



COMMONS REGISTRATION ACT 1965

Reference No. 209/U/134

In the Matter of 7 pieces of land at Peter Tavy Common, Peter Tavy,
West Devon

DECISION

This reference relates to the question of the ownership of 7 pieces of land being parts of the land comprised in the Land Section of Register Unit No. CL.194 in the Register of Common Land maintained by the Devon County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Plymouth on 19 April 1994.

There are annexed to the Notice of Reference dated 2 November 1993 four plans (which I have numbered I - IV) and I have identified each of the seven pieces of land with which I am concerned by a letter. A copy of the plans so marked is annexed to this decision.

At the hearing the Duchy of Cornwall was represented by Mr C Sturmer, Mr J A Kempe, Lord of the Manor of Cudlipptown, appeared in person; and Mr B K Rowse, the owner of property at Cudlipptown also appeared. The Registration Authority did not appear.

I will deal first with the land marked C on Plan 1, which is a portion of Smeardon Down. This land is claimed by the Duchy of Cornwall and Mr Sturmer produced a certified copy of a Deed Poll dated 10 May 1930 made by the 11th Duke of Bedford and his Settled Land Act Trustees whereby for consideration the Duke conveyed to the Duke of Cornwall various lands including Smeardon Down and including this land. Mr Kempe and Mr Rowse did not oppose this claim and I am accordingly satisfied that the land is the property of the Duchy of Cornwall and I shall direct the Devon County Council as registration authority to register the Duke of Cornwall as the owner of the land under section 8(2) of the Act of 1965.

The land marked A on Plan 1 is known as Cudlipptown Green, and that marked B thereon as Smith Hill Common. These lands are claimed by Mr Kempe, who produced records of Court Leet showing his installation as Lord of the Manor of Cudlipptown on 5 July 1927, and records of the beating of bounds of the Manor; both these lands are within those bounds, as however is also much land - some of it owned by Mr Rowse - which is privately owned. Mr Kempe's submissions were, however, mostly directed to another question, that is, the ownership of Cudlipptown Down (or that part of it north of White Tor) of which the Duchy is registered as owner, claiming, by its Solicitors Messrs. Farrer & Co, that the land is part of the Manor of Lydford owned by the Duchy since 1337, whereas Mr Kempe claims that the land in question is part of the Manor of Cudlipptown which has been in Mr Kempe's family since the 18th Century. However, that dispute is not before me so I shall say no more about it. Mr Kempe's case as regards Cudlipptown Green and Smith Hill Common is based on the proposition that these are within the Manor of which he is Lord and that in the absence of other evidence he as Lord of the Manor must be taken to be the owner. If the land were manorial waste, this claim might be regarded as valid: but the rights



section of the Register shows that rights of common are registered over the whole of the land in this Unit, and accordingly the land must be deemed to be land subject to rights of common rather than manorial waste. I am, therefore, not satisfied as to Mr Kempe's claim.

As regards the other four small and widely separated pieces of land falling within the reference, no evidence as to ownership was produced at the hearing, though Mr Sturmer at the last moment indicated that the Duchy might be able to make out a claim to piece G on Plan IV.

In these circumstances, I adjourned the inquiry as to the six remaining pieces of land (i.e. A and B on Plan I and D E F G on Plans II - IV) to a date to be fixed.

The adjourned hearing took place at Plymouth on 28 July 1994. Mr Sturmer Mr Kempe and Mr Rowse did not attend. Mr C E Mudge attended but was unable to assist me as to the ownership of any of the above six pieces of land, which will therefore remain subject to protection under section 9 of the Act of 1965.

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.

Dated this

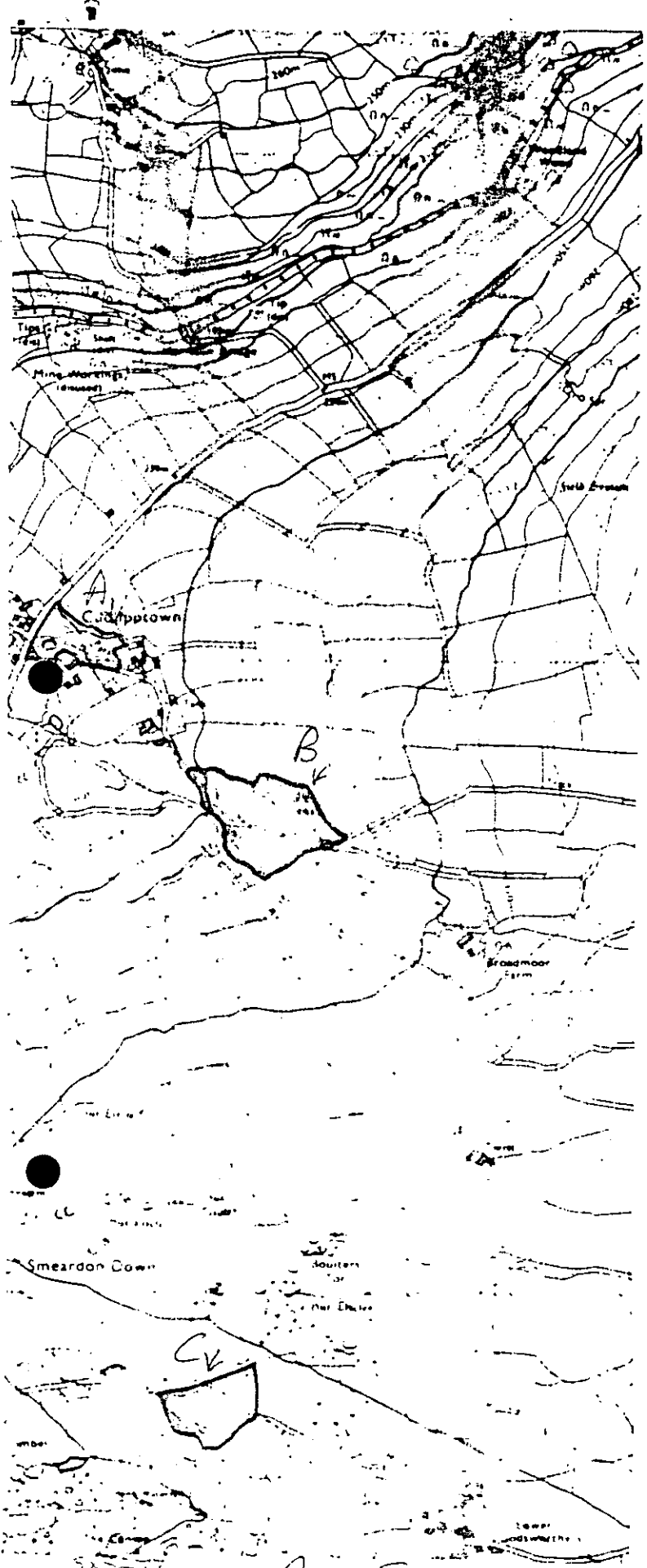
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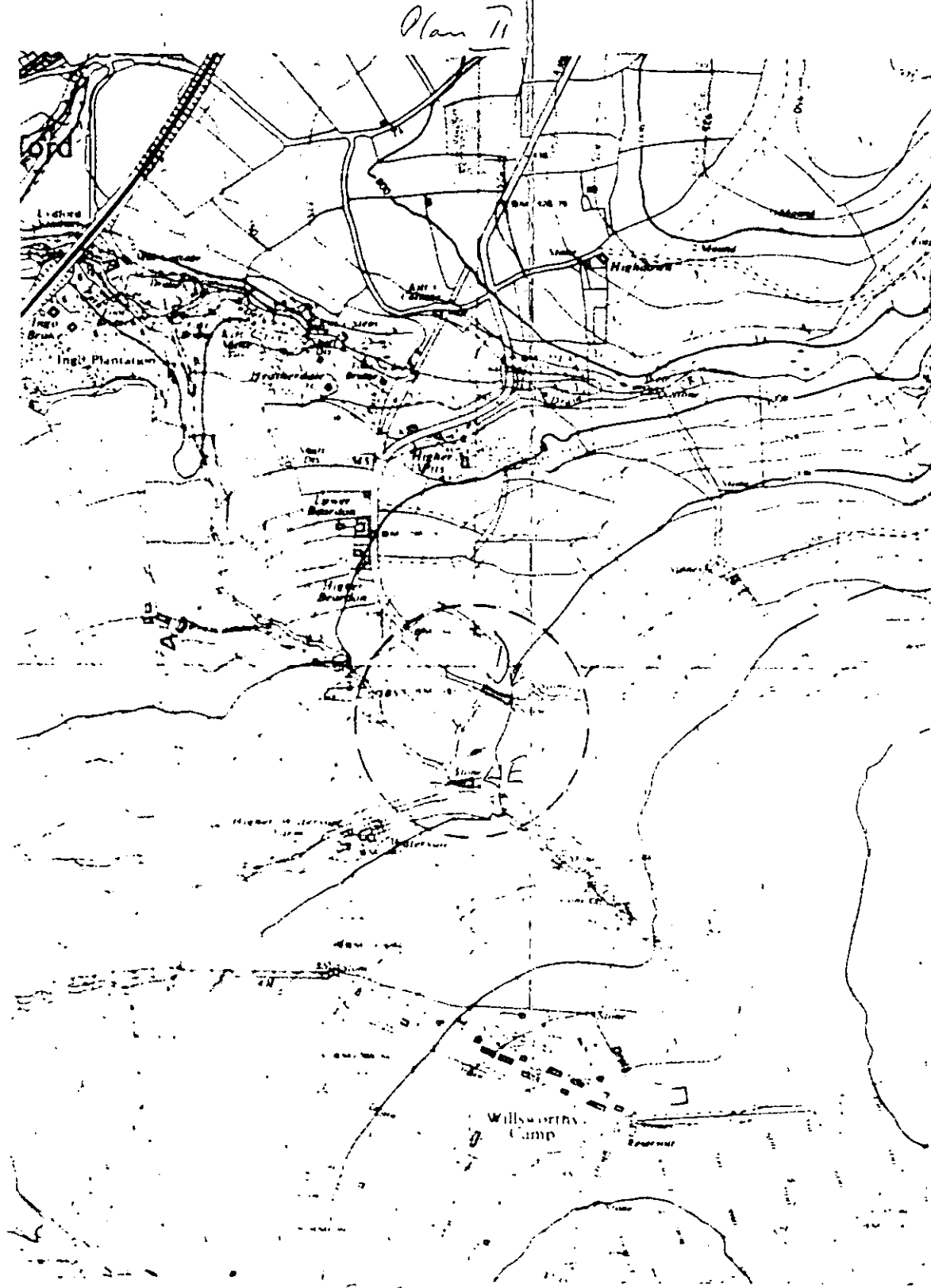
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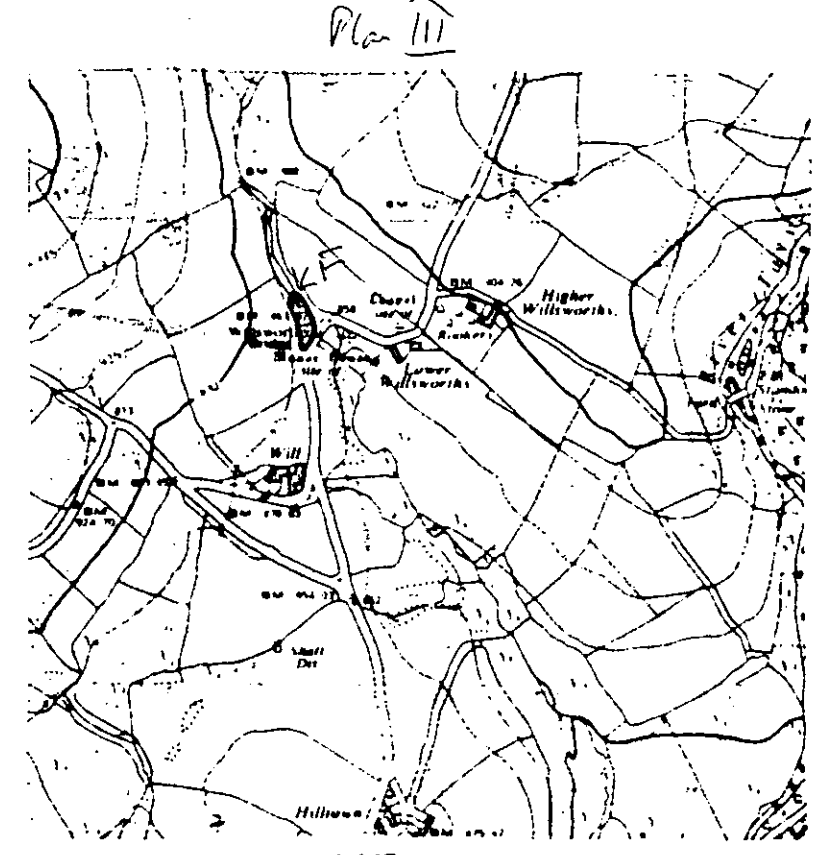
Plan I

SX57NW/51
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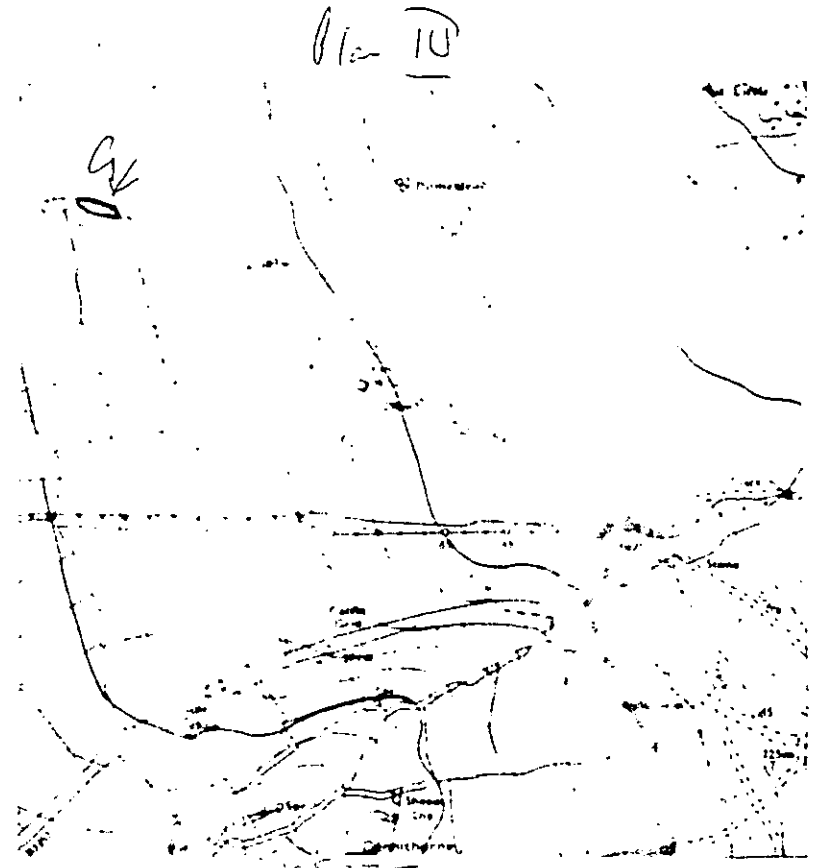
Plan II

SX5183
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Plan III

SX5531



Plan IV

SX575

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O.S. SHEET No(S): SX57NW/51
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