



Reference 209/D/388

COMMONS REGISTRATION ACT 1965

In the Matter of Black Hill,
Haytor Down, Manaton,
Teignbridge District, Devon

DECISION

Introduction

This Matter relates to 44 (not counting replacements) registrations made under the 1965 Act. My decision as regards each of these registrations is set out in the First Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry Nos 1 to 10 inclusive, 12 to 32 inclusive (13 and 27 have been replaced by Nos 59 and 60 and Nos 67 and 68), 34 to 38 inclusive (35 has been replaced by Nos 64 and 65), 42, 43, 45 to 49 inclusive, and 51 in the Rights Section of Register Unit No. CL 103 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 576 made by Mr Herbert Hugh Whitley and noted in the Register on 30 November 1970, by Objections Nos 594 and 595 made by Messrs Robert Cyril Longsdon and Helen Mary Longsdon and noted in the Register on 24 and 25 November 1970, by Objections Nos 1040, 1041, 1042 and 1043 made by the said Mr Robert Cyril Longsdon and noted in the Register on 11 September 1972.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 14 March 1984. At the hearing (1) Mr Antony Leonard Cullen of Leighon, Manaton as successor of the said Messrs R C and H M Longsdon who not only made Objections as aforesaid, but are also in the Ownership Section at Entry No. 1 registered as owners of all the land ("the Unit Land") in this Register Unit and who applied for the Rights Section registrations at Entry Nos 39 and 40 (final, being undisputed), attended in person; (2) Mr Herbert Hugh Whitley who made Objection No. 576 as aforesaid and who with Mr H G Retallick applied for the Rights Section registration at Entry No. 8 was present but took no part in the proceedings explaining that he had about 7 years ago sold Bagtor Barton to Mr M H Retallick; (3) Mr Colin Noel Evans who applied for —→ the Rights Section registrations at Entry Nos 2 and 3, was represented by Mr C Thomas, solicitor of Harold Michelmore & Co, Solicitors of Newton Abbot; (4) Mr Richard Norman Wills who with his former partner Mrs Rosemary Isabel Elizabeth Anne Wills applied for the Rights Section registrations at Entry Nos 5 and 6, attended in person on his own behalf and as representing his nephew and present partner Mr Robert Charles Wills of Narracombe Farm; (5) Mr Maurice Harold Retallick as successor of his father Mr Harold George Retallick (he died in 1981), who with the said Mr H H Whitley applied for the Rights Section registration at Entry No. 8 (a right attached to Bagtor Barton) and who alone applied for the Rights Section registrations at Entry Nos 9 and 10 (rights attached to Crownley Park and Bagtor Mill), attended in person; (6) Mrs Yvonne Ware as successor of Mr Alexander John Ware (he died in 1969) who applied for the Rights Section registration at Entry No. 15 and as the applicant for the Rights Section registration at Entry No. 64 which in part replaced that at Entry No. 35, attended in person; (7) Colonel Robert Wilson Perkins of Town Barton Manaton and Miss S Smith of Cross Park Manaton as successor (each in



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respect of a different part of Town Barton) of George Dick Hart who applied for the Rights Section registration at Entry No. 28, attended in person; (8) Mr J D Crossman of Higher Sigford Farm, Bickington as successor of Harry Mortimore who applied for the Rights Section registration at Entry No. 30 was also represented by Mr C Thomas; (9) Mr Arthur Samuel Courtier who applied for the Rights Section registration at Entry No. 17 (as tenant with Frank Gilbert Lupton and Dora Ellen Lupton as owners), at Entry No. 35 (as owner and tenant) and at Entry No. 65 now replacing it as to part attended in person; (10) Mrs Anstice Brown who applied for the Rights Section registration at Entry No. 47 was represented by Mr P J R Michelmore, chartered surveyor of Michelmore Hughes, Chartered Surveyors of Newton Abbot; (11) Dr Patrick Gerald Kidner and Mrs Griselda Flora Kidner who applied for the Rights Section registration at Entry No. 48 were represented by Mr R Keast, solicitor of Stephens and Scown, Solicitors of Exeter; and (12) Mr Hedley Frederick Pearce and Mrs Gwendoline Joyce Pearce who applied for the Rights Section registration at Entry No. 51, attended in person.

The Unit Land is a tract containing about 343 acres all in Manaton. Its south boundary (a little over 3/4 of a mile) adjoins Haytor Down in (or ? the part of Haytor Down in) Ilsington, being Register Unit No. CL 25. The south part (about 1/3 rd of a mile) of its east boundary adjoins the west end of Yarner Down in (or ? the part of Haytor Down in) Bovey Tracey, being Register Unit No. CL 184, and most of the remainder (about 3/4 of a mile) of its east boundary adjoins Trendlebere Down in Lustleigh, being Register Unit No. CL 58. The Unit Land is crossed by and open to the B3344 road from Manaton to Bovey, the part north of the road being about 1/15th of the whole; the Unit Land is also crossed by and open to the comparatively —→ minor road between Manaton and Haytor Vale, the part of the Unit Land west of such a road being about 2/3 rds of the whole. The Rights Section registrations at Entry Nos 33, 39, 40, 44, 50 and 52 being undisputed have become final. The registration in the Ownership Section of Robert Cyril Longsdon and Helen Mary Longsdon as owners of the whole of the Unit Land being undisputed has become final. The grounds of the Objections and the Entry Nos to which they relate are summarised in the First Schedule hereto.

Course of proceedings

This Matter was listed for hearing on 12 March, but owing to other business was not reached.

At the beginning of the hearing (14 March):- (1) Mr A S Courtier about the letter of 5 March 1984 specified in Part I of the Second Schedule hereto said that the land mentioned by Mr R C Anderson as purchased by him in 1977, is a field of about 8½ acres of glebe land included in the registration (No. 35) made on his application. (2) Mr R N Wills said that Mrs R I E A Wills specified in the registrations at Entry Nos. 5 and 6 of rights attached to Narracombe Farm and Harkworthy Farm was no longer interested in either Farm. (3) Mr A L Cullen said that the reference in the letter of 18 February 1984 specified in Part I of the Second Schedule hereto was a mistake; the letter could only refer to Entry Nos. 1 and 2 made by Mr C N Evans. (4) Mr R Keast said (in effect):- On and after 12 March, discussions had taken place between those then present or represented as to a possible agreement, on the basis that there were farms in the Manor of Manaton and also farms in the Manors of Ilsington and Bagtor; rights attached to these farms have been registered both over the Unit Land



which is in Manaton and over Hayton Down (Register Unit No. CL 25) which is in Ilsington; with the exception of Mr M H Retaillick, all who took part in the discussions agreed that the Manaton farms should have no rights over the CL 25 land (or over the CL 26 land beyond) and the Ilsington and Bagtor farms should have no rights over the Unit Land. About Entry Nos. 28, 48 and 51 agreement was reached as he stated (summarised in the First Schedule hereto after "RK:- ..."). As regards the registrations at Entry Nos. 32 and 34 he understood they were not being prosecuted and he therefore asked that I should reject them for want of prosecution. On my saying that I could not split the registration at Entry No. 28 as had been agreed in these discussions because I thought any apportionment of rights should be effected as provided by the Commons Registration (General) Regulations 1966 by an application made to Devon County Council as registration authority, see regulation 29, Colonel Perkins and Miss Smith said they were agreeable to my confirming Entry No. 28 as stated in the First Schedule hereto.

Mr Michelmore said he did not seek to support the registration at Entry No. 47 made on the application of Mrs A Brown.

Mr Keast then asked if anybody present at the hearing objected to effect being given to the agreements about Entry Nos. 28, 48 and 51; nobody present did and Colonel Perkins, Miss Smith and Mr and Mrs Pearce said they were agreeable, as did Mr Keast on behalf of Dr and Mrs Kidner.

So I next considered the registrations at Entry Nos. 8, 9 and 10 relating to lands in Ilsington being those supported by Mr M H Retaillick, who so Mr Keast had alleged would not join in the said agreement about the other farms in this parish.

Mr Maurice Harold Retaillick in the course of his oral evidence in support of the registrations at Entry Nos 8, 9 and 10, said (in effect):- His flock of Scotch black faced sheep had been grazing on Black Hill and Haytor Down since they were purchased from Mr Evans of Deal Farm, Manaton in 1954 or 1955. They are leared or hefted on these Commons and were grazed there for a period of time (some 6 or 7 years) prior to being purchased by his father. The flock had been continuously on these Commons to the present day. Being a hill farmer, he made a large proportion of his living from hill sheep and cattle running on Black Hill and Haytor Down Commons. His records show the cattle have been grazed there for approximately the same period of time to the present day. Nobody from Manaton Parish has ever suggested that this was not lawful or has turned them back. Indeed Mr Hart of Town Barton, Manaton, ran sheep on Black Hill and Haytor Down during the same period and no-one interfered with him. At the present time and for many years before Mr Perryman of Leighon has done exactly the same thing and there has been no protest from Haytor Down Commoners against him. He is still grazing at the present time.

On the map (ALC/1) produced by Mr A L Cullen, Mr Retaillick marked approximately his farms: Bagtor Barton, Crownley Park and Bagtor Mills. Questioned by Mr Cullen who started by referring to his father's purchase in 1955 of sheep and putting



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to him that rights to graze were attached to land and not to sheep, Mr Retallick said (in effect):- The practical aspect of the matter is that the sheep were leared to a particular area, and after they were bought they went back to that area; part of his flock is now leared on Black Hill other parts are leared elsewhere. They did not stray onto Black Hill; when they were purchased they were leared there.

Further questioned by Mr Cullen, Mr Retallick said (in effect):- He agreed that when making his registration he had claimed grazing rights over twelve different Register Units (including the Unit Land and CL25) and that a few days before this Unit Land hearing he had withdrawn his registration over three of these Register Units, and would be withdrawing others; as to this the practical side of grazing on Dartmoor is now affected by cattle grids; he now reduced his claim to the Unit Land, the rest of Haytor Down (CL184 and CL25), Bagtor Down (CL26) and Grey Goose Nest (CL27):

Further questioned by Mr Cullen about his attempt to establish that the Unit Land and the CL25 land were not two commons but were one common and particularly about cattle, Mr Retallick said (in effect):- The cattle he had on the common did move more than sheep do but they graze in the area where there is quite a lot of herbage; by grazing the rough herbage they are complementary to the sheep grazing the finer herbage. Some of their cattle were fed on the common land; the feeding on the hills varies from day to day because of the weather etc. He tried to feed them on the lower part of the Hill; there are some occasions when feeding is necessary. As to the Objections (Nos. 594 and 595 dated 25 September 1970), they were made in his father's time although subsequently he was aware of them; before (the Objections) they (his father and he) had grazed Black Hill from Haytor Down. People from Manaton have grazed Haytor Down previously and presently and have not had their stock physically interfered with. To his knowledge their stock (his father's and his) had not been moved. Nobody had complained to him about the health of the stock on Black Hill; if there was any mention of anything wrong with stock on the Moor whether they were theirs or their neighbours, "we" attend to it. He or his son was on the Moor every day of the year except for about 10 days so the grazing is closely supervised. As to damaging the Moor by overstocking or feeding cattle on it, in wet weather there is a spot where cattle congregate, and under wintry conditions they go down to near the spring Yarnar Wells.

Mr Retallick in answer to questions by me, said (in effect):- Bagtor Barton comprises house and fields of about 165 acres together with a newtake of about 320 acres. Crownley Park comprises fields and grounds of about 16 acres. Bagtor Mill comprises about 14 acres. Crownley Park and Bagtor Mill were purchased by his father from Mr Whitley in the mid-1960s; his father was not then a tenant of either of them. Of Bagtor Barton his father started as a tenant in 1935 and so continued (as tenant of Mr Whitley) until 1976 when Mr Whitley sold Bagtor Barton to him (the witness). To feed stock on Black Hill, they travelled along the road (he indicated that from Haytor Vale to Manaton), and then went off it where there was a convenient track to where the stock was.



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Mr A L Cullen in the course of his oral evidence produced the documents specified in Part II of the Second Schedule hereto, and said (in effect):- The description in the Register of the Unit Land as "part of Haytor Down" is an error; it is called Black Hill. The boundary stones about 2 feet high between it and Register Unit No. CL25 are obvious. The Law of Property Act 1925 declaration (ALC/2) by Mr Longsdon deals with "Haytor Down" on the plan annexed coloured green (distinctly). The Manor Book (ALC/4) which he holds as the current Lord of the Manors of Ilsington and Bagtor make this clear. Reading from his statement ALC/3 (so far as it relates to the claims of Mr Retallick):-

... The very full details of the perambulations to view the bounds of the Commons of Haytor Down held on 29 October 1835, 11 October 1853 and 9 October 1879 make abundantly clear that the two Commons are entirely distinct and that the boundaries between the two are the same as the present parish boundaries ... William Crossing (see Second Schedule hereto) also makes this distinction clear in the Appendix to A Hundred Years on Dartmoor where he defined Black Hill (Manaton) as above Yarner Wood and north of Hey Tor Down ... This Manorial Court Book (ALC/4) makes it clear that the only Commoners allowed on Heytor Down were those who held tenements within the Manors of Ilsington and Bagtor and that strangers from Manaton, Widecombe, etc. were stringently excluded. The holders of these rights are listed in detail as are the Rents they paid to the Lord of the Manor for their Common Rights up to Michaelmas 1937 ...

He did not contest that Mr Retallick believes he has rights on Black Hill; he is apparently relying on prescription; he has established that stock were on Black Hill, but he has not established anything above a straying right. He has encouraged his cattle by feeding them on his neighbours' common. His land certainly had no right attached to it before 1954.

Questioned by Mr Retallick, Mr Cullen said (in effect):- As far as he knew feeding on the common was never allowed; feeding was always on the inby land; and feeding on the common was generally accepted as illegal. He did not accept that Mr G H Retallick by buying sheep from Deal Farm obtained a right on Black Hill; Deal Farm was in Manaton some distance to the north of the Unit Land, on the OS map 1/50,000, west of "Inn" in "Water".

Mr Arthur Samuel Courtier who has known Black Hill and Haytor Down all his life (about 70 years) and who had sheep and cattle on Haytor Down up to 1974, in the course of his oral evidence said (in effect):- If stock from Haytor Down strayed onto Black Hill "we brought them back". In his time they (those having stock on Haytor Down) leared them (there). In his time "the only animals fed on our common were ponies, not other animals; and certainly not on any other common".

Questioned by Mr Retallick about stock being driven back since the war (1939-45), Mr Courtier said (in effect):- Since the war up to the time he had sheep on Haytor Down (1974) sheep were driven back in his day "we kept to our common and if they went elsewhere we brought them back; to put it more precisely we kept to our lear".



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Mr Richard Norman Wills who is 62 years of age and is the Secretary of the Ilington Commoners Association and has been such since 1950 when it was formed, in the course of his oral evidence said (in effect):- Those of Haytor Down had no right to graze on Black Hill. As to feeding, as Secretary he had had complaints of feeding on the common especially in the winter time when it is very wet, but these complaints were not about Mr Retallick who is a friend.

Questioned by Mr Retallick about feeding, Mr Wills said (in effect):- He had mentioned the fact to Mr Mercer of the Dartmoor National Park Office; the objections were made by the general public, because it was difficult to walk on it (the part where the animals have been fed).

Next Mr Cullen made submissions against the registrations at Entry Nos. 8, 9 and 10, in the course of which he said that if Mr Retallick succeeded, the two commons (the Unit Land and the CL25 land) would be grossly overstocked, and the animals would be a danger to traffic (on the roads which cross the Unit Land).

Next Mr Retallick made submissions for the registrations the course of which he explained that he had a large amount of stock on the Moor that this grazing was important to him and his two sons.

Next I said I would make an inspection.

Next I called out the Entry Nos. for each of the displayed Rights Section registrations and invited comments. As to Entry Nos. 1 and 2 made on the application of Mr C W Evans who in his letter of 18 February 1984 (see Part I Second Schedule hereto) Mr Thomas said that the registrations were withdrawn. As to the registration at Entry No. 4 (to stray) specified in Objection Nos. 576 and 595 Mr Whitley said he did not wish to be concerned with No. 576 (made by him). As to Entry No. 15, Mrs Ware said that she was now the owner of Middlecott and that the registration was withdrawn. As to Entry No. 30 (to stray attached to Higher Sigford Farm), Mr Thomas said on behalf of Mr Crossman as successor of Mr Harry Mortimore, that the registration was withdrawn. As to Entry No. 31 rights attached to Vogwell Farm, Mr Cullen said that early in March 1984, Mr W R Greenaway had told him that he would withdraw his claim. As to Entry No. 32, Mr Cullen said that Mr C P A Kilby had been succeeded by Mr K Morris and that Treetops was about $\frac{1}{2}$ a mile from the Unit Land. As to Entry No. 34, Mr Cullen said that the land specified in the registration (Dean Cottage) is a cottage with garden and the claim to graze 10 ponies 50 sheep 20 cattle was frivolous because the land is incapable of carrying this stock; and that claimant Mr Lodge is now deceased having been succeeded by Mr (? and Mrs) Stabb. As to No. 37, of a grazing right attached to Yarner, Mrs Ware said that she had telephoned Mr Allerfeldt yesterday (15 March 1984) and had been told by him that his claim was a mistake. As to No. 45 made on the application of Mr D W Coysh, Mr Wills said that Mr Coysh had told him yesterday (15 March 1984) that his registration was withdrawn.

Inspection

On 17 March 1984, I inspected the Unit Land attended by Mr A L Cullen and Mr M H Retallick, starting from Yarner Wells in a Land Rover paying particular



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attention to the boundary between the Unit Land and the CL25 Land. Unattended I viewed Unit Land and the CL25 land in my motor car from the road which runs from Manaton by Yarner Wells to Hemsworthy Gate.

Bagtor Barton, Crownley Park
and Bagtor Mill

If X who has appurtenant to his land a right of common (grazing) on common land C sells sheep which have been grazed in exercise of such right, the purchaser Y from him does not in my opinion by becoming the owner of the sheep thereby acquire a right of common appurtenant to his (Y's) land to graze the sheep on common C; I accept Mr Cullen's submission about this and reject the contrary view put forward if not expressly at least impliedly by Mr Retallick. In this decision I shall assume (as apparently all others at the hearing assumed) that there are undoubtedly appurtenant to Bagtor Barton, Crownley Park and Bagtor Mill rights of grazing over the CL25 land; since the hearing I have held another hearing in April 1984 about the CL25 land at which it appeared that there were Objections to any such rights; about these Objections I have given a decision of even date confirming CL25 registrations of rights attached to these farms.

As to Mr Retallick's claim that the rights over the Unit Land by his father registered as attached to these 3 farms are established by use (prescription):- A right can be so established under one of three headings: prescription at common law, under the Prescription Act 1832, or by a presumed modern grant, see *Tehidy v Norman* 1971, 2QB 528 at page 543. For a right to be so established, mere use is not enough; the use must be as of right within the legal meaning of these words. By section 16 of the Commons Registration Act 1965, the 30 and 60 year period mentioned in the Prescription Act 1832 is (stating the effect of the section shortly) to run back from the date of the objection, in the instant case, 25 September 1970. In my opinion the 20 year period applicable to Prescription at common law and to a presumed grant runs back from the same date, either by analogy if with the said section 16 or because in the absence of special circumstances (none here were suggested) use after an objection made cannot be as a right because → an objector can properly refrain from interrupting the grazing by legal proceedings or otherwise relying on the dispute resulting from the objection being in due course determined by a Commons Commissioner under the 1965 Act.

So I am concerned with the 20 year period commencing September 1970. The grazing of Mr H G Retallick for Bagtor Barton started in 1954 and from Crownley Park and Bagtor Mill in the middle of 1960's. Having regard to the situation of the three Farms in relation to the Unit Land, I decline to infer that the predecessors of Mr H G Retallick grazed as described by Mr M H Retallick. So on these grounds his claim based merely on use, fails.

I record that I am not persuaded that all the grazing described by Mr M H Retallick was as of right within the relevant meaning of these words. In 1954 to begin with Messrs Retallick wrongly assumed that their sheep purchased from Dean Farm which a right over the Unit Land was attached, automatically carried with them a right for their owner to lease them where they had been leased when owned by their vendor. Further grazing to be as a right must be not secretly, meaning the enjoyment must have been open and of such a character that an ordinary owner



of the diligent in the protection of his interest would have or must be taken to have had a reasonable opportunity of becoming aware, see *Union v London* 1902 2Ch 557 at page 571. To begin with at least animals from these three farms would be taken by an ordinary owner to have been strays such as in nearly all the Dartmoor National Park are tolerated because they do no harm.

So at the hearing it was rightly assumed by Mr Cullen and Mr Retallick that the main question for my decision was whether the Unit Land and the CL25 land were in any now relevant sense one common not two commons.

That the two lands were under the 1965 Act registered separately by the County Council is irrelevant, because I do not know on what principles they acted. The feeding by Mr Retallick of his animals on the Unit Land could to a person who knew of it indicate that they were there not as strays but were intentionally being grazed there, and consequentially be some evidence that such grazing was as of right; but I have no evidence that and I decline to infer that any such feeding was before 1970 known to any person concerned to object to grazing on the Unit Land; so I regard such feeding as irrelevant. I express no opinion as to whether grazing all the year on a moor or whether feeding on a moor animals unavoidably consequential on all the year grazing, is or is not a proper exercise of a right of common (about these questions as a Commons Commissioner I have heard conflicting views).

In favour of them being one common:- *Jessel MR in Commissioners v Glasse* 1874 Eq 134 decided that extensive open lands then (and still) known as Epping Forest were grazable as one common notwithstanding that historically they had been in a number of separate manors. The County Council in their registrations of the Unit Land (CL103) Haytor Down (CL25) Bagtor Common (CL26) and Yarner Down (CL184), described them all as if they were part of something known as Haytor Down. On the OS maps I have, Black Hill is not marked at all or is in smaller letters than Hayton Down. The higher part of the land within the Unit Land and the CL25 land, say that above the 1,300 feet contour is a considerable area of plateau like land, a small part of which including Black Hill summit, rises to a little above 1,325 feet, and might therefore for many geographical purposes be appropriately described as Haytor Down. Further (a matter much emphasised by Mr Retallick both at the hearing and during my inspection) there is nothing on the ground to prevent or even discourage animals on the CL25 land going onto the Unit Land, the ground on either side of the boundary line of stones being for grazing purposes practically identical.

But contra I have the evidence of Mr Cullen, Mr Courtier and Mr Wills and the documents produced.

The claim of Mr Retallick was over the whole of the Unit Land, not over merely the plateau area or any part relevantly less than the whole. So I must consider whether the CL25 land are together one very large area or are separately two large areas.

As to appearance:- There is a very large area geographically high ground known as Haytor. The CL25 land is substantially one side of this large area associated with the built-up area of Haytor Vale and the farms in the parish of Ilsington. The Unit Land is substantially the other side of this area associated with the village of Manaton and the farms in that parish. To my mind these two areas are as different from



each other as night is from day; and they do not become one any more than night and day become one because there are places (times) where (when) it is difficult to say where (when) one begins and the other ends.

Although Jessel MR decided that Epping Forest is one common, he did not decide (as is I think implicit in his judgment) that in law manorial history is always irrelevant; indeed it must have been known to him as it is known to me that there are in England and Wales numerous commons grazed on an exclusive manorial basis. About the Unit Land and the CL25 land being separate, I accept the evidence of Mr Cullen, Mr Courtier and Mr Wills and consider that the Manor Book (ALC/4) supports their conclusions.

There is nothing remarkable in the appearance of the boundary stones between the Unit Land and the CL25 land. A line of stones can never by itself be decisive as to the extent of Common Rights, and indeed in my CL25 decision of even date I have decided that some registered rights of common on both sides of a similar line of boundary stones are the same. The Unit Land/CL25 boundary stones are extraordinary in that they are on the line of the parish boundary between Ilsington and Manaton, are on the OS map distinctly marked one of them being given a name "Prince of Wales", and they are a prolongation of a similar line of boundary stones between Ilsington and Bovey and between Yarner Down (CL184) and the CL25 land and named "Victoria", "Old Jack", "Old William" and "Prince Albert". As a boundary whatever may be their effect on animals the meaning of these stones would be clear enough to any reasonable human: the legal rights duties and liabilities on one side are different from those on the other. I reject Mr Retallick's suggestion that from such meaning must be excluded grazing rights; although those who put them there may have had in mind such parish matters as law and order, in this somewhat remote area, it would have been importantly desirable to mark the limits of private rights such as grazing.

Because on the plateau there are at some times of the year, considerable areas of grazable grass on either side of the boundary stones it may be practically impossible to prevent animals put on one side from time to time crossing to the other. This circumstance might cause problems, but nobody at the hearing said that any had actually arisen, or asked me to do anything about any such problem. I see no need for the Register to include anything about how such problem should if it ever arises be resolved.

My conclusion is therefore balancing as best I can the conflicting considerations above summarised, that the Unit Land and the CL25 land are not one common in any now relevant sense.

From the above conclusions it follows that the registrations at Entry Nos. 8, 9 and 10 were not properly made and as stated in the First Schedule hereto I refuse to confirm them.

Straying

The registrations at the Entry Nos listed in Part II of the First Schedule hereto are all expressed "to stray". For the reasons set out under the heading Straying in my said CL164 decision dated 30 June 1983 I consider that any such registration should in the absence of special circumstances (I have no evidence or suggestion of any such) not be confirmed.



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Little if anything was at the hearing said about these registrations, because so I understood those present knew about my CL164 decision and contemplated these registrations would not be confirmed. Quite apart from such reasons, an Objection has been made to all these registrations and in the absence of any evidence or information supporting them I consider that I ought to treat them as not having been properly made.

Accordingly as stated in Part II of the First Schedule hereto I refuse to confirm the registrations at Entry Nos. 3, 4, 5, 6, 7, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 35, 36, 38, 42, 43, 46, 47 and 49, including the replacements at Entry Nos. 59, 60, 64, 65, 67, 68, 70 and 71.

Others

As to the other registrations:-

I consider I can properly act on the agreement made as above recorded about the registrations at Entry Nos. 28, 48 and 51; and on the withdrawal by Mr Thomas and Mrs Ware of the registrations at Entry Nos. 1, 2 and 15.

The registrations at Entry Nos. 29, 37 and 45 are specified in Objection No. 1041, the grounds of which include "the right does not exist at all". The Objection puts the registrations wholly in question and in the absence of any evidence or argument in support of them I conclude that they were not properly made. Further against these registrations I have the yellow form and the statements of Mrs Ware and Mr Wills recorded in the First Schedule hereto.

The registrations at Entry Nos. 32 and 34 being of rights attached to Treetops and to Deal Cottage respectively, are specified in Objection No. 1042. The grounds of this Objection do not, or at least do not clearly, put these rights wholly in question in that they might be read as conceding the rights provided that the numbers of animals are reduced to "8 cattle or 8 ponies or 32 sheep" and "one cattle or one pony or two sheep" respectively. The observations of Mr Keast and Mr Cullen above recorded about these registrations seem to me somewhat vague and I consider therefore those concerned to support these registrations should have the opportunity given to them by the liberty hereinafter granted (under the heading Final) to apply to me to correct mistakes. Nevertheless I decide subject to such liberty to apply that these registrations were not properly made in any respect because I consider that such a result would be just to those concerned with these registrations if they do nothing about them. Any application by them pursuant to the liberty should be made within the THREE MONTHS mentioned under the heading Final and otherwise as therein specified.

Objection No. 1043 about the registration at Entry No. 31 does not → put the registration wholly in question; upon consideration similar to those set out in the preceding paragraph I consider that those concerned with this registration should have a like liberty to apply within the said period of THREE MONTHS and otherwise as specified under the heading Final.

Final

For the reasons set out above my decision on all the registrations in dispute is as set out in the First Schedule hereto that is to say I refuse to confirm the registrations about which it is therein written "CONFIRMATION REFUSED" and I confirm the registrations about which it is therein written "CONFIRMED with MODIFICATION", with the modification therein specified.



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Because much of this decision relates to persons who were not present or represented at the hearing and is dependent on matters about which there may herein be some mistake or error I give LIBERTY TO APPLY to any person who might be affected by any such mistake or error. Such applications should be made within THREE MONTHS from the day on which this decision is sent out (or such extended time as the Commons Commissioner may allow) and should in the first instance be by letter to the Clerk of the Commons Commissioners stating the mistake or error and the applicants reasons for thinking it should be corrected. A copy of the application should be sent to any person who might be adversely affected by the application being granted and for their information to the County Council as registration authority. As a result of the application a Commons Commissioner may direct a further hearing, unless he is satisfied that the error or mistake is obvious and all those concerned are agreeable. Of such further hearing notice will be given only to those persons who on the information available to the Commons Commissioner appear to him to be concerned with the registration in question. Any person who wishes to be given notice of any such further hearing should by letter inform Clerk of the Commons Commissioners as soon as possible specifying the registration a further hearing about which he might wish to attend or be represented at.

I record that after the hearing I received the letters specified in Part III of the Second Schedule hereto which are therein stated to have been occasioned by a suggestion made by myself during my inspection that I "could resolve the difficulty (Mr Retallick's claims) by changing the southern boundary of Black Hill so that part of Black Hill would become effectively Haytor Down on which Mr Retallick has rights". My inspection took some time; its purpose was to enable me to see the land about which evidence had been given at the hearing. Unavoidably there was a good deal of conversation between the three of us some of which was perhaps outside this purpose. Assuming (as I suppose I must) that I made this suggestion, it is clear to me now and I think it was clear to me then, and I would I think if I had been asked so said, that any such suggestion could not be implemented unless all concerned either agreed or had had an opportunity of expressing their views about it. The letters contained information and argument to which I could not properly pay attention without giving Mr Retallick an opportunity of commenting on them; so for his benefit I record that in writing this decision I have paid no attention to these letters except for the purpose of writing this paragraph on it.

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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FIRST SCHEDULE
(Rights Section registrations and decision)

Part I: registrations other than "to stray"

No. 1

Colin Noel Evans: owner; Sigford House, Bickington, Ilsington; turbary, estovers, graze 60 cows 60 calves or 100 sheep, or 60 ponies.

Representation: Mr C N Evans was represented by Mr C Thomas.

Objection: Longsdon No. 594, right does not exist at all.

Mr Thomas said that the registration was withdrawn.

CONFIRMATION REFUSED

No. 2

Colin Noel Evans: tenant; part of Little Sigford, Ilsington; turbary, estovers, graze 5 cows 5 calves, or 10 sheep or 5 ponies.

Representation: Mr C N Evans was represented by Mr C Thomas.

Objection: Longsdon No. 594, right does not exist at all.

Mr Thomas said that the registration was withdrawn.

CONFIRMATION REFUSED

Nos 3, 4, 5, 6 and 7

To stray see Part II of this Schedule.

No. 8

Harold George Retallick tenant and Herbert Hugh Whitley owner; Bagtor Barton, Ilsington; graze 75 cows and their followers and 250 ewes and their followers.

Representation: Mr M H Retallick as successor of Mr H G Retallick (he died 1981) attended in person. Mr H H Whitley also attended in person but took no part in the proceedings.

Objection: Longsdon No. 594, right does not exist at all.

Evidence and argument for registrations of Mr M H Retallick and against the registration of Mr A L Cullen, Mr A S Courtier and N Wills. Documents considered. Inspection of boundary between Unit Land and CL 25 land on 17 March 1984.

For the reasons under heading Bagtor Barton CONFIRMATION REFUSED

No. 9

Harold George Retallick; Crownley Park, Ilsington; graze 16 cows and their followers and 85 ewes and their followers.

Representation: Mr M H Retallick as successor of Mr H G Retallick attended in person.

Objection: Longsdon No. 595, right does not exist at all or should comprise fewer animals, 12 cows and followers or 48 ewes and followers.

Evidence, argument and inspection as at No. 8 above.

For reasons under heading Crownley Park CONFIRMATION REFUSED

No. 10.

Harold George Retallick; owner; Bagtor Mill, Ilsington; graze 14 cows and their followers and 65 ewes and their followers.

Representation: Mr M H Retallick as successor of Mr H G Retallick attended in person.

Objection: Longsdon No. 595, right does not exist at all or should comprise fewer animals, 12 cows and followers or 48 ewes and followers.

Evidence, argument and inspection as at No. 8 above.

For reasons under heading Bagtor Mill CONFIRMATION REFUSED

No. 11

Cancelled: superseded by No. 46.

Nos 12, 13 and 14

To stray, see Part II of this schedule.

No. 15

Alexander Herbert John Ware: owner; Middlecott, Ilsington; graze 6 ponies
10 bullocks.

Representation: Mrs Y Ware as successor of Mr A H J Ware (he died in 1969)
attended in person.

Objection: Longsdon No. 1041, right does not exist at all, or should comprise
fewer animals, 4 ponies or 4 bullocks, or such smaller number as shall restrict
the total grazing on register unit CL103 to the equivalent of 170 bullocks.

Mrs Ware said that the registration was withdrawn.

CONFIRMATION REFUSED

Nos 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27

To stray, see Part II of this Schedule.

No. 28

George Dick Hart; owner; Town Barton, Manaton; graze 25 cows and followers
200 ewes and followers.

Representation: Colonel R W Perkins and Miss S Smith as successors of
Mr G D Hart attended in person.

Objection: Longsdon No. 1042, if the right does exist should comprise fewer
animals: 56 cattle or 224 sheep or such smaller number as shall restrict the
total grazing rights on register unit CL103 to the equivalent of 170 bullocks.

RK:- Agreed Colonel Perkins as successor of part should have 10 cattle or 10
ponies or 40 sheep and Miss Smith as successor of the remaining part should
have 18 cattle or 18 ponies or 72 sheep.

After discussion agreed CONFIRM with MODIFICATION in column 4 substitute
"28 cattle or 28 ponies or 112 sheep" for "25 cows and followers, 200 ewes and
followers".



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No. 29

Michael Royce Sanders and Gordon Clifford Sanders; owners; Great Lounston, Ilsington; estovers, turbary, graze 70 cattle 200 sheep.

Representation: none

Objection: Longsdon No. 1041, right does not exist at all, or should comprise fewer animals ...

Letter (yellow form) to County Hall (undated received 8 August 1973) signed M R Sanders and G C Sanders agreeing to registration being cancelled.

CONFIRMATION REFUSED

No. 30

To stray, see Part II of this Schedule.

No. 31

Geoffrey Norman Greenaway and William Roy Greenaway; owners; Vogwell Farm and part Kendon Farm, Manaton; turbary, take sand, stone and gravel, cut bracken, ferns and rushes, graze 80 ponies, 30 cattle, 120 sheep.

Representation: none.

Objection: Longsdon No. 1043, the right only exists in respect of part of the land to which the right is registered as attaching, that is no rights exist at all in respect of OS Nos 1142, 1114, 1144, 1135 and 1135a in Bovey Tracey parish.

Mr A L Cullen said that Mr W R Greenaway had told him that he would withdraw his claim.

CONFIRMATION REFUSED, but subject to liberty to apply as specified under the heading Others.

No. 32

Charles Philip Austin Kilby; owner; Treetops, Manaton; graze 80 sheep 30 cows 12 ponies.

Representation: none.



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Objection: Longsdon No. 1042, if right does exist it should comprise fewer animals, 8 cattle or 8 ponies or 32 sheep or such smaller number ... (etc see no. 28 above).

RK:- We understand registration not being prosecuted and we ask for it to be rejected for want of prosecution.

CONFIRMATION REFUSED but subject to apply as specified under the heading Others.

No. 33

Flora Pauline James; Latchel, Manaton; FINAL.

No. 34

Frederick George Lodge and Irene Helen Lodge; owners; Deal Cottage, Manaton; graze 10 ponies 50 sheep 20 cattle.

Representation: none.

Objection: Longsdon No. 1042, if right does exist it should comprise fewer animals, 1 cattle or 1 pony or 2 sheep or such smaller number ... (etc see No. 28 above).

RK:- We understand registration is not being prosecuted and we ask for it to be rejected for want of prosecution.

Mr Cullen suggested the registration was frivolous.

CONFIRMATION REFUSED but subject to liberty to apply as specified under the heading Others.

Nos 35 and 36

To stray, see Part II of this Schedule.

No. 37

Kurt Eric Allerfeldt and Evelyn Joan Allerfeldt; owners; Yarner, Bovey Tracey; graze 50 cattle 300 sheep.

Representation: none.

Objection: Longsdon No. 1041, right does not exist at all or should comprise fewer animals, 50 cattle or 200 sheep or such smaller number ... (etc, see No. 15 above).

Mrs Ware said that Mr Allerfield had told her that the claim was a mistake.

CONFIRMATION REFUSED



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No. 38

To stray, see Part II of this Schedule.

Nos 39 and 40

Robert Cyril Longsdon and Helen Mary Longsdon; Leighon and Greater Farms, Manaton.

FINAL

No. 41

Cancelled; superseded by No. 50 below.

Nos 42 and 43

To stray, see Part II of this Schedule.

No: 44

Penelope Ann Keough; Deal Farm, Manaton. FINAL

No. 45

David William Coysh; tenant; part Little Sigford, Bickington, Ilsington; turbary, estovers, graze 3 cows 3 calves 10 ewes 10 lambs.

Representation: none.

Objection: Longsdon No. 1041, right does not exist at all or should be for fewer animals, 3 cattle or 10 sheep or such smaller number ... (etc see No. 15 above).

Mr Wills said that Mr Coysh said yesterday (15 March 1984) that the registration was withdrawn.

CONFIRMATION REFUSED

Nos 46 and 47

To stray, see Part II of this Schedule.

No. 48

Patrick Gerald Kidner and Griselda Flora Kidner, owners; Beckhams, Manaton; turbarry, graze 450 sheep with their lambs or equivalent 1 cattle beast = 1 pony = 4 sheep.

Representation: Dr P G and Mrs G F Kidner were represented by Mr R Keast.

Objection: Longsdon No. 1041, right does not exist at all or should comprise fewer animals, 70 cattle or 70 ponies or 280 sheep or such smaller number ... (etc see No. 15 above).

RK:- Agreed amendment is 70 cattle or 70 ponies or 280 sheep.

CONFIRM with MODIFICATION in column 4 substitute "70 cattle or 70 ponies or 280 sheep" for "450 sheep with their lambs or equivalent 1 cattle beast = 1 pony = 4 sheep".

No. 49

To stray, see Part II of this Schedule.

No. 50

Robert Cyril Longsdon and Helen Mary Longsdon; owners and Frederick John Dymond; tenant; Beckford Farm, Manaton. FINAL as amended 12/1/73.

No. 51

Hedley Frederick Pearce and Gwendoline Joyce Pearce; part owners, part tenants; Mill Farm, Manaton; graze 60 cattle 120 sheep 25 horses.

Representation: Mr H F and Mrs G J. Pearce attended in person.

Objection: Longsdon No. 1042, if the right does exist it should comprise fewer animals, 22 cattle or 22 ponies or 88 sheep or such smaller number ... (etc, see Entry No. 28 above).

RK:- Agreed amendment is 30 cattle or 30 ponies or 120 sheep.

CONFIRM with MODIFICATION in column 4 substitute "30 cattle or 30 poies or 120 sheep" for "60 cattle 120 sheep 25 horses".

No. 52

Patrick Gerald Kidner and Griselda Flora Kidner; Cleave Hill, Manaton, FINAL.

Nos. 53 to 57

Cancelled.

Nos 58-71 inclusive

Record finality of registrations above said to be final and record also replacements of rights to stray; see Part II of this Schedule.

Part II: registrations "to stray"

Nos

3, Sidney Lang (from CL 25); 4, Owen John Hendy (from CL 25); 5, R N Wills and R I E A Wills (from CL 25); 6, R N Wills and R I E A Wills (from CL 25, replaced after hearing by Nos 70 and 71); 7, M Garrish (from CL 25): (11 cancelled, superseded by No. 46 below); 12, T Reep (from CL 69); 13, G Wills (from CL 25 and CL 26 replaced by Nos 59 and 60); 14, J P P Mohan (from CL 25); 16, S Madge (from CL 15); 17, F G Lupton, D E Lupton and A S Courtier (from CL 25); 18, F C A Himely (from CL 25); 19, B G M Wooff (from CL 25); 20, W R Williams (from CL 25); 21, M E Neufeldt (from CL 25); 22, J P Klinkenberg (from CL 25); 23, M M Hamlyn (from CL 69); 24, M M Hamlyn (from CL 69); 25 A F Cowlard, E D Riley and C M Cowlard (from CL 164); 26, W E Wills (from CL 81 and CL 58); 27, J L Horton (from CL 69 and CL 90 replaced by Nos 67 and 68); 30, H Mortimer (from CL 25 and CL 32); 35, A S Courtier (from CL 25 replaced by Nos 64 and 65); 36, R W C Beard (from CL 25 and CL 32); 38, W G Bosence (from CL 25 and CL 26); 42, R J Warren (from CL 69); 43, P J J Hicks (from CL 69); 46, T Reep (from CL 69); 47 A Brown (from CL 69); 49 F Perryman (from CL 124 and CL 248).

Also Nos 59 (G Wills); 60, (P R S Cullun), 64 (Y Ware), 65 (A S Courtier), 67 (E P E Newbould-Young), 68 (N L Watson), 70 (M H Retallick) and 71 (R N Wills and R C Wills) being replacements as above mentioned of Nos 13, 35 27 and 6.

Representation:- Nos 5 and 6, Mr R N Wills attended in person on his own behalf and as representing his nephew Mr R C Wills. No. 35 (also No. 64) Mr A S Courtier attended in person. No. 47 Mrs A Brown was represented by Mr P J R Michelmore. No. 70 Mr M H Retallick attended in person. No. 71 Mr R N Wills attended in person see 5 and 6 above.



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Objections: Whitley No. 576 to Entry No. 4, right does not exist at the claimant has no grazing rights on an adjoining common. Longsdon No. 595 to Entry Nos 3, 4, 5, 6 and 7, right does not exist at all or should comprise fewer animals. Longsdon No. 1040 to Entry Nos 12, 16, 17, 18, 20, 21, 22, 23, 24, 25, 36, 42 and 49, right does not exist at all. Longsdon No. 1041 to Entry Nos 13, 14, 19, 26, 27, 30, 35, 38, 43, 46 and 47, right does not exist at all or should comprise fewer animals.

Letter dated 12 March 1984 from Devon County Council enclosing Yellow Form reference "OBJ 1041" signed 7 March 1984 by Bridget Symes agreeing to Entry No. 27 being cancelled.

Mr Thomas said that No. 30 was withdrawn.

For the reasons under the heading Straying CONFIRMATION REFUSED.

SECOND SCHEDULE
(Documents produced or referred to)

Part I: before hearing

--	8 Aug 1973 (received by County Council)	Letter (yellow form) referring Obj. 1041 signed by M R Sanders and G C Sanders, agree to Entry No. 29 being cancelled.
--	--	Statement to Commons Commissioner by Manaton Parish Council; Clerk Mrs Katherine Perkins, chairman, Miss M E Bindloss.
--	18 Feb 1984	Letter to Commons Commissioners from Mr C N Evans (Nos 1 and 2; letter mistakenly mentions 8); unaware Black Hill was a separate common ... Haytor Down where I have grazed for 20 years ... amend my claim to straying rights ...
--	5 March 1984	Letter from R C Henderson of Heatherdown, Haytor Vale about right attached to land in 1977 purchased by him from Mr A Courtier.

Part II: by Mr A L Cullen

ALC/1

1959

OS map, 1/25,000: sheet SX77.



- ALC/2 -- Declaration made by Mr H C Longsdon about Haytor Down (coloured green on annexed plan) under section 193 of the Law Property Act 1925.
- ALC/3 15 March 1984 Statement about CL103 - Black Hill (or Manaton) signed A L Cullen with additional final paragraph added.
- ALC/4 1818 to 1937 Foolscap manuscript book bound in vellum and entitled "Manors of Ilsington and Bagtor and Notsworthy". Begins:- At a Court Baron of George Temple Esquire ... 15 January 1818 ..." and continues "Manors of Ilsington Bagtor and Notsworthy ... 13 October 1818 ...".
- Includes:-
Rental lists 1821, 1824, 1826, 1831, 1888, 1889 ... 1920, 1923, 1926, 1928, 1929, 1930, 1931, 1932, 1933, 1934 and 1935.
Various presentments for overstocking.
- "Manors of Ilsington Bagtor and Notsworthy: Court Leet and Court Baron of ... Duke of Somerset ... 29 Oct 1935 ... Jury ... procede to view the bounds of the Commons of Haytor down of which notice ... given ... commences ...".
- "Report of Perambulation of the Manors of Ilsington and Bagtor on Tuesday October 11th 1853: Present ... commences ... (16 signatures).
- "A list of Bound stones on Haytor Down in Ilsington viewed by the Commoners Oct 9th 1879 No. 1 ... 9. Prince of Wales ... 21 ... (signed) E S Bearne, Steward of Manor".
- "Manor of Ilsington and Bagtor: the Court Leet and Court Baron of Washington M G Singer ... (22 November 1923) ... Richard Willcocks be Reeve ... Robert Bradford Pound Keeper ... (last record in Book of meeting of Jury).
- Book ends:- William John Piper of Leighon appointed Pound Keeper of Manor of Ilsington from 29 September 1938 at a wage of 30/-per week
- -- Printed book: A Hundred Years on Dartmoor, by William Crossing.



Part III: received after hearing

- 31 March 1984 Letter from Manaton Commoners signed by P G Kidner, F Pearce, P Keogh, P James, S Smith, B Rice and R W Perkins as to suggested change of boundaries of common
- 28 March 1984 Letter from Miss M E Bindloss as chairman of Manaton Parish Council endorsing last mentioned letter of 31 March.

Dated the 18th day of March 1985

1985

A. A. Baden Fuller

Commons Commissioner