



In the Matter of Bridestowe and
Sourton Common, in Bridestowe
and Sourton, West Devon District,
Devon

DECISION

These disputes relate to the registrations at Entry Nos 3, 5, 9, 16, 22, 24, 26, 31, 32, 39, 40, 44, 48, 49, 52, 54, 55, 62, 68, ~~69~~, 70, 77, 78, 79, 80, 80a, 81, 83, 89, 91, 92, 93, 94, 96, 98, 104 to 145 inclusive, 148, 150, 151, 157, 159, 160, 161, 163, 165, 166, 168, 169, 170, 172, 173, 174, 175, 177, 178, 180 to 209 inclusive, 212, 214, 215 and 219 in the Right Section of Register Unit No. CL 96 in the Register of Common Land maintained by the Devon County Council and are occasioned by the Objections listed in the First Schedule and by some of the registrations being in conflict as in such Schedule mentioned.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 8 and 9 March 1983. At the hearing (1) the Bridestowe Commoners who made Objection No. 80 and the Sourton Commoners Committee who made Objections Nos 123, 371 and 893 were represented by Mr D M Crocker solicitor of Bellingham & Crocker, Solicitors of Plympton (he said that the Bridestowe Commoners and the Sourton Commoners Committee described in the said Objections were one association); (2) the Attorney-General for the Duchy of Cornwall who made Objections Nos 384, 385, 386 and 387 was represented by Mr C Sturmer, their Land Agent for Dartmoor; (3) Lady Sylvia Rosalind Pleadwell Sayer attended in person, (a) on her own behalf and as representing Vice Admiral Sir Guy Bouchier-Sayer, they being applicants for the registration at Entry No. 48, (b) as representing Admiral Sir James E F Eberle as successor in title of Mr David Miller Scott on whose application the registration at Entry No. 49 was made, and (c) as representing Mrs Eleanor Nancy Smallwood on whose application the registration at Entry No. 142 was made; (4) Mr Philip Ivan Pellow, Mr Courtenay John Heard, Mr Kenneth Cyril Heard and Mr Wesley James Leonard Heard on whose application the registrations at Entry Nos 94, 157, 169 and 214 were respectively made, were represented by Mr P J Woodward solicitor of Burd Pearse Prickman & Brown, Solicitors of Okehampton; (5) Lt-Col Vincent Warwick Galmady-Hamlyn on whose application the registrations at Entry Nos 177, 178 and 180 to 208 inclusive were made, was represented by Mr J P Hastings chartered surveyor of Stratton & Holborrow, Chartered Surveyors and Land Agents of Exeter; (6) Mrs R M Joy as successor in title to Major Leonard Thomas Sheasby on whose application the registration at Entry No. 155 was made (this registration being undisputed has become final) was represented by Mr P A Elliot solicitor of Foot & Bowden, Solicitors of Plymouth; and (7) South West Water Authority who claimed to be the owner of the part of the land formerly in, but in 1973 excluded from, this Register Unit and hatched violet on the Register map, were represented by Mrs F G Canning solicitor of their Legal and Estates Department.



The land ("the Unit Land") in this Register Unit is a tract containing about 2,260 acres bounded on the northeast by West Okement River (on the other side of which is Okehampton Common, Register Unit No. CL 155), bounded on the west by a line approximately straight and about 3 miles long from Vellake Corner on the north to Nodden Gate on the southwest (much of this boundary adjoins Sourton Common Register Unit No. CL 97 and an extension of Okehampton Common known as the Triangle Register Unit No. 135), bounded on the south by a line leading up to Dunna Goat on the other side of which is Lydford Common Register Unit No. CL 64, and bounded on the east by part of the Forest being Register Unit No. CL 164. The Unit Land is land common to the civil parishes of Bridestowe and Sourton. Of the 218 uncanceled registrations in the Rights Section, 88 being undisputed have become final. In the Ownership Section HRH Charles Prince of Wales, Duke of Cornwall is registered as the owner of all the Unit Land except two comparatively very small pieces on the north boundary adjoining West Okement River hatched violet on the Register maps, of which he did not claim the ownership and which in 1973 were excluded from the Register.

At the hearing I first considered the registration at Entry No. 94 made on the application of Mr P I Pellow of a right of turbary, estovers, piscary, take stones and gravel, graze 40 cattle 300 sheep 20 ponies attached to Kerslake Farm, Okehampton, part Higher Highslade, Okehampton Hamlets, land at Cawsen Down, Sourton and part Higher Maddaford, Okehampton Hamlets. As to Objection No. 873 (grounds only in respect of OS 385 in Sourton, reduce to 5 stock units), Mr Woodward on behalf of Mr Pellow and Mr Crocker on behalf of the Commoners Association said they had agreed 19½ units; Mr Woodward also said that Mr Pellow conceded Objection No. 386, grounds no piscary. Nobody then or later at the hearing suggested that I should not give effect to this agreement and there being no other Objection to the registration, I CONFIRM the registration at Entry No. 94 with the MODIFICATION in column 4 delete "piscary" and for "40 cattle 300 sheep 20 ponies" substitute "19½ stock units (NFU Scale)", and in column 5 delete all except "Land at Cawsen Down, Sourton Comprising OS No. 385 (2nd edition 1906) for the Parish of Sourton".

Next I considered the registrations at Entry Nos 5, 9, 16, 22, 24, 26, 31, 32, 39, 40, 44, 68, 89, 135, 166, 177, 178 and 180 to 208 inclusive; of these 45 registrations 31 being those at Nos. 177, 178 and 180 to 208 were made on the application of Lt-Col. V W Calmady-Hamlyn as owner; of these 31 registrations 14 conflict with the other 14 registrations made by various persons as tenant. As to the conflict between Nos. 40 and 192 I have a letter dated 6 May 1982 sent to the Commons Commissioners and signed by Col. Calmady-Hamlyn and Mr B W J Lavis whose application for registration at Entry No. 40 was made of a right attached to Great Crandford Farm was made by which he agreed to withdraw such registration and that the owner's registration should stand. At the hearing Mr Hastings produced papers (VWC-H/1) signed as next mentioned by which the applicant tenants or their successors in title agreed to withdraw their tenant registrations and that the owner's registration should stand, being: No. 5, Higher Wordens and Alice Ford on the application of Charles Heathman, signed by Mrs P Reeder as present tenant, so No. 187 stands; No. 9, Woodgates Farm on an application of Edgar Walter Alford, signed by W J L Heard as present tenant, so No. 181 stands; No. 16 land at Sourton on application of Albert Stephen George Daniel, signed by S E Daniel as present tenant, so No. 183 stands; No. 22 Collaven and Ball Park on the application of William Patrick Fogerty signed by him, so No. 188 stands; No 24 Coombe Farm,



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on the application of Clifford Horn, signed by G J Horn as present tenant, so No. 191 stands; No. 26, Part Hall Farm on the application of George William Alford and No. 39 Palmers Sourton on the application of Edward Fred Cullen, signed by G R Alford as present tenant (successor to both Nos 26 and 39) so No. 184 stands; No. 31 East Lynne on the application of Edward Gale and No. 44 Lake Farm on the application of Olive Mary Jury & Sons signed by R J Jury as present tenant (of both East Lynne and Lake Farm) so Nos 190 and 207 stand; No. 68 and at Fernworthy on the application of Clifford Charles Gloyn and Lionel George Gloyn, signed by Mrs M G Roberts present tenant, so No. 200 stands; No. 135 Newtakes Farm on the application of Mrs Joyce Friend, signed by her (she is now Mrs Joyce Lake) so No. 204 stands; and No. 166 land at Bridestowe and at Pool on the application of Mrs Louise Annie Worden signed by J H Metheral as present tenant, so No. 184 stands. As regards the registration at Entry No. 31, to East Lynne, Mr Hastings produced the Leawood Estate Report of 1961 which showed that Tenant of High Collaven was then Mr Edward Gale and recorded that he on 25 March 1969 surrendered the OS Nos in the Register described as "East Lynne" and that they were then let to Messrs Jury. Mr Hastings conceded that "piscary" in the registrations at Entry Nos 178, 179 and 180 to 208 inclusive was a mistake and that I should therefore as regards these registrations give effect to Objection No. 386. Nobody then or at any later stage in the hearing suggesting that these registrations were not in all other respects proper and there being no other Objection applicable to them my decision is that they were properly made. Accordingly I REFUSE TO CONFIRM the registrations at Entry Nos 5, 9, 16, 22, 24, 26, 31, 32, 39, 40, 44, 68, 135 and 166 and I CONFIRM registration at Entry Nos 177, 178 and 180 to 208 inclusive with the modification that in column 4 delete "piscary".

Next (9 March) I considered the registration at Entry Nos 48, 49 and 142, included in Objections Nos 80, 123 and 371 by the Commoners Association. In support of No. 48 Lady Sayer handed in a written submission (S/301) together with a letter dated 18 October 1977 (S/302) written on behalf of the Duchy showing they were not pursuing their objection and a copy of a map (S/303) submitted in evidence by the Dartmoor Association for the Royal Commission on Common Land in 1957 showing an area (including the Unit Land) described as "Commons of Devon". Her submission was to the effect that her registration was of a Venville right and that I should therefore accept it in accordance with decisions of the Chief Commons Commissioner about Register Unit No. CL 148 and No. CL 190 and a decision of the High Court confirming the CL 190 decision. Lady Sayer asked that her submission should be treated as being also for the registration at Entry Nos 49 and 142. Her submission is essentially the same as that made on her behalf in proceedings relating to Register Unit No. CL 188 which were the subject of a hearing by myself on 24, 25, 26, 27 and 28 May, 6, 7 and 8 July and 9, 10, 11 and 12 November 1982 and about which I had not when I held this hearing (8 March 1983) given a decision. Mr Crocker resisted the submission. With a view to saving the time and expense of repeating the arguments and evidence put forward at the CL 188 hearing and to preserving any rights any person concerned might have to appeal from my decision, it was agreed between Lady Sayer and those present at the hearing that the arguments and evidence given at the CL 188 hearing for and against persons who claimed to have Venville rights extending over all commons adjoining the Forest (Register Unit No. CL 164) should be treated as having been given before me at this hearing.



My decision in relation to the CL 188 proceedings is dated 30 June 1983 and much of it is by reference to a decision also so dated relating to the proceedings before me about Register Unit CL 164. That the Duchy as owners concede that these rights were properly registered is some evidence that the rights existed when the registrations were made, but in my view such evidence is not conclusive, particularly as the Commoners have themselves made Objections. In relation to their Objections, the evidence provided by the Duchy concession is I think of negligible weight, because I do not know why the Duchy withdrew their Objection, because the information I have about the undisputed rights suggests that the Duchy's interest as owner in the grazing of the Unit Land is negligible and because it may be that the withdrawal by the Duchy of their Objection was merely to avoid being involved in a legal controversy the outcome of which could affect them little. There was no evidence at this CL 96 hearing or any other hearing I have had relating to Dartmoor that any rights of common attached to the lands mentioned in the registrations at Entry Nos 48, 49 and 142 have ever been exercised over the Unit Land (CL 96) and having regard to the situation of these lands the unreasonableness of any such exercise could not be different from the unreasonableness which I have found to exist in relation to the CL 188 land. I find therefore that such rights have never been exercised over the Unit Land. On 30 June 1983 I signed my decisions on the disputes relating to the CL 188 land and for the reasons therein set out I reject the submissions of Lady Sayer in relation to the Unit Land, and accordingly I REFUSE TO CONFIRM the registrations at Entry Nos 48, 49 and 142.

Next (9 March) I considered the registrations at Entry Nos 157, 169 and 214 made on the application of Mr Courtenay J Heard, Mr Kenneth C Heard and Mr W J Leonard Heard, and summarised in Part I of the Second Schedule hereto. Mr Woodward on their behalf agreed there was no right of piscary.

Mr Kenneth C Heard in the course of his oral evidence produced the documents specified in Part II of the said Schedule, and said (in effect):- He is the son of Mr James Cyril Heard and was born in 1932 at Hughslade of which his father had been tenant since 1926. His father died on 17 August 1956; up to then he, his 2 brothers and 3 sisters lived there. In March 1957 he and his brother Courtenay bought Hughslade (containing about 242 acres); they then farmed it in partnership. In October 1958 they bought Meldon Farm (containing about 226½ acres). In May 1962 they bought a field (containing about 12¾ acres) part of Higher West Bowden. In October 1962 they bought pieces of land (containing about 19 acres), part of East Bowerland. In October 1964 he bought part of Fowley Farm and Fowley Moor (containing about 89 acres and about 63 acres) and Place Farm (containing about 115 acres). In February 1965 he and his brother Courtenay ceased farming in partnership; he Kenneth, kept Fowley Farm, Fowley Moor and Place Farm (then all in his name), and under a deed of partition (KCH/101) became sole owner of Hughslade; his brother Courtenay under the same deed became sole owner of Meldon Farm and the fields and pieces of land formerly part of Higher West Bowden and East Bowerland. When his registration was made, the part of East Bowerland therein mentioned (not the same as the part bought in 1962 by him and his brother Courtenay) was owned by his mother; it contained about 14 acres; since her death he has become owner. From as early as he could remember (say 1940) his father rode over the Forest (CL 164) Okehampton Common (CL 155) and Bridestowe Common (the Unit Land). He understood that in 1934 (? 1932) his father bought two flocks from Mr Ellis (he could not say from where Mr Ellis ran these flocks), and in 1939 a flock from Mr Squire of



Coryton Barton ($4\frac{1}{2}$ miles west of Nodden Gate, the nearest point of the Unit Land); at that time his father only had Hughslade so he brought them back there. Mr Squire's sheep were leared west of River Okement, from Corn Ridge down to the River including Shelstone Tor, Slipper Stones and up to Sandy Ford. Mr Ellis' flocks were leared mainly on the west from Corn Ridge towards Lake Down. When his father died by his will he left his sheep equally between his three sons; shortly afterwards his brother Leonard had his share, and in 1965 the remainder (or their progeny) were divided between him (Kenneth) and his brother Courtenay. His (Kenneth's) sheep are still marked with the Squire mark (blue across the rump). No Objection to his grazing sheep on Sourton Common (meaning the Unit Land) had been raised by other persons using the Common; "we always collected together". He thought that if the 1965 Act had never been passed, there never would have been any objection; there was no substance in the Objection No. 371 because if his flock had not grazed where they did nobody else would have grazed there; he named other persons who grazed the Unit Land. As to the 1,200 sheep mentioned in the registration, 700 were leared on the Forest (CL 164), 400 on Okehampton Common (CL 155), and 100 on Sourton (the Unit Land).

Mr W J Leonard Heard in the course of his oral evidence produced the documents specified in Part III of the Second Schedule hereto and said (in effect):- He was born in 1927. He and his father were tenants of Yelland Farm from March 1950, and in 1960 (after his father's death) he bought it (WJLH/1). The Bowerland marked on the maps is West Bowerland; the East Bowerland mentioned in the registrations is on the other (east) side of the course of the old railway. His father had sheep on the Forest (CL 164) Okehampton Common (CL 155) and Bridestowe Common (the Unit Land) which were brought back to Hughslade; from Hughslade he put them on to the Unit Land by going across Okehampton 'riangle (CL 135); but after 1950 when he became a tenant of Yelland, he used Yelland to bring them in. He had had sheep of his own since 1950; in the 1950's he acquired the mark of Mr Voaden (not his sheep) and had used this mark ever since; before then he had used the family markings (meaning as I understood him those of his father). The "part Oatmeal" mentioned in his registration is about 3 acres; before 1965 he had been renting it for several years (not more than 10). He received his share of his father's sheep as had been stated by his brother Kenneth; nobody had ever objected to his sheep being grazed on the Unit Land; "we all gather together; every flock owner gathered and (the sheep are) divided at the gate". He did not think anyone would have objected to his grazing but for the 1965 Act. As to the 950 sheep mentioned in his registration 100 were leared on the Unit Land, 300 on Okehampton Common (CL 155) and the 550 on the Forest (CL 164).

Mr Courtenay J Heard in the course of his oral evidence referred to the evidence, given as above mentioned by his brothers and added (in effect):- He was born in 1934 at Hughslade. He, like his brothers, remembered in his early days going out with his father not only on to the Forest (CL 164) and Okehampton Common (CL 155) but also on Sourton Common (the Unit Land), and being told that some of the sheep he saw had been bought from Mr Ellis and Mr Squire. As to the 650 sheep mentioned in his registration, 100 were leared on the Unit Land, 250 on Okehampton Common and 300 on the Forest.

For the Sourton Commoners Committee, Mr Charles Heathman who has been their chairman for 10 years, and who from 1937 to 1973 farmed Higher Worden



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(with common rights over the Unit Land and the adjoining Sourton

Common (CL 97) in the course of his oral evidence said (in effect):-

The Mr Ellis mentioned by Messrs Heard farmed from Youldens, Southerly: he had one flock which he put out on the Moor (meaning the Unit Land) at Nodden and (?) Ringrock. The Mr Squire mentioned by them farmed at Coryton Farm which is not in either Bridestowe or Sourton parish; in 1926 Mr Dawe who was then the Moorman and took his sheep on to the Forest (CL 164) around the south of Kitty Tor. He also took sheep from other people including those of Mr Squire. As to sheep being 'put' on to the Unit Land, the trouble is that it is enough to 'open the gate and let them go' the relevant gate being that a short distance from the main road (A386) from which there is access ('the Bridge access') through a gap in the railway (now discontinued) embankment over which gap when the railway was running there used to be a bridge to carry the railway; once through this gate there was nothing to stop the sheep getting to the Unit Land although it was one mile away (in between it and the gate is the Okehampton Triangle CL 135 and the Prewley Moor part of Sourton Common, CL 97). There was no grazing from Hughslade Farm on the Unit Land until after Mr Heard bought the Squire flock; at that time they would be driven along the main road to the Bridge access; but now Messrs Heard have Meldon they would go there by a side road to Meldon village and then by a road becoming a track ('The Higher Bowden track') bearing south-westwards (by the entrance to Higher Bowden towards the Okehampton Triangle). No sheep had been grazed on the Unit Land from Meldon Farm except possibly as described by Messrs Heard and no sheep as far as he knew ever been grazed on the Unit Land from East Bowerland, Place Farm, Fowley, or Yelland. Mr Squire's sheep (when he owned them) were not leared in the valley (meaning of West Okement River), the south-west side of which is within the Unit Land. He (witness) thought that Mr Heard's purchase of the Ellis flock was after (and not before as stated by Messrs Heard at the hearing) his purchase of the Squire flock. These sheep after purchase if put through the gate of the Bridge access 'would go anywhere after that!'

Mr Thomas George Giles Dawe who had been a member of the Commoners' Association for 20 years and who had farmed in the area since 1948 and known it since 1928 in the course of its oral evidence said (in effect):- The policy of the Association had always been to object to graziers from outside the parish and was strongly against people from other commons; however he agreed that there had been stock from Hughslade on the Unit Land.

On the day after the hearing I inspected the Bridge access and also walked along much of the Higher Bowden track south-westwards as far as the gate and beyond.

I consider the above summarised and in some respects conflicting evidence against the geographical background. On the OS map the Unit Land is marked as "Bridestowe and Sourton Common (lands common to the parishes of Bridestowe and Sourton)". As to the Unit Land being (as the name implies) a common grazed on a parish basis, as I understood Mr Heathman and Mr Dawe they, like other members of the Association (as was reflected in the pattern of their Objections) treated the Unit Land as parochial to these two parishes. The geography is confusing, because the Okehampton Triangle (Register Unit No. CL 135) which is in the parish of Okehampton Hamlets and which is locally regarded as part of, although detached from, Okehampton Common (Register Unit No. CL 155), is a sort of wedge foreign to both Bridestowe and Sourton which separates the Unit Land from Sourton Common (CL 97). I had no evidence



about the grazing on the Triangle (about 64 acres) from lands in Okehampton Hamlets, and on appearance I doubt whether it would be practical for any but the nearest farms. However this may be, when considering whether the sheep of Messrs Heard were on the Unit Land as of right, it is relevant that their presence on the Triangle would not be, and probably could not be, challenged; so their presence on some parts of the Unit Land might without some explanation be regarded as accidental. Making allowance for the wedge, on geography alone, I infer the graziers from Yelland, Hughslade, Meldon and the other lands of Messrs Heard in Okehampton Hamlets could in relation to the Unit Land and Sourton Common (CL 97) be regarded as outsiders. From this and the evidence of Mr Heathman as to the absence of grazing from these farms, I conclude that nothing by Messrs Heards Said to have been done by them on the Unit Land was in continuation of anything done by their predecessors and that I cannot reflect their evidence back as representing what was done from their land before they came there. I find that there has not been from time immemorial any grazing from these farms on the Unit Land and that accordingly the rights claimed are not established by prescription at common law.

I must therefore consider whether by the grazing actually done by Messrs Heard has for any of them established a right of common under the Prescription Act 1832 or, has been enough to presume a grant in accordance with the law stated in *Tehidy v Norman* 1971 2QB 528. As to the 1832 Act, the period is 30 years back from the date of the relevant Objection, in this case 16 September 1970, see section 16 of the 1965 Act. Under *Tehidy v Norman* the period is 20 years which although not particularly mentioned in the 1965 Act should I think by analogy date back from September 1970; alternatively the existence of the Objection by the Commoners' Association (its necessary consequence being that soon or later the position would be investigated by a Commons Commissioner) is reason enough for no-one when talking to or working with any of Messrs Heard, challenging their sheep being on the Unit Land.

Messrs Heard all gave their evidence on the assumption that when their father purchased sheep he necessarily acquired a legal right to graze them on any land where they had lawfully been grazed by his vendor and that on the division after his death of his sheep among his 3 sons any right which the father had to graze sheep on the Unit Land necessarily passed to each son as to become attached (rateably according to the number of sheep) to the lands which at the time of the division each son happened to own or occupy. The rights with which I am concerned are in law ordinary rights of common appurtenant, and in my opinion in the respects mentioned Messrs Heard's assumptions as to the law are (as Mr Heathman pointed out when giving evidence) mistaken. However in accordance with the law as stated in *de la Warr v Miles* (1881) 17 Dh D 535, this mistake does not exonerate me from considering whether the grazing by their evidence established as having been actually done by them is enough to fulfil the requirements of either the 1832 Act or *Tehidy v Norman* supra.

As to the things done by Mr W J Leonard Heard and Mr Courtenay J Heard from the farms they now own or occupy, such things were not done for the full 20 years necessary to establish a right of common appurtenant. I reject the submission of Mr Woodward that these things were enough to establish a right of common in gross; to establish a right the things done must be as of right in the sense that they were not "secret" within the legal meaning of the word as now relevant, that is those concerned to object must have reasonable grounds that the things done were in



purported exercise of the right claimed. There was no evidence that the things done were intended to be associated with a right in gross, for example there was no writing such as is requisite when a right of common in gross is exercised by persons in succession, see section 53 of the Law of Property Act 1925; unlike a right of common appurtenant which may pass on a conveyance of the appurtenant land without particular mention, see section 62 ib. The right claimed was not registered as a right in gross although the printed forms provided for such a registration as a possibility. It would not I think be just to modify the registration into a right in gross. My decision is therefore that the evidence of grazing from these farms does not establish any right over the Unit Land.

I have evidence that from Hughslade Mr Kenneth C Heard and his father before him had grazed on the Unit Land for more than 20 years before September 1970. This was known to Mr Dawe and I infer that it was done sufficiently openly to be as of right, and that I should therefore presume grant of a right of common of some kind. Those of the parishes of Bridestowe and Sourton have registered rights amply described as including rights such as turbarry, taking sand and gravel, and grazing cattle sheep and ponies over the whole of the Unit Land. In my view the activities of Mr Kenneth C Heard and his father in relation to the Unit Land were not enough nor is the situation of Hughslade such that I can conclude that Hughslade by their grazing has somehow become a farm which should in relation to the Unit Land be treated as if it was within the parish of either Sourton or Bridestowe. Although in law it is possible to conclude that a farm although outside a parish is so situated in relation to it as to be properly regarded in respect of a parish common as being in the parish, in my view Hughslade is not such a farm. I see no reason for expanding the right which I must presume to have been granted for the benefit of Hughslade beyond that necessary to correspond with the use proved.

Although Messrs Heard themselves regarded their Unit land activities as somehow associated with Mr Ellis and Mr Squire, I think such an association was no more than a way of speaking among themselves about the sheep they had on the Unit Land; I reject the suggestion that the part of the Unit Land on which these sheep grazed was ever reputed to have^{er} in fact ever had, any connection with the learing either of Mr Squire or of Mr Ellis; on this aspect of the matter I prefer the evidence of Mr Heathman. Coryton Farm is too far away from the Unit Land and from Hughslade for there to have been any relevant continuity; the adoption by Messrs Heard of Mr Squire's marks has I think no relevant significance. A right attached to Youldens, Southerly has been registered on the application of Mr Reginald John Ellis at Entry No. 13 and has become final (see Entry No. 220); Mr Kenneth C Heard not having objected to this registration, cannot I think properly claim as successors of anything done from Youldens. I have no evidence of any grazing other than from Hughslade or of any animals being grazed other than sheep or the exercise of any other right of common over the Unit Land or of any sheep in excess of 100 being leared on the Unit Land; so my decision is that grant which I am by law required to presume should be limited accordingly. As to the part of the Unit Land to which such presumed grant should extend, I am not⁶ persuaded that there is any grazing ~~any~~ Hughslade as of right over the part of the Unit Land which Mr Kenneth C Heard ascribed to the sheep of Mr Ellis, and shall accordingly limit the grant I am presuming to the area which he ascribed to Mr Squire's sheep; unavoidably I must define the line of limitation somewhat arbitrarily as I have below done. My decision is therefore accordingly.

Although I am against the claim put forward on behalf of Mr W J Leonard Heard from the evidence of himself and his brothers, there is no reason why he should not as regards Oatneal have the benefit of the concession made at the hearing by the Commoners Association.



For the above reasons in relation to registrations made by Messrs Heard, my decision is as follows:- I REFUSE TO CONFIRM the registration at Entry No. 157. I CONFIRM the registration at Entry No. 169 with the MODIFICATION that for all the words in column 4 substitute "To graze 100 sheep over the part of the land in this Register Unit which is north-east of a line starting at a point on the boundary near to the letter "V" in the words "Vellake Brook" where they are marked on the Register map near the 1,200 feet contour, from such point going straight to Corn Ridge summit marked on the Register map as 1,762 feet and thence going straight to the most eastern part of the land in this Register Unit near the "rd" in the words "Sandy Ford" marked on the said map, and in column 5 delete all the words from and including "Place, comprising OS Nos 809 ..." down to and including the numbers "...1554, 1607, 1622". I CONFIRM the registration at Entry No. 214 with the MODIFICATION that in column 4 "piscary" be deleted and that for "100 cattle 950 ewes 75 ponies and their progeny" there be substituted "15 sheep or 3 cattle or 3 ponies" and in column 5 there be deleted all the words and numbers except "part Oatneal comprising OS No: 1033 (2nd Edition 1906) for the Parish of Sourton".

Next I heard Mr Sturmer about Duchy Objections Nos 384, 385, 386 and 387. As to No. 384 that the rights at Entry Nos therein mentioned do not exist, Mr Sturmer said that he was instructed to withdraw the Objection as regards all Entry Nos except Nos 150 and 151; they were insisted on because the Duchy could find no payment of Venville either personally or in respect of the land mentioned or in respect of the parish of South Tawton; these two registrations are also within Objection Nos 80 and 371 made by the Commoners Association. Mr Sturmer then gave evidence in support of Objections No. 385 (no "shooting") No. 386 (no "piscary") and No. 387 (no "pannage").

About Objection No. 1124 (Devon County Council) to the registration at Entry No. 145 made on the application of Mrs Valerie Nevill Thompson of a right in gross, I have no note or recollection of any evidence being offered. Although I think it was implicit in what was said by Mr Dawe that if the County Council had not objected to this registration, the Commoners Association would have done so. In relation to the Unit Land a right in gross is in relation to other registrations extraordinary, and in the absence of any evidence in support of this my decision is that the registration was not properly made. Accordingly I REFUSE TO CONFIRM the registration at Entry No. 145.

About Objections Nos 80 and 371 (rights do not exist) Mr Dawe continuing his evidence said that he had farmed in this area since 1948 and known it since 1928 and that he had been a member of the Commoners Association for at least 20 years. It had always been the policy of the Association to object to grazing by persons outside the parish of Bridestowe and the Objections were on this basis. Exceptionally mentioned in Objection No. 371 to the registration at Entry No. 144 made on the application of Mr David Kenneth Wilson Cox was a mistake. The objections put in question for the registrations mentioned in them and in the absence of any evidence in support of them I conclude that they should not have been made, accordingly I REFUSE TO CONFIRM the registrations at Entry Nos 54, 55, 70, 92, 93, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 137, 138, 139, 140, 141, 142, 150, 151, 169, 214, 215 and 219.

About Objections Nos 385, 386 and 387, Mr Sturmer's evidence against shooting, piscary and pannage was by reference to similar evidence he gave of the hearing



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relating to the Forest (CL 164) on 21 October 1982; he produced at this Unit Land hearing 5 specimen fishing licences (Duchy/401) and a bundle of correspondence (Duchy/402) including letters dated 28 March 1908, 8 June 1908, 22 August 1908 (shooting permitted with reservation of grey-hens/black game and hares, dated 10 September 1932 and 2 October 1981 (shooting) and 22 July and 5 August 1953 (Devon River Board agreed their bailiffs asked fishermen to produce Duchy permits) and letter dated 28 January 1954 (payment to bailiff) and (undated) specimen licence to hunt with harriers. Nobody at the hearing suggested that shooting, piscary or pannage were rightly included in any of the registrations and my decision is that these Objections succeed.

There being no other Objections to the registrations mentioned I conclude that subject to giving effect to the preceding paragraph they were properly made and upon similar considerations I reach the same conclusion as regards the registration at Entry No. 4 made on the application of Mr D K W Cox. Accordingly I CONFIRM the following registrations: 3, 78, 79, 80, 80A, 81, 83, 91, 96, 98, 104, 105, 106, 107, 108, 134, 136, 143, 144, 148, 159, 160, 163, 165, 168, 170, 172, 174, 175, 209 and 212 with the MODIFICATION that in column 4 "shooting" and/or "to shoot" and/or "piscary" and/or "pannage" be deleted in any such registrations where these words occur, but WITHOUT ANY OTHER or (as the case may be) ANY MODIFICATION. 95.

When preparing this decision, I became puzzled as to what I should do about the registrations at Entry Nos. 52, 62, 77, 161 and 173 made upon the application of Mrs H E Glass, Mr T May, Mr L A R Huggins, Mr J G Woodridge and Mr W A R Pearse respectively. I have no note or recollection of anyone at the hearing saying anything about these registrations. All of them are noted in the Register as being in some way in conflict with other registrations; none of them is mentioned at Entry No. 220 as having become final. None is mentioned particularly in any Objection, or in any of the conflict references made by the County Council as set out in the First Schedule hereto. Being of rights "to stray", in the absence of any evidence or explanation for the reasons set out in my Forest of Dartmoor decision (CL 164) dated 30 June 1983 under the heading "Straying", I consider they should not have been made and should be avoided. It being desirable in the public interest that I should not by adjourning these proceedings or otherwise needlessly put numerous persons to the expense of another hearing, I REFUSE TO CONFIRM the registration at these Entry Nos. 52, 62, 77, 161 and 173. But because this decision is arbitrary and because in this Register Unit a number of registrations of "to stray", being undisputed have by the operation of section 7 of the Commons Registration Act 1965 become final without the need of any Commons Commissioner hearing, I give to the applicants for these registrations or any person claiming under them or otherwise interested in them, and also to the County Council as registration authority LIBERTY TO APPLY to me alter this paragraph of this decision, subh liberty to be exercised as hereinafter specified.

Having regard to the complexity of these proceedings, I realise that this decision may contain not only clerical errors but also errors which I ought to correct without putting the parties to the expense of an appeal. Accordingly I give all persons who attended or were represented at the hearing or were entitled to be heard at its LIBERTY TO APPLY to me to alter this decision, such liberty be exercised as hereinafter specified.



The liberty to apply for the above mentioned should be exercised within THREE MONTHS of the date on which notice of this decision is given to the persons entitled to it but so that application may be made to a Commons Commissioner to enlarge this three month period. Any application under this liberty should be made in writing (it may be by letter) and should be sent to the Clerk of the Commons Commissioners in London.

I am required by regulations 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.

FIRST SCHEDULE
(Objections)

No. 80: made by Bridestowe Commoners and noted in the Register on 13 October 1970, that the right does not exist at all as the applicants are not resident in Bridestowe parish, applicable to 48, 49, 54, 55, 70, 92, 93, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 137, 138, 140, 142, 150 and 151.

No. 123, No. 371 and No. 873: made by Sourton Commoners Committee and noted in the Register on 17 September, 26 October and 13 November 1970, that (123) the right does not exist at all applicable to: 48 and 49, that (371) the right does not exist at all, applicable to: 54, 55, 70, 92, 93, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 137, 138, 139, 140, 141, 144, 150, 151, 157, 169, 214, 215 and 219; that (873) the right exists only in respect of OS 385 in Sourton and should therefore be reduced to 5 stock units (NFU Scale), applicable to: 94.

Nos 384, 385, 386 and 387: made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 15 December 1970, the grounds in all cases being limited to the part of the land hatched in red and lettered A on the Register map, such part being all the Unit Land except the two comparatively very small pieces just within the northeast boundary (in the Register said to be excepted because of the north Devon Water Board's ownership), that (384) the right does not exist,



applicable to 48, 49, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 142, 150 and 151*; that (385) no rights exist for shooting applicable to 56, 83, 92, 104, 105, 106, 107, 108, 127, 128, 130, 131, 132, 136, 137, 138, 141 and 174; that (386) no rights exist for piscary, applicable to 3, 54, 55, 56, 78, 79, 80, 80A, 81, 83, 91, 92, 93, 94, 95, 96, 98, 104, 105, 106, 107, 108, 127, 128, 129, 130, 131, 132, 133, 134, 136, 137, 138, 140, 141, 143, 148, 157, 159, 160, 163, 165, 166, 168, 169, 170, 172, 174, 175, 177, 178, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 214, 215 and 219; that (387) that the right of pannage does not exist, applicable to 148, 163 and 166.

*Note: at the hearing Objection No. 384 was except as regards registrations at Entry Nos 150 and 151 withdrawn by Mr Sturmer.

No. 1124: made by Devon County Council and noted in the Register on 11 September 1972 that the right registered at Entry No. 145 "does not exist at all".

Conflicts

- No. 5; Charles Heathman, with No. 187.
- No. 9; Edgar Walter Alford, with No. 181.
- No. 16; Albert Stephen George Daniel, with No. 183.
- No. 22; William Patrick Fogerty, with No. 188.
- No. 24; Clifford Horn, with No. 191.
- No. 26; Geoffrey William Alford, with Nos 39 and 184.
- No. 31; Edward Gale, with Nos. 44, 190 and 207.
- No. 32; David Claude Ball, with No. 185.
- No. 39; Edward Fred Cullen, with Nos. 26 and 184.
- No. 40; Brian William John Lavis, with No. 192.
- No. 44; Olive Mary Jury and Sons, with Nos. 31 and 190.
- No. 68; Clifford Charles Gloyn and Lionel George Gloyn, with No. 200.
- No. 89; Peggy Delphine Garvey, with No. 193.
- No. 135; William Henry Voaden, with No. 203.
- No. 166; Louise Annie Warden, with No. 204.
- No. 181; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 9.
- No. 183; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 16.
- No. 184; Lt-Col Vincent Warwick Calmady-Hamlyn, with Nos. 26 and 39.
- No. 185; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 32.
- No. 187; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 5.
- No. 188; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 22.
- No. 190; Lt-Col Vincent Warwick Calmady-Hamlyn, with Nos. 31 and 44.
- No. 191; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 24.
- No. 192; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 40.
- No. 193; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 89.
- No. 200; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 68.
- No. 203; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 135.
- No. 204; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 166.
- No. 207; Lt-Col Vincent Warwick Calmady-Hamlyn, with No. 31.

Note: Nos. 52, 62, 77, 161 and 173, although in the Register noted as in conflict have not been referred.



SECOND SCHEDULE

(Meldon, Hughslade and Yelland Farms)

Part I: registrations

No. 157

Courtenay John Heard; (i) Meldon Farm, (ii) East Bowerland, OS Nos 1443 and 1444, (iii) Higher West Bowden, and (iv) OS Nos 798 etc; owner of (i), (ii) and (iii)/tenant of (iv); turbarry, piscary, estovers, take stone and gravel, graze 650 sheep, 290 cattle and 120 ponies; "over the whole of the land in this register unit and ..."

No. 169

Kenneth Cyril Heard; (i) Hughslade, (ii) Place, (iii) Fowley and (iv) part East Bowerland OS Nos 1556 etc; owner of (i), (ii), and (iii)/tenant of (iv); estovers, turbarry, piscary, take sand and gravel, graze 200 cattle, 1,200 ewes and 150 ponies with progeny; "over the whole of the land in this register unit ..."

No. 214

Wesley James Leonard Heard; (i) part Fowley Farm OS Nos 822 etc, (ii) East Bowerland Farm OS Nos 1551 etc, (iii) Yelland Farm, and (iv) part Oatmeal OS No. 1033; owner of (i), (ii) and (iii)/tenant of (iv); estovers, turbarry, piscary, take sand & gravel, graze 100 cattle, 950 ewes 75 ponies and their progeny; "over the whole of the land comprised in this register unit and ..."

Part II: documents produced by Mr K C Heard

KCH/101

6 February 1965

Copy deed of partition under which Mr K C Heard acquired Hughslade containing about 242.304 acres, and Mr C J Heard acquired (a) Meldon Farm and Meldon cottages containing about 226 a.2r.33p, (b) field part of Higher West Bowden containing 12 a.3r.18p, being OS No. 1735, and (c) 2 pieces of land part of East Bowerland containing 19 a.38p.

KCH/102

6 October 1964

Copy conveyance by Mrs M M K Ryan to Mr K C Heard of (a) part of Fowley Farm containing about 89 a.1r.33p, and (b) Fowley Moor containing about 63 a.16, and (c) Place Farm containing about 115 a.1r.28p.



Part III: produced by Mr W J L Heard

- WJLH/1 25 November 1960 Copy conveyance by Mr D P K and Mrs M M K Ryan to Mr W J L Heard of Yelland containing about (1905 OS) 252.706 or (Nat Grid) 253.112 acres.
- WJLH/2 6 October 1964 Copy conveyance to Mrs M M K Ryan to Mr W J L Heard of part of Fowley Farm containing about 51.252 acres.

Part IV: produced after hearing with letter of 14 April

- 25 March 1957 Copy conveyance by Mr W Brown to Messrs K C and C J Heard of Hughslade containing 242 a.1r.8p.
- 4 October 1958 Copy conveyance by Mr J J Newcombe to Messrs K C and C J Heard of Meldon Farm and 7 cottages known as Meldon Cottages all containing 226 a.2r.3p.
- 25 November 1960 see WJLH/1 above.
- 1 May 1962 Copy conveyance by Mr E P Danby and Lloyds Bank Ltd (his chargee) to Messrs K C and C J Heard of field part of Higher West Bowden containing 12 a.3r.18p.
- 1 October 1962 Copy conveyance by Mr W A Dennis to Messrs K C and C J Heard of two pieces of land part of East Bowerland containing about 19 a.38p.

Part IV: produced on behalf of Duchy of Cornwall

- Duchy/401 -- Specimen fishing licences, salmon week, salmon season, trout week and trout season.
- Duchy/402 28 March, 8 June
22 August,
22 August 1906 Copy letters from A E Bovington about shooting licences fee of 10/- charge "Greyhen and Hares as reserves for breeding and the latter for hunting.



- 24 May 1910 Copy letter from A E Bovington about a shooting licence.
- 23 April 1910 Extract from letter about Dartmoor shooting: "preserving blackgame ... the Duchy ordered 50 Blackgame from Sweden last year and they were on the way but got smashed on the railway".
- 10 September 1932 Letter from Bailiff of Dartmoor to Assistant Secretary about rents for shooting over the forest.
- 2 October 1981 Letter from Martin Spiller to Hitchings of Duchy of Cornwall Office enclosing £5 rent for permission to shoot over Riddon Down.
- 22 July,
5 August 1953 Letters to and from Devon River Board about their Bailiffs being instructed to ask fishermen on Duchy Waters to produce Duchy permits.
- 28 January 1954 Copy of letter from Duchy to F Warne (Board Bailiff).
- Before 1900 Draft Grant to ... licence to Hunt with Harriers from 1 October 18—, 31 May 18—.

Dated the 13th day of October — 1983.

A. A. Baden Fuller

Commons Commissioner

CORRECTED This 21st day of November 1985 by deleting "169, 214" in the 3rd and 4th lines above the bottom of page 9 and by inserting "95," after "... 91," in the 15th line below the top of page 10.

A. A. Baden Fuller
21. xi. 85.