COMMONS REGISTRATION ACT 1965

1121

Reference No. 209/D/414

In the Matter of Aish Ridge,
South Brent, South Hams District,
Devon

DECISION

These disputes relate to the registrations at Entry Nos 3, 4, 5 and 7 in the Rights Section of Register Unit No. CL 60 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections No. 943 made by W J Edmunds, Hon. Sec. Aish Ridge Commoners Asson. and noted in the Register on 18 November 1971, by Objection No. 945 made by Thomas Wilfred Mugridge and noted in the Register on 5 January 1972, and by Objection No. 990 made by W J Edmunds and noted in the Register on 23 June 1972.

I held a hearing for the purposes of inquiring into the disputes at Plymouth on 20 July and 27 November 1984. At the hearing: (1) Mr Wilfred John Edmunds as Hon Secretary of the Aish Ridge Commoners Association ("ARCA") on whose behalf he made Objection No. 943 (he also made Objection No. 990 and with Miss Lucy Adeline Edmunds applied for the Rights Section registration at Entry No. 5 and claimed to be the owner of Mann Aish in succession to Messrs J H and M J Wildman who applied for the Rights Section registration at Entry No. 4) at the July part was represented by Mr J F Barton, solicitor, of Michael Barton & Co, Solicitors of Kingsbridge, and at the November part attended in person; (2) Mr Thomas Wilfred Mugridge who applied for the Rights Section registration at Entry No. 7 and who made the said Objection No. 945 was represented by his son Mr Graham John Mugridge; and (3) Mrs Mollie Doreen Mugridge who applied for the Rights Section registration at Entry No. 3 was represented by her husband the said Mr G J Mugridge.

The land ("the Unit Land") in this Register Unit is a tract of about 29½ acres situated about 1 mile (in a direct line) from Aish and approachable from it either by road leading from Aish to its east corner or by a road (becoming a track) from Binnamore leading by Staddon Farm buildings to near its northwest corner: the first road (as a track) continues across the Unit Land to its southwest corner where it is joined by a continuation of the track from Staddon and Binnamore and continues northwestwards to the south boundary of Brent Moor (Register Unit No. CL 161) at Ball Gate. Most of the Unit Land is moorland being about half of a ridge the highest point of which is 928 feet; about three-quarters of the Unit Land slopes down to its west boundary along or near to which is a stream being or ultimately flowing into, Badworthy Brook (a tributary of the River Avon). A part ("the DNPA ⟶ Part") of the Unit Land being a triangular area with sides of about 60, 90 and 150 yards along and within the projecting part of its southwest boundary, was recently planted by the Dartmoor National Park Authority with beech, oak and pine.

In the Ownership Section no person is registered as owner of the Unit Land. Of the 8 registrations in the Rights Section, those at Entry Nos. 1 and 2 being undisputed have become final, and those at Entry Nos. 6 and 8 have been cancelled. ARCA Objection No. 943 is against Entry No. 7, "that the right does not exist at all";

Mugridge Objection No. 945 is against Entry Nos. 4 and 5, "that the rights claimed either do not exist at all, and in any case the rate of stocking is excessive"; and Edmunds Objection No. 990 is against Entry No. 3, "that the claim is excessive: the entry should read: to graze 75 sheep or 15 cattle or 15 ponies ...".

At the beginning of the hearing about the registrations at Entry Nos. 3, 4 and 5 Mr Edmunds and Mr Mugridge said that they were agreed that these registrations should be confirmed with modifications by which the number of animals specified should be reduced as stated in the Second Schedule hereto. It having become later in the hearing apparent that both Mr Mugridge and Mr Edmunds had had personal knowledge of the use of the Unit Land for a considerable time, I consider I can properly act on their agreement, and my decision is therefore as stated in paragraphs 1, 2 and 3 in such Schedule.

The remainder of the hearing was concerned with ARCA Objection No. 943 to the registration at Entry No. 7 being of a right attached to Staddon and Higher Binnamore Farm as shown on a supplemental map to graze 20 cattle or 20 ponies or 100 sheep over the whole of the Unit Land. Mr Barton said that the land specified in the registration includes a piece known as Babland containing 6.75 acres and it was conceded that in respect of Babland there was a right to graze 6 cattles or 6 ponies or 30 sheep.

Next in support of the registration oral evidence was given by Mr G J Mugridge who explained that his father was not present because he was living in Dorset, is aged 76 years and did not feel well enough to talk about the Unit Land; in the course of his evidence he produced the documents specified in Part I on the First Schedule hereto. Next Mr John Trevarthen French gave oral evidence saying that the DNP Part is now owned by Thomas Wilfred Mugridge under a Deed of Exchange made between them in 1964, he (the witness) was able to convey the DNPA Part to him because in 1962 he purchased Treeland (a farm west of and adjoining Staddon). Next in support of the Objection oral evidence was given by Mr W J Edmunds in the course of which he produced the documents specified in Part II of the First Schedule hereto.

There was some conflict between the evidence given by Mr Mugridge and Mr Edmunds both about the grazing from Staddon on the Unit Land and about the inferences to be drawn from the background facts next below mentioned stated by one and not disputed by the other.

Mr T W Mugridge in 1948 bought Staddon and Higher Binnamore from Mr Knapman under the conveyance GJM/4, Mr Knapman having acquired the same property (together with Staddon Plantation containing 9a. Or. 23p.) under the 1918 conveyance (GJM/2). In the 1948 conveyance Staddon and Higher Binnamore were described by reference to a schedule as containing 87a. Or. 36p; at the end of the schedule (as also at the end of the 1918 conveyance schedule) appear the words:

> "The estate and interest of the vendor of and in the royalties and mineral and sporting rights over ---
> 60 (Number): Aish Ridge (Name): 29.0.2 (A.R.P.)".

Between 1963 and 1965 there were differences between Mr W J Edmunds ——————→ and Mr T W Mugridge, as appears from the correspondence (ARCA/2). Mr Edmunds (or

someone for him) had cut some turf off the Unit Land for the purpose of making or repairing a lawn. Solicitors for Mr Mugridge (letters 14 June, 18 June, 20 August 1963) point out that the mineral rights in Aish Ridge belong to the farm owned by Mr Mugridge, that Mr Edmunds had no right to cut turf, and that all his entitlement was a right of grazing, and threaten if the operation is repeated proceedings would be issued. Solicitors for Mr Edmunds (5 November 1963 and 28 February 1964) say that according to the information in their client's possession, Mr Mugridge is not entitled to any rights on Aish Ridge other than mineral and sporting rights, neither of these being exclusively in his possession; to this Mr Mugridge's solicitors (3 March 1964) again threaten proceedings if Mr Edmunds exercises rights other than grazing. Next Mr Edmunds writes to Mr Mugridge (26/4/65) trying to get "the rights on Aish Ridge ... properly established", and to this Mr Mugridge's solicitors (30 April 1965) suggest an independent arbitrator. Mr Edmunds' solicitors (30 June 1965) suggest an attempt to come to an agreement, the first of which might be an exchange of copies of the relevant deeds; to this Mr Mugridge's solicitors (1 July 1965) agree to a mutual production of documents. Mr Edmunds thought that the solicitors did meet; however there was no agreement before December 1968 the date of this now disputed registration.

At the hearing as possibly directly supporting the registration I had the 1963 statutory declaration of Mr A S Knapman (GJM/1): "I was the owner of Staddon Farm ... which adjoins a Moorland Brake known as Aish Ridge for about 35 years during which time I grazed the said Brake and occasionally I cut turf but no-one else cuts turf and being the owner of the mineral rights and shooting rights I would not have allowed anyone else to do so without express permission". Also as possibly directly supporting the registration Mr Mugridge in the course of his oral evidence sai in effect:- His father purchased Staddon in 1948 (GJW/4) and went into immediate possession. His father grazed the Unit Land since 1948. When he got married in 1933 he lived at Staddon for about 3 years and then (from 1933 to about 1936) he grazed the Unit Land.

Questioned by Mr Barton (and also by myself), Mr Mugridge said (in effect):- He was born in 1940 and so what he said about grazing in 1948 is what his father told him. He remembered going in 1948 on his pony to the Unit Land for his father to see the cattle there. As to his claiming to own the Unit Land; he had got proof outside (Mr G T French) who could verify his ownership of the DNPA Part; he would expect there was a deed somewhere. He knew there was an argument in 1963 between his father and Mr Edmunds about turf. His father herd is 29; it is not grazed regularly on the Unit Land because not enough grass is produced there; it might be grazed with 10 or 15 or sometimes 20 cattle. He agreed that his father did not put cattle from Staddon onto the Unit Land "for quite a while" but did not agree there was any period when he stopped stocking. He knew that Mr Edmunds and other members of the of the ARCA had challenged their rights but nobody asked "us to stop so we kept it up". He could not say why the 1963 statutory declaration (GJM/1) was not produced in 1965: "My father did it then"; as to Mr Edmunds possibly having first seen it a few weeks ago he could only say "I have been placed in at the deep end; a lot of what is coming out (at the hearing) I have not heard before".

The documents he produced were provided by his father's solicitor Mr Johnson of Kellock and Johnson, Solicitors of Totnes) who thought that they ought to be produced.

Against the disputed registration Mr W J Edmunds gave oral evidence (some of the documents he produced had been put to Mr Mugridge)in the course of which he said (in effect):- He is the Secretary of the ARCA comprising 5 commoners. He was born in 1934 and had lived at Gribblesdown (a farm adjoining the southeast boundary of the Unit Land) nearly all his life (since March 1939). His father who died 9 September 1963 purchased the greater part of Gribblesdown in 1947. His father never accepted that Staddon enjoyed grazing rights on the Unit Land and he tried to mobilise other commoners to prevent grazing from Staddon. There was a change when Mrs Mugridge bought Binnamore (Entry No. 3): a noticeable reduction in the amount of stock that went out on the common (the Unit Land); there was a series of periods during which the Unit Land was not stocked from Staddon. The 1918 auction particular (ARCA/3) mentioned no rights of grazing from Staddon.

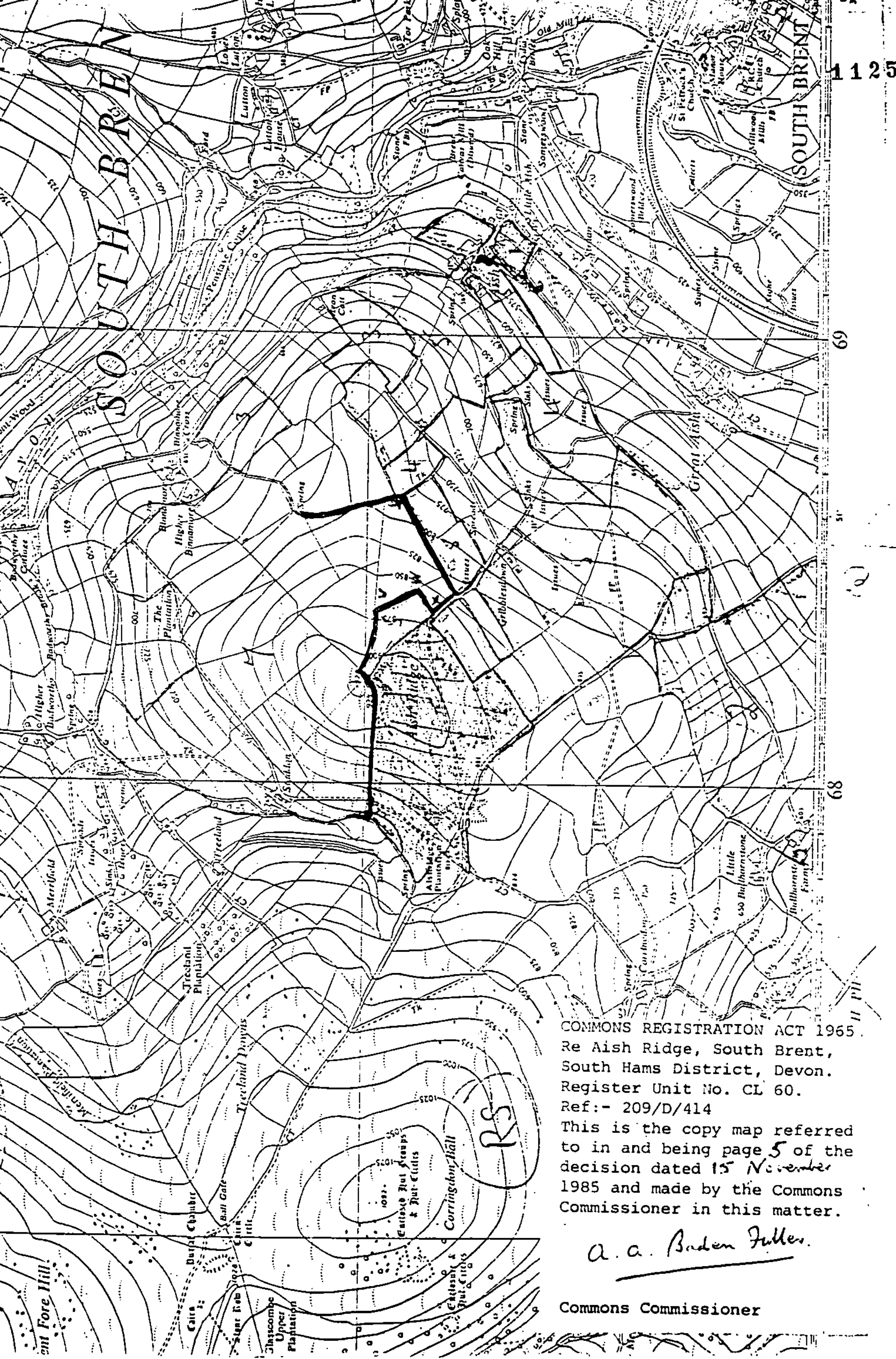
Questioned by Mr Mugridge about the stocking after his wife bought the land at Binnamore (he said: about 16½ acres, she purchased in 1966), Mr Edmunds said from personal observation the stocking from Staddon dropped although it still went on.

Mr Barton submitted the rights registered had not been proved. There was no explanation why the 1963 statutory declaration had not been produced before. The 1918 particulars of sale were against any such usage mentioned during the evidence; the usage was neither sufficiently long (from 1948 not enough) nor sufficiently continuous to amount to prescription. Mr T W Mugridge claimed to be the owner of the Unit Land; the claim now being made by Mr G J Mugridge of rights is inconsistent with any such ownership.

At the end of the July part of the hearing I said I would inspect the Unit Land at a time which would be notified to Mr Mugridge and Mr Edmunds.

In letters dated 21 September 1984 sent to Mr G J Mugridge and Mr Edmunds by the Clerk particular attention was drawn to the suggestion made at the hearing (a) that Mr T W Mugridge is or at one time was freehold owner of all (or nearly all) of the land in this register unit under a deed, and (b) that he was also entitled to a small part of such land under a deed recently made by Mr J T French and it was said that I considered that my decision would be more satisfactory to those concerned if before I made it, I either saw or was provided with properly certified copies of these deeds and was told who now holds them.

On 26 November 1984 I inspected the Unit Land attended by Mr G J Mugridge and Mr W J Edmunds and with them walked over much of it including the part near its north-east boundary. During the inspection they agreed that the DNPA Part had by the Dartmoor National Park Authority been recently fenced and planted with beech, oak and pine as above stated, and that Babland was added to Staddon Farm after the 1948 conveyance, is now farmed with it, and is situated within the lines TUVWXQ then marked by me in their presence on GJM/3 (so the land attached to the application dated 27 June 1968 made by Mr T W Mugridge leading to the now disputed registration was incorrect in its delineation of Babland). At page 5, is an uncoloured copy ("the Decision Plan") of GJM/3 showing the letters TUVWX on which I have shown with a thick black line the south boundary of Staddon as



COMMONS REGISTRATION ACT 1965
Re Aish Ridge, South Brent,
South Hams District, Devon.
Register Unit No. CL 60.
Ref:- 209/D/414
This is the copy map referred to in and being page 5 of the decision dated 15 November 1985 and made by the Commons Commissioner in this matter.

A. A. Baden Fuller

Commons Commissioner

Mr Mugridge and Mr Edmunds agreed it should be in a supplemental map specified at Entry No. 7 in the Rights Section (assuming I against Mr Edmunds decided to confirm the registration).

At the November part of my hearing Mr Mugridge said that he had consulted Mr Johnson (solicitor of Kellock and Johnson) about his father's possible ownership, not only of the DNPA Part but also of the rest of the Unit Land, and he said he would dig out documents, but he Mr Mugridge had no idea what documents were needed to establish ownership or what he would dig for. I said I would postpone my decision for one month to enable Mr Mugridge to produce any documents which might be found and if I was not at the end of such month informed of any (I have not been so informed) I would assume there were none. Mr Mugridge then said that he claimed that his father owned the DNPA Part enclosed and recently planted, but did not claim that his father owned any other part of the Unit Land.

As to the ownership of Mr T W Mugridge of the DNPA Part I consider I should give my decision on the basis that of it he is the owner, this being in accordance with the very brief evidence of Mr French which was accepted at the hearing. But to prevent any misunderstanding at any "ownership hearing" which may hereafter be held by a Commons Commissioner under section 8 of the Commons Registration Act 1965, I record that in my opinion the evidence of Mr French in the absence of the relevant documents is not enough to "satisfy a Commons Commissioner" within the meaning of the said section.

As to Mr Barton's submissions so far as they were based on Mr T W Mugridge having before the hearing claimed that he is the owner of the Unit Land:- I have the copy of 1971 letter (ARCA/1) to R N Harley Esq of Aishridge Commoners Association apparently in answer to a letter from him dated 16 October (I suppose about the registration) containing the words "our client is the owner of Aish Ridge freehold and entitled by deed to it", and I have that Mr G J Mugridge when shown it during his evidence said "I now agree that my father was in 1971 claiming the ownership of Aish Ridge". The part of the letter containing the above quoted words is preceeded by "we answer the rest of your letter entirely without prejudice". Notwithstanding his above quote answer when questioned about this letter, I conclude that Mr W J Mugridge apart from the 1971 letter had at no time during the July Part of the hearing any idea whether his father had or had not ever claimed ownership, and accordingly, the letter being without prejudice, I have no evidence that he has ever so claimed. In these circumstances my decision is on the basis that except for the DNPA Part, Mr T W Mugridge has never claimed the freehold ownership of the Unit Land, and such ownership except for "the Royalties and Minerals and sporting rights" is unknown.

I have no jurisdiction to determine in these proceedings which side was right about the questions discussed in the 1963-6 solicitor's correspondence above referred to; although some may think Mr Edmunds to have been right seeking an agreement, Mr T W Mugridge was under no duty in law in 1965 to make, or to try to make, an agreement either about the turf previously cut or as to the rights generally in or over the Unit Land. His inactivity was not discreditable, and my decision is therefore on the basis that such correspondence is wholly irrelevant.

As I understood him, Mr Barton when suggesting that the grazing of Mr Mugridge and his predecessor may have been discontinuous, had in mind the provisions of the Prescription Act 1832. Such Act provides for circumstances in which a person claiming a right of common could not prescribe at common law by reason of the numerous technical matters which as the law stood before 1832 prescription at common law could be defeated. There was no evidence of any such matters existing in relation to Staddon Farm and there was no reason why the rights claimed by Mr Mugridge should not have existed from time immemorial, so I am only concerned whether they were established by prescription at common law.

I infer that the December 1963 statutory declaration of Mr Knapman was obtained as a result of the then differences between Mr T W Mugridge and Mr Edmunds as appearing in the correspondence (ARCA/2). I infer that neither Mr Edmunds nor his solicitor were ever informed of this declaration, and so never had an opportunity of considering it while Mr Knapman was alive. For this reason, and without in any way reflecting on him personally, I consider I should for the benefit of Mr Edmunds, treat the declaration as unreliable.

Mr Edmunds' main contention (as I understood him) was (apart from his father's views) that the absence of any mention of any right over the Unit Land in the 1918 auction particulars (ARCA/3) or in the 1918 and 1948 conveyances (GJM/2 and 4) either shows that no such rights were ever conveyed to or by Mr Knapman and/or is some evidence that neither he nor Mr T W Mugridge as his successor had them. By section 62 of the Law of Property Act 1925 (reenacting section 6 of the Conveyancing Act 1881) every conveyance of land shall be deemed to include and shall by virtue of the Act operate to convey "all buildings ... commons ... rights and advantages what so ever appertaining or reputed to appertain to the land ... or at the time of the conveyance ... enjoyed with, or reputed or known as part or parcel of or appurtenant to the land ..."; so notwithstanding the absence of any mention of any right to graze the Unit Land in these conveyances, such right if it existed would have passed under them. The circumstances that the conveyances expressly mentioned rights which might otherwise have passed under the section (royalties and minerals and sporting rights) does not show an intention that the section should not apply to other rights, see Hansford v Jago 1921 1Ch 322. Although the express mention of a right of Common in a conveyance may be and generally is some evidence that the conveying party was entitled to the right expressed to be conveyed, the absence of any such mention by itself without any knowledge of the circumstances in which the conveyance was made, is equivocal: a right may be so well known to be, and so obviously appurtenant to the land, that nobody would think of mentioning it in the conveyance (lawyers would be aware of the effect of the said section 62); alternatively the right may be so doubtful that the conveying party would not risk liability under the covenants for title implied in the conveyance by mentioning it expressly.

During my inspection, Mr Edmunds said (in effect): that the title to the farms other than Staddon, to which registered rights were attached, was similar; that Gribblesdown Farm is now as it has always been but Mann Aish Farm was some time ago ("before our time") split up. At the hearing no documents were produced in support of such title history. But even if they had been and even if every

document about these other farms expressly mentioned rights over the Unit Land, this would not by itself be enough to negative a right becoming attached to Staddon Farm by prescription at common law.

So I am left with the simple choice: can I propery infer from what Mr G J Mugridge said about the grazing from Staddon since 1948 on the Unit Land, there has been such grazing as of right from time immemorial, or should I infer the contrary from the view held by Mr Edmunds and his father that the grazing (admittedly to some extent discontinuous) was such that it was never as of right. I do not criticise either of them for being so brief, because I think it likely that further research for documents would have been troublesome and expensive and likely to be unproductive.

During my inspection it was agreed that there were attached to Staddon Farm rights of common over Brent Moor (Register Unit No. CL161); a registration made on the application of Mr T W Mugridge at CL161 Entry No. 100 was at a hearing held by me shortly before this Unit Land hearing conceded by Mr Edmunds, and by my CL161 decision of even date has been confirmed except as regards a comparatively very small part of the CL161 land claimed by the Duchy of Cornwall to be part of the Forest of Dartmoor. During my inspection I therefore had in mind that rights over Brent Moor attached to Staddon Farm did exist, and it was obvious that a convenient way of exercising them would be by taking stock along the north and lowest part of the Unit Land by the stream where grass grows freely to the north-west corner and then to the Ball Gate access of Brent Moor.

Whether or not there are attached to Staddon Farm any rights to graze on Brent Moor, the grass on the north part of the Unit Land, moister than other parts by reason of its nearness to the Brook, was and so it seemed to me from time immemorial always would have been very conveniently grazable from Staddon Farm and not nearly so conveniently grazable from any other farm. Generally the appearance of the Unit Land and its position in relation to Staddon Farm is such as to support the view that the one has been immemorially grazed from the other. Although it may be that in law a right of common cannot be established merely by looking, it seemed to me on my inspection obvious that animals from Staddon Farm would have been grazed on the Unit Land as of right from time immemorial. Accordingly, balancing the conflicting evidence as best I can, I decline to infer from the evidence given by Mr Edmunds that his father or his about this grazing of which they did not approve ever did anything which could affect the conclusion which apart from his evidence, I would certainly reach that such grazing was always as of right and its discontinuity was not relevant.

For the above reasons, I confirm the registration at Entry No. 7 without any modification except as next mentioned. Strictly no prescription at common law can be effective against the DNPA Part owned by Mr T W Mugridge; but because the exclusion of such part from the register would complicate it by making the other registrations confusing, and because such exclusion was not suggested at the hearing or during my inspection, and because it seems to me it would serve no useful purpose, I shall make no modification about the DNPA Part. But I shall give effect to the agreement about Babland reached as above stated at the end of my inspection. Accordingly my decision is at stated in paragraph 4 the decision table being the Second Schedule hereto.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erronerous 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.

FIRST SCHEDULE
(Documents produced)

Part I: by Mr G J Mugridge

GJM/1	6 December 1963	Certified copy statutory declaration by Alfred Soper Knapman.
GJM/2	30 September 1918	Certified copy of conveyance by Price Wakeford Lee Ashford to Alfred Soper Knapman of farm land and premises known as Staddon and Higher Binnamore containing about 96a. 1r. 19p.
GJM/3	--	Map prepared by Mr W J Edmunds showing coloured yellow Staddon including Babland.
GJM/4	12 April 1948	Certified copy conveyance by A S Knapman to Thomas Wilfred Mugridge of the said premises (less plantation OS Nos. 121 and 122 containin 9a. Or. 23p.) containing 87a. Or. 36p.

Part II: by Mr Edmunds

ARCA/1	21 October 1971	Copy letter from Kellock and Johnson to Aish Ridge Commoners Association.
ARCA/2	14 June 1963 to 1 July 1965	Bundle of correspondence between Kellock and Johnson, Solicitors of Totnes and W J Edmunds and Rossetti & Peppercorn, Solicitors of Kingsbridge.
ARCA/3	1918	Extract from particulars of auction sale of (Lot 1) Merrifield containing 157a. 2r. 80p. and (Lot 2)Staddon containing 96a. 1r. 90p.

SECOND SCHEDULE
(Decision table)

1. I CONFIRM the registration at Entry No. 3 with the MODIFICATION in column 4 substitute "15 cattle or 15 ponies or 75 sheep" for "100 sheep or 20 cattle or 20 ponies".

2. I CONFIRM the registration at Entry No. 4 with the MODIFICATION in column 4 substitute "12 cattle or 12 horses or 60 sheep" for "14 cattle or 14 horses or 70 sheep".

3. I CONFIRM the registration at Entry No. 5 with the MODIFICATION in column 4 substitute "35 cows or 35 ponies or 120 sheep" for "60 cows or ponies or 120 sheep".

4. I CONFIRM the registration at Entry No. 7 with the MODIFICATION alter the boundary on the supplemental map referred to in column 5 by redrawing the south boundary thereon shown edged red so as to include the area northeast of the line VWXQTU shown on the copy map referred to in, and being page 5 of, this decision and so as to exclude from the land edged red on the said supplemental map the area south and southeast of the line XQT.

Dated this 15th day of November 1985.

A. A. Baden Fuller.

Commons Commissioner