therefore not surprising that the Jordan family took over this piece of land for their own purposes.

Mrs Jordan was sworn and gave evidence confirming what she had said in her Statutory Declaration of 1st March 1989 with a few modifications. Her evidence was that she had known Goose Lane Farm since early childhood - she is now 68 and had lived in the farmhouse since her husband returned from the War in 1946. Within a matter of months thereafter the buildings which then existed on area A were extended over area B. Since 1939 or at the latest 1940 the Jordan family had been in uninterrupted possession of both areas. To the best of her knowledge no one else had claimed ownership of either area or denied the right of the Jordan family to the exclusive use of them. None of the Jordan family had ever paid anyone for such use. The buildings were altered from time to time. They were used for stabling horses and for pigs.

Mrs Mackenzie on behalf of the Parish Council made no objection to Mrs Jordan's claim. She had no information as to any possible claimants to the remainder of the Register Unit.

The 1923 Conveyance showed the land to the north of Goose Lane Farm as belonging to the Earl of Orford. I was told that this later became vested in Lord Walpole, a member of the same family. Mr Duffield said that Lord Walpole would have known about the Commons Commissioners hearing in 1975. He then made no claim.

On this evidence I am satisfied that Lilian Dulcie Jordan is the owner of the two areas of land marked A and B on the plan annexed hereto and I shall accordingly direct the Norfolk County Council, as registration authority, to register her as the owner of those parcels under section 8(2) of the Act of 1965. The remainder of the Register Unit will remain 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

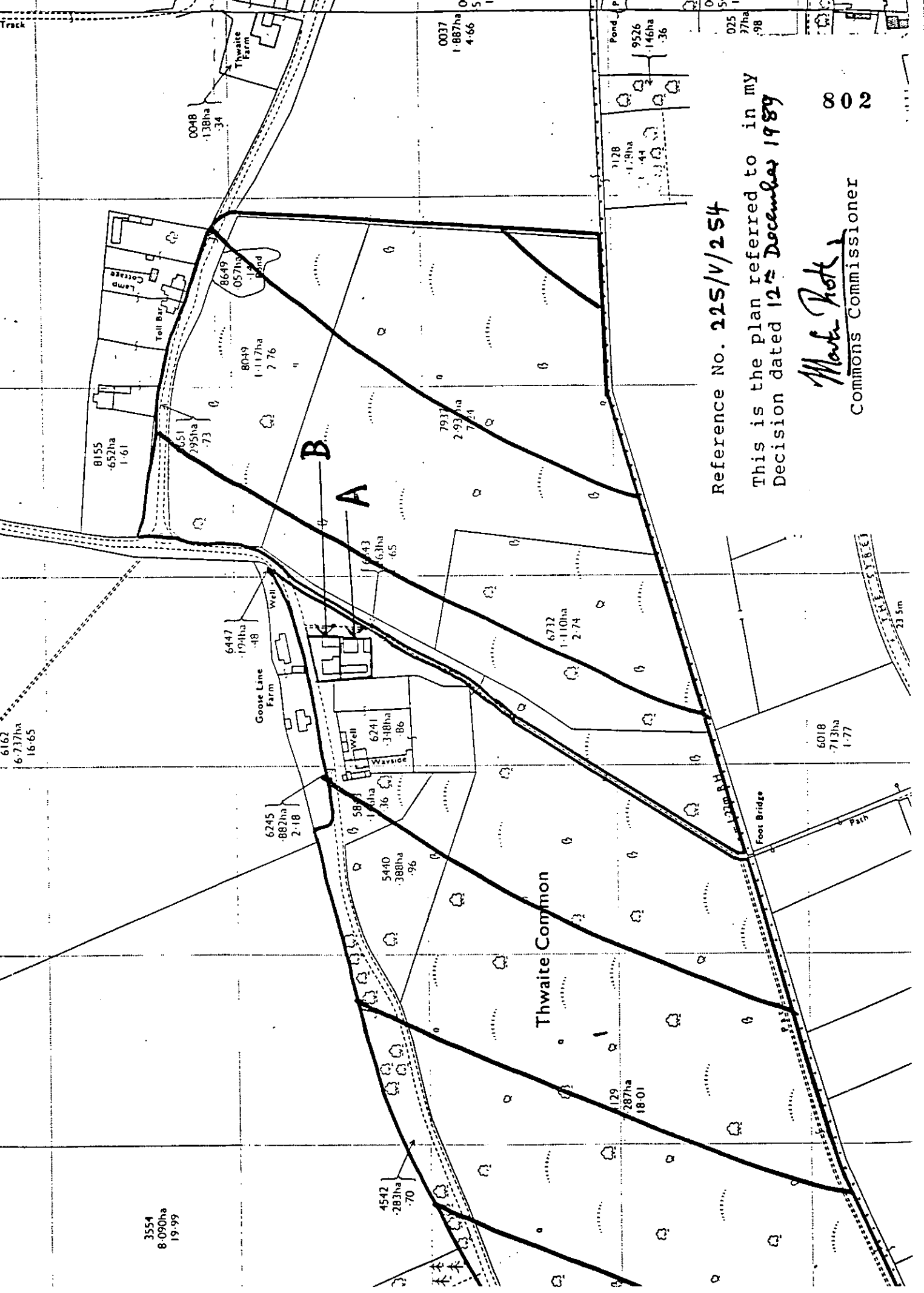
12th

day of

December

1989

Commons Commissioner



Reference No. 225/V/254

This is the plan referred to in my
Decision dated 12th December 1989

Mark Pott
COMMONS COMMISSIONER