



COMMONS REGISTRATION ACT 1965

Ref Nos 209/D/323-327/Q

In the Matter of parts of Crownhill Down  
and Headon Down in Sparkwell, South Hams  
District, Devon

DECISION

Introduction

This matter relates to 22 registrations made under the 1965 Act. My decision as regards each of the registrations is set out in the Second (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 to 16 inclusive 18, 19 and 20 in the Rights Section and at Entry Nos 2 and 3 in the Ownership Section of Register Unit No. CL189 in the Register of Common Land maintained by the Devon County Council, and are occasioned by Objection No. 263 made by English Clays Lovering Pochin & Co Ltd and noted in the Register on 27 October 1970 and by Objection No. 620 made by Mrs J E Cobbold and noted in the Register on 3 March 1971 and by the said Ownership Section registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 18 and 19 October 1983. At the hearing (1) English Clays Lovering Pochin & Co Ltd ("ECLP") who made the said Objection No. 263 and on whose application the Ownership Section registration at Entry No. 1 was made, were represented by Mr G Muskett of their Surveyor's Department; (2) Mrs Judith Eileen Strode Cobbold who made the said Objection No. 620 and on whose application the Ownership Section registration at Entry No. 3 was made, was represented by Mr M O Davies Jones solicitor of Osborne Clarke, Solicitors of Bristol; (3) Watts Blake Bearn & Co Ltd ("WBB") on whose application the Ownership Section registration at Entry No. 2 was made, were represented by Mr G Dawes, mining engineer in their employ; (4) Dr L J Bussell on whose application the Rights Section registration at Entry No. 1 was made, attended in person; (5) Mrs Maryorie Edith Goodman of Bohing, Gibb Hill, Luton as successor of Mr N H Blackler on whose application the Rights Section registration at Entry No. 5 was made, was represented by Mr P W Harker solicitor of Bellingham & Crocker, Solicitors of Plympton; (6) Mr John Francis Lawson of Tor House Yealhampton as one of the executors of Mr F de M Lawson (he died 23 September 1983) on whose application the Rights Section registration at Entry No. 11 was made and as successor in respect of "Firestone" of Dorey & Lawson Ltd on whose application the Rights Section registration at Entry No. 12 was made, attended in person; (7) Mr Michael Jeremy Lomax Sayers of Priors Park, Elburton as successor in respect of "Flood" of Dorey & Lawson Ltd on whose application the Rights Section registration at Entry No. 13 was made, was represented by his brother-in-law the said Mr J F Lawson; (8) Mr Ivor Phillips on whose application the Rights Section registrations at Entry Nos 15 and 16 were made, attended in person; (9) Mr Robert Edward Skelley on whose application with Messrs Robert Lewis Skelley and Winifred Bullen Skelley (both now deceased) the Rights Section registration at Entry No. 18 was made, was represented by the said Mr P W Harker; (10) Mr Edward William Mudge on whose application the Rights Section registration at Entry No. 19 was made, attended in person; and (11) Devon County Council who as registration authority made the Land Section registration at Entry No. 1 without any application, was represented by Mr P A J Browne their senior assistant solicitor.



The land ("the Unit Land") in the Register Unit is a tract very approximately triangular with irregular sides, the north-west, the south and the north-east sides (measured from corner to corner) being about  $1\frac{3}{4}$ , a little under 2, and about  $1\frac{1}{2}$  miles long. Of the west, north-west and north part ("the Crownhill Down Part") being about half of the total area of the Unit Land, Mrs Cobbold is in the Ownership Section registered as owner except for two comparatively small pieces towards the north of which ECLP and WBB are so registered; the Crownhill Part of the Unit Land is the greater part of a larger area of open moorland known as Crownhill Down, of which the remaining part (north-west of the Unit Land) is part of Register Unit No. 190 (being a number of commons in Shaugh Prior). The "East Part" of the Unit Land is about  $\frac{1}{3}$  of its total area; it is (or at least the most easterly part of it is) known as part of Headon Down; the rest of Headon Down is in Register Unit No. CL115; of the East Part in the Ownership Section Mrs Cobbold, ECLP and WBB are severally registered as the owners. Between the Crownhill Down Part and the East Part, there is a part ("the Central Part") of the Unit Land which includes the now disused Hemerdon & Broomage Moor China Clay Works and of which no person is registered as the owner. The Crownhill Down Part is not far from its south-west corner crossed by the road (much used by lorries and other motor traffic) from Plymouth on the south to Lee Moor on the north where there are extensive buildings and works associated with the production of china clay.

In the Rights Section there are 19 subsisting Entries (Nos 17 and 21 to 28 have been cancelled). The grounds of Objection No. 363 relating to the Rights Section registrations at Entry Nos 15 and 16 (Mr Phillips) are that the rights do not exist at all. The grounds of Objection No. 620 to the Land Section registration "pt CL189 ("Crownhill Down)" are "the land was not common land at the date of registration and according to the notes and objection form, no common rights exist over it. (See the application No. 3075, Entry No. 2 - claim for ownership)". By sub-section (7) of section 5 of the Commons Registration Act 1965 Objection No. 620 must be treated as being "an objection to any registration ... of any rights ...".

#### Course of Proceedings

At the beginning of the hearing Mr Dawes on behalf of WBB produced the agreement specified in Part 1 of the First Schedule hereto and said that in accordance with it they were agreeable that I should confirm the Ownership Section registration at Entry No. 3 (Mrs Cobbold) without any modification and confirm the Ownership Section registration at Entry No. 2 (WBB) with the modification that there be removed from the registration the part of the Unit Land which is now within the registration and which is lettered "D" on the Register map and therefore also within the registration at Entry No. 3 (the part is a comparatively very small area about 300 yds long and nowhere more than about 40 yds wide).

Next Mr Browne against Objection No. 620 so far as it claimed that the Land Section registration should be avoided, gave oral evidence in the course of which he produced the documents specified in Part II of the First Schedule hereto. Mr Browne contended that Mr Jones by not disputing that the part of the Unit Land owned by Mrs Cobbold was open uncultivated and unoccupied, and agreeing that reference might be made to the April 1953 assent, it was established that such part at least was "waste land of a manor" within the definition of common land in section 22 of the 1965 Act and that accordingly the Land Section registration should be confirmed even if as a result of this hearing I should decide that none of the Rights Section registrations were supported. He contended that the circumstances were indistinguishable from those considered in 1977 by the



Chief Commons Commissioner in relation to the adjoining CL190 part of Crownhill Down, and that I should therefore give a like decision.

Mr Davies Jones offered no evidence about the matters put forward by Mr Browne. In my opinion the documentary evidence put forward by Mr Browne supports his contention and respectfully agreeing as I do with the decision of the Chief Commons Commissioner I find that the part of the Unit Land owned by Mrs Cobbold now is and at all relevant times has been waste land of a manor within the said section 22 definition; my decision is therefore that Objection No. 620 so far as it puts in question the Land Section registration fails. There being no other Objection to it, I confirm the Land Section registration at Entry No. 1 without any modification.

So shortly after when the hearing commenced it appeared that I was only concerned to determine the validity of the Rights Section registrations of which all are to be treated as in question by the operation of the said sub-section (7) and those at Entry Nos 15 and 16 as being in question by the operation of Objection No. 263.

The Rights Section registration at Entry No. 1 made on the application of Dr L J Bussell is of a right attached to Brokers Farm "to stray 100 sheep or 20 cows or 20 ponies" onto that part of the Unit Land lettered "A" on the Register map, being substantially the same or little more than the East Part above defined from that part of Register Unit CL114 as is hatched in red diagonals and lettered "C" on the (CL115) Register map. Dr Bussell in the course of his oral evidence produced the 1932 conveyance specified in Part III of the First Schedule hereto, being a conveyance of Brokers about 26a. 6p. "together also with all rights of common over the adjoining moors heretofore exercised or enjoyed by the owners or occupier of the said property". He said (in effect) he had under CL115 registration the right attached to Brokers Farm of turbarry and to graze 100 sheep or 20 cows or 20 ponies on the CL115 part so lettered "C". The adjoining moor mentioned in the said conveyance was Headon Down which comprised not only the said CL115 part but also the east of the two parts of the Unit Land lettered "B" on the Register Map. So the registration at Entry No. 1 should be modified by substituting "graze" for "stray". He was not interested in the rest of the land lettered "A" on the Unit Land Register map; it (? most of it) is now all clay works shut off with a padlocked gate.

Next oral evidence was given by Mr J F Lawson who is concerned with the registrations at Entry Nos 11, 12 and 13 of rights attached to land at Elburton of turbarry, estovers, cut wood and graze 4/2/6 sheep or pigs or 2/1/3 cows over the part of the Unit Land lettered "E" on the Register map, being a triangular area with sides of about 300, 200 and 100 yds situated at the north end of the Crownhill Down Part. It appeared later at this hearing and at the next following hearing relating to Register Unit No. CL240, that the evidence in relation to this lettered "E" part of the Unit Land was essentially the same as that relating to the CL240 land; so to shorten my CL240 decision I am not repeating in it a summary of his evidence, and I am in this CL189 decision summarising all the evidence he gave as regards the three registrations over both the CL189 and CL240 lands. Mr Lawson who in the course of his evidence produced the documents specified in Part IV of the First Schedule hereto said, (in effect):- The documents he produced showed that these lands at Elburton by conveyances dated 1855, 1878, 1896 and 1949 had been expressed to be conveyed together with rights of common "... upon the wastes or commons called Lee Moor and Torracombe Wood" or some such words (in some of them omitting Torracombe Wood and mentioning only Lee Moor). Mr F de M Lawson who applied for the registration



at Entry No. 11 was his father; the F T B Lawson mentioned in the 1949 conveyance was his grandfather. No. 5 Alice Terrace is now No. 94 Sherford Road. Firestone and Flood are fields now owned respectively by himself and his brother-in-law Mr M J L Sayers. He had never been anywhere near the lettered "E" part of the Unit Land.

Mrs Joan Blanche Lawson widow of Mr F de M Lawson, in the course of her oral evidence said (in effect):- She understood that the rights had been accepted by the Chief Commons Commissioner (referring to his decision dated 30 May 1977) in the matter of Hentor Warren and other commons in Shaugh Prior (comprising Register Unit No. CL190). The rights as far as she knew had not been exercised since 1920, but that did not make them any less valuable. She and her husband had walked round the area and "it took quite a long time to get around"; they had attempted to identify Lee Moor but she did not know where Torracombe Wood is. What she said applied to both the Unit Land and the CL240 land.

Next, Mr Phillips gave oral evidence in support of the registrations at Entry No. 15 being of a right attached to (a) Ash Mill and part Ash Lands in Whitchurch, (b) 8 Beechfield Avenue, Yelverton, in Buckland Monachorum, (c) the Corner, Yelverton in Buckland Monachorum, and (d) 1 and 1A Weston Park Road, Plymouth, of turbarry, estovers, piscary, take stone, graze 68 stock units (NFU scale), and at Entry No. 16 being of a like right in gross as "man of Devon". He said (in effect):- His intention was to register right over the south quarter of the Forest (CL164) and all the Commons of Devon adjoining that quarter being so advised by his father. He had been told by his father and his grandfather that he had these rights, as had everyone else in Devon over the Forest and the Commons of Devon, and that such rights were exercisable without payment. That was the totality of his knowledge before the Commons Commissioners had started any hearing (about Dartmoor). Since the hearings he found that those claiming rights could be divided into 3 groups. First, the Commoners Association who had strong views and who applied as representing large farmers with great numbers of sheep; the majority of people who want to keep a small number of cattle and ponies and who do not belong to the Commoners Association have been forced off the Moor by the people over stocking with Scotch black faced sheep. Secondly for the people concerned with protection who had at the hearings he attended chiefly been represented by Lady Sayer. Thirdly, persons like himself a small farmer who had difficulty in grazing because of the said over stocking by Scotch black faced sheep. He registered originally as "Man of Devon" without completely realising the significance of the term; he referred to page 38 of my decision dated 30 June 1983 about the Forest of Dartmoor (CL164) particularly to the 1542 Instructions to my Lord Prince there mentioned. The 1542 instruction fits in exactly with what he had been told by his grandfather; although some people paid to put their stock on the Commons of Devon, presumably because they thought they were in Venville, others like themselves had not done so, presumably making use of their right. He thought that Mr Lawson who had just given evidence had rights as a man of Devon. As to the Crownhill Down part he was born in 1928 at Torycombe; his father built sheds on the common land at Torycombe and kept milking cows and supplied the hamlet of Torycombe with milk and his cattle regularly grazed on Crownhill Down. In fact he (as a witness) used to go on Crownhill Down each day to try and find them; he used to cut bracken on Crownhill Down; he personally kept ponies which spent part of their time on Crownhill Down and part of their time on Lee Moor and Penn Moor. They (meaning he and his parents) were not alone; the majority of the people in the village or hamlet of Torycombe kept stock which used Crownhill Down in common with the rest of the Commoners. He lived at Torycombe in the 1930s and the early 1940s.



During the late 1940s and the 1950s the Skelley family produced large numbers of black faced sheep which made it uneconomical for people to keep cattle; so one by one people gave up doing so. The rights to graze on Crownhill Down still exist and have never been challenged. He contended that all the Commons of Devon are one common; stock freely move (in the area known to himself) from common to common. The Cornwood Commoners have never objected to him during these hearings although he at present is living many miles away.

In the course of being questioned by Mr Muskett and Mr David Jones, Mr Phillips again contended he had rights as a man of Devon and said that his father had one of the Torycombe Cottages marked on Register map; they left in the 1940s to go to Cornwood. His rights had been recognised by the Chief Commons Commissioner in 1977 re Hentor Warren (CL 190) decision (No 2).

Next Mr Harker on behalf of Mr R E Skelley said that he was agreeable that the registration at Entry No. 18 being inapplicable the lands lettered "D" on the Register map but supported the registration over the remainder of the Unit Land. To this Mr Davies Jones said that Objection No. 620 made by Mrs Cobbold was intended to be limited to the land lettered D, so they both asked me to confirm the registration modified only so as to exclude much land.

Next Mr Harker explained that although Mr R E Skelley was as regards Wotter successor of Mr Robert Lewis Skelley he made no submission as regards Rights Section registration at Entry No. 3 based on his application (being a right to stray in gross). He Mr Harker did not represent Mr D R H Skelley whose application Rights Section registration at Entry No. 4 had been made (stray attached to Yonderton, Lutton). On behalf of Mrs Goodman, he made no submission in support of the Rights Section registration at Entry No. 5 made on the application of Mr N H Blackler (to stray: attached to Springfield Temement, Cornwood).

Next Mr E W Mudge on whose application Rights Section registration at Entry No. 19 was made, said he did not wish to claim any rights of the land owned by Mrs Cobbold.

Next Mr M O Davies Jones gave oral evidence in the course of which he produced the documents specified in Part V of the First Schedule hereto and said (in effect):- The Newnham Estate had been owned by the Strobe family since the 15th century; it includes most of Crownhill Down, itself being part of the Unit Land and the CL 190 land. Crownhill Down is neither enclosed nor cultivated, although Mr Browne relied on a copy of the lease of part which has been enclosed. There is evidence that Newnham Estate admitted the exercise of common rights as specific grant in conveyances of land; from the estate archives he had made extracts (JSC/1). The 1894 notices (JSC/2) showed how the estate kept the grazing private. At the hearing all the Rights Section registration as regards Mrs Cobbold's land had either been withdrawn or unsupported by any evidence; they should therefore all be avoided. He could not answer the question put by Mr Phillips as to whether the estate had ever impounded his stock not rightfully on Crownhill Down because he had not personally been involved in the management of the estate.

Next (19 October) Mr E W Mudge clarified what he had said on the previous day saying that he agreed to forego all his rights on all the Unit Land except that lettered "B" on the Register map and explained Cholwichtown Farm is to the northeast of the Unit Land.



Next Mr I Phillips produced the statement specified in Part VI of the First Schedule hereby by Mr Frank Phillips (aged 72 years); he said that he had known many people to graze Crownhill over the years, that from time to time they had been threatened to remove them but no-one had been forced to do so.

Next Mr George Muskett produced the documents specified in Part VII of the First Schedule hereto as showing the ownership and other rights of ECLP in the Unit Land. He said (in effect):- The land comprised in the 1934 conveyance was a very large area nearly all north of the Unit Land on which ECLP carried on many activities relating to production of china clay; the only part included in the Unit Land is the northerly of the two parts lettered "C" on the registered map. The land comprised in the 1952 conveyance being Smallhanger Waste has on it extensive areas of mineral workings, last worked in about 1963, but there still is some workable clay there. The land comprised in the 1960 conveyance had before it was so acquired by ECLP been worked for minerals but not exhaustively and had not been worked since 1960.

Man of Devon  
(Entry Nos 15 and 16)

These registrations are in question directly under ECLP Objection No. 263 and indirectly by the operation of sub-section (7) of section 5 of the 1965 Act under Cobbold Objection No. 620.

About so much of Mr Phillips' evidence and arguments as are based on things relating to Man of Devon and Venville, my decision dated 2 March 1984 and made re Penn Moor and Stall Moor (CL112), particularly the part under the heading "Man of Devon" should be treated as repeated in this decision. Mr Phillips' evidence and argument at this (CL189) October 1983 hearing so far as it related to "Man of Devon", "right in gross", "right in Venville", and to the acceptance by the Chief Commons Commissioner and myself of similar registrations relating to other Register Units, was essentially the same as those put forward by him at my CL112 January 1983 hearing, although he had not in October 1983 any information as to what my CL112 decision might be. For the reasons set out in my said CL112 decision, I reject all such evidence and argument.

So as appears under such heading, I am only concerned to consider the evidence of the use of the Unit Land from (i) Ash Mill and Part Ash Lands, Grenofen, (ii) 8 Beechfield Avenue, Yelverton, (iii) the Corner Yelverton, and (iv) 1 and 1A Weston Park Road, Plymouth, being the lands mentioned in column 5 of Entry No. 15; or more particularly of the exercise as of right, appurtenant to such lands, of the rights of common described in column 4.

In my opinion Mr Phillips cannot for the purpose of supporting this registration add to the use made by his father and himself in the 1930s and early 1940s from Torycombe, to anything he may have done from his land not acquired by him until 1960 in Whitchurch. Of his having exercised as of right any right of common such as is mentioned in Entry No. 15, I have no evidence at all. The statement of Mr Frank Phillips does not relate to any of the lands mentioned in this Entry No.



- 7 -

Upon the above considerations, my decision is that the ECLP Objection No. 263 wholly succeeds, and the registrations at Entry Nos 15 and 16 should be avoided.

#### Ownership

As regards the conflict between the Ownership Section registrations at Entry Nos 3 and 4, nobody suggesting otherwise, I shall give effect to the agreement (WBBC/1) between WBB and Mrs Cobbold.

As a consequence of the production on behalf of ECLP of their documents of title (First Schedule Part VI), I know something of the ownership of the part of the Unit Land of which nobody is now registered as the owner. Nevertheless I consider I ought not under the instant ownership reference made under section 5 of the 1965 Act to give a decision about their ownership, because it is not within reference (relating only to conflict). However ECLP will not be prejudiced because the ownership will be determined by a Commons Commissioner in proceedings under section 8 of the Act, which in accordance with such section will follow these proceedings. The documents produced have however provided a useful background to my consideration of the questions hereinafter discussed.

#### Mrs Cobbold's Part Rights Section: section 5(7) of 1965 Act

As to the Land Section, for reasons hereinbefore stated, her Objection No. 620 fails as regards the part of the Unit Land owned by her. Nobody suggested that the Objection should extend to any other part.

For the application of section 5(7), the grounds are not happily expressed in that although their main wording is general and therefore possibly applicable to all the Unit Land, paragraph 5 of the form of Objection is: "Pt.C.L.189 (Crownhill Down)" and the parenthesis after the general words apparently limit them to the Entry No. 2 claim for ownership. I read the objection as intended to apply to no more than the part of the Unit Land lettered "D" on the Register map of which she is registered as the owner.

At least to the extent of such intention, all those concerned to support the Rights Section registrations have notice that they would be in question at the hearing. They were not supported and Mr Davies Jones gave general evidence as above stated against them. So my decision is that all the Rights Section registrations at least as regards part of the Unit Land lettered "D" on the register map should be avoided.

#### Other parts of Unit Land (Rights Section applicability to)

By reason of subsection (7) of section 5 of the 1965 Act all the Rights Section registrations are wholly in question, and whatever may have been the intention of Mrs Cobbold or her advisers I must give a decision about them; as to this see the legal considerations summarised under the heading "Pithill Farm" in my said CL112 decision. As stated under such heading, the circumstance that the registrations were not as regards other parts intended by the only relevant Objector to be put in



question is an argument that subject to giving effects for her intention, the registration should be confirmed without any other modification. But I must consider whether I have reason for not treating such argument as decisive.

The registrations at Entry No. 3 (R L Skelley), No. 4 (D R H Skelley), No. 5 (N H Blackler), No. 6 (W R Palmer), No. 8 (E E Daw), No. 10 (S J Sandover), No. 14 (C D Serpell), are of rights "to stray". For the reasons set out under the heading "Straying" in my decision dated 30 June 1983 in re Forest of Dartmoor (CL164), I consider I ought in the absence of some good reason to avoid a registration expressed as "to stray"; I have no such reason and contra as regards Entry Nos 3 and 5 Mr Harker offered no submissions. Accordingly my decision is that these registrations should be avoided.

The registration at Entry No. 1 (L J Bussell) is also of a right "to stray"; but in support of it I have the above recorded evidence and submission of Dr Bussell. Nobody suggested that the submitted modification could noticeably affect anyone other than WBB. According to my recollection (although I have note to this effect) Mr Dawes acquiesced; however this may be in the absence of any cross-examination of, or argument against Dr Bussell I conclude that he made a mistake in his application which I ought to put right, and my decision is accordingly.

The registration at Entry No. 19 (E M Mudge) is also of a right "to stray"; but in support of it as above recorded the evidence and submission of Mr E M Mudge was essentially the same as that of Dr Bussell, and the same absence of cross-examination or contrary argument. Accordingly my decision is the same.

The registrations at Entry No. 11 (F de M Lawson) and Nos 12 and 13 (Dorey & Lawson Ltd), for the reasons set out below under the heading "Elburton lands" I consider should be avoided.

As to the remaining registrations being those at Entry No. 2 (W R Palmer), No. 7 (D H Honey), No. 9 (R and P A Burns), No. 18 (R E, R L and W E Skelley) and No. 20 (J Luckett), having no good reason for thinking otherwise, my decision is that they were properly made except as regards part of the Unit Land lettered "D" on the Register map.

Because those who neither attended nor were represented at the hearing may as regards the matters under this heading discussed have overlooked considerations which I have considered decisive, and because I may be mistaken about some of the submissions or agreements upon which I have relied, I give those concerned with the registrations under this heading mentioned liberty to apply in accordance with the last paragraph of the Second Schedule hereto.

#### Elburton lands

(Entry Nos 11, 12 and 13: also CL240 Rights Section Entry Nos 1, 2 and 3)

These registrations so far as they affect the Unit Land are limited to a triangular area at the north end having sides of about 300 yards, 200 yards and 150 yards or a little more, being the part lettered "E" on the Register map. They affect all the CL240 land which adjoins and has about twice the area.





On the OS map (1"=1 mile) the distance between "Crownhill Down" and "Elburton" is about 5 miles, and there is much enclosed farm land in between. A right of common appurtenant so extraordinary needs some justification. Mr Lawson relied on the confirmation of rights similarly expressed over Register Unit No. CL190 having been approved by the Chief Commons Commissioner in his decision dated 30 May 1977 re Hentor Warren. But such approval I find not persuasive because from his decision it appears that the registrations being Nos 80, 81 and 84 of CL190, were approved by him as the result of an agreement reducing the number and without any consideration as to the circumstances; those making the agreement may have favoured a compromise because the Lee Moor mentioned in the deeds produced by Mr Lawson is clearly within CL190.

As regards the CL240 land, the ECLP Objection No. 265 questions all the CL240 registrations, and gives clear notice to those wishing to support them that they will be challenged at the hearing and makes it requisite for me to give a decision having regard to the evidence put before me. Mr Muskett pointed out that Lee Moor is on all the maps available distinctly north of and outside both the Unit Land and the CL240 land, that Torycombe Valley, is to the south-west of both the CL240 land and the lettered "E" part of the Unit Land, and that Torycombe Cottages are even further away; and also that the CL240 land on the maps is marked as "Knowle Wood". Neither Mr Lawson nor Mrs Lawson could say where was the "Torrycombe Wood" mentioned in the deeds produced; or say that the rights had been exercised over land supposedly Torrycombe Wood or exercised at all. The removal from the register of the adjoining part of the CL190 land by the Chief Commons Commissioner is if anything against the word "Torrycomb" ever having been applicable to the CL240 land or to the lettered "E" land. I find that CL240 land is not within the description of "Lee Moor" with or without "Torrycomb Wood" mentioned in the deeds and that no such rights over the CL240 land such as claimed in these registrations now exist. Alternatively, if I am mistaken in so finding, I consider the burden of proving the existence of these rights is at least as regards the CL240 land upon those concerned to support them, and such burden has not been discharged.

As to the part of the Unit Land lettered "E", the legal considerations as explained under the preceding heading are not identical with those applicable to the CL240 land. A right attached to lands at Elburton over such a small piece of land so far away would be extraordinary. Neither Mr nor Mrs Lawson could identify the lettered "E" land. On No Map it is clearly within land named Torrycombe, and nobody said that it is now or has ever been part of a wood. Within living memory the rights claims have never been exercised. It is now impractical from so far away as Elburton to exercise a right over so small a piece of land. These are I think reasons enough for avoiding the registrations, and my decision is accordingly.

#### Final

The effect of the decisions hereinbefore recorded is set out in the Second and last Schedule hereto which should be treated as part of this decision.

Because this decision may contain not only clerical errors but also errors due to my incorrectly recording agreements and concessions made to me and possibly other errors which I ought to correct without putting the parties to the expense of an appeal, I give to all persons who attended or were represented at the hearing or were entitled to be heard at it liberty to apply. Such liberty should be exercised in accordance with the last paragraph of the said Schedule.



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 my point of law may, within 6 weeks from the date of on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

FIRST SCHEDULE  
(Documents produced)

Part I: on behalf of WBB

WBBC/1	- 1983	Agreement between WBB and Mrs Cobbold as to conflicting CL189 Ownership Section registrations.
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Part II: on behalf of County Council

PAJB/1	30 May 1977	Decision of Chief Commons Commissioner, re Hentor Warren, Register Unit No. CL190 (No. 1); concluding that Crownhill Down is parcel of the manor of Fernhill and has therefore been properly included in the Register Unit, irrespective of whether it is subject to any rights of common.
PAJB/2		From Devon Record Office - extract from Tithe Apportionment Award for Shaugh Prior "Strode G (owner); himself (occupier); 965 (plan no.) part of Crownhill Down (description); 62.1.11. (area)".
PAJB/3		From Devon Record Office - extract Tithe Apportionment Award for Plympton St Mary: "Strode Geo (owner) himself (occupier); 2279 (plan no.); Crownhill Down (description); 427.2.29. (area)."
PAJB/4	31 August 1842	Counterpart lease by George Strode to Joseph Tucker of "part of Crownhill Down to be called Tucker's Enclosure", including covenant "4 thly. To attend and render suit and service at all the courts of the said landlord which shall be held for the Manor of Hemerdon or Loughtor during the said term ...".



JSC/1  
(agreed)

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(a) 16 November 1562  
(b) ... 1630

Extract from old deeds including  
(a) lease of part of manor of Fernhill,  
and (b) lease of lands in the manor  
of Fernhill "... in or upon the East  
west or common of Fernehill called  
Crownwell downe".

Agreed  
document

16 April 1953

Assent by L D Jones, P D Tuckett and  
C C Boyd as personal representatives  
of George Sydney Strode Strode (he  
died 8 July 1950) in favour of  
Anne Margaret Dorothea Grigg-Strode  
of lands including all those several  
manors or lordships ... Loughtor,  
Cartsfour and Fernhill being in the  
Parish of Plympton St Mary, Plympton  
Maurice and Shaugh; and Newnham,  
Mansion House and other lands  
including "67 part Crownhill Down  
5.232 and part 59, ditto 380.000  
approx (together 385.232 acres)".

Part III: by Dr L J Bussell

LJB/1

6 November 1932

Conveyance by W Tremaine, A J Perry  
to Edward Lawrence Fox of  
Brokers containing 26a.6p.  
together also with all rights of  
common over the adjoining moors  
heretofore exercise or enjoyed by  
the owner/occupier of the said  
property.

LBJ/1

30 March 1939

Assent by F H Bickerton and J M Fox  
as personal representatives of  
Edward Lawrence Fox (he died  
11 December 1938) to the vesting to  
Lawrence John Bussell of Brokers  
26a. 6p. together with (as in 1932  
conveyance).

Part IV: by Mr J F Lawson

JFL/1

27 April 1949

Conveyance by A Dorey and  
F T B Lawson to Dorey and Lawson Ltd  
of field part of Finchs' Tenement  
known as Flood in Elburton containing  
3a.2r.27p. "Together with the  
commons of pasture for all sorts of  
commonable cattle in or upon the  
waste and commons called Lee Moor  
and Torracomb Wood for such and so  
many cattle in Summer in the said  
property called Flood can keep and  
maintain in winter and also a common



of turbary turf or moor wood to be cut had made and taken in and upon the said wastes to be burnt and spent on the said property called Flood and not elsewhere".

JFL/2

1920

Abstract of title of Mrs Hannah Robinson and Miss L Anniss to No. 5 Alice Terrace, Elburton; commencing with an indenture dated 1 April 1896 by which N A Sanders and others conveyed to Silas Rendle Anniss field known as Yarrowell on Elburton contain 3a.2r.26p. "Together with common of pasture for all sorts of commonable cattle in or upon the wastes or commons called Lee Moor and Torracomb Wood for such and so many cattle in Summer as the hereditaments ... could keep and maintain in Winter and the common of Turbary Turf and Moor Wood to be cut had made and taken from the said wastes to be burnt and spent in the same and not elsewhere and including the right of cutting and taking wood and underwood from part and portion of Earles Wood in the Parish of Shaugh ... used or enjoyed with or accustomed to the same ...".

JFL/3

1878

Abstract of title of trustee of William Lugg deceased commencing with an indenture dated 16 April 1855 by which J Line and others conveyed to William Lugg 6 thly field called Firestone in Elburton containing 3a.9 $\frac{1}{2}$ p. "Together with common of pasture for all commonable beasts in or upon the wastes or commons called or known by the name of Lee Moor for so many beasts in summer as the said premises could keep in winter and also a common of turbary & turf to be cut and taken in or upon the said waste & common the same to be spent in or upon the said premises & not elsewhere".

JFL/4

1887

Abstract of title of R Waycott to 2 fields called Firestone, commencing with an indenture dated 26 September 1878 by which W K Kelly and others



conveyed to Richard Waycott a field called Firestone in Elburton containing 2a.3r.28p. together ... (see 16 April 1855 above) and including an indenture of 29 September 1879 by which A J Stevens conveyed to Richard Waycott a field known as Firestone containing 2a.1r.

Extract from Register, copy Objection No. 620, and plan showing "E" in Rights Section.

Part V: on behalf Mrs Cobbold

JSC/1

Extract (mentioned in Part II supra) from old deeds in estate archives showing specific grants of commons rights and not mentioning any other common rights.

JSC/2

2 July 1894

Notice (12" x 9") Cornwhill Down "The Cutting of Turf and the grazing of cattle in Miss Strode's right ... without permission being previously obtained ... prosecution ... impounded".

Part VI: by Mr Phillips

18 October 1983

Statement by Frank Phillips of St Alban Tree, Lee Moor.

Part VI: on behalf of ECLP

ECLP/GM/A

Plan (6 ins. = 1 mile approx) of ECLP ownership of Unit Land.

ECLP(i)

26 April 1934

Conveyance by E R 4th Earl of Morley to ECLP of extensive lands nearly all to the north and north-west of the Unit Land as described in first part of first Schedule thereto including the northerly of the two pieces marked "C" on the Unit Land Register map and including also both the pieces (adjoining) which together make up the CL240 land.

ECLP(ii)

31 January 1952

Conveyance by Jessie Davis Olver and Frank Nicholls Olver to ECLP of all such parts of Small Hanger Waste within the Parish of Plympton St Mary both enclosed and unenclosed edged pink on Plan; the land so edged is the same as the southerly of pieces marked "C" on the Unit Land Register map.



- ECLP(iii) 21 May 1973 Conveyance by Judith Eileen Strode Cobbold to ECLP of part of the larger of the 2 pieces marked "D" on the Unit Land Register map (being about  $\frac{1}{4}$  at the north end).
- ECLP(iv) 16 June 1960 Conveyance by Humphrey Woollcombe and others to ECLP of properties described in the first, second and third schedules including in the third schedule the minerals specified but "out of the property hereby conveyed ... the existing rights of common and pasture and common of turbarry are excepted and reserved to the persons entitled to the same" (being the minerals under the Central Part hereinbefore defined).
- ECLP(v) 4 December 1934 Conveyance being a partition between George Strode and George Woollcombe the land marked BP and coloured yellow on the plan to the use of George Woollcombe "discharged from all rights of common or free warren whatsoever" and marked AO and coloured green on the plan to the use of George Strode discharged from all rights of common or free - warren whatsoever".
- ECLP(vi) 1841 Extract from Tithe map and Schedule of the Tithe Apportionment Award for Plympton St Mary.
- ECLP(vii) -- Diagramatic map of Dartmoor Forest and adjacent commons from evidence given by Dartmoor Commoners Association to the Royal Commission on Common Land.
- ECLP(viii) 31 December 1976 Plan A: E E Daw to ECLP: 1/2500. Development of land at Wotter (plan attached to application of Mrs E E Daw at Entry No. 8).



## SECOND SCHEDULE

1. I CONFIRM the Land Section registration at Entry No. 1 without any modification.
2. I REFUSE to CONFIRM the Rights Section registrations at Entry Nos 3, 4, 5, 6, 8, 10, 11, 12, 13 (and 14, 15) 16.
3. I CONFIRM the Rights Section registration at Entry No. 1 with the MODIFICATION that in column 4 for "to stray 100 sheep or 20 cows or 20 ponies on to that part of the land comprised in this register unit as is lettered "A" on the register map" substitute: "to graze 100 sheep or 20 cows or 20 ponies onto that part of the land comprised in this register unit as is lettered "B" on the register map with (so far if at all as they may be lawful) straying rights on".
4. I CONFIRM the Rights Section registration at Entry No. 19 with the MODIFICATION that in column 4 for "to stray 280 cattle or 280 ponies or 1,400 sheep or proportionate combination onto the whole of the land comprised in this register unit", substitute "to graze 280 cattle or 280 ponies or 1,400 sheep or proportionate combination onto the part of the land comprised in this register unit lettered "B" on the register map with (so far if at all as they may be lawful) straying rights on".
5. I CONFIRM the Rights Section registration at Entry Nos 2, 7, 9, 18 and 20 with the MODIFICATION in column 4 after "the land comprised in this register unit" insert "except the part hatched in red and lettered "D" on the register map.
6. I CONFIRM the Ownership Section registration Entry No. 2 with the MODIFICATION that there be removed from the registration the part of the land comprised in this Register Unit which is hatched in red and lettered "D" on the register map and now included in the registration at Entry No. 3 AND I CONFIRM the Ownership Section registration at Entry No. 3 without any modification.
7. Wherever in this decision a liberty to apply is mentioned, such application should be made within THREE MONTHS from the day on which this decision is sent out (or such extended time as a Commons Commissioner may allow). 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. Except where the application relates solely to an obvious clerical error or similar mistake to which there could be no possible objection, the applicant should send a copy of his application to every person who might object to it and must in his application summarise the evidence (referring to any relevant documents) which would be produced by the Applicant at any hearing that may as a result be directed; and also send a copy of his application to Devon County Council as registration authority for their information. Applicants should realise that unless they can show that all who could possibly object to the application, agree to it being granted, the Commons Commissioner may direct a further hearing to be held, so that the application may be fully considered in the presence of all who may be concerned. Of such further hearing notice will be given only to the persons who on the information available to the Commons Commissioner appear to him to be concerned with the registration



in question. Any person who wishes to be given notice of any such further hearing should by letter inform the Clerk of the Commons Commissioners as soon as possible specifying the registration a further hearing about which he might wish to attend or be represented at.

Dated the 23<sup>rd</sup> day of March 1984

A. A. Baden Fuller

Commons Commissioner

Corrected by substituting "13, 14, 15 and 16" for "13 and 14" in paragraph 2 of the Second Schedule.

A. A. Baden Fuller

5 November 1984