



COMMONS REGISTRATION ACT 1965

Reference Nos. 206/D/964 to  
981 inclusive

In the Matter of (1) East Moor, and  
(2) Land additional to East Moor and  
The Ridge, both in Altarnun,  
North Cornwall District, Cornwall

DECISION

These 27 disputes relate to the registrations at Entry No. 1 in the Land Section and at the Entry Nos. listed in the first column of the First Schedule hereto in the Rights Section of Register Unit No. CL108 in the Register of Common Land maintained by the Cornwall County Council; and at Entry No. 1 in the Land Section and at the Entry Nos. listed in the second column of the said Schedule in the Rights Section of Register Unit No. CL162 in the said Register; and are occasioned by Objection No. X68 and No. X68A made by Economic Forestry (Wessex) Ltd and noted in the CL108 Register on 17 July 1970 and in the CL162 Register on 18 March 1971; by Objection No. X467 made by the Minister of Agriculture, Fisheries and Food and noted in the CL162 Register on 17 November 1970; by Objection No. X968 made by Mr Francis Thomas Boundy and noted in the CL108 Register on 21 March 1972; by Objection Nos. X1274, X1275, X1276, X1277, X1278 and X1279 made by East Moor Commoners Association and noted in the CL108 Register on (X1274-77 and 79) 23 December 1972 and (X1278) 25 January 1973; and by Objection Nos X1280, X1281, X1283, X1284 and X1282 made by East Moor Commoners Association and noted in the CL162 Register on (X1280, 81, 83 and 84) 22 December 1972 and (X1282) 25 January 1973.

I held a hearing for the purpose of inquiring into the disputes at Wadebridge on 12 and 13 May 1981. At the hearing: (1) Major Owen John Lewis and Mrs Lilian Honor Gordon Lewis of Lescrow Hay Fowey as successors of Economic Forestry (Wessex) Ltd were represented by Mr J B G Holt, solicitor of Hancock & Lawrence, Solicitors of Truro; (2) The Minister of Agriculture, Fisheries and Food were represented by Miss A G Braddock, solicitor in his Legal Department; (3) Various persons mentioned in the fifth column of the said Schedule as being interested in or entitled to the benefits of the registrations in such Schedule mentioned were either represented by Mr M Warne, solicitor of Peter Peter & Son, Solicitors Launceston or represented by Mr P N Hewlitt, solicitor with Parnall Godwin & Chegwin, Solicitor of Launceston or attended in person or were otherwise represented as in such column mentioned; (4) the East Moor Commoners Association who are a branch of the Cornwall Commoners Association, an application by who there is noted in the CL108 Land Section, were as such Objectors represented at the beginning of the hearing by Mr Ernest Pryce Bloomfield of North Bowder, North Hill their Chairman and shortly afterwards by Mr J B G Hold (above mentioned); and (5) Mr Anthony Arthur-Lock of No. 5 Windsor Villas, Lockyer Street, Plymouth who said he was "one of the two soil owners of East Moor, Ref CL108" attended in person.

The land ("CL108 East Moor") in Register Unit No. CL108 is a tract containing about 1,308 acres being a little more than 2 miles long from northeast to southwest and about one mile wide. The grounds of Objection No. X68 (Economic Forestry) are stating their effect shortly that the registration should not have included a strip ("the X68 Objection Land") which is about 600 yards long and about (in places more) 75 yards wide and which is shown on the plan attached thereto. The land ("the CL162 additional land") in Register Unit No. CL162 is a tract of about



500 acres comprising 7 pieces of which one ("the Ridge", much the largest) adjoins the southeast boundary of the CL108 East Moor and the 6 others adjoin on the north, south and southwest. The grounds of Objection No. X467 (M of A for Forestry Commission) are stating their effect shortly that the registration should not have included triangular area ("the X467 Objection Land") whose sides are about 170 yards long and which forms the greater part of that one of the said 6 CL162 pieces adjoining the southwest side of CL108 East Moor. The grounds of Objection No. X68A (Economic Forestry) are stating their effect shortly that the registration should not have included the remaining part ("the X68A Objection Land") of such one of the said 6 pieces.

In support of Objection Nos. X68 and X68A Major Lewis in the course of his oral evidence produced a conveyance dated 14 March 1972 by which Mrs E M S Mann, Mrs A F H Morshead, Mrs E M W Lloyd and Mrs D E A Glossop, conveyed Smiths Moor and Farm containing about 219.016 acres to Mrs L H Lewis (his wife), and also two bundles of signed statements by which various persons who had registered rights as set out in the said Schedule hereto agreed to effect being given to the said Objections. The vendors under the 1972 conveyance are the same persons as are named at Entry No. 2 in the CL108 and CL162 Ownership Section as owner of a part of a registered land which included in X68 and X68A Objection Lands.

In support of Objection No. X647 oral evidence was given by Mr Peter Horace Parson head forester (at Bodmin) with the Forestry Commission, in the course of which he produced a conveyance dated 18 September 1931 by which Altarnun Mines Limited conveyed Halvana Moor containing about 496.522 acres to the Forestry Commissioners. He said that the X467 Objection Land is at present a bog and cannot be planted with trees like the adjoining part of the land comprised in the 1931 conveyance (marked on the OS Map as "Wilsey Down Forest, Halvana Plantation") and that the X467 Objection Land is fenced as far as practicable so as the nature of the ground admits like the rest of the forest land.

By the 1972 and 1931 conveyances these Objection lands are conveyed in the same way as the rest of the lands thereby dealt with without any indication that they are subject to any rights of common. Nobody at the hearing suggested they should remain in the Land Section registrations, and as above stated a high proportion of those who have registered rights over such lands have expressly agreed to withdraw. In these circumstances my decision is that the X68, X68A and the X467 Objection lands should not have been included in the registrations. I am obliged by section 6(7) of the 1965 Act to treat these Objections being also an objection to all the Rights Section registrations; I deal later in this decision with the possibility of these deemed objections to the Rights Section registrations extending beyond the Objection lands above mentioned.

After Mr Archer-Lock read a statement in which he said, understanding that the Commoners Association have agreed among themselves that they should claim grazing units to a total for above the capabilities of the Common, he submitted that the capacity stocking rate of the Common should include a reasonable and none excessive proportion of the total units to be allocated to the soil owners in preservation of their rights, and in support of this referred to Harris and Ryan on Common Land (1967)



para 3-4 on page 85, and also to a letter dated 24 May 1966 written to him by the Ministry of Land and National Resources suggesting the number of animals he could turn out could only be determined by the Courts or by a Commons Commissioner.

Mr Hewlitt said that Mr J L Smith withdraws his claim to the right registered at CL108 Entry No. 95 (formerly 56) so that I can refuse to confirm this registration.

Mr Warne on behalf of Mr Richard Smith presented his case in support of the registration at CL108 Entry No. 96 (formerly 57), on the basis that he had to meet Objection No. X1277 made by the Commoners Association, that is: "rights do not exist". Mr Smith in the course of his oral evidence said (in effect):- Trelawney to which the right is attached, was purchased by his father in about 1939. From his earliest recollections (he is now aged 46 years) cattle from there had been grazed on the Moor. Trelawney is 86 acres. He also owned Tregaddick which is 34 acres, for which a right of common has been registered at Entry No. 91 (formerly 51).

Mr E B Bloomfield, who supported the Objection intervened to say that the Association considers that any right attached to Trelawney was exerciseable only over West Moor (an area north of the A30 road) although they concede that there is a right attached to Tregaddick (but not for as many animals as registered). Mr Smith continuing his evidence said that he had had Tregaddick since 1953. Mr John Goodenough of Woodaver as a member of the Commoners Association produced an extract on the Altarnun Tithe Apportionment which he had made in the County Record Office at Truro. After some discussion I considered it unsatisfactory that I should deal with Entry No. 91 and Entry No. 96 separately or deal with either without having some information about the documents of title relating to Trelawney and Tregaddick, so I deferred further consideration of these registrations until later at the hearing so that those concerned could consider supplementing the evidence summarised above.

Mr Bloomfield who has been a member of the Commoners Associates for about 30 years and their chairman for 10 years then gave evidence as to the general attitude of the Association to the registrations to which they had objected. When considering the grazing registrations, their view was that the rights of grazing should be treated as being in units, each unit being a right to graze one head of cattle or one pony or 5 sheep and that the number of units registered in respect of each farm entitled to rights should be in proportion to the in-bye land of the farm. The registrations as applied for and made totalled (after translating the numbers into units) 2,080 units. The Association treated East Moor and The Ridge (that is both CL103 and CL162 land) as one common, and considered that as one common (it is about 1,800 acres) it would be unrealistic and impracticable for more than between 800 and 1,000 units to graze; and so assuming that the total of the in-bye lands of the farms concerned amounted to about 5,000 acres, the Association's Objections were on the basis of the unit numbers of each farm should be one unit for every 5 acres of in-bye land.

Mr Bloomfield was questioned by Mr A Anthony-Locke, by Mr A Wadge, by Mr Warne, by Mr Hewlitt and by Mr Scott.

I find that the Commoners Association in approaching this matter, treated the owners of the CL108 East Moor and CL162 additional land as having no rights of grazing



at all. Against this view further oral evidence was given by Mr A Anthony Lock to the effect that the registrations at Ownership Section Entry No. 1 of Mrs E M S Mann and Mrs E M W Lloyd as owners of the land in the Register specified (being almost the whole the lands in these Register Units) were as trustees, because the land was held in undivided shares, one share for himself as Lord of the Manor of Trevauge and the other for Mrs E M S Mann, Mrs A H Morshead, Mrs E M W Lloyd and Mrs D A Glossop as trustees of the Rodd Estate. He explained that the amounts of each share had not been resolved, that they could be 50-50 and that he did not claim more than one half. On the basis of this ownership he claimed some units. At the hearing I said I would in these proceedings disregard this claim as to rights, for the reason (among others) that it was I thought contrary to a High Court decision given more than 300 years ago which reasons I would give in my decision. Such reasons as set out in the Second Schedule hereto.

There was at the hearing a considerable discussion as to how I should give effect to the evidence of Mr Bloomfield. The conflicting views being as follows:- If the total number of units registered exceeded the capacity of the Common, there would be a "free for all", so that those who were prepared to leave animals out "to live or die" would be able to do this to the detriment of the animals and of the grass of the Common. But the figures proposed by the Commoners Association if all entitled actually grazed, would be in excess of the capacity of the Common, so that on any view some "free for all" was unavoidable. The farms to which grazing rights are attached could be divided (roughly) into two classes: hill farms and other farms. To many of those who farmed the other farms their rights on the Common were not under present conditions and as they now farmed of much consequence, because their business was based on high quality animals not (if their quality was to be kept) for grazing on the Common; but such other farmers (because conditions might change) did not wish to give up their rights. Contra, to many of those who farmed hill farms, their grazing on the common was an essential and important part of their business, based on animals which could do well enough on the not so good grass of the Common; having regard to the Hill Farm Subsidy and other considerations, no useful purpose would be served by their unit numbers being reduced for the benefit of those who farmed the other farms and did not currently wish to exercise their rights.

By section 15 of the 1965 Act where a right of common consists of a right not limited by number to graze animals, it shall be exerciseable in relation to no more animals than a definite number; and any application for the registration of such a right shall state the number of animals to be entered in the register. I find that in relation to the CL108 and CL162 lands, apart from the 1965 Act the rights of common with which I am dealing are "not limited by number," so that section 15 is applicable. Unfortunately the Act gives no guidance as to how the number is to be fixed; the Commons Registration (General) Regulations 1966 which provide for a form of application for the registration of a right, (Form 9 of Schedule 1) indicates in the Notes that the applicant shall register the number of animals "which he believes himself entitled to graze" and warns applicants against putting an excessive figure because a Commons Commissioner might order them to pay costs of an objector. The Act provides when a registration has become final rights shall not be exerciseable in relation to animals exceeding the number registered or "such other number or numbers as Parliament may hereafter determine".



In my opinion Parliament by providing that the animals grazed should not exceed the number registered, does not provide that a person entitled to a right registered for any particular number can in all circumstances and at all times without regard to the rights of persons who have made other registrations, always graze that number; the question whether the person is grazing excessive numbers at any particular time although he is within the limits of his registration, must, it seems to me, be determined in the same way as it would have been determined if the 1965 Act had never been passed.

As I understood the views expressed at the hearing, all present (apart from Mr Archer-Lock) were agreeable to the numbers being proportional to the in-bye land of those who had rights, but so they should as regards any individual farmer be large enough so as not to interfere with what he had been recently doing without any other commoner finding any substantial ground for complaint. In this case the rights with which I am dealing are (as explained in the Second Schedule hereto) sole and several herbage rights in respect of which apart from the 1965 Act there is no limit to the number of animals any commoner can put on the Common provided that the other commoners are agreeable and that he does not infringe their rights. There is no reason why I should limit the numbers to the capacity of the Common at the date of the hearing, and to do this might discourage the capacity being increased by worthwhile improvements. If the Commoners agree and the Register will in the result not be confusing, there is I think no legal reason against my giving effect to their views.

However it was said that if I gave effect to these views as regards only the registrations to which the Commoners Association had particularly objected and with which I am as a result of their Objections concerned in these proceedings, I would be treating some of their members unfairly; particularly those who had pursuant to the Association's Objections reduced their numbers, would be at an unfair disadvantage in relation to those who had contrary to the views of the Association's Objections insisted on larger numbers. In the particular circumstances of this case I can avoid this difficulty, because all the Rights Section are under the 1965 Act treated as having been objected to the Objections to the Land Section registrations made by Economic Forestry (Wessex) Ltd and the Minister of Agriculture, Fisheries and Food. The 1965 Act provides in effect for a Commons Commissioner to have power to modify any registration to which an objection has been made and this power is not by the Act limited to the grounds of the Objection. By regulation 25 of the Commons Commissioners Regulations of 1961, a Commissioner may allow if he thinks it just a ground not stated in the Objection; this regulation confirms my view that the jurisdiction is not limited to the wording of the Objection. So that the registrations as regards these Register Units may be altogether consistent with each other, I can I think properly increase the number of animals appearing in any registration beyond that claimed by the applicant so as to get over the difficulty above mentioned.

Having regard to the views above set out, at the hearing I went through each of the registrations, as indicated in the sixth column of the First Schedule hereto with the result therein indicated. Except as is in such column or hereinafter mentioned there was at the hearing no difference as to what my decision should be.

In relation to CL106 Entry Nos. 45, 60, 99 and 100, Mr A W Wadge claimed that the number of Units being offered by the Commoners Association was too few for the



acreage of the relevant in-bye lands; in support of this claim oral evidence was given by Mr Ernest Henry Wadge as to such acreage, in the course of which it appeared that in-bye lands on which he had calculated his acreages were greater than the lands in the application for registration specified as the lands to which the rights should be attached, and which were the lands in column 5 of the Register described. In my opinion if I proceed in accordance with the views put forward by the Commoners Association as to the relation between the number of units and the acreage of the in-bye lands, the relevant in-bye lands must be those specified in the Register and not the lands which at the hearing it was suggested by Mr Wadge might possibly be regarded as the lands to which the registered rights should be attached. Neither Mr A W Wadge nor Mr E H Wadge suggested that on this basis the figures 16 units, 7 units, 24 units and 16 units put forward on behalf of the Association were too small so my decision is therefore in favour of these figures and no more.

In relation to CL108 Entry No. 88, Mr L G Ellis gave oral evidence in the course of which he produced a statement to the following effect:- Before 1968 the lands to which the rights registered at Entry Nos. 88 and 93 are attached were owned by Mr C H Judd who sold the No. 93 land (23 acres) to Mr I Bloomfield and the No. 88 land (now East Moorgate House, East Moorgate Cottage and Stable Cottage) to Captain T T Brandreth. In 1969 after the registration at Entry No. 40 (later replaced by No. 88), Captain Brandreth acquired a small part of the No. 93 land and sold Stable Cottage and East Moorgate Cottage to Mr Eale and to Mr and Mrs Howlett. Subsequently the remainder of No. 88 land and the said small part of No. 93 land, was sold by Captain Brandreth to Mrs S Davies and afterwards sold by her to Mr and Mrs Ellis. As I understood Mr Ellis he considered I should somehow record this devolution of title particularly recording that under the conveyances, statements, declaration, epitomes and abstracts he could produce, all the rights registered at Entry No. 88 had devolved on him and his wife to the exclusion of Mr Eales and Mr and Mrs Howlett.

The Commoners Registration (General) Regulations 1966 provide how the Registers are to be amended when a right of common is apportioned or varied, see regulation 29. Neither under the 1965 Act nor under the Regulations is a Commons Commissioner empowered to give any decision or direction as to any such amendment. In my view I have no jurisdiction to do so; in these proceedings I am concerned only to determine whether the registrations now in dispute were correct at the time when they were made and as regards at Entry No. 88 I must treat it as having been made on 17 October 1969 being the date of the registration at Entry No. 40 which it replaced; a confirmation of the registration at Entry No. 88 will not I think prejudice any claim Mr and Mrs Ellis may wish to make under regulation 29 to exclude Stable Cottage and East Moorgate Cottage from the land described in column 5 of the registration. There being agreement between the Commoners Association and Mr and Mrs Ellis that apart and any question of apportionment, 2 units would be appropriate for Entry No. 88, I so decide.

I was informed by Mr Warne and Mr Holt that after an abstract of the title of Mr Richard Smith to both Trelawney and Tregaddick had been produce, Mr Smith and the Association had agreed that the registration at Entry No. 91 should be modified to 14 units and the registration at Entry No. 96 should be withdrawn. So I need not express any opinion as to the conflicting evidence briefly summarised above relating to these two registrations.



Objection No. X968 by Mr F T Boundy relates particularly to and only to Entry No. 43 (now No. 99) made on the application of Mr A W Wadge. Nobody appeared in support of the Objection. So far as the grounds of the Objection relate to grazing I see no reasons for giving any effect to them so far as they conflict with the views of the Commoners Association as above stated. So far as the grounds put in issue, the right to cut and take peat and turf, I do not know why Mr Boundy particularly selected Entry No. 43 for his Objection, when there are at least 15 other registrations of a similar right made on the applications of other persons. There having been no particular objection to these similar registrations so far as they relate cutting peat and turf (some of them include taking stone for fishing) and being of the opinion that they should therefore be confirmed as regards such rights without any modification, I have no good reason for treating in this respect Entry No. 99 any differently. So my decision is wholly against the Objection.

For the reasons set out above, I confirm the registration at Entry No. 1 in the CL108 Land Section with the modification that the Objection X68 Land be removed from the Register. I confirm the registration at Entry No. 1 in the CL162 Land Section with the modification that the Objection 68A Land and the Objection No. X467 land be removed from the Register. I refuse to confirm CL108 Rights Section registrations at Entry Nos. 95 (formerly 56) and 96 (formerly 57). I confirm without any modification CL108 Rights Section registration at Entry No. 42 (turf peat fish stone). I confirm without any modification the CL162 Rights Section registration at Entry No. 30 (turf peat fish stone). I confirm the CL108 Rights Section registrations and the CL162 Rights Section registrations which are specified in the First Schedule hereto and against which in column 5 appears the words "I CONFIRM" with the modification that in every case for the words "to graze ... sheep ... ponies" or any words describing a right of grazing animals by any numbers and of any kind and in any combination there be substituted "to graze ... units as in this Rights Section defined" so that the number of units to be inserted in the ... shall be the number of units specified in the said column of the said Schedule after the word "CONFIRM" and so that somewhere in the Rights Section (as Cornwall County Council as registration authority shall determine) there shall be recorded that in it a right to graze so many units means "a right to graze one head of cattle or one pony or 5 sheep" and so that where the right is both over CL108 Land and the CL168 Land (whether or not so expressed in the Register) as regards numbers of animals the said lands shall be treated as one common and the grazing rights as regards numbers treated as one right not exerciseable at any time for more than the animals allowed by the number of units specified.

I realise as all present at the hearing also realise, that the total number of units which will as a result of this decision appear in the Register represents a number of animals far in excess of the capacity of the CL108 East Moor and the CL162 additional land. Nevertheless the 1965 Act will I think have achieved something (with the help of the Commoners Association) by finalising one of the kinds of possible disputes which might arise between the Commoners. In my view the Act by requiring the number of animals to be specified in any registration did not contemplate that all possible management questions would be resolved or that a free for all detrimental to animals would certainly be prevented.



I have given no decision about CL108 Rights Section Entry No. 59 and CL 162 Rights Section Entry No. 41 made on the application of Mrs E M S Mann Mrs A F Hope-Morshead Mrs E M W Lloyd and Mrs D E A Glossop, because I have no note or recollection of anything being said at the hearing about these registrations; accordingly I give these persons and anyone claiming under them and any other person who was present or represented at the hearing liberty to apply to me about these registrations with a view to my giving a second decision which will some way finalise them; if no such application is made, as regards these registrations the proceedings will stand adjourned to a date or place to be fixed by a Commons Commissioner. In case I have in this decision made a mistake about these registrations or any other registration mentioned in the First Schedule hereto I give to any person who attended or was represented at the hearing liberty within 42 days after this decision is sent to them to apply to me to correct this mistake. Any such application should in the first instance be made by letter addressed to the Clerk of the Commons Commissioners in London and should specify the correction which the applicant considers desirable.

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.

TURN OVER  
for FIRST SCHEDULE



FIRST SCHEDULE

OB Entry No. (Former No.)	CL162 Entry No. (Former No.)	Applicant will stand to which right is attached	Right Register	Representation	Observations made at Hearing and my Decision
9	5	Henry William Matthews (owner) Treburland Farm, Altarnun	30 ponies and 50 bullocks and 200 sheep	Mr Wesley Smith as transferee of Treburland Farm represented by Mr P N Hewlitt	Objections X1276 and X1284 should be pure animals 15c. or 18p. or 90s. Mr Hewlitt produced copy conveyance dated 14 February 1969 by H W Matthews to W Smith describing Treburland as containing 92.469 acres. I CONFIRM 37 (thirty seven) Units.
10	6	Clara Roberts (owner) Poldhu, Altarnun	28 head cattle or 28 ponies or 140 sheep	Mr John Henry Jude attended in person and on behalf of his wife Mrs Patricia Loris Jude as successor Mrs C Roberts	Objections X1276 and X1281 pure animal 14c. or 14p. or 70s. Mr Jude said his farm was 70 acres. I CONFIRM 28 (twenty eight) Units.
22	No	William Richard Sanders (owner) Trerithick Manor, Altarnun	90 head of cattle or 90 ponies or 450 sheep Cut and take peat	Mr W R Sanders represented by Mr P N Hewlitt represented by	Objection X1276, fewer animals, 34c. or 34p. or 170s. I CONFIRM 68 (sixty eight) Units.
23	No	William Richard Sanders (owner) Hall Parks, Lewannick	90 head of cattle or 90 ponies or 450 sheep Cut and take peat	Ditto	Objection X1276, fewer animals, 6c. or 6p. or 30s. I CONFIRM 12 (twelve) Units.
24	18	Alec Peter Scott and Beatrice Marilyn Scott (owners) Hondra Farm, Altarnun	136 head of cattle or 136 ponies or 600 sheep	Mr A P Scott and Mrs B M Scott represented by Mr P N Hewlitt	Objections X1275 and X1280, fewer animals 68c. or 68p. or 340s. Mr Hewlitt said present owner is Mr G J Wainwright I CONFIRM 136 (one hundred thirty six) Units.

26	No	Elsie and Minnie Hornabrook (owners) Goodaver and Lowlands Farm, Altarnun and St Cleer	10 bullocks	Miss E and Miss M Hornabrook repre- sented by their tenant Mr I J Goodenough of Goodaver, Common Moor, Liskard	No objection by Commons Association. Mr Goodaver says from his 300 acres. Mr Holt agreeing for the Association an increase, I CONFIRM 120 (one hundred and twenty) Units.
27	22	Jack Palmer (owner) Trevadlock Hall, Congdons shop, North Hill	6 head of cattle 6 ponies or 30 sheep		Objection X1275, fewer animals, 3c. or 68p. or 340s. In the absence of any representations I CONFIRM 6 (six) Units.
30	25	Richard Jasper (owner) Tregirls Bridge, Altarnun	2 bullocks or 2 ponies or 10 sheep	Mr R Jasper repre- sented by Mr P N Howlitt	Objections X1275 and X1280, fewer animals 1c. or 1p. or 5s. I CONFIRM 2 (two) Units.
31	26	Richard Jasper (owner) Part of North Down, Polyphant	8 bullocks or 8 ponies or 40 sheep	Ditto	Objection X1275, fewer animals, 4c. or 4p. or 20s. I CONFIRM 8 (eight) Units.
32	27	Richard Jasper (owner) Trewint Farm, Trewint	58 bullocks or 58 ponies or 290 sheep	Ditto	Objections X1275 and X1280, few animals 2c. or 2p. or 10s. Mr Howlitt used the conveyance dated 1.7.1958 by G V Kittow to R Jasper of Trewint Farm described as containing 143.645 acres I CONFIRM 20 (twenty) Units.

- 34 19 Charles Smith (owner)  
Oldhay Farm, Altnarnum
- 58 head of cattle  
59 ponies or  
290 sheep
- Mr C Smith repre-  
sented by Mr P N Hewlitt
- Objections X1275 and  
X1280, fewer animals,  
29c. or 29p. or 146s.  
Mr Hewlitt said the farm  
has since 1938 been split  
up into 3 pieces. I said  
that this split could be  
dealt with by application  
under Regulation 29 of  
the Commons Registration  
(General) Regulations  
1966 that this showing  
I was concerned only  
with the registration  
as originally made or  
at the date of Objection.  
On this basis I CONFIRM  
58 (fifty eight) Units.
- 35 20 William Henry Barriball  
(owner)  
Tredaule, Manor Farm,  
Altnarnum
- 20 head of cattle  
or 10 ponies or  
30 sheep
- Mrs Vivienne Turner  
as successor entitle  
of Mr W H Barriball  
represented by  
Mr P N Hewlitt
- Objections X1275 and  
X1280 fewer animals, 3c.  
or 3p. or 15s.  
The application plan  
shows the area to be  
14 acres.  
I CONFIRM 6 (six) Units.
- 37 28 Wesley Smith (owner)  
Stertifolds, Altnarnum
- 30 head of cattle  
or 30 ponies or  
100 sheep
- Mr W Smith repre-  
sented by Mr P N Hewlitt
- Objections X1275 and  
X1280 fewer animals,  
5c. or 5p. or 25s.  
Mr Hewlitt produced a copy  
of a conveyance dated  
26.2.1951 by which  
Charles Sleep conveyed  
to Wesley Smith  
Stertifolds described  
as containing 24a. or  
22p.  
I CONFIRM 10 (ten) Units.

42	Clara Roberts (owner) Poldu and Redhill, Altarnun	Dig and take turf or peat; take fish; take stone	Mr John Henry Jude attended in person and on behalf of his wife Mrs Patricia Loris Jude as successor entitled Mrs C Roberts	No objection.
45	Ernest Henry Wadge (owner) Tregirls, Altarnun	29 head of cattle 29 ponies or 145 sheep; cut and take turf or peat	Mr E H Wadge represented by Mr Alfred William Wadge of Jolls Ground (see No. 99 below).	Objection X1274, fewer animals 15c. or 15p. or 75s. Reasons given earlier in this decision I CONFIRM 16 (sixteen) Units.
59	Evelyn Mary Stanhope Mann, Annie Frances Hope Morshead, Elinor Mary Wynn Lloyd and Diana Edith Alicia Glossop (owners) Smith's Moor Farm, Altarnun	126 head of cattle or 126 horses horses or 500 sheep Cut or take peat		Objections X1278 and X1282, fewer animals, 50, or 50p. or 250s.
41	In the registra- tion no reference to 162 to CL108			
33				

60	42	Amie Wadge (Owner). Fields at Polyphant Lewannick.	7 head of cattle or 7 ponies or 35 sheep	Mrs A Wadge represented by Mr Alfred William Wadge	Objection X1274 and X1283. Fewer animals 4 c. or 5 p. or 18 s.
64	No Reg.	Mary Joanna Hills (Owner) Newhay Farm, Altarnun	16 head of cattle or 80 sheep or 16 ponies	Mrs Mary E Richards and Mr John Wills attended in person as successors in title of their aunt Mrs M J Wills now deceased.	For reasons given earlier in this decision I CONFIRM 42 (forty two) units
65	59 (formerly 1)	Doreen Mary Taylor (Owner) Travadlock Farm and other land at Lewannick.	22 Cows or 22 ponies or 110 sheep. Cut and take peat.		No objection by Commoners Association I CONFIRM 40 (forty) Units.
66	66 (formerly 2)	Barbary Joan Thom (Owner) Trenilk Farm, Five Lanes	2 head of cattle or 10 sheep		No objection by Commoners Association. I CONFIRM 4 (four) Units.
67	45 (formerly 3)	Alec William Scott (Owner) Trecornar, Altarnun	41 cows or 41 ponies or 205 sheep	Mr A W Scott represented by Mr P N Hewlitt	Registration satisfies objections X1276 and X1281. Agreed should be 82 units. I CONFIRM 82 (eighty two) Units.
68	46 (formerly 4)	Alec William Scott (Owner) The Cannaframe Estate Altarnun.	125 head of cattle or 125 ponies or 625 sheep	Ditto, but Cannaframe Estate now owned by Mr R L Robson present in person	Registration satisfies objections X1276 and X1281 but agreed should now be 250 units. I CONFIRM 250 (Two hundred and fifty) Units.

69 merly 6)	No Reg. Edward Jasper Sanders and Beryl Joy Sanders (Owners) Newhouse Farm, Altarnun.	20 cattle or 30 sheep	Mr E J and Mrs B J Sanders represented by Mr P N Hewlitt	No objection by Commoners Association. Mr Holt suggested 18 acres which Mr Hewlitt agreed. I CONFIRM 8 (eight) units.
70 merly 7)	No Reg. Kathleen Mary Sanders and Edward Jasper Sanders (Owners). Tregenna Farm, Altarnun.	30 cattle and 50 sheep	Miss K M Sanders and Mr E J Sanders represented by Mr P N Hewlitt	Objection X1279, "and" should be "or" and fewer animals, 15 c and 75 s. Mr Holt and Mr Hewlitt agree 114 acres I CONFIRM 46 (forty six) Units.
71 merly 8)	No Reg. Edward Jasper Sanders (Owner). Jopes Farm, Trenilk, Altarnun.	10 cattle and 20 sheep	Mr E J Sanders represented by Mr P N Hewlitt	Objection X1279, "and" should be "or", and fewer animals, 5 c or 75 s. Mr Hewlitt and Mr Holt were agreed 30 acres. I CONFIRM 12 (Twelve) Units.
72 merly 11)	47 (formerly 7) Trebartha Estates Ltd (Owners) Trevague and Newton, Altarnun.	26 head of cattle or 26 ponies or 128 sheep. Cut and take turf or peat.	Trebartha Estates Ltd represented by Mr F G C Libby Chartered Surveyor of Kittows 2 High Street Launceston, their Managing Agent.	Registration satisfies objections X1276 and X1281. Mr Libby and Mr Holt agree 137 acres. I CONFIRM 55 (fifty five) Units.
73 merly 12)	48 (formerly 8) Trebartha Estates Ltd (Owners) Knighton and Newton, Altarnun.	21 head of cattle or 21 ponies or 105 sheep Cut and take turf or peat.	Ditto	Registration satisfies Objections X1276 and X1281. Mr Libby and Mr Holt agree 130 acres. I CONFIRM 52 (fifty two) Units.

74 (formerly 13)	49 (formerly 9)	Trebartha Estates Ltd (Owners) Tolcarne, North Hill.	40 head of cattle or 40 ponies or 198 sheep.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt. are agreed 198 acres. I CONFIRM 80 (eighty) Units.
75 (formerly 14)	50 (formerly 10)	Trebartha Estates Ltd (Owners) Stonafoad, North Hill.	15 head of cattle or 15 ponies or 75 sheep. Cut and take turf or peat.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt agree 76 acres. I CONFIRM 31 (thirty one Units
76 (formerly 15)	51 (formerly 11)	Trebartha Estates Ltd (Owners). Trevennial, North Hill	11 head of cattle or 11 ponies or 55 sheep. Cut and take turf or peat.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt agree 55.9 acres. I CONFIRM 23 (twenty thr Units.
77 (formerly 16)	52 (formerly 12)	Trebartha Estates Ltd (Owners). Lemarne, North Hill.	13 head of cattle or 13 ponies or 65 sheep. Cut and take turf and peat.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt agree 60.5 acres. I CONFIRM 25 (twenty fiv Units.
78 (formerly 17)	53 (formerly 13)	Trebartha Estates Ltd (Owners). Trekernell and Rylands, North Hill.	24 head of cattle or 24 ponies or 120 sheep. Cut and take turf or peat.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt agree 121 acres. I CONFIRM 49 (forty nine Units.
79 (formerly 18)	54 (formerly 14)	Trebartha Estates Ltd (Owners). North Bowds, North Hill.	48 head of cattle or 48 ponies or 238 sheep. Cut and take turf.	Ditto	Registration satisfies Objections X1276 and X12 Mr Libby and Mr Holt agree 236 acres. I CONFIRM 95 (ninety fiv Units.

80 (formerly 19) (formerly 15)	55 Trebartha Estates Ltd (Owners). Bowhayland, North Hill.	15 head of cattle or 15 ponies or 75 sheep. Cut and take turf or peat.	Ditto	Registration satisfies Objections X1276 and X1281. Mr Libby and Mr Holt agree 79.4 acres. I CONFIRM 32 (thirty two) Units.
81 (formerly 20) (formerly 16)	56 Trebartha Estates Ltd (Owners). Tresellern, North Hill.	40 head of cattle or 40 ponies or 200 sheep. Cut and take turf.	Ditto	Registration satisfies Objections X1276 and X1281. Mr Libby and Mr Holt agree 202 acres. I CONFIRM 81 (eighty one) Units.
82 (formerly 21) (formerly 17)	57 Trebartha Estates Ltd (Owners). Industry, North Hill.	15 head of cattle or 15 ponies or 75 sheep.	Ditto	Registration satisfies Objections X1276 and X1281. Mr Libby and Mr Holt agree 72.3 acres. I CONFIRM 29 (twenty nine) Units.
83 (formerly 28) (formerly 23)	62 Adolphus James Brown (Owner). Part of Glebe, Altarnun.	3 head of cattle or 3 ponies or 15 sheep.		Registration satisfies Objections X1275 and X1280. Mr Holt agrees 14 acres. I CONFIRM 6 (six) Units.
84 (formerly 29) (formerly 24)	63 Iris Meta Brown (Owner). Moor Meadow, Trewind.	1 head of cattle or 1 pony or 5 sheep.	Miss I M Brown represented by Mr P N Hewlitt	Registration satisfies Objections X1275 and and X1280. Mr Hewlett and Mr Holt are agreed 3.8 acres. I CONFIRM 2 (two) Units.
85 (formerly 33)	No Reg. Dorothy Francis Morris (Owner). Five lanes and Meadowside, Trewind, Altarnun.	8 head of cattle or 24 sheep or 8 ponies		Registration satisfies Objection X1279 Mr Holt says application shows area as 42 acres. I CONFIRM 17 (seventeen) Units.



86 (formerly 36)	No	Henry Wadge and Lillian Maude Wadge (Owners), Lanchem Farm, Altarnun.	3 head of cattle or 3 ponies or 15 sheep	Mr H and Miss L M Wadge represented by Mr M Warne	Registration satisfies Objection X1275. Mr Warne and Mr Holt agree 12 acres. I CONFIRM 5 (five) Unit
87 (formerly 39) (formerly 40)	73	Henry Wadge and Lillian Maude Wadge (Owners) Upton Farm, Lewannick.	58 head of cattle or 58 ponies or 290 sheep	Ditto	Registration satisfies Objections X1275 and X1283. Mr Warne and Mr Holt agree 116 units I CONFIRM 116 (one hundred and sixteen Units.
88 (formerly 40)	No	Thomas Tarleton Brandreth (Owner), East Moor Gate, Altarnun.	1 head of cattle or 1 pony or 5 sheep	Mr G F Howlett as successor in title of Captain T T Brandreth (? as regards part of the land) represented by Mr M Warne and Mr Lewis Gardiner Ellis of East Moor Gate House as (with his wife Mrs Barbara Ellie) successor in title of Captain T T Brandreth as regards another part (the majority) of his land attended in person and as representing his wife.	Registration satisfies. X68 (Economic Forestry. For reasons given earlier in this decisio I refuse to alter column 5 and I CONFIRM 2 (two) unit;
89 (formerly 41)	No	Kenneth Stephens (Owner), Laskcys Ground, Trewind, Altarnun.	5 head of cattle or 5 ponies or 25 sheep	Mr K Stephens represented by Mr M Warne	No objection by Commoners Association Mr Warne and Mr Holt agree 7 units. I CONFIRM 7 (seven) Units

90 (formerly 50)	No	Eric Grenville Stephens (Owner). Higher Trethinna, Altarnun.	39 head of cattle or 39 ponies or 165 sheep	Mr E G Stephens represented by Mr M Warne	Objection X1275, fewer animals, 20 c or 20 p or 40 s. Mr Warne and Mr Holt agree 116.75 acres. I CONFIRM 47 (forty seven) Units.
91 (formerly 51)	No	Richard Smith (Owner). Tregaddick, Lameant.	11 head of cattle or 11 ponies or 55 sheep	Mr R Smith represented by Mr M Warne	Objection X1274, fewer animals, 1 c or 1 p or 5 s. After hearing evidence and argument about Trelawney (No 96) as recorded in my decision above as agreed, I CONFIRM 14 (fourteen) Units.
92 (formerly 52)	No	Arthur John Rowe (Owner). Three Pieces of land at Altarnun.	2 head of cattle or 2 ponies or 10 sheep	Mr A J Rowe represented by Mr M Warne	Objection X1274, fewer animals, 1 c or 1 p or 5 s. Mr Warne said and Mr Holt agreed .638 acre I CONFIRM 4 (four) Units.
93 (formerly 54) (formerly 38)	No 72	Ian Bloomfield (Owner). Land at Eastmoorgate, Altarnun.	5 head of cattle or 5 ponies or 23 sheep	Mr I Bloomfield represented by Mr M Warne	Registration satisfies Objections X1274 and X1283. Mr Warne said and Mr Holt agreed 23.33 acres. I CONFIRM 10 (ten) Units.

94 formerly 55) (formerly 39)	70	Thomas Smith (Tenant) Part of Tredanle Estate, Altarnun.	33 head of cattle or 33 ponies or 165 sheep	Mr T Smith represented by Mr M Warne	Objection X1274 and X1283 fewer animals 16 c or 16 p or 23 s. Mr Warne agreed 88.492 acres. I CONFIRM 36 (thirty six) Units.
95 formerly 56)	No	John Llewellyn Smith (Tenant) Barton Bilventor, Altarnun.	25 head of cattle or 25 ponies or 125 sheep	Mr J L Smith represented by Mr P N Hewlitt	Objection X1277; rights do not exist. Mr Hewlitt said Mr Smith withdraws REFUSE TO CONFIRM
96 formerly 57)	No	Richard Smith (Owner) Trelawney, Altarnun.	28 head of cattle or 28 ponies or 140 sheep	Mr R Smith represented by Mr M Warne	Objection X1277; rights do not exist. After hearing evidence and argument as recorded in my decision above this registration was withdrawn REFUSE TO CONFIRM
97 formerly 58)	No	Henry Wadge and William Maude Wadge (Owners). Reeds Ground, Altarnun.	3 head of cattle or 3 ponies or 15 sheep	Mr and Mrs Wadge represented by Mr M Warne	Registration satisfies Objection X1274 I CONFIRM 7 (seven) Units.
99 formerly 43) (formerly 31)	65	Alfred William Wadge (Owner) Jolls Ground Estate, Altarnun.	37 head of cattle 37 ponies or 165 sheep. Cut and take turf or peat.	Mr A W Wadge attended in person	Objection X968 by Mr F T Boudry disputes grazing and turf peat. For reason given earlier in this decision I CONFIRM 24 (twenty four) Units.

100 (formerly 44) (formerly 32)	66 Alfred William Wadge (Tenant) 40 acres of land in Altarnun	13 head of cattle or 13 ponies or 65 sheep Cut and take turf or peat.	Mr A W Wadge attended in person	Objection X1275 and X1283 fewer animals 6 o or 6 p or 30 s. For reasons given earlier in this decision I CONFIRM 16 (sixteen) Units.
101 (formerly 46) (formerly 34)	77 Evelyn Maud Archer and Anthony Archer-Lock (Trustee Owners). Tregune and Corkeer, Altarnun.	70 cows or 70 ponies or 350 ewes	Mr A Archer-Lock present in person he said Mrs E M Archer was his aunt and is now deceased	Objection X1274 and X1283 fewer animals 35 c or 35 p or 175 s I CONFIRM 70 (seventy) Units.
102 (formerly 47) (formerly 35)	68 John Llewellyn Smith (Tenant) Tredaule Manor Altarnun.	25 head of cattle and 30 ponies and 50 sheep Dig and tako peat or turf	Mr J L Smith represented by Mr P N Hewlitt	Objections X1276 and X1284 fewer animals 12 c or 12 or 60 p. As agreed by Mr Hewlitt, I CONFIRM 22 (twenty two) Units.
103 (formerly 48) (formerly 36)	69 John Llewellyn Smith (Tenant) Trenilk Farm, Altarnun	50 head of cattle and 30 ponies and 100 sheep Cut or take peat or turf and take fish	Mr J L Smith represented by Mr P N Hewlitt	Objections X1276 and X1284 fewer animals, 25 c or 25 or 125 s. As agreed by Mr Hewlitt I CONFIRM 39 (thirty nine) Units.
104 (formerly 49) (formerly 37)	75 Leslie Hooper (Owner) Land at Five Lanes Hill, Pentor and Hyders, Altarnun	20 head of cattle or 20 ponies or 60 sheep	Mr L Harper represented by Mr P N Hewlitt	Objections X1274 and X1283 fewer animals 8 c or 8 p or 40 c. As agreed by Mr Hewlitt I CONFIRM 9 (nine) Units.



SECOND SCHEDULE  
(the claim of Mr A Archer-Lock)

This claim raises two questions: (a) whether the owners of CL108 East Moor and CL1262 additional land have a right as owners to graze animals on these lands which although qualified in some way by the grazing rights of the Commoners cannot be altogether excluded; and (b) whether (it being clear that if the animals are grazed on these lands in the numbers obtained by totalling all those mentioned in the registrations there would be no grass left for the animals of the owner) the Rights Section should include either (i) a registration or record showing that the Owners have a right to graze so many animals (such rights being therein described in terms similar to those used in the description of the rights registered) so as to indicate for the benefit of the owner the right is in gross; or (ii) a provision or record showing that the right of every commoner is subject to the owners being able effectively to graze so many animals on like conditions; or (iii) some other statement or record preserving the owners right of grazing.

As an indication of what Mr Archer-Lock has in mind it has on his application been noted in the CL108 Land Section that he "claims to be entitled as Lord of the Manor Rights to graze: 120 head of cattle or 600 sheep 120 ponies ... and also to let such rights or a portion of these rights up to the maximum of the numbers quoted".

As to (b) above:- As a general rule the owner of land cannot have a right of common over his own land (he grazes as owner). But it often happens that the owner of a common surrounded by farms having grazing rights also owns one of the farms from which cattle are grazed under conditions essentially the same as cattle have been grazed from other farms in other ownership; in many cases the owner of the common has registered in respect of his farm a right of common; this practice is both convenient and legal because such a quasi right of common is recognised by law, see *Musgrave v Inclosure* (1874) LR9QB162. As I understood Mr Archer-Lock had not in mind such a right.

As to (b)(ii) Mr Archer-Lock has made no objection to the registrations made by the other commoners on the grounds that such registrations should be qualified by some recognition of the owners rights; so his present claim is not apparently within the grounds of any Objection over which I have jurisdiction. Under the Regulations a claim such as has on his application been noted as above mentioned in the register is not an objection. Further I have no jurisdiction to adjudicate on the claim just because it has been so noted.

As to paragraph (b)(iii):- Although I have as appears earlier in this decision jurisdiction to make a modification to a registration notwithstanding the modification is not mentioned in the grounds of any objection, I should not I think attempt to do this if the suggested modification is opposed by those concerned and at least there are some grounds of substance for it.

As to (a):- This is a question of law essentially the same as that dealt with before Lord Hale CJ in 1671; *Hoskins v Robinson* 2 Lev 2; 2 Saund. 323 and Poll 13; and see *Williams* 1877 Lectures on Rights of Common (1880) at page 25



where he points out that the Pollexfen report is the argument put forward unsuccessfully by the reporter as counsel for the defendant. The plaintiffs pleaded that the customary tenants of the Manor had the sole and several pasturage as belonging to their said customary tenements, and the jury so found; on application by the defendant on the grounds (among others) that the custom was bad being to have solam pasturam and to exclude the Lord, on the grounds that it was not averred that the beasts were levant and couchant upon the copyhold, the Court decided in favour of the plaintiffs. Thus I think establishing that a right now known as a sole or several herbage or a sole or several vesture is recognised by law, see Halsbury Laws of England (4th Edition) Vol 6 (1974) page 209 et seq.

So whether rights of common are or are not to the exclusion of the owners of the soil is a question of fact.

That the rights claimed in this case are not in the Register described as being of "herbage" is no evidence that they are not, because by section 22 of the 1965 Act for the purposes of the Act a right of common is to include a sole or several vesture or herbage.

The proceedings in *Hoskins v Robinson* supra related to "certain places called Emblands-kercedown and Lady More in the parishes of St Brewer otherwise Symonward and Blisland in the county of Cornwall" see 2 Saund at page 323; places easily recognised as not far from CL108 East Moor. Merely because the Commoners Association in these proceedings proceeded on the basis that the commoners are the only persons concerned with grazing, gives me no reason for being suspicious. Mr Archer-Lock did not suggest that he should provide any evidence that the owners as such ever grazed on these lands; resting as I understood him on the bare proposition of law that because the Ownership Sections registrations were final it ~~was~~ necessarily followed that I should pay some regard when considering numbers to the views of the owners; as to this for the reasons set out above I think he is mistaken.

It would I think be an oppressive in the circumstances above summarised to have adjourned the proceedings to enable Mr Archer-Lock to obtain evidence which might support his case, when the procedural situation as set out above is so much against him.

Dated the 25<sup>th</sup> — day of August — 1981

a. a. Baden Fuller

Commons Commissioner