



## COMMONS REGISTRATION ACT 1965

Reference Nos. 209/D/226  
to 230 inclusive

In the Matter of Knighton Heath,  
part in Bovey Tracey and part in  
Hennock, Teignbridge District,  
Devon

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 to 6 inclusive in the Rights Section and Entry Nos. 1 and 2 in the Ownership Section of Register Unit No. CL 2 in the Register of Common Land maintained by the Devon County Council and are as regards the Land Section and Rights Section registrations occasioned by Objection No. 482 and 483 made by Miss A L Cole and Mrs G Bond and noted in the Register on 16 and 25 November 1970 and as regards the Ownership Section registrations by these registrations being in conflict.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 13, 14 and 15 October 1981. At the hearing (1) Mr William Ronald Bond of Pullabrook Farm represented his wife Mrs Grace Bond and her sister Miss Annie Lavinia Cole who were the said Objectors and also the applicants for the Ownership Section registration at Entry No. 2; (2) Mr C R George of counsel instructed by Tozers, Solicitors of Teignmouth represented (a) Devon and Courtenay Clay Company Limited who were the applicants for the Ownership Section registration at Entry No. 1 and (b) Watts Blake Bearne Company Limited of Park House, Courtenay Park, Newton Abbott as successors in title of Devon and Courtenay Clay Company Limited; (3) Mr H Turner solicitors of Kitsons, Solicitors of Torquay represented (a) Mr Geoffrey Household and his wife Mrs Joanna Household as successors in title of Wing Commander Guy Webster Cory on whose application the Rights Section registration at Entry No. 2 was made, (b) Mr Graham Edward Tett and his wife Mrs Phyllis Tett of Woodlands Farm as successors in title of Mr Lewis Lloyd Baker on whose application the Rights Section registration at Entry No. 3 was made, (c) Candy & Company Limited on whose application the Rights Section registration at Entry No. 4 was made, (d) W L Vallance (Holdings) Ltd on whose application the Rights Section registration at Entry No. 5 was made and (e) Chudleigh Knighton Commoners Association (on the instructions of their chairman Mr W L Vallance); and (4) Mr N F Lloyd Roberts Solicitor of Newton Abbott represented Mr Thomas Henry Minchington and his wife Mrs Desnee Rose Minchington on whose application the Rights Section registration at Entry No. 6 was made.

The land ("the Unit Land") in this Register Unit is in two pieces separated by a strip ("the Railway Strip") along which used to run a railway but now no longer used or usable as such. One of the pieces ("the North Piece") has a length between its nearly straight south east side (by the Railway Strip) and its nearly straight north west side of about  $\frac{2}{3}$ ds of a mile and an average width between its irregular south west side and its irregular north east side of about  $\frac{1}{3}$ rd of a mile. The other of the pieces ("the South Piece") is comparatively small being a triangular area whose north side (by the Railway Strip) is about  $\frac{1}{4}$  of a mile long and whose other sides are about  $\frac{1}{3}$ rd and  $\frac{1}{6}$ th of a mile long. A little north of the centre of the North Piece is a crossroads known as Dunley Cross, one of the roads being the B3344 road from Chudley Knighton about a mile to the south east to



Bovey Tracey about 3 miles to the northwest; the other road (comparatively minor) runs from Hennock on the north to a point on and thence across the southwest side of the North Piece. The OS map on which the Register map is based, is misleading as to the present appearance of much of the Unit Land because as a result of the widening and improvement of the nearby A38 road (Exeter-Plymouth) the east part of the Railway Strip and much of the South Piece has become part of the A38 road or of the well fenced embankments and verges of it; further the line of the road running southwards from Dunley Cross has been changed so that instead of running approximately southeast by south it runs nearly due south with its south end curving to carry it to a bridge over the cutting containing the A38 road. For the purpose of these proceedings importance is attached to a line ("the Parish Boundary") marked on the OS maps as a boundary between parishes (Bovey Tracey and Hennock) starting near the northwest corner of the South Piece, then running almost due north across the North Piece to a stone a few yards southeast of Dunley Cross and then running northeast to a point on the northeast boundary of the North Piece about 200 yards from the northeast corner.

The Land Section registration was made on the application of Devon and Courtenay Clay Company Ltd and an application by the Commons Open Spaces and Footpaths Preservation Society is noted. In the Rights Section there are 6 registrations: that at Entry No. 1 made on the application of Mr Cyril Oscar Holland of a grazing right over nearly all of the part of the North Piece west of the Parish Boundary; that at Entry No. 4 being of estovers over the whole of the Unit Land, and those at Entry Nos 2, 3, 5 and 6 being of grazing over the whole of the Unit Land (Nos 3 and 6 include estovers, turbary and pannage and No. 5 includes turbary). The Ownership Section registration at Entry No. 1 (Devon and Courtenay Clay Company Ltd) relates to all the Unit Land except an area ("the Recreation Field") being approximately rectangular about 350 yards long and about 100 yards wide near the east corner and within the North Piece and a short distance from Chudleigh Knighton. ~~The~~ the Ownership Section registration at Entry No. 2 (Mrs Bond and Miss Cole) is of an area ("the Bond-Cole Ownership Area") about  $\frac{2}{3}$  of the part of the North Piece which is west of the Parish Boundary. The grounds of Objection No. 482 (to the Land Section registration) are "that the land coloured red on the attached plan was not common land at the date of registration and no common rights exist over it"; the land so coloured is about  $\frac{5}{6}$ ths of the part of the North Piece west of the Old Boundary Line including the Bond-Cole Ownership Area. The Grounds of Objection No. 483 (to the "Rights Section registration) are: the rights do not exist at all".

I have a letter dated 26 June 1981 from Mr C Oscar Holland to the Clerk of the Commons Commissioners in which he formally withdraws such claim as he made to a right of common on Knighton Heath in the Parish of Bovey Tracey, Register Unit No. CL2. This letter refers to Entry No. 1.

At the beginning of the hearing it appearing that the questions most likely to be disputed in detail were between those represented by Mr Bond on the one hand and by Mr George, Mr Turner and Mr Lloyd Roberts on the other, it was agreed that without prejudice to any question there might be as to burden of proof, Mr George should begin and that I should consider the evidence offered by Mr Bond after I had heard the evidence offered by others.

Mr George said that the Devon and Courtenay Clay Company Limited ("DCC") had in their application for registration mistakenly included a triangular area ("the 7271 Area") which is on the OS map (1/2500 1956) plot No. 7271 containing 2.78 acres



and which is situated at the southwest corner of the North Piece and that accordingly Watts Blake Bearne Company Limited ("WBB") as successors of DCC were agreeable to the 7271 Area being removed from the Register notwithstanding that none of the grounds of Objection were directed to any such removal. To this removal Mr Turner agreed. Mr Lloyd Roberts said his clients Messrs Minchington as owners of the 7271 Area claimed it ought to be removed from the Register.

Next at the hearing Mr George opened the case for DCC and WBB by referring in some detail to Plans A and B and the documents in Bundle A (later produced in evidence by Mr Pike). Then against the Objections and the ownership claim of Mrs Bond and Miss Cole oral evidence was given by (1) Mr Walter Lewis Vallance, (2) Mr Frank Gilbert Lupton, (3) Mrs Phyllis Test, (4) Mr Thomas Henry Minchington, (5) Mr Geoffrey Andrew Household, and (6) Mr John Drew Pike. In support of the objections and the ownership claim of Mrs Bond and Miss Cole, oral evidence was then given by Mr William Ronald Bond. In the course of this evidence the documents specified in the Schedule hereto were produced by the said witnesses and also from the Devon County Record Office by Mrs Alice Mary Wells, records clerk.

On the day after the hearing I inspected the Unit Land in the presence of Mr A R Bond, Mrs G Bond, Mr J D Pike, Mrs P Tett, Mr T H Minchington and Mr Lloyd Roberts.

After the hearing I received from Mr Bond a letter dated 26 October 1981 with enclosures as specified at the end of the Schedule hereto.

Although the Objections put in question all the registered rights of common as regards all the Unit Land, Mr Bond, as I understood him, did not dispute such rights so far as they were claimed over the part of the Unit Land east of the Parish Boundary, nevertheless contending that such rights if (which he did not admit) they did exist at all could not be exercised over the part of the Unit Land west of the Parish Boundary, and in particular not over the Bond-Cole Ownership Area. Mr George conceded that the Rights Section registrations were properly made, so there was no difference between him and Mr Turner. Although the claims made by Mr Turner and Mr Lloyd Roberts are important, for the purposes of exposition I will first deal with the conflict between the Ownership Section registrations both made on 16 March 1967, because by far the greater part of the evidence (both oral and documentary) and argument was directed to this.

The claim of WBB as successor of DCC to own all the Unit Land except the Recreation Field and the 7271 Area was as I understood Mr George made under the following headings:—(A) The ownership in fee simple could be traced from Edward Adolphus 12th Duke of Somerset (he died 28 November 1893) through (i) the 1894 conveyance (...) from Lord H F Thynne and Sir J W Ramsden as trustees under the will to Richard Harold St Mawr as beneficiary, (ii) the 1925 conveyance (JDP/5) from him to Stover Estates Limited (iii) the 1938 conveyance (JDP/5/3) from them to Evans and Reid Investment Company Limited, (iv) the 1965 conveyance (JDP/9) from them to DCC. (B) The persons successively entitled in fee simple had made by the documents produced by Mr Pike, licensing agreements, leases, electricity wayleave agreements, and a Law Property Act 1925 section 193 declaration (and subsequent revocation) relating to the Unit Land or some part of it. (C) The said persons had made applications for and had obtained planning permissions relating to the Unit Land. (D) The title of such persons had been recognised at meetings of the Court Leet in 1893 and 1922 (WLV/1). (E) The said persons or persons claiming under them had done things on the land: as regards the part of the North Piece east of the Parish Boundary, extracting ball clay in a large way, for this purpose constructing or



erecting roads, banks, sheds machinery and other equipment; and as regards the part of the North Piece west of the Parish Boundary, making boreholes (by their mineral licensees) and erecting pylons and electricity lines (by the electricity authority under the wayleave agreements).

The contra ownership claims of Mrs Bond and Miss Cole were, as I understood Mr Bond primarily based on their ownership of Little Bovey Farm being land containing about 58 acres adjoining the greater (central) part of the west boundary of the North Piece. The documents produced by Mr Bond traced the ownership of this Farm from at least as far back as John Tapper (he died 10 March 1899) through a specific devise in his will (abstract WRB/6) to John Stooke Tapper (he died 29 November 1956), the 1957 conveyance (WRB/4) by his executor to Mr John Scott Drake Cole (he died 23 December 1963) and the 1964 assent (WRB/5) by his executrix in favour of his daughters Mrs Bond and Miss Cole (3/5ths and 2/5ths). The title so deduced to Little Bovey Farm is regular and was not disputed. What was disputed was Mr Bond's claim that the Bond-Cole ownership area in some way belonged to or went with Little Bovey Farm. There was nothing in the documents of title relating to the Farm supporting any such connection between it and the Bond-Cole Ownership Area. As evidence of this connection Mr Bond referred to some documents and a number of matters of local history. Some of these I have not referred to in this decision because I cannot imagine how they could be relevant to anything which I have to decide. In the next 7 paragraphs I deal with the points made by Mr Bond (mostly summarised in WRB/1) which might conceivably have some bearing on the ownership of this Area.

First, Mr Bond's point that the North Piece was historically two pieces of land, the piece east of the Parish Boundary in the parish of Bovey Tracey being known as Knighton Heathfield, and the piece west of the Parish Boundary in the parish of Hennock being known as Chudleigh Knighton Heath; "the farms around ... included the area known as Knighton Heathfield ... I know this land belongs to the farms adjoining". Neither the 1957 conveyance nor the 1964 assent contain any express words which could include the Bond-Cole Ownership Area. I doubt whether such Area (at least 20 acres as I estimate from the map) could be "belonging" within section 62 of the Law of Property Act 1925 so as to pass without express mention; however this may be I decline to give Mr Bond's statement about belonging any significance beyond such as may be justified by the appearance of the land and by the other points he made. As regards appearance:- During my inspection Mr Bond explained that as between the various farms adjoining he considered Knighton Heathfield to be divided by lines being prolongations of that part of the boundary lines between the farms as was nearest to Knighton Heathfield; this was the basis on which the north and south boundary of the Bond-Cole Ownership Area had been drawn in the application for the Ownership Section registration. During my inspection Mr Bond contended that the north of these two prolonged lines was recognisable on the ground. I disagree; the first few yards of this prolongation corresponded with a shallow ditch; but this after a short distance becomes indistinct and beyond to the northeast I found nothing on the land which could be a boundary. As regards the south of these prolongations, during my inspection Mr Bond was unable to point out to me any feature on the land which corresponded with it at all. In my opinion the appearance of the land is against there being any such belonging as was suggested by Mr Bond.

Mr Bond's point that: "a large part of Knighton Heathfield has been ploughed, a lot of it being the ridge and furrow type for drainage which is visible when burnt off". It was evident during my inspection that the part of the North Piece which is



north of the Bond-Cole Ownership Area and west of the Parish Boundary had been used otherwise than in the exercise of rights of common; eg there were some concrete beds apparently at one time bases for temporary buildings, and there was a dump of commercial or household waste. Mr Bond explained that in October the furrows he mentioned were not easily visible; although he pointed out to me where they were (a comparatively small part of the Bond-Cole Ownership Area) I did not myself see them. No evidence was given at the hearing as to when or by whom these furrows were made. I am unable to attach any significance to what Mr Bond said about them.

Mr Bond's point that the ownership claim of Mrs Bond and Miss Cole was helped by the 1843 Tithe Award and the map referred to in it. In the Award the part of the Unit Land west of the Parish Boundary is No. 2019, named "Knighton Heathfield", being (state of cultivation) "pasture and furze" containing "82a. 2r. 16p." and under the headings "Land Owners" and "Occupiers" appears "Devon, the Earl of" and "Themselves". This ownership and occupation is similar to at least 11 pages of the Award. I discuss later in this decision the possible relevance of the Earl of Devon having been perhaps at one time owner of the part of the Unit Land west of the Parish Boundary; otherwise I can attach no relevant significance to the Award and map.

Mr Bond's point that the 1862 Teign Valley Railway Deposited Plans and Book of Reference supported the ownership claim. The relevant part of the plan distinctly marks the Parish of Bovey Tracey and the Parish of Hennock and the boundary between these parishes (being the Parish Boundary as defined in this decision); it also marks the Torquay Water Main along the same line as that now existing; as regards the name "Knighton Heathfield", the word "Knighton" is written in the Parish of Bovey Tracey and the word "Heathfield" is written in the Parish of Hennock. In the Book of Reference, the property (No. 23) described as "Knighton Heathfield" is described as being in the ownership of the Duke of Somerset and Charles Alderburgh Bentinck, and the Lord of the Manor of Bovey Tracey is said to be Charles Alderbury Bentinck and the Lord of the Manor of Knighton is said to be the Duke of Somerset. I decline to infer from these documents that at the time the Unit Land was considered as being in two pieces one in the Parish of Bovey Tracey owned by Mr Bentinck and the other in the Parish of Hennock owned by the Duke. I infer rather that the Railway Company considered the Unit Land to be all one piece all known as Knighton Heathfield which might be owned by Mr Bentinck and the Duke together or separately in some way which it was unnecessary in order to take part for use of a railway, to determine.

Mr Bond's point that: "in this area of Dartmoor when a farmer owns the land outside the field the owner marks his ownership by erecting a gateway from the field onto the unenclosed land with granite gateposts with the hangings on the open land side; thus the gate opens out to unenclosed land. This has always been accepted as an unwritten law and in many cases stone gateposts cut from the Templer owned Haytor Granite Quarry were used. This can be dated by the life use of that quarry. If you examine the Tithe Map in relation to our farm there were eleven fields against Knighton Heathfield with 11 gateways leading thereon":- During my inspection Mr Bond pointed out these 11 gateways; 5 were from his fields north of the track which runs from Little Bovey Farm to the west corner of, and then across the North Piece, and the remaining four south of this Track. Through the most northerly gate (No. 1) runs a (different) track which provides convenient access to Little Bovey Farm from the B3344 road. The site of the next gateway southward is visible but is now no longer usable (having been blocked in 1963 so Mr Bond said). I was not shown No. 3. No. 4 was not used. No. 5 was the only gateway I examined



which had granite posts such as Mr Bond mentioned. The hooks were on the side of the North Piece so the gate when opened swung over it; the gateway was very near to the western end of the most westerly part of the North Piece and led not only to the North Piece but also to the track leading directly to Little Bovey Farm buildings. Three of the other gateways (Nos. 6, 7 and 8) led directly to this same track nearer to the farm buildings. According to my notes and recollection not more than 3 of the gates now have any granite posts, and for only one is the post now operational; however this may be for the purposes of this decision, I will assume at one time there were (as Mr Bond seemed to think) granite posts such as this one for all these 11 gates. I know of no general rule of law under which the owner of land on one side of the gateway is presumed also to own any unenclosed land on the other side over which the gate when opened passes: but I accept that the manner in which a gate opens, may with other considerations be relevant to ownership at least to the extent of so much of the land as is crossed by the gate opening and shutting. I doubt whether local custom under which ownership was presumed by reference to gate opening would be recognised by law; but however this may be, in my opinion the evidence of Mr Bond falls short of establishing any such custom. In the particular circumstances of these gates, my conclusion is that their opening over the North Piece can be adequately explained by private right of way from the nearby part of Little Bovey Farm either to the B3344 road or to the road leading southward from Dunley Cross or to the said Track (well marked) leading to Little Bovey Farm buildings; indeed as regards gate No. 5 Mr Bond explained that it was the only way of getting to the field from the Farm. While I have no jurisdiction in these proceedings to give any decision as to the existence of a right of way, I reject the idea that the opening of any of these gates over part of the Bond-Cole Ownership Area (a part which when compared with the whole Area is very small) provides evidence that the Area "belongs" to Little Bovey Farm in any now relevant sense.

Mr Bond's point that Bovey Heathfield was allocated to all farms after being cut in two by the railway to Moretonhampstead. This point made orally by Mr Bond at the hearing, is repeated in the document lastly specified in the Schedule hereto. As above stated the 1862 railway document indicate that Mr Bentinck as Lord of the Manor of Bovey Tracey might with the Duke as Lord of the Manor of Knighton be the owner of Knighton Heath therein treated as one piece. Perhaps the 1843 Award indicates too that the Earl of Devon or his successors (possibly not the Duke) might have an interest. It may perhaps be reasonable to guess that when the Railway Company acquired the strip they subsequently used as a railway, Mr Bentinck and the Duke or their representatives met and agreed how the ownership of the Unit Land should be split between them. The 1640 manor, ~~and~~ and possibly also the 1843 Award may (as suggested in plan B) suggest the whole of the Knighton Heath was within the Manor of Knighton including the part of the Parish of Bovey Tracey. However this may be, I refuse to infer or even guess that at any such supposed meeting it was decided that thenceforth the parts of Knighton Heath mentioned in the 1862 railway document west of the Parish Boundary should thenceforth for ownership purposes be treated as belonging to the adjoining farms and dwellings. Of any such agreement or allocation, I had no evidence at all.

Mr Bond's point on the 1737 Settlement and the 1767 lease:- I can find nothing relevant in the Settlement. An unexecuted lease could not be relevant whatever it contained. Having much information as to how these lands had been dealt with or reputed to be owned during the last 100 years, I reject the suggestion that I should somehow from older documents ascertain what the ownership was then reputed to be and then conclude that all the later documents were mistaken. I prefer



rather to presume that all persons who might under the older documents possibly claim against those more recent have under conveyance now lost conveyed such interest if any as they had to persons who under the later documents were then reputed owners.

Upon the considerations above summarised, I reject all the points made by Mr Bond in support of the ownership claim of Mrs Bond and Miss Cole and conclude that their registration at Ownership Section Entry No. 2 was not properly made. So I now have to consider the further point made by Mr Bond that WBB as successors of DCC do not own any part of the Unit Land west of the Parish Boundary because their documents of title, particularly the 1894, 1925 and 1938 conveyance contain no relevant mention of the "Parish of Bovey Tracey".

Mr George while conceding that these conveyances could have been more clearly expressed as regards this part of the Unit Land, contended that they were clear enough and referred me to *Waterpark v Fennell* (1859) 7 HLR 650, *Herrick v Sixty* (1867) LR 1 PC 436, *Neilson v Poole* (1969) 20 P & CR 909, *Treloar v Nute* 1976 1WLR 1295 and *Wigginton v Winster* 1978 1 WLR 1462.

The parcels of the 1894 conveyance are: "... the Manors ... of Teigngrace Hennock and Knighton ... also ... the messuages lands ... known as the Stover Estate ... situate in the parishes of Bovey Tracey Hennock ... with the Common lands of the said Manor ... described in the Schedule ... delineated on the plan ... coloured pink (the common land of the said Manor being thereon coloured green)". In the Schedule Knighton Heath is described as five pieces in the parish of Bovey Tracey containing together 80a. 1r. 25p. and 11 pieces in the parish of Hennock together containing 97a. 10r. 1p. The plan shows coloured green all the Unit Land. In my opinion the conveyance clearly includes the part of the Unit Land west of the Parish Boundary and is of itself some evidence that such part was not then considered to be within the Manor of Bovey Tracey.

The parcels of the 1925 conveyance are: "the Mansion House messuages ... lands ... situate in the parishes of Teigngrace ... Hennock and elsewhere in the County of Devon described in the First Schedule hereto and for the purposes of identification only delineated on the plan annexed hereto and thereon coloured pink and blue". The First Schedule contains a number of separate descriptions that relevant being "lands and hereditaments situate in the Parish of Hennock comprising 178a. 1r. 37p. (or thereabouts) and known as "Knighton Heath". In the plan the whole of the Unit Land is thereon coloured blue. If the conveyance includes part of the Unit Land west of the Parish Boundary the words in the Schedule "in the parish of Hennock" are incorrect; if it does not include this part, the area 178a. 1r. 37p. In the schedule is incorrect as also is the colouring on the plan. Further the 1843 Award and the 1862 railway documents show that the land known as Knighton Heath then included this part so if the 1925 conveyance is not included the words in it "known as Knighton Heath" are also incorrect. So clearly some part or parts of the parcels is incorrect. In accordance with the principles of law conveniently summarised under the maxim "falsa demonstratio non nocet" the true effect of the conveyance must be ascertained by determining which of these descriptions is false and which is true. Having regard to the words "and elsewhere" in the parcels, showing that the parties had in mind that some of the lands thereby dealt with might not be within the parishes named, I am of the opinion that the description in the Schedule "situate in the Parish of Hennock" could in accordance with the maxim be treated as false and the conveyance construed as if these words had been omitted. With this omission, the plan, the acreage, the description "known as



"Knighton Heath" truly describe land which includes the part of the Unit Land west of the Parish Boundary.

The parcels of the 1938 conveyance are: "the Mansion House messuages ... lands ... situate in the parishes of Teigngrace, ... and Hennock in the County of Devon which form the Estate commonly known as the Stover Estate all which said property is more particularly delineated on the plan hereto annexed and thereon coloured pink and green ..." On the said plan the whole of the Unit Land is thereon coloured green and it is thereon marked "Knighton Green". The parish of Bovey Tracey is mentioned elsewhere in the parcels in connection with mines and minerals. Upon considerations similar to those set out above in relation to the 1925 conveyance, I incline to the view that the description by reference to parishes is false and being not essential cannot be decisive, and that the true and significant description is the "Knighton Heath", the colour on the plan, and the reference to what was then commonly known as the Stover Estate. That the Unit Land was then part of such Estate, the 1925 conveyance is some evidence.

But even if the view expressed in the preceding paragraph is not correct any defect in the title of WBB as successors of DCC is removed if somehow any outstanding estate of Stover Estates Ltd has been got in. As to this I have the statutory declaration (JDP/8) of Mr A G Davies directed particularly to this point and the evidence put before me as to acts of possession hereinafter mentioned. Further in these proceedings under the 1965 Act no claim has been made by Stover Estates Limited or anyone claiming under them other than WBB and DCC. In my opinion any such outstanding estate was extinguished by the Limitation Act 1939.

Although there are extensive clay workings on the part of the Unit Land east of the Parish Boundary, the present general appearance of the Unit Land is that it is one piece of land on which any acts of possession on any part can properly be referred to the whole. The pipes under the land although they have a divisive effect as regards mineral workings and although they are all more or less along the line of the Parish Boundary, do not separate the Unit Land as regards possession into two distinct pieces. As regards grazing, the appearance of the Unit Land is that it is one not two pieces. Quite apart from the conveyances produced, the licensing agreements, leases, electricity, wayleave agreements, and section 193 declaration are acts of possession. I feel some doubt whether either an application for or a grant of planning permission can properly be regarded as an act of possession; but however this may be, I have I think enough to show that Evans & Reed Investment Company Limited, DCC and WBB have been successively in possession.

I conclude therefore that the ownership at the date of registration of DCC has been proved and that accordingly the registration at Ownership Section Entry No. 1 was properly made.

That rights of common as registered at Entry Nos 2 to 6 existed and were properly registered was conceded by Mr George. Such a concession made on behalf of persons who I have found were and are the owners of all the Unit Land (except the Recreation Field and the 7271 Area) is I think prima facie evidence enough.

But I have other evidence. The 1893 Court Leet (WLV/1) refers to a pound keeper and to irregular stocking. Colonel St Maur in 1921 asks (JDP/2) whether the Commoners object to boring for clay, and the 1922 letters (JDP/3 and 5) refer to rights of common. At the 1922 Court Leet (WLV/1) the Commoners were consulted. Mr W L Vallance remembered the formation in 1924 of the Chudleigh Knighton Commoners Association and its subsequent operation, and the payments received by





the Commoners during the 1939-45 war for the use of the Unit Land by the Army. Mr Lupton who was chairman of the Commoners Association from 1929 to the early 1960s identified the Unit Land (except the 7271 Area) as being the Common as he knew it. The 1949 conveyance (PT/1) expressly grants a right of pasture over Knighton Heathfield in the parishes of Hennock and Bovey Tracey.

The very extensive clay workings over the greater part of the North Piece east of the Parish Boundary at present vent any exercise of rights of common over such part, and are apparently inconsistent with there being any rights of common over it. But this inconsistency is explained away by the acknowledgment of DCC and WBB that such workings are by arrangement with the Commoners, and not against their rights. For grazing purposes the North Piece except the said part east of the Parish Boundary and the North Piece west of the Parish Boundary are apparently one piece of land, as Mr Lupton said he had always so regarded them.

As I understood Mr Bond, the evidence which he offered and which I have for the reasons set out above rejected, was intended to be his answer both to the ownership claim of DCC and the rights of common claimed in the Rights Section. In my opinion it is no more cogent against such rights than it is against such ownership claim.

In the above circumstances I conclude that the rights of common exist as claimed in the Rights Section at Entry Nos 2 to 6, and in the absence of any criticism of the numbers of animals or other details in the said Section specified, I also conclude that these registrations at least as regards all the Unit Land except the Recreation Field and the 7271 Area were properly made.

Mr George in opening said that the part of the Unit Land a short distance northeast of the Recreation Field (on the other side of the B3344 road) was on 16 February 1972 conveyed to the Parish Council as a replacement recreation ground, and that he understood that this ground and the Recreation Field both belong to the Parish Council. I am not in these proceedings concerned to give effect to this 1972 conveyance. In the absence of any representation by the Parish Council or anyone else as to the exclusion of the Recreation Field from the land over which the registered rights are exercisable, I conclude that these rights do as now registered exist over this part of the Unit Land as they do over the rest, except the 7271 Area.

Mr Lloyd Roberts contended that this Area should be excluded from the Land Section registration. That the evidence of Mr Minchington upon this contention was properly admitted and that I should give effect to it is established by a High Court decision: re Sutton reported in the Times Newspaper of 1 December 1981 (after my hearing). The documents produced (TEM/1, 2 and 3) showed the 7271 Area to have been treated as no part of Knighton Heath. On my inspection so it appeared. I conclude that it should not have been included in the registration.

For the above reasons:- I confirm the registration at Land Section Entry No. 1 with the modification that there be removed from the register the land in this decision called the 7271 Area meaning the land which is on the OS map (1/2500, 1956) plot No. 7271 containing 2.78 acres. I refuse to confirm the registration at Rights Section Entry No. 1. I confirm the registrations at Rights Section Entry Nos. 2, 3, 4, 5 and 6 without any modification other than is necessarily consequential on the removal of the 7271 Area from the register. I confirm the registration at Ownership Section Entry No. 1 without any modification save such



as is necessarily consequential as aforesaid. And I refuse to confirm the registration at Ownership Section Entry No. 2.

Mr George and Mr Turner asked for costs.

As a general rule costs in proceedings before a Commons Commissioner do not follow the event as they do in most cases in proceedings in the High Court and other Courts. Under the 1965 Act a Commissioner is to hold an "inquiry" indicating that proceedings before him are not necessarily to be equated to similar proceedings in a Court. Further under the Act persons are required or expected to make applications for registration or to make objections without having any opportunity of investigating whether their actions will be opposed or knowing anything of the evidence which might be offered against them. It would not be just for a person to be at risk as to costs merely because he made a mistake while following the early stages of the registration procedure set up by the Act. So I must consider whether this case is exceptional.

Neither Mrs Bond nor Miss Cole gave evidence although they were so I understood both present at the hearing, and I spoke to Mrs Bond during my inspection. From the way their case was presented I conclude that Mr Bond was not only their representative and advocate at the hearing but also on their behalf managed their affairs as regards all matters relating to the Unit Land. So in as regards costs, they are bound by what he did on their behalf.

Stephans & Scown, Solicitors of Exeter wrote a letter dated 25 February 1966 to DCC, and Ford Simey & Ford, Solicitors of Exeter wrote letters of 6, 13 and 17 April 1967 and 29 May and 1 August 1969 (bundle B); Mr Bond during his evidence said that Stephans & Scown were the solicitors for the National Farmers Union, and that Ford Simey & Ford included the "Sheriff of the Court" and that these letters although purporting to have been written on behalf of Mrs Bond and Miss Cole were written without instructions; in my view Mr Bond by approaching these solicitors sufficiently authorised them to write as they did. The 1966 letter complained about the lack of consultation about mines and minerals. The 1967 letters complained of the occupation of the Unit Land by DCC and as showing the ownership of Mrs Bond and Miss Cole mention was made of a conveyance dated 25 November 1712 by Christopher Bayle of Little Bovey Farm including the general words: "... pastures feedings commons and common of pasture and easements ... appertaining ..." In the May 1969 letter they ask WBB to produce their title deeds; in a reply of 29 July 1969 such production was offered, and I infer from a memorandum dated 8 October 1969 by Tozers (the Solicitors of WBB) and from the cesser of the correspondence that the deeds of WBB were in 1969 inspected by Ford Simey & Ford as Mr Bond in the course of his evidence said "I expect they did".

So quite apart from the 1965 Act, Mr Bond was in dispute with DCC and WBB, raising questions which would have to be decided sooner or later by the High Court or some tribunal.

Having regard to this correspondence, DCC and WBB could properly prepare for the October 1981 hearing on the basis that the history of the Unit Land for at least as far back as 1712 might be investigated. That they <sup>were</sup> justified in doing this was confirmed by Mr Bond's presentation of the case, in that he arranged for the production of the 1862 Railway documents and himself produced two documents dated 1737 and 1767 and only failed to produce the 1712 conveyance because it was as he said "temporarily missing". By his conduct at the hearing in making points which



I have held as set out above he showed that DCC and WBB were fully justified in calling evidence and putting forward arguments in anticipation of their being made. I consider therefore that DCC and WBB should have a substantial part of their costs.

The grounds of Objection No. 483 put in question the rights of common over all the Unit Land. Although at the hearing Mr Bond limited the objection to the part west of the Parish Boundary and links the objection to his Ownership claim, the Commoners could not know this in advance. Notwithstanding that no correspondence before the hearing with those representing the Commoners was produced, and that their apparent preparation for it was not extraordinary, I consider that they too were properly represented separately from the owners and that they should have their costs independently.

But Mrs Bond and Miss Cole should not be liable for the costs of Messrs Minchington who raised a question altogether distinct from anything contemplated by the Objection and in fact procedurally benefited by there having been an Objection. Nor should they be liable for the costs of Chudleigh Knighton Commoners Association; but because Mr Turner's representation of such Association could not have significantly increased the cost, I see no reason for apportioning or otherwise diminishing the costs which would otherwise be payable if he had not additionally appeared for them.

As to the scale; I have not overlooked that the preparation for the hearing made by DCC and WBB was comparable with that usual in proceedings in the High Court and that the value of their interest in the part of the Unit Lands east of the Parish Boundary from where the ball clay is being worked, was obviously such as to merit High Court costs. But contra, the value of the part in question west of the Parish Boundary is much less; although there may be much valuable clay under it, for the working ~~and~~ planning permission ~~may~~ have been obtained or be obtainable it is of less value because less easily workable by reason of the road and of the pipes which cross it. In all the circumstances, it would not I think be just to give DCC and WBB complete indemnity such as they might obtain in a High Court action. So upon the above consideration I shall order Mrs Bond and Miss Cole to pay DCC and WBB and to pay to Mr and Mrs Household, Mr and Mrs Tett, Candy & Company Ltd and W L Vallance (Holdings) Ltd the costs incurred by them in respect of these proceedings with the modification that the costs of things done by Kitsons solicitors of ~~Tring~~ on behalf of the six persons last named and also on behalf of Chudleigh Knighton Association should be allowed (without any apportionment) except so far as these costs were increased by being done on behalf of such Association in addition to being done on behalf of all or any of the said six persons. And I shall direct that such costs be taxed as regards acts and things done before 1 October 1981 on Scale 3 prescribed by the County Court Rules 1936 as effectively amended before then and as regards acts and things if any done after 1 October 1981 on Scale 2 prescribed by such Rules as amended by County Court (Amendment) Rules 1981 which then came into operation.

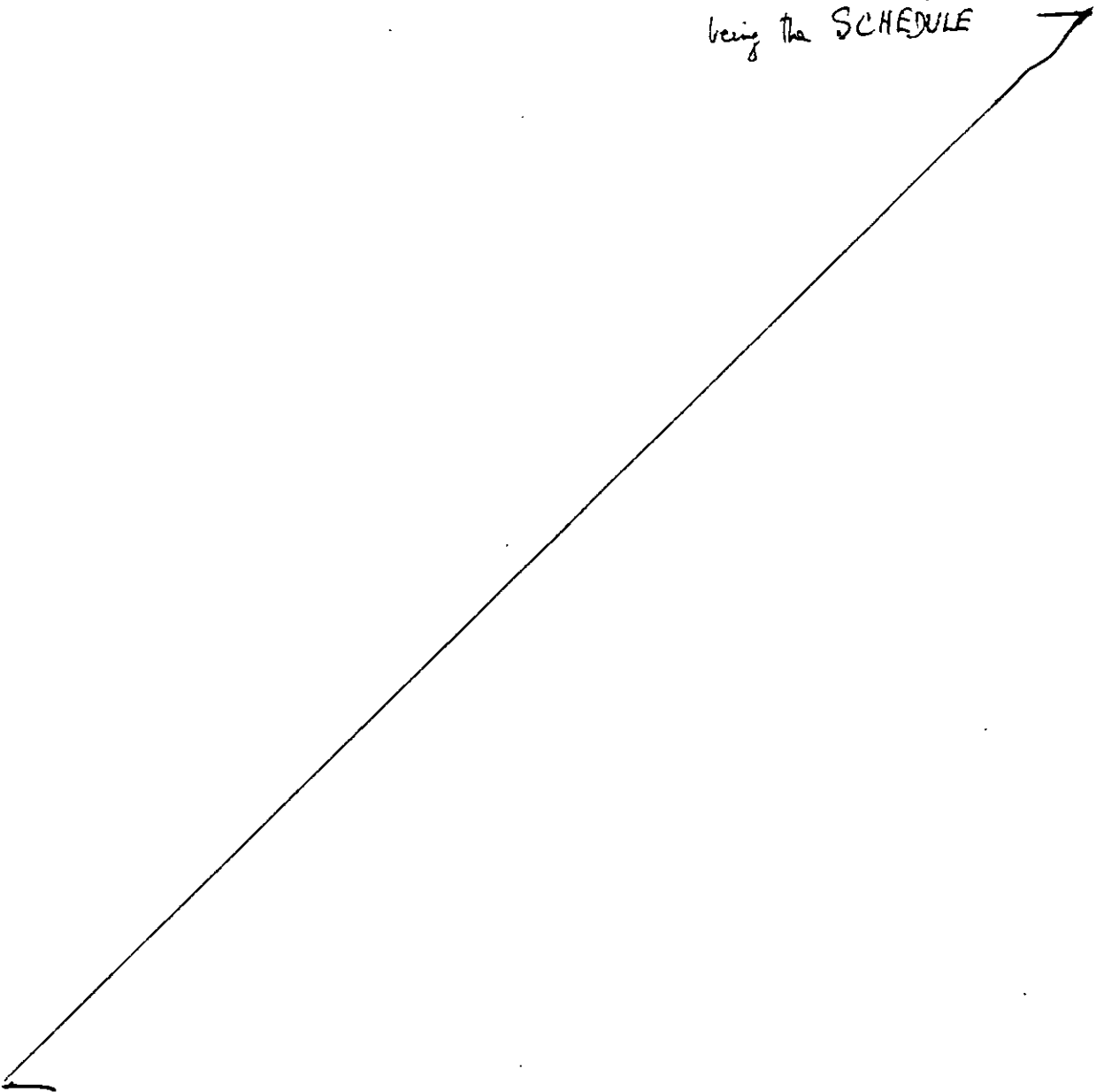
Since the 1712 conveyance was mentioned in the said April 1967 letter and a copy of it was sent to me by Mr Bond after the hearing, I record my opinion about it as follows. The words relating to Commons in the parcels are the same as quoted in the 1967 letter. Such general words are not evidence that the conveying parties had any rights capable of being passed by them, see *Baring v Abingdon* 1892 2 Ch 374 at page 388. In 1712, it was usual to include such general words in all conveyances of land, but since the Conveyancing Act 1981, now section 62 of



the Law of Property Act 1925, all conveyances are "deemed to include" similar general words. I reject the suggestion that Christopher Bayle by the 1712 conveyance ever intended to include it with the two messuages and tenements then in the occupation of Thomas Sampson thereby conveyed (even assuming they were part of Little Bovey Farm nor owned by Mrs Bond and Miss Cole) any part of the Unit Land. And I record that the copy conveyance contains an express exception of "all wast ground parcel of the said manors or lordships of Knighton & Hennock or one of them and free liberty together with the royalty of hunting hawking ..."

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

TURN OVER for pages 13 <sup>et seq.</sup>  
being the SCHEDULE



(Documents produced or referred to)

## I. Produced by Mr W L Vallance

- WLV/1                    --                    Leather bound foolscap manuscript book entitled "Manor of Knighton and Hennock" 1863-1869 containing records of the meetings of the Leeds Jury in 1863, 1869, 1893, 1902 and 1922.
- WLV/2                    17 July 1925                    Copy Appointment by Richard Harold St Mawr of Alfred Willian Prudence to be Bailiff and Reeve of the Manors of Hennock and Knighton Heath with power to distrain.

## II. Produced by Mr F G Lupton

- FGL/1                    19 October 1929                    Letter from witness (paper headed Candy & Co Ltd) to Miss Hawker agreeing to represent Company on Commoners Committee.
- FGL/2                    --                    Witness identifies common land on Plan A below mentioned.
- FGL/3                    --                    Notice by County Council as registration authority to W L Vallance (Holdings) Ltd of Objection 482 with map showing part of Unit Land of which Mrs Bond and Miss Cole claimed to be the owner.
- FGL/4                    --                    Witness refers to copy of Register supplemental map showing land to which is attached the right registered at Entry No. 4 on application of Candy & Co Ltd.

## III. Produced by Mrs P Tett

- PT/1                    25 March 1949                    Conveyance by Frank Denbow Adams to Arthur William Prudence of Woodlands Farm containing about 38a. 2r. 17p. together with right of pasture so far as vendor has power to convey over Knights Heathfield in the parishes of Hennock and Bovey Tracey.
- PT/2                    2 January 1976                    Conveyance by Mary Spencer Lister and Patrick Michael Wilson Lister to Graham Edward Tett and Phyllis Tett reciting a conveyance of 31 December 1971 and conveying land by description as in PT/1.

## IV. Produced by Mr T H Minchington

- THM/1                    --                    Plan used by South Western Electricity Board for scheme for Heathfield alternative supply; produced to identify OS No. 7271.

THM/2 9 October 1961 Conveyance by A S Herridge to G Burnett and H Burnett of field in Bovey Tracey No. 1840 on Tithe map and coloured pink on annexed plan.

THM/3 16 July 1965 Conveyance by G Burnett and H Burnett to T H Minchington and D R Minchington of the same premises.

-- 1981 Examined abstract of the Title of Mr T H and Mrs D R Minchington to OS No. 7271 commencing with a conveyance dated 27 March 1922 made by Richard Harold St Mawr.

V. Produced by Mr G A Household

GAH/1 24 September 1879 Conveyance of New Park Cottage in parish of Hennock common or commonable right on Knightfield Heathfield.

GAH/2 3 March 1976 Conveyance by John St Leger Greenfell and Pauline Mary Greenfell to Geoffrey Anderson Household as Joanna Pauline Household.

GAH/3 -- Extract from conveyance of 3 March 1876.

GAH/3 Bis -- This refers to Plan A below mentioned identifies Greensleaves (on the road going due north from Chudleigh Knighton).

VI. Produced from Devon County Record Office at request of BWB

-- 31 August 1843 (copy certified 13 September 1843) Tithe Apportionment Award for the parish of Bovey Tracey (originally having been in the Diocesan Record Office).

-- -- Tithe map referred to in the said award (separated from it for better preservation).

-- 1640 (approximate date ascribed by Mrs Wells) Map for titled "Description of Manor of Bovey Tracey and Meadows Pastures and Arable thereto belonging lying in Countie of Devonshire" as surveyed by Willian Owen.

Produced from Devon County Record Office at request of Mr Bond

-- November 1862 Plan and Section of Teign Valley Railway, being the "Deposited Plans" left with the Clerk of the Peace which was attached the Book of Reference relating thereto.

VII. Produced by Mr J T Pike

10 March 1893 Record of Court Leet and Court Baron of the Manors of Knighton and Hennock before Steward, Lett Jury and Homage Jury. J Forbes appointed Reeve and Poundkeeper overstocking (unlawful stocking of the Common represented). Boundaries reviewed.

28 September 1894

Conveyance by Rt Hon H F Thynne and Sir J W Ramsden to Richard Harold St Mawr of the Manors of Teigngrace Hennock and Knighton and hereditaments known as Stover Estate containing with the commons lands of the Manor 3,175a. 1r. 21p. described in Schedule and delineated on plan "coloured pink (the common lands of the said Manor being therein coloured green)".

JDP/2

2 December 1921

Copy letter from Harold Michelmore & Co to Miss Hawker saying desire to bore Knighton Heath for clay to see whether works can be established and Colonel St Mawr wishes to discover whether commoners have any objection.

JDP/3

30 January 1922

Copy letter from Harold Michelmore to Miss Hawker stating nature of commoners rights and Colonel St Mawr's intentions as to clay.

JDP/4

15 May 1922

Agreement between Richard Harold St Mawr and Newton Abbot Clays Limited being licensed to bore and search for china clay in Knighton Heath containing 177a. 1r. and 35p. as described in schedule and plan annexed with an option for a lease of not more than 22 acres.

JDP/5

10 April 1922

Copy letter Harold Michelmore to Miss Hawker saying Colonel St Mawr anxious to arrange matters in a friendly way and asking for a list of commoners.

8 June 1922

Record of Court Leet and Court Baron of the Manors of Knighton and Hennock. To consider question of commoners rights on Knighton Heath having regard to proposed working of mineral. The Lord of the Manor explained. Proposed lease was approved; the laying of a recreation ground discussed.

JDP/5/1

7 December 1925

Conveyance by Richard Harold St Mawr to The Stover Estates Limited of Mansion House cottage farm etc, in parishes of "Teigngrace ... and Hennock and elsewhere" described in First Schedule and delineated on plan annexed coloured pink and blue"





JDP/9	18 January 1965	Conveyance by Evans and Reid Investment Company Limited to DCC of Chudleigh Knighton Heath comprising 169.324 acres with OS Nos acreages as in Schedule and edged pink on plan annexed subject to rights of commoners.
JDP/10	10 October 1966	Owners consent given by DCC to Central Electricity Generating Board (to erect 2 pylons and power lines across northwest corner of North Piece and from north to south across the western projection of the North Piece).
JDP/11	4 October 1966	Deed of revocation by DCC of deed of declaration dated 17 November 1930 above-mentioned.
JDP/12	9 December 1968	Letter from Mr W B Bond to Mr Singleton saying WBB no right to let patches of concrete "for your timber business" ... "They have no right to let any of the ground in the Bovey Tracey part of the Heath .. we are certain they do not own the piece of land they are now using. They have known for three years that we claim part of Knighton Heath ..".
JDP/12/1	27 November 1978	Letter WBB to Mr W R Bond objecting claim of ownership and requesting him to consult their lawyers: Tozers.
JDP/11/2	3 July 1969	Wayleave agreements with WBB and South Western Electricity Board as to poles and lines near to or east of Parish Boundary.
JDP/12/2	24 December 1969	Wayleave agreement between WBB and South Western Electricity Board as to overhead lines and poles and underground cables.
JDP/13/1	12 January 1970	Licence by WBB to Devon Trust for Nature Conservation Limited (plan shows the Unit Land and some land to the southeast).
JDP/13/3	29 April 1971	Copy letter from Mr W R Bond to Devon Trust for Nature Conservation.
JDP/13/	25 January 1972	Copy letter from Mr W R Bond to Lord Roborough, Lord Lieutenant of Devon and President of Devon Trust of Nature Preservation.

JDP/14	29 January 1973	Planning Permission granted by Devon County Council to develop for winning and working of ball clay (among other lands) the part of the North Piece west of the Parish Boundary.
JDP/16	19 October 1978	Letter from WBB to Mr W R Bond <b>complaining</b> about heap of sewage waste on the concrete bedplaces on the Bradley side of Dunley Cross.
	26 May 1980	Copy letter from Mr W R Bond to Lord Roberough.
JDP/15	31 January 1978	Conveyance by DCC to WBB of lands comprised in conveyances listed in Schedule (including that dated 16 January 1965 above-mentioned).
	Plan A	Land based on OS map 1/2,500 showing WBB freehold, WBB Minerals and freehold, Mrs Bond, Miss Cole's ownership claim, Minchington surface freehold, Bovey Tracey-Hennock Parish Boundary and new alignment of roads.
JDP/1	Plan B	Plan showing owners and occupiers according to Tithe Apportionment land to the west of the Unit Land and the boundary of the Manor of Knighton 1893 and Bovey Tracey in 1630.
VIII. Produced by Mr W R Bond at the hearing		
WRB/1	--	Statement by Mr Bond of the case of Mrs G Bond and Miss A L Cole.
WRB/2A	10 November 1969	Letter headed Harold Michelmore & Co from G A Holmes to Mr W R Bond.
WRB/2B		Facsimile of OS map enclosed with letter and marked Tappers Little Bovey, Emmetts Little Bovey and boundary of "what can be proved was the Duke of Somerset's and then St Mawr's land.
WRB/2/C	--	Draft of reply to Mr Holmes.
WRB/3	3 November 1921	Conditions of sale by auction of Stover Estate (vendor Richard Harold St Mawr).

WRB/4	9 November 1957	Conveyance by John Smith as executor of John Stooke Tapper (he died 29 November 1956) to John Scott Drake Cole of lands containing 59.456 acres with building known as Little Bovey.
WRB/5	25 September 1964	Assent by Miss A L Cole as executrix of Mr J S D Cole (he died 23 December 1963) to the vesting in herself and Mrs G Bond of 59.456 acres of land with the buildings known as Little Bovey on trust for sale (3/5ths and 2/5ths).
WRB/6	1957	Abstract of the title of the personal representative of J S Tapper to Little Bovey Farm, commencing with the will of John Tapper (he died 10 March 1899) containing a specific devise of his farm known as Little Bovey, and including a lease dated 19 May 1926 by J S Tapper to C R and R C A Skyner of beds etc of clay under 59a. 3r. as shown on plan for 40 years (endorsed as cancelled 24 March 1936).
--	--	Various death certificates etc kept with the above-mentioned abstract.
WRB/7	22 September 1737	Settlement made on marriage of Nicholas Mardon and Joan Sampson.
WRB/8	28 September 1767	Unexecuted engrossment of a lease dated 28 September 1767 by Nicholas Mardon to Nicholas Mardon the younger.
WRB/9	7 June 1879	Statutory declaration by Charles Langley as to the enjoyment of Pullabrooke belonging to Mr John Tapper consisting of about 245 acres.
Bundle	IX. Put to Mr W R Bond by Mr George	
B	25 February 1966	Letter from Stephens & Scown as solicitors for Miss A L Cole and Mrs G Bond to DCC about alleged proposal to interfere with their rights over Knighton Heath.

- 6, 7, 13, 14 and 17  
April 1967
- Letter from Ford Simey & Ford solicitors of Exeter on behalf of Mrs G Bond and Miss A L Cole to Tozers solicitors of Teignmouth, reply further correspondence.
- 29 May 1967
- Letter from Ford Simey & Ford to Tozers about erection of a timber store by Mr Singleton on a site at Dunley Cross.
- 29 July 1969
- Copy reply from Tozers from above saying February 1967 he met Mr G Bond his wife and sister-in-law Miss Cole and produced their clients title deeds, and offering to produce them again.
- 1 August 1969
- Reply Ford Simey & Ford.
- 8 October 1969
- Memorandum by Tozers of interview with Mr Ford of Ford Simey & Ford.
- X. By Mr W R Bond after the hearing
- 26 October 1981
- Letter from Mr W Bond to the Commons Commissioners with enclosures below listed.
- 25 November 1712
- Copy of conveyance by Christopher Bale to Thomas Sampson of 2 musuages and tenement with the appurtenances situate lying in being in Little Bovey then in the possession of the said Thomas Sampson together with ... commons ... which said premises are of the Manor of Knighton Heathfield.
- 26 October 1981
- Description of ridge and furrow ploughing.
- 25 August 1945
- Extract from the will of George Mardon Stooke.
- "In the 1920's".
- Extract (printed of pages 88 to 99 of the Wreylan Documents by Cecil Tor, barrister; Cambridge Law Press.
- 1968
- Extracts (printed with plan of Bovey Tracey) pages 56-61, 69 and 70 of Bovey Tracey History and Legend by Armitage Hargreaves; the Mid-Devon Newspaper Company.

1964

Printed booklet (63 pages),  
Haytor Granite Tramway and  
Stover Canal by M C Ewans.

26 October 1981

What happened to the open lands  
of Bovey Tracey.

Dated the 31<sup>st</sup> — day of Nov. 1982

a. a. Baden Fuller  
—

Commons Commissioner