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Next oral evidence was given by Mr Reginald Frederick Hudson Stephenson FRICS of Stephenson & Son, Chartered Surveyors of York in the course of which he produced as showing the ownership of his daughter-in-law Mrs J M Stephenson of two other parts of the Unit Land the documents specified in Part III of the said Schedule. He said (in effect):- The Unit Land contains about 100 acres. His firm had been associated with it since 1935. Every year the hay had been taken and his firm had distributed the proceeds of sale (less their commission) among the "owners". As Clerk to "the pasture masters" he let the grazing (the aftermath) from 16 August (it is a late hay harvest) to an adjoining farmer (for about 50 or 60 cattle) and the rent so received is used to pay for the maintenance of the Unit Land (fencing, bridges, roads, gates and dikes). Every year the floodgates are opened; making the grass (coarse) grow as a lush crop so there is no need to fertilise; the Water Authority use the Unit Land as a washland to hold the River water back (for about 48 hours until the flood water subsides).

Next, Miss Tripp produced the documents specified in Part IV of the Schedule hereto. Under the 1918 conveyance (YCC/1) the York City Council are Lords of the Manors of Clifton and Rawcliffe. The 1918 letter (YCC/3) contains:-

"The only functions which the Ladies of the Manor exercise are those of keeping a hold upon the frontstead owners who exercise rights upon the Ings and seeing at the annual Court views that the ditches and waterways within the Manor are clean and that there are no trespasses upon the waste of the Manor... Mr E R Dodsworth ... is the present acting Steward of the Manors and holds the Court..."

The interview memorandum (YCC/4) contains these words:-

"...once a year the Manorial Court Baron met and the Jurors viewed the ditches and returned for a dinner in the evening. The Steward is paid a guinea per annum and the Bailiff 10/- or thereabouts... Clifton Ings is owned by the Freeholders in strips... Legal position as to Right to charge for Skating on Clifton Ings very doubtful... The gates and hedges on Clifton Ings are maintainable by the Freeholders under supervision of the Lords of the Manor?"

Next there was a discussion as to whether I should direct some entry on the Register about the York City Council being the Lord of the Manor. I mentioned sub-paragraph (2) (d) of paragraph 24 of the Commons Registration (General) Regulations 1966, which requires a registration authority on application to note:

"rights and interests of the lord of the manor (in that capacity) other than the ownership of land".

I expressed the opinion to which I now adhere, that I am in these proceedings under section 8 of the 1965 Act concerned only with ownership, and have no jurisdiction over the notes which have been or might be made in the Register by the County Council as registration authority.

It being likely that the persons other than Yorkshire Water Authority and Mrs J M Stephenson have relevant documents of title relating to their possible ownership of parts of the Unit Land as claimed by Mr Anderson, I gave to them liberty to send such documents (or copies of them) to the London Office of the Commons Commissioners and said I would in my decision have regard to any documents so sent.



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Immediately after this Unit Land hearing I held a hearing about Clifton Green (Register Unit No. VG1) in the course of which Miss Tripp produced a Brief (YCC/7) for the plaintiff in Earl Cowper and others v Stubbs in York County Court by which it was claimed from the defendant as an amercement made by the Court Baron "for trespass and waste ... on the Clifton Ings by exercising a horse or horses on the said Ings and thereby committing damage". The Brief included:

"Clifton Ings is legally vested in several Freeholders of the Manor who owe suit and service to the Lords by virtue of such ownership but exercise the ordinary rights of ownership only from the 6th April till the Hay is gathered in in every year. The Ings is then "broken", that is to say the Common Right Owners of the Manor who are the persons owning certain ancient tenements situate within the limit thereof exercise their rights of depasturing such head of cattle as their land supports during the summer (sic? winter) time such rights being appurtenant to the ownership of the tenements. It is not known how this right originated but it seems probable that it did not arise by virtue of any grant or award..."

The Brief is not dated, but it may be about 1908 because there is about similar subject matter an opinion (YCC/6) of counsel (Mr H Stuart Moore) dated 1 June 1908.

On the day after the hearing I inspected the Unit Land from the floodgates (or lock) at its west corner and from the footpath at its south corner where the River bends.

Under cover of letters dated 12 and 15 March, 15 April and 3 July 1985, Cowling Swift & Kitchin on behalf of the Earl of Harewood, Mrs J M Stephenson, Messrs A G and C Plummer and Mrs K E Dibb, and the Church Commissioners for England sent the documents specified in Part V to IX of the Schedule hereto.

The Land Section registration was made (according to the Register) "at the request of the North Riding County Council and included in the Straddling Agreement made between the North Riding County Council and the Corporation (? York County Borough Council) and dated 21 October 1966"; the registration being undisputed became final on 1 October 1970; the Rights Section and the Ownership Section contain no Entries. By section 8 of the Commons Registration Act 1965 I am in these proceedings concerned to determine the ownership of the Unit Land meaning ownership of a legal estate in fee simple, see sub-section (2) of section 22; so I am not concerned with how the rights of the various persons interested in the Unit Land change on 16 August when the hay crop is taken or with the rights and duties of Mr R F H Stephenson as Clerk to the Pasture Masters in relation to the City Council as Lord of the Manor and conveners of the Court Leet, or with such matters as maintenance mentioned at the hearing; indeed I then understood that such questions are not causing any difficulty.

As to the ownership so defined of the Unit Land, the oral evidence at the hearing and the documents I have are generally to the same effect: the Unit Land has always been treated as divided into about 10 to 15 parts owned for an estate in fee simple by various persons (each owning one or more of such parts) and each in possession to the extent at least of receiving a share of the proceeds of the hay crop and of being able to attend meetings concerned with the management of



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the land. It may be that under section 10 of the Commons Registration Act 1965, the Unit Land is now conclusively deemed to be "waste land of a manor" within the definition in section 22, see *Corpus Christie v Gloucester* 1983 1QB 361; but although for the purposes of the definition, waste land of a manor must be "connected with a manor, see re *Box* 1980 2 Ch 1909, it need not be owned by a lord of a manor. So the circumstance that the Unit Land is waste of the Manor and its letting and management after 16 August are supervised by the Manorial Court does not prevent me deciding on the documentary and other evidence offered that persons who own a part from 6 April to 16 August, are owners for the whole year.

So I must consider separately the evidence offered by each claimant to be the owner of the part of the Unit Land which he claims, and for this purpose I must identify the various parts by reference to a plan.

The plan ("the Decision Plan") being page 5 of this decision is a copy of the plan (H/4) specified in Part V of the Schedule hereto with additional lines and letters marked on it by myself to show how the Unit Land should be divided into parts separately owned as shown in the documents produced: the letters on it "HA", "DI", "CC", "PL", "ST", and "YW", indicating the respective ownerships of the Earl of Harewood, Mrs K E Dibb, the Church Commissioners for England, Messrs A G and C Plummer, Mrs J M Stephenson and the Yorkshire Water Authority, as claimed by Mr Anderson and Mr Simpson on their behalf. I realise that the Decision Plan is somewhat lacking in precision but no more convenient plan was produced at the hearing or sent to me afterwards. I give to any person present or represented at the hearing who considers that the direction which I am required by the 1965 Act to give to North Yorkshire County Council as registration authority for the purpose of enabling them to give effect to this decision should be more precise, liberty to apply to me to approve a better plan sent to the London office of the Commons Commissioners. Any such plan should be on a scale 1/2,500 or 1/1,250 and should comprehend in one or more pieces the whole of the Unit Land and indicate by black lines or other means not involving any colouring, the parts of the Unit Land which the applicant considers are in separate ownership. Any plan should be submitted to York City Council and the other owners concerned for their approval and should be sent to the London office of the Commons Commissioners within THREE MONTHS from the day on which this decision is sent out or within such extended time as a Commons Commissioner may allow.

As to the ownership of Mrs Stephenson, the documents produced are for (a) about 7 acres, (b) about  $\frac{1}{2}$  acre and (c) about  $1\frac{1}{2}$  acres. The 1905, 1935, 1946, and 1955 appointments of trustees (JMS/6, 9 and 11) particularly mention (a) the 7 acres as freehold land subject to the Bellerby Will Trust, and the title from such Trustees to Mrs Stephenson is regularly deduced; the 1976 declaration (JMS/2) is some evidence identifying the 7 acres with plot 11 on the H/1 plan, but it as to the use made of the 7 acres by the deponent and his father is noticeably uninformative: Mrs Stephenson's ownership of the 7 acres was by her diminished by her 1984 conveyance (YWA/2) to the Yorkshire Water Authority. The title of Mrs Stephenson to (b) the  $\frac{1}{2}$  acre is similar to (a) except the 1905 appointment and the 1906 admission (JMS/6 and 8) treat it as copyhold, and it was I suppose enfranchised in 1925 when copyhold was abolished by the Law of Property Act 1922, and except that the identification (JMS/2) is with the south part of the unnumbered plot on the H/1 plan. The title of Mrs Stephenson to (c) the  $1\frac{1}{2}$  acre commences with the 1978 conveyance (JMS/3), its shortness being mitigated by the 1978 declaration (JMS/4) of 12 years possession, said to be "undisturbed", noticeably

RE: Clifton Ings, York City  
and Ryedale District,  
North Yorkshire

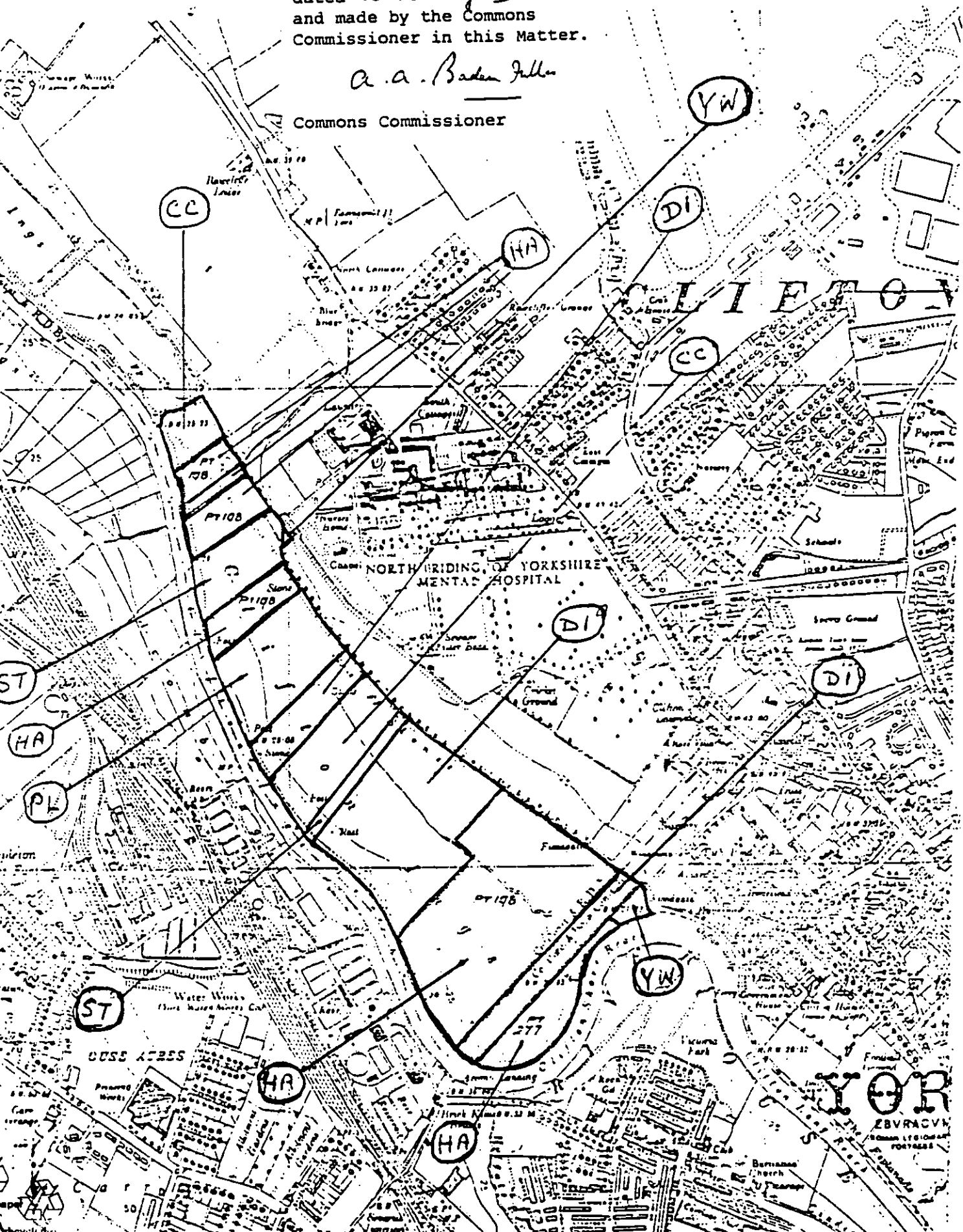
Register Unit No. CL4.

This is the Decision Plan  
referred to in and being  
page 5 of the decision  
dated 10 February 1986  
and made by the Commons  
Commissioner in this matter.

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*a. a. Baden Fuller*

Commons Commissioner





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failing to explain the lettings described by Mr R F H Stephenson, but identifying it with the north part of the unnumbered plot on the H/1 plan.

As to the ownership of Lord Harewood, the 1957 conveyance (H/3) produced with its plan includes plot Nos 1, 3, 4, 10 and 11 and most of plot 13 on the H/1 plan but omits (as is apparent from the "Pt 198" on the Decision Plan) the south part of plot 13 of the H/1 plan.

As to the ownership of Messrs Plummer, the 1951 conveyance (AGP/2) conveys 10a.13r.11p. identified from the plan on it with plot 9 on the H/1 plan.

As to the ownership of Mrs Dibb, the documents produced are for (a) about 29 acres in 3 pieces of 5a.3r.8p., 4a.1r.16p. and about 19a.0r.0p., and (b) about  $\frac{1}{2}$  acre. The title to (a) 29 acres is regularly deduced from the 1920 conveyance (KED/2) to Mrs Dibb, but there is nothing identifying the 3 pieces with any of the plots on the H/1 plan, because the abstract does not include the plan annexed to the 1920 conveyance or the plan referred to in the 1964 assent (KED/5). However the plan annexed to the 1958 conveyance (AGP/2) produced on behalf of Messrs Plummer marks 3 pieces as "A Holmes" identifying (a) with plots 2, 8 (? or the north part of 8) and 6 on the H/1 plan. The title to (b)  $\frac{1}{2}$  acre is regularly deduced from the 1947 conveyance (KED/4) but the plan on it (as I read it) identifies it with part of the unnumbered plot on the H/1 plan, which was at the hearing claimed on behalf of Mrs Stephenson under a different conveyance. Confusingly the 1958 conveyance (RCP/2 plan) marks "AH" (meaning I suppose Alan Holmes) as owning 2 other strips which might be part of plot 8 or of the unnumbered plot on H/1 plan, and the 1947 conveyance (KED/4) plans ascribes the  $1\frac{1}{2}$  acres mentioned in the declaration (JMS/4) to the Ecclesiastical Commissioners.

As to the Church Commissioners, I have the 1985 declaration (CC/1) which explains the absence of documents of title, as ordinarily understood, but which being prepared for the purpose of legal proceedings is defective because it fails to state the grounds of the deponent's belief for saying (what could not possibly be within his own personal knowledge) that the part was in November 1836 in the possession of C W Eyre and that since 1836 the Ecclesiastical Commissioners for England and the Church Commissioners as their successors have been in receipt of the rents and profits.

As to the ownership of the Yorkshire Water Authority, their title under the 1984 conveyances (YWA/1 and 2) is wholly dependent on the title of Mrs Stephenson and Lord Harewood to plots 11 and 1 on the H/1 plan.

If each of the claimants had to satisfy me separately as to their ownership of the parts of the Unit Land which Mr Anderson claimed on his, her or their behalf, I would have felt doubt about some of the claims particularly those relating to the smaller plots. But in considering the requirement of being "satisfied" (the word used subsection (2) of section 8 of the 1965 Act) as a Commons Commissioner I can I think properly attach importance to there having been advertisements inviting claims and of public hearing, to there being no claimants other than those represented by



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Mr Anderson and Mr Simpson, and to their claims being not opposed by Miss Tripp on behalf of the York City Council. The claimants who could possibly have competed with other claimants were all represented by Mr Anderson; from this I infer that any doubts there may be between the claimants have been compromised between them on the same basis as that on which Mr R F H Stephenson has been dividing the rent he received. Further 15 August is (or is near to) old Lammas day, so the Unit Land could not inaptly be described as Lammas Land; the legal problems associated with land so describable are discussed without being completely solved in Baylis v Tyssen-Amhurst 1877 6 Ch D 500; the strip ownership of the Unit Land as claimed is not unique, because as a Commons Commissioner I have been concerned with similar claims about a few (perhaps between 5 and 10) register units, mostly of land now or formerly liable to flooding, so the hay crop or the grazing before Lammas day has been traditionally claimed in severality by a number of persons, but the modern more economical taking of the crop or grazing by one person to provide cash for all, and the flooding, has led to the strip boundaries being neglected or otherwise becoming confused. The basis of the division by Mr Stephens was if not fully, at least very substantially supported by the documents produced. By continuing the hearing, I might obtain answers to some of my criticisms of these documents, but I think it unlikely that it would result in any significant clarification of the ownership position beyond what I might reasonably guess on the information I now have. I conclude therefore that my decision should be in accordance with that basis.

But because many of the documents above discussed were produced after the hearing and I had not therefore the benefit of submissions about them from Mr Anderson and Miss Tripp, I give to any of the persons represented by them liberty to apply for a decision on a different basis. Any such application should be made within the THREE MONTHS period and otherwise as hereinbefore prescribed for an application under the liberty to apply applicable to the Decision Plan.

On the evidence and for the reasons herein before summarised and given I am satisfied that the Earl of Harewood, Mrs K E Dibb, the Church Commissioners for England, Messrs A G and C Plummer, Mrs J M Stephenson and Yorkshire Water Authority are the owners of the parts of the Unit Land hereinafter specified and I shall accordingly pursuant to section 8(2) of the Act of 1965 direct North Yorkshire County Council as registration authority to register (HA) Right Honourable George Henry Hubert Earl of Harewood, (DI) Mrs Kathleen Elsie Dibb of Rawcliffe Grange, Shipton Road, Rawcliffe, York, (CC) the Church Commissioners for England of 1 Millbank, Westminster, London, SW1, (PL) Mr Arthur George Plummer of Victorian Farm, Water Lane, Clifton, near York and Mr Charles Plummer of 7 Grange Lane, Acomb, York, (ST) Mrs Judith Margaret Stephenson of Claremont House, Main Street, Wiggenton, near Haxby, York and (YW) Yorkshire Water Authority of West Riding House, 67 Albion Street, Leeds, LS1 5AA as the owners of the parts of the Unit Land respectively on the Decision Plan marked "HA", "DI", "CC", "PL", "ST", and "YW", subject nevertheless to the said liberty to apply for a revised plan or for a revised basis of division in this decision before granted.

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.



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SCHEDULE  
(Documents)

## Part I: at hearing by Mr Anderson

H/1                    --                    Plan showing ownership claimed:-  
(1) all except small piece at north,  
(3), (4), (10), (12) and (13) by  
Harewood Estate; (2), (5), (6) and (8)  
by Mrs K Dibb; (11) and not numbered by  
Mrs J M Stephenson; (9) by Messrs Plummer;  
(7) and (14) by Church Commissioners for  
England; and east part of (1) and  
small triangular area east of (11) by  
Yorkshire Water Authority.

## Part II: at hearing on behalf of Yorkshire Water Authority

YWA/1                    4 September 1984                    Conveyance by Rt Hon G H H Earl of  
Harewood to Yorkshire Water Authority  
of about 2.27 acres, subject to  
"the right of the Pasture Masters of  
Clifton Ings to graze the aftermath".

YWA/2                    19 June 1984                    Conveyance by Judith Margaret  
Stephenson to Yorkshire Water  
Authority of 0.42 acres, subject to the  
exception and reservation in a conveyance  
of 9 March 1976 (JMS/1 below).

## Part III: at hearing on behalf of Mrs J M Stephenson

JMS/1                    9 March 1976,                    Conveyance by Harold Watson-Hall to  
Judith Margaret Stephenson of First  
the Officers Meade otherwise Kings  
Meade containing about 6 acres in  
the parish of Kurt Burkind in Clifton  
Ings and secondly ... containing about  
1½ acres ... except and reserving to  
the Pasture Masters of the Manor of  
Acomb with Clifton and Holgate a right  
to take the aftermath ... after mowing.



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- JMS/2                    8 January 1976                    Statutory declaration by George Kenneth Plummer that for the last 60 years his father and he have been the tenants of the Trustees of John Bellerby deceased of 2 pieces of land shown on the plan (on H/1 shown as No. 11 and to the south part of the strip on H/1 not thereon having a number).
- JMS/3                    24 February 1978                    Conveyance by George Kenneth Plummer to Judith Margaret Stephenson of land containing about 1.5 acres and shown hatched red on plan (on H/1 shown as the north part of the strip not thereon numbered).
- JMS/4                    24 February 1978                    Statutory declaration by George Kenneth Plummer that he had for 12 years been in possession of the said 1.5 acres.

Part IV: at hearing on behalf of York City Council

- YCC/1                    29 March 1919                    Conveyance (not easily legible M/S) by Rt Hon Nan Ino Baroness Lucas as to one moiety and Rt Hon Mary Evelyn Compton Vyner with the concurrence of Most Hon Frederick Oliver Marquess of Ripon and another as her trustees as to the other moiety to Lord Mayor Aldermen and Citizens of York the Manors or reputed Manors of Clifton and Rawcliffe with all their rights members and appurtenances.
- YCC/2                    29 March 1919                    Recently typed copy of YCC/1 showing title to moieties derived under indenture dated 27 June 1915 of Clifton and Rawcliffe Estates one to use of Lady Lucas and her heirs and the other to uses under will of Robert Charles de Grey Vyner deceased, under will dated 20 August 1914 of the said R C de G Vyner and under a disentailing indenture of 14 September 1909 by Rt Hon Auberon Thomas Baron Lucas.





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YCC/3                    22 October 1918                    Letter from Linklater & Co, Solicitor of Wallbrook, London, EC4 to Percy J Spalding, Town Clerk, York ...

YCC/4                    23 October 1918                    Memorandum of "Interview with Mr E R Dodsworth ..."

Part V: sent with letter of 12 March 1985 for Earl of Harewood

H/2                      --                                      Epitome of Title as below.

H/3                      5 April 1957                      Examined copy conveyance by Lascelles Estate Limited and their liquidator to Rt Hon G H H Earl of Harewood of First lands in Adel-cum-Eccup and other parishes comprising about 5,896.285 acres particularly described in the First Schedule and annexed plans edged red ... First Schedule "York CB (OS No) Pt.277 Clifton Without (OS No) Pt.198 (Area altogether) 47.194 acres. Note:- Pt.198 on plan shown as same as 1, 3, 4, 10, 12 and 13 on H/1, except the strip on south side of 13 not included in Pt.198.

H/4                      --                                      Photocopy of plan No 2 of said 1957 conveyance showing "Pt.198".

Part VI: sent with letter of 15 March for Mrs J M Stephenson

--                                      Epitome of title to land shown on H/1 on No. 11 and to south part of strip on H/1 not thereon having any number with documents annexed as under.

JMS/5                    7 August 1901 etc                    Abstract of will and codicil of John Bellerby (he died 15 September 1903) and of probate.

JMS/6                    22 August 1905                    Appointment of Trustees with Schedule of property subject to the Trust of the said will and codicils including (among freehold hereditaments) "Seven acres or thereabouts of freehold land situate in and forming part of Clifton Ings near the City of York", (among copyhold hereditaments) "half an acre of copyhold land situate in and forming of Clifton Ings near the City of York".



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JMS/7	29 September 1905	Statutory declaration by Alfred Procter as to Testator's children.
JMS/8	6 March 1906	Manor of Acomb with Holdgate and Clifton: Admission reciting the admission of John Bellerby on 10 November 1876 "to that ... piece of land containing ... half an acre ... in the Ings of Clifton ...", and recording the admission of his trustees.
JMS/9	3 December 1935	Appointment of trustees with Schedule of Property, relatively as in JMS/6 save the half an acre is described in recital among "enfranchised lands affected by manorial incidents".
JMS/10	28 February 1946 25 November 1955	Appointments of new trustees with schedule of property relevantly the same as JMS/9.
JMS/2	8 January 1976	Statutory declaration by G K Plummer, see Part III above.
JMS/1	9 March 1976	Conveyance by H Watson-Hall and another to J M Stephenson, see Part III above.
--	--	Epitome of title to lands being the north part of the strip not on Plan H/1 having any number with documents annexed as under.
JMS/4	24 February 1978	Statutory declaration by G K Plummer, see Part III above.
JMS/3	24 February 1978	Conveyance by G K Plummer to J M Stephenson, see Part III above.
Part VII: sent with letter of 15 April for Messrs A G and C Plummer		
AGP/1	--	Epitome of title relating to 10a.13r.11p. of land (on H/1 number 9).
AGP/2	10 December 1958	Conveyance by William John Bellerby to Arthur George Plummer and Charles Plummer of meadowland containing 10a.13r.11p. lying in Clifton Ings as delineated on plan annexed and coloured pink "subject to such rights of pasturage in or open the said land as now exists or are exercised by the several owners



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or occupiers of Ancient Common Right Houses in the Township of Clifton aforesaid".

Part VIII: sent with letter of 15 April for Mrs K E Dibb

- KED/1            --            Epitome of title to OS No. 198a, 198b and 198c at Clifton Ings.
- KED/2            14 May 1920            Conveyance by Rt Hon Nan Ino Baroness Lucas as to one moiety and Rt Hon Mary Evelyn Compton-Vyner with the concurrent of the Most Hon Frederick Oliver Marquess of Ripon and indeed another as her trustees of the other moiety to Albany Holmes of First Rawcliffe Grange Farm and secondly "three fields part of Clifton Ings ... described in second part of First Schedule delineated on plan coloured blue, green and mauve (no plan included in abstract) with Schedule description of 198a, 198b and 198c respectively containing 5a.3r.8p., 4a.1r.16p., and (about) 19a.Or.Op.
- KED/3            10 July 1947            Conveyance by Charles Arthur Holmes to Albany Holmes of "... land ... in a certain open field called Clifton Ings ... containing ... one acre and a half" ... "Subject to such rights of stray and average and all such other rights as now affect the property".
- KED/4            22 December 1947            Conveyance by Fred Buckle to Albany Holmes of "Land ... on a certain open field called Clifton Ings ... containing half an acre ... delineated on the plan ... thereon coloured red.
- KED/5            10 July 1964            Assent by Kathleen Elsie Dibb as personal representative of Albany Holmes who died 19 June 1959 in favour of herself of (among other property) "fourthly three fields part of Clifton Ings containing 29a.24p. as described in conveyance of 14 May 1920 (KED/2); fifthly about half an acre described in conveyance 22 December 1947 (KED/4) and field 198c described in conveyance of 14 May 1920 containing one acre and a half.



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Part IX: sent with letter of 3 July 1985 for  
Church Commissioners of England

CC/1

19 June 1985

Statutory declaration by James Richard Beard Estate Secretary to the Church Commissioners of England with Plans A and B annexed at lands delineated formed part of the Strensall Prebend Estates by the Ecclesiastical Commissioners at 1840 (3&4 Vic cap 113) an estate in fee simple in possession on 18 November 1836, and since the date of this vesting in the Ecclesiastical Commissioners and the Commissioners as their successors in title have been in receipt of the rents and profits of the said property.

Dated this 10<sup>th</sup> day of February 1986.

*A. A. Barker Fuller*

Commons Commissioner