



In the Matter of Garway Hill  
Common, Garway, South Hereford  
District, Hereford and Worcester

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DECISION

My decision (stating its effect shortly) is:- The Objections made by Mr Edgar Benjamin succeed wholly against the Entries which were at the hearing withdrawn (Nos 9 and 10) or not supported by any evidence at all (Nos 4 and 5) or not supported by any evidence of user after 1825 (No 18); and succeed partially (deleting "to graze 1 horse") as against one Entry (No 23). The Objections made by him wholly fail as regards all the other Entries. Mr Edgar Benjamin must pay the costs of those who supported such other Entries. The circumstances which have given rise to these proceedings, the facts which were proved or admitted at the hearing before me, and my views on the questions about which oral evidence was or may have been in conflict, and my reasons for my decision as summarised above are as follows.

These disputes relate to the registrations at Entry Nos 4, 5, 6, 7, 8, 9, 10, 13, 14, 16, 17, 18, 20, 22 and 23 in the Rights Section and at Entry No 1 in the Ownership Section of Register Unit No CL. 4 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection Nos 357, 358, 361, 362, 466, 467, 468, 469, 470 and 471 made by Mr Edgar Benjamin and noted in the Register on 15 December 1970 and 28 July 1972 and by Objection No 377 made by Mr J T Oldfield and noted in the Register on 15 October 1971. The said Entries and the said Objections are summarised in the First Schedule hereto..

I held a hearing for the purpose of inquiring into the disputes at Hereford on 27 January and 9, 10 and 12 November 1976. At the hearing the persons who attended or who were represented were as specified in the Second Schedule hereto. On 13 November 1976 I inspected the land as stated in such Schedule.

The land ("the Unit Land") comprised in this Register Unit is known as Garway Hill Common or as (by those who live locally) "The Hill"; it is about 2 miles northwest of the village of Garway and about  $\frac{1}{2}$  a mile northeast of the River Monnow. It contains about 209 acres and its highest point is 1203 feet above sea level; it slopes steeply down to the west towards Kentchurch Court and Park, not so steeply down on the south towards the group of dwelling houses called White Rocks and comparatively gently down on the east towards the road on which there are a number of houses collectively known as Garway Hill.

On the Unit Land there is much bracken and some scrub; nevertheless there are considerable areas of grass on which the grazing is of value. At the opening of the hearing Mr Rollings said that the general consensus was that it would take 600 sheep. When I walked round it I saw also a number of ponies grazing.



At the hearing oral evidence was given (1) by L J A Phipps (Agent for the Kentchurch Estate in support of R/S Entry No 18), (2) by Mr F Crownshaw (owner of Lower Caestre in support of R/S Entry No 23), (3) by Mr W A Whistance (owner of Little Garway Farm in support of R/S Entry No 22), (4) by Mr A E Jones (in support of Mr Whistance's case), (5) by Mrs L V Lampen (owner of White Rocks House, in support of R/S Entry No 9), (6) by Mrs A E Powell (owner of Rock Bottom in support of R/S Entry No 7), (7) by Mr P J Ward (he is tenant of Little Adawent and his wife owns Little Castlefield Farm in support of R/S Entry Nos 13 and 14, (5 bis) by Mrs Powell (recalled in support of Mr and Mrs Ward's case), (9) by Mr S P Goodwin (tenant of Old Kitchen Farm in support of R/S Entry No 17), (10) by Mr I J Morris (predecessor of Mr Goodwin in support of his case), (11) by Mrs E Whistance (as to Mr Benjamin's residence in the area), (12) by Mrs L M C Brown (a former resident of Old Kitchen Farm in support of Mr Goodwin), (13) by Mr R G D Williams of Little Corras Farm in support of Entry No 16), (14) by Mr Edgar Benjamin (the Objector), (15) by Mr J F Benjamin (his son), (16) by Mr T Nuttall (clerk of the Parish Council in support of O/S Entry No 1), (14 bis) by Mr Edgar Benjamin (the Objector against O/S Entry No 1) and (3 bis) by Mr Whistance (chairman of the Parish Council in support of such Entry). In the course of their evidence, some of them produced the documents specified in the Third Schedule hereto.

As to ownership, Burt Evans & Shawcross, Solicitors of Ross-on-Wye in a letter dated 18 November 1974 said that they acted for the Executors of Mr J T Oldfield who died on 10 June 1974 and that the Executors did not wish to continue in any form the Objections he had made in connection with various matters, including Garway Hill Common CL. 4. Mr Burroughs said he had purchased Mr Oldfield's property (White Rocks) and knew of the Objection in 1974.

Mr Nuttall who has been clerk of the Parish Council for the past 12 years in the course of his evidence said (in effect):- In about 1958 the Midland Electricity Board wished to lay cables across Garway Hill to get to various farms and villages; they were unable to trace anybody who could give them a right of way leave, so they approached the Parish Council to see if they would undertake the responsibility of granting the way leaves until the proper persons turned up; without a right of way leave the MEB could not proceed with the erection of the wooden poles needed.

The Parish Council tried to trace the Lawley family through solicitors in Monmouth, but could not do so. So they granted the way leaves; MEB started paying under them in 1960, and the Parish Council has been paid ever since (yearly in October). The Parish Council have not concerned themselves with the grazing rights, being content to let the Commoners arrange these among themselves. In answer to questions by Mr Edgar Benjamin, Mr Nuttall said that the Police and Ambulance people had wanted to put up a radio mast on the Unit Land (near the northeast corner); he as clerk summoned a Parish meeting (a special not annual meeting), so that anyone who wanted could object; there were objections, and the next he heard was that the mast was put where it is now (a little to the north of the site originally proposed) not on the Unit Land). The Parish Council had never done anything about sporting rights on the Unit Land (Mr Benjamin agreed that there was not much else besides rabbits).



Mr Benjamin in the course of his evidence as to ownership said (in effect):- By his objection "no rights of ownership" he meant there was no Lord of the Manor. The Commoners Association should be the owners; at a meeting of the Association, the chairman Commander Lampen (he died on January 1973) when asked about this said "Every individual should register it"; so (said the witness) only Mr Oldfield and myself have done this, intending it to be for the Commoners Association.

Mr Whistance who has been a member of the Parish Council for about 10 or 12 years and is now and has been since 1976 chairman, in the course of his evidence said (in effect):- He remembered the meeting mentioned by Mr Benjamin; it was about 6 years ago. Although a question of ownership was mentioned, Commander Lampen never said each person should apply for ownership; he thought that the County Council should be the owner but the majority of the speakers said that it should be the Parish Council; but no note was made of the views expressed on this point; it was just talk.

During the evidence about the Rights Section Entries taken earlier in the proceedings, Mr P J Ward produced a copy of a newspaper report of proceedings in 1911 and Mr Whistance produced the Particulars of the sale of the Garway Estate on 14 January 1920 and his conveyance dated 10 December 1920. From the conveyance I infer that this sale was made by Mr E W Lawley who died 26 May 1920 and was completed by Mrs E W Lawley his widow and the administrator of his estate. Garway Estate as offered for sale in 1920 comprised 2751 acres; the Estate is southeast of and adjoins the southeast boundary (about 1/6th of the whole) of the Unit Land. Although the Particulars include a statement that the Vendor was the Lord of the Manor, neither the Lordship nor the Unit Land nor Little Garway Common (further south in the village) is included in the sale. There is nothing in the Particulars to suggest that the Unit Land is part of the Estate, and if Mrs Lawley or her advisers had thought it was the Particulars would I think have been different; in my opinion they provide no evidence as to ownership. I regard the reference in the 1911 report to the Court Rolls of the Manor of Garway as too unreliable to form the basis of any decision as to the ownership when (1969) the Ownership Section Entry was made.

The ownership application of the Parish Council made under the 1965 Act in 1968 was perhaps then to some extent wishful thinking. But they were then in possession (subject to the rights of the commoners), being then in receipt of the way leave rent. Ever since 1968 they have received this profit. The approach made by the Police and Ambulance people about the radio mast and the subsequent summoning of a Parish Meeting to discuss it, is some evidence of reputed ownership. The wooden poles of the MEB are in prominent positions. I consider the description of the Commoners Association meeting given me by Mr Whistance more reliable than that given me by Mr Edgar Benjamin; in my opinion nothing happened at that meeting which seriously called in question the then reputed ownership of the Parish Council.

My conclusion is that the Parish Council are now in possession in circumstances which make it practically certain that such possession will not be disturbed; such possession is equivalent to ownership and I can I think properly reflect it back to the date on which the ownership registration was made. For these reasons my decision is that these two ownership Objections both fail.

As regards the Rights Section Entries, at the beginning of the hearing and from time to time during the hearing, those who supported the Entries indicated that under the Objections as now expressed whatever might be the result of these



proceedings, the total number of animals mentioned in the Entries would far exceed the grazing capacity of the Unit Land, that the Objections made at the end of July 1972 (a few days before the expiration of the Objection period) were unfair in that it became practically impossible for those concerned to retaliate by objection; to Entry No 21 made on the application of Mr Edgar Benjamin or to any of the other Entries which have now become final, and that anyhow they could not understand the basis of or the reason for his Objections. Notwithstanding this provocation and invitation, Mr Edgar Benjamin neither at the beginning of the hearing nor subsequently offered any explanation (save as below mentioned) of his Objections. On the second day of the hearing after Mr Whistance had produced some documents of considerable importance and given oral evidence at some length, I asked Mr Edgar Benjamin whether he wished to cross examine: he said nothing. With a view to helping him, I asked him to explain his case as regards the evidence given and on the basis of his explanation asked Mr Whistance some questions. I reported this process with the other witnesses.

Before dealing with the extensive evidence in support of the disputed Rights Section Entries, I should I think record my view on the evidence given later by Mr Edgar Benjamin and his son Mr J F Benjamin (given after Mrs E Whistance had given evidence to the probable extent of their knowledge of the Unit Land).

Mr Edgar Benjamin after he was sworn seemed puzzled about the procedure, and appeared not to want to say anything. My note of what he said (the questions in brackets were asked by me) is as follows:- (As regards Entry No 4, 5, 6, 8, and 9 no legal rights at all?) There is no legal rights from the Manor; I don't know what I can say really. (Why did you object?) The Commoners bought their places and accommodation land with the right to graze their stock on common land whereas these other Objectors too are taking their rights off them. I have been over the Hill ever since I was a toddler either working or with my uncle. I have travelled the Hill practically every day of the week. There is the section between 1932 and the beginning of 1936; I was in a farm at Stenfrith which is just the other side of the River Monnow. I used to cross the River Monnow on wires to come over the Hill about once a week to visit my uncle and other relatives who had grazing rights on the Hill. (As regards Entry No 7?) As I said yesterday she (Mrs A E Powell) was a neighbour to Old Garden for 50 years. They kept some sheep some part of the time up to the present. (As to 35 sheep?) They had bought no manorial rights but as they had grazed for such a long time I could not refuse to give them such rights. (Mr Davis objects to this evidence; they bought no manorial rights). (Entry No 10: 100 sheep 16 cattle?) If they put them on the Hill then they had no manorial rights. I understand there is a little holding, Hower Castre, have the rights, and they were travelling animals from one place to the other: this was about 1945 or 1950. (Entry Nos 13, 14 and 20: no rights at all?) As to 13 and 14 we did those yesterday. (Entry No 16?) No manorial rights: with no manorial rights should not be able to take more than 35 sheep the number I have given. (Mr J F Benjamin in reply to my question said he did not think his father had forgotten to say anything).

At the conclusion of the above statements, Mr Rollings objected that Mr Edgar Benjamin had given no evidence at all in support of his Objection to Entry No 17 and contended that he either could not ~~or~~ → or had no need to cross examine. Mr Halpern supported this contention. However Mr Davis and Mr Ward asked Mr Edgar Benjamin some questions.



In answer to Mr Davis, Mr Edgar Benjamin said (in effect):- His farm (Old Garden Farm) in the 1920 particulars (lot 47, 58a 2r 22p) had no rights but it was in the particulars described as "adjoining Garway Hill Common" and the rights "is on the deeds". He objected to rights which in the particulars had "no adjoining"; and he objected to others who adjoined the Unit Land because they had no manorial rights. He would not say that it was possible to have manorial rights without actually adjoining the Unit Land; only part of the Old Garway Estate had rights on the Unit Land; see condition 8 of the Particulars (copyhold shall be deemed to have merged).

Mr J F Benjamin in the course of his evidence referred to the Hill Sheep Subsidy and was questioned by Mr Halpern, Mr Davis and Mr Rollings. It appeared that the land to which the rights registered on the application of Mr Edgar Benjamin (Entry No 21) comprised both Old Garden Farm (lot 47 in the 1920 particulars, 58a 2r 22p) but also Trewadoc Farm (lot 38, 71a 3r 30p) which did not adjoin the Unit Land; Mr Holman who was representing the County Council as registration authority, produced for inspection the application made by Mr Edgar Benjamin.

Later in the hearing Mr Rollings contended that Mr Edgar Benjamin had given no evidence at all; the explanations which he had as above stated given me as a basis for my questions to other witnesses were not heard by anyone except myself and could not be properly regarded as evidence. Mr Edgar Benjamin contended (as I understood him) that everything he had said at any stage of the hearing (including the said explanations) should be considered as evidence by him.

In my opinion Mr Edgar Benjamin as regards the Rights Section Entries did not give any evidence apart from that recorded as above and apart from his answers to the questions by Mr Davis and Mr Ward, and there is accordingly substance to Mr Rollings' Objection. However I think I ought to record what my opinion would be of the evidence of Mr Edgar Benjamin on the assumption that everything he said at the hearing to me at any time could properly be regarded as evidence by him.

On this assumption:- Mr Edgar Benjamin although he provided me with information on which I based questions to witnesses, did not so far as I can recollect ever say that any document produced by any witness was not what it appeared to be or say that what any witness had said was to his knowledge untrue. In my opinion everything Mr Edgar Benjamin said was unreliable. If by his statement that he had travelled the Unit Land daily he meant that he was in a position to say who was grazing on the Unit Land from time to time, I do not believe him. If he ever said to me or wished me to understand that what other witnesses had said was untrue, I prefer their evidence to his. In my opinion Mr Edgar Benjamin was in no way prejudiced by the irregular way which with a view to helping him, I questioned other witnesses on his behalf. Although Mr Rollings' clients might have been prejudiced by such irregularity, for the reasons set out above, in my opinion they were not.

During the course of hearing I had ample opportunity of judging the personality of Mr Edgar Benjamin. On farming matters, which he evidently understood, he was not difficult to understand. But as regards the disputed Rights Section Entries, he was generally incoherent and incomprehensible. At one time I thought his objections were based on the view that only the lands in the 1920 Particulars described as



having rights of common over the Unit Land now had such rights; however as in such Particulars his own farm (lots 38 and 47) were not stated to have any such rights, I conclude that this was not the real basis of his objection. Indeed on consideration of the Particulars themselves and bearing in mind that they relate only to land on one side of the Unit Land and that it must have been reasonably obvious from inspection that lands on the other side must have had or were likely to have rights of common, I conclude that they provide no evidence that the lots not therein described as having rights of common, at that time were reputed to have rights of common; except as regards the smaller lots adjoining the Unit Land, the existence of any such rights would not at that time have been a selling point. In my opinion Mr Edgar Benjamin (except to the limited extent apparent later in this decision) never had any sensible or relevant reason for making his Objections.

The absence of any reason for the Objections does not I think render them a nullity or prevent Mr Edgar Benjamin taking advantage of the provisions of the 1965 Act which require me to inquire into any right to which objection has been made; if I conclude on the evidence put before me that the right could not exist or that for some other reason the Objection ought to succeed, I am bound by the Act to give effect to it. But I am not obliged to go beyond the grounds stated in any Objection, because under regulation 26 of the Commons Commissioners Regulations 1971 an objector is not entitled to rely upon any ground not stated in his Objection unless the Commissioner thinks it just; in this case it would not I think be just to treat any of the Objections as extending to any of the other alternative grounds set out in paragraph 9 of the Notes attached to every form of Objection or in any other way beyond the grounds stated in them.

I will now deal with the Rights Section Entries in the order in which witnesses at the hearing gave evidence in support of them.

Mr Phipps whose firm has acted for the Lucas-Scudamore Estate for the last 50 years, in support of Entry No 18 said (in effect):- The Estate has been in the family for more than 800 years. Kentchurch Park to which the right claimed is attached is about 250 acres. The existence of the right is shown by the 1824 letters; these are now in the National Museum of Wales at Aberystwyth, being part of a collection there on permanent loan from his clients. No sheep, horse or pony has been grazed on the Unit Land from the Park in his time. Although only sheep are mentioned in the 1824 letters, horses and ponies were included in the application because the Park is very suitable for them. Old Kitchen Farm and Corras Farm are part of the Estate.

In my opinion the 1824 letters are too vague to be a basis for any finding that rights of common were in 1824 attached to the Estate as a whole, so that it necessarily follows that a right is now attached to the Park as part of it. The rights referred to in the 1824 letters might have been attached to farms part of the Estate such as Old Kitchen Farm and Corras Farm in respect of which there are other Entries (Nos 16 and 17). The appearance of the Unit Land in relation to the Park, although not such as to negative the existence of any right such as is now claimed, does not render its existence likely. My conclusion is that the right claimed does not exist, and my decision is therefore that Objection No 467 succeeds.

Mr Cronshaw in support of Entry No 23 said (in effect):- Objection No 470 is in error, at least in part, in that rights of estovers and turbary were not included in Entry No 11. The inclusion of OS No 78 (meaning a small part of this OS No, having an area of 0.112 acres) in the Unit Land was a mistake; as it is now too late for him to claim that this OS No part should be excluded, he should be allowed the extra one horse as compensation.



OS No 78 part appears at one time to have been cultivated, but it is now mostly unfenced and somewhat derelict. On appearance alone, I think it likely that if someone had objected in time to its inclusion in the Unit Land, some Commons Commissioner would have held that it ought to be excluded. Any such objection would now be out of time, and I cannot properly in these proceedings treat it as before me; equally I cannot I think properly give effect to it indirectly by treating an otherwise unjustifiable Rights Section Entry as valid. But as regards estovers and turbary, the Objection is (as stated by Mr Cronshaw) unfounded and therefore fails, and I so decide; but as regards the one horse it succeeds.

At the beginning of the second day of the hearing Mr Rollings said on behalf of Mr H B F Smith that Entry No 9 was withdrawn and on behalf of Mrs E C Smith that Entry No 10 was withdrawn. There is I think no reason why I should not act on these withdrawals notwithstanding that Objection No 362 which relates to Entry No 10 does not challenge the Entry entirely. My decision is therefore that these Entries should not have been made.

Entry No 22 was made on the application of Mr W A Whistance. He now owns Little Garway Farm including land previously known as Pitta Hill. The Farm and Pitta Hill were offered for sale by public auction on 14 January 1920 as lot 40, Little Garway Farm 152a Or 32p, therein described as (except for the woodland) "let to Mr Whistance" and lot 43, Pitta Hill 1a 2r 28p). His father Mr William Abbot Whistance purchased these two lots and they were conveyed to him by a conveyance dated 10 December 1920. He died 8 December 1921 and under his will his widow Mrs E Whistance was tenant for life and their children became entitled after her death. She died 29 June 1934, and by a 1935 conveyance two of the third shares were conveyed to Mr W A Whistance (he being entitled to the other one third) by his brother and sister. In the 1920 Particulars, lot 43 is described as "with common rights on Garway Hill" but the description of lot 40 contains no such words.

Mr Whistance said (in effect):- He was born in 1911 and had lived at Little Garway Farm all his life. His father became tenant in 1910. Pitta Hill was separately let before 1935, but after 1935 it and Little Garway Farm had been farmed together. He remembered before 1935 the tenant of Pitta Hill had 20 or 30 sheep and a pony or two and he exercised his rights on the Unit Land. When his mother farmed Little Garway Farm she had about 100 sheep, 100 beef cattle and 8 or 10 horses. When he took over in 1935 he increased the number of sheep to about 200 and horses (working horses and Welsh ponies) to about 12. When he purchased the Farm in 1935, it had always been known that Little Garway had a grazing right and he exercised the right after his purchase and had continued to do so to the present day in respect of the whole Farm.

Mr A E Jones who is 67 years of age and who had lived by Little Garway Farm when he was a boy said (in effect):- He remembered Mr Whistance's tenant (Mr Pritchard) of Pitta Hill and he remembered Mr Pritchard had animals out on the Unit Land.

On my inspection I saw the remains of the now derelict dwelling house which formerly formed part of Pitta Hill (lot 43). The boundary between lot 40 and lot 43 as shown on the 1920 Particulars plan had completely gone, lot 43 appearing to have become part of the nearby field of Little Garway Farm. On appearance I would estimate that the lot had become part of the adjoining field for at least the last 20 years, and probably for much longer, an estimate to which those who accompanied me on my inspection while we were looking at this field raised no objection.



I accept the evidence of Mr Whistance and Mr Jones and I conclude from such evidence and the 1920 Particulars that a right of grazing over the Unit Land was enjoyed from 1920 to 1935 in respect of lot 43 and that thereafter Mr Whistance in exercise of a right he supposed (rightly or wrongly) to be attached to Little Garway Farm (including Pitta Hill) from 1935 to 1972 (when the Objection was made) enjoyed grazing rights far larger than any which could be attached to Pitta Hill. Accordingly I conclude that Mr Whistance had and has a right such as is registered at this Entry No, and my decision is therefore that Objection No 466 fails.

Mrs Lampen in support of Entry No 6 said (in effect):- Her husband who died in January 1973 bought White Rocks House in 1954 from Mrs Bateman; there was originally a cottage which was sold off but "we bought it back in 1956 to complete our property"; it is now about 3 acres, part paddock  $1\frac{1}{2}$  acres and part house and garden  $1\frac{1}{2}$  acres "We have used the common for geese; kept in the garden part, allowed out during the day and kept in a house at night".

To Mr Edgar Benjamin's explanation "Commander Lampen said at a commoners' meeting that there was no rights to White Rocks House, the cottage and the other pieces of land bought by the Bridgwaters", Mrs Lampen said:- "My husband did go to the Commoners' Meetings. He was chairman of an association called the Garway Hill Commoners Association. I am quite sure he did not say he had no rights. White Rocks House and the cottage are two separate dwelling houses and part of his property. The cottage was a ruin when my husband bought. My husband built up the cottage into a deep litter for hens; it is not used for people, only for animals and hens; I have never heard of the Bridgwaters. In our time we did not have any stock, we turned out geese; we had no sheep or cattle or horses (or ponies).

Mrs Lampen contended that her rights of common were established by the words in the 1847 conveyance "together with all ways waters water courses trees woods underwoods common of pasture and all other commonable rights privileges easements advantages and appurtenances whatsoever to the said hereditaments and premises or any part thereof belonging or with the same or any of them now holden used occupied or enjoyed". At the time when this indenture was made it was customary to include some such wording in any conveyance of land, whether the land was rural or urban. Ever since 1882 any conveyance of land is deemed to include some such words, see section 6 of the Conveyancing Act 1881, now replaced by section 62(1) of the Law of Property Act 1925. In my opinion the inclusion of these words in the 1847 conveyance in no way supports this Entry No.

Further I have no evidence that "two cows and one horse" have at any time been grazed from White Rocks House over the Unit Land in accordance with this Entry No. But in my opinion these defects in the case made by Mrs Lampen do not conclude the matter against her, because there is no rule of law that a right of common can only be proved by some document or by some evidence of use.

The White Rocks House property adjoins the Unit Land. From what I saw on my inspection it was obvious that any person living there who owned horses or cattle would have had an almost irresistible temptation to graze them on the Unit Land,





because such grazing would be so convenient and it would be quite impossible for anyone to prevent it. The size of the house and the nature of the cottage building is such that I feel certain that before the days of the motor car there must have been at least one horse and at least two cattle on the property. I accept the evidence of Mrs Lampen as outlined above; in my opinion the suggestion made to her by Mr Edgar Benjamin that her husband had said he had no rights of common was without any foundation. Mr Edgar Benjamin (as stated above in connection with the Ownership Section) was prepared to act on what he thought was the advice of Commander Lampen as chairman, and he was content, as no doubt were the other Commoners that he should be chairman. In my opinion the circumstance that Commander Lampen attended the meetings of the Association and was so elected, is evidence that he was reputed to have a right of common over the Unit Land, and such reputation is some evidence that he had such a right.

Against his having such a right, Mr Edgar Benjamin offered no or at least no credible evidence at all. If there had been no Objection, under the 1965 Act the registration would have become final as a result of the statutory declaration on Form 9 made by Commander Lampen on 15 December 1967, that he believed he was entitled to the right of common for which he applied. The number of animals claimed is modest. In the circumstances outlined above, I conclude that I can and ought from the appearance of the property and the reputed ownership above mentioned conclude that the right claimed is established, and accordingly my decision is that as regards this Entry No Objection No 358 fails.

Mrs E J Ward in support of Entry No 8 said (in effect):- She bought White House, Garway Hill in 1964; the land incorporated Yew Tree Cottage and Barracks Cottage, both of which cottages are now in ruin. She bought it from the personal representatives of Mr Hanna Jones, she had let it for more than 30 years to Mr Hubert Hill. She relied on the documents she produced (see Third Schedule); she did not produce her conveyance because it contained nothing about common rights. During her ownership the rights had been exercised by the late Mr E Smith of Belle Vue Farm who had the use of her land and exercised rights of common by grazing ponies, cutting fern on her behalf and since he died Mr D Jones of Cherry Orchard Farm had the use of the White House land and exercised rights of common on her behalf. Except for the Objection of Mr Benjamin nobody had objected to the exercise of these rights.

In answer to explanations by Mr Benjamin she said: "I know nothing about Mr Hill except what we were told when we bought about grazing rights; Mr Hill had left when we bought. Mr Smith exercised the rights on our behalf because we told him to; when we bought the house there were 6 acres of land attached for which we have no use. Mr Smith agreed to look after this land in exchange for grazing rights on the land and on the common.

The Particulars of sale produced (they are torn and to some extent defective) related to the White House, Garway Hill being Barrackes Cottage & garden, White House, garden and buildings and pasture, total 6.078 acres and included these words: "It is understood the present vacating tenant Mr Hill had...(torn) undisturbed common rights of grazing on the adjacent 209ac...(torn) common for the past 30 years. This has enabled him to run...(torn) ewes on this property". The answers to the requisitions on title include "The vendors and their predecessors have always



enjoyed grazing rights and know of no obligation". The letter is as follows:  
"I doubt if I can be of much assistance to you, as regards the White House. I rented White House for approximately 30 years. I never kept cattle. The few sheep I kept was the numbers that could be wintered with the hay etc provided on the place. During my tenancy no one ever approached me as regards the number or rights. I have always cut the amount of fern required".

White Rocks House is very near the Unit Land, and on my inspection it was apparent that the owner of the 6 acres of land would be much tempted to graze on the Unit Land, that it would be convenient for him to do this and practically impossible for anyone to stop him. The access is at a point on the Unit Land remote from any access Mr Edgar Benjamin would be likely to use from his property, and I consider unreliable any statement made at any stage by Mr Edgar Benjamin in these proceedings to the effect that Mr Hill did not graze as he said. Bearing in mind that the letter from Mr Hill was written in reply to a letter about grazing rights on the Unit Land, I interpret it as meaning that Mr Hill did in fact so graze the land for 30 years. Accordingly in my opinion the right claimed is established, and Objection No 358 as regards this Entry fails.

Mrs A E Powell in support of Entry No 7 said (in effect):- By April next year she would have lived at Rock Bottom for 53 years; her husband died in 1958. They and she had always raised sheep in some numbers on the common. At one time they had as many as 80; nobody (apart from Mr Benjamin in these proceedings) had objected. She applied for 70 because "we had always kept them when we were younger. I can't say I have done it now I am older". I consider you can put on as many as you like; the smallholding could have what they like because they have not got the land to put on any more. My holding is about 3 acres, which is all I get for cattle; we always depended on Garway Hill Common. (Mr Benjamin explained that his objection was that although he had known Mrs Powell for many a year and known she has turned out sheep the number is too excessive for a little place.) We sold the lambs, when we got older we sold the ewes; my patch adjoins Mr Benjamin's ground; he says 35 to the holding, I would let it go at that; I want 70, I can't keep myself if I or any of my children want to sell it, 70 is better.

There was no evidence at the hearing apart that from the 1965 Act there had ever been any limit on the number of animals which could be grazed on the Unit Land by those entitled to grazing rights over it. I conclude therefore that all the rights with which I am dealing "consist of or include" within the meaning of the opening words of section 15 of the 1965 Act "a right unlimited by numbers to graze animals...". Notwithstanding the absence of any limit, the section requires a number to be stated in the register. The section contains no indication as to how the numbers shall be determined; however it does expressly ~~and~~ *from all concerned* that there is no finality about the number because Parliament had in 1965 an intention to alter it.

The section contains nothing expressly stating that the number shall be by reference to levancy or couchancy or otherwise by reference to the acreage or nature of the holding to which the rights are attached. A determination of the numbers by reference to levancy and couchancy or acreage has no special merit when applied to the Unit Land, because it may result in the commoners collectively having a right to graze



animals far in excess of what the Unit Land will bear; there was no evidence that in practice there have ever been any disputes apart from the 1911 proceedings referred to by Mr Ward as to the numbers because, so I suppose, in practice the actual limitation was dependant on how much those entitled to grazing rights could afford to spend purchasing animals.

Guidance as to how section 15 number is to be fixed can be found in the notes to form 9 scheduled to the Commons Registration (General) Regulations 1966 as follows:- "However for registration rights not limited by number (sometimes called "sans nombre" or without stint) must be quantified. This means the applicant must enter in part 5 of the application form the number of animals or number of animals of different classes which he believes himself entitled to graze...The applicant should not insert a figure higher than that which he believes himself entitled to. If he puts in an excessive figure provisional registration is likely to be objected to. In that case unless the registration authority permits it to be cancelled or the Objection is withdrawn, the matter will in due course be referred to a Commons Commissioner for decision, and if the Commissioner orders the figure to be reduced he may also order the applicant to pay the costs of the Objector".

The possibility of a Commons Commissioner ordering costs, does not I think affect the substance of the note, that every applicant is to register what he believes to be his entitlement. Section 15 is I think a transitional provision towards future legislation under which all commons will become gated or stinted commons to be regulated under section 16 et seq of the Inclosure Act 1773 or under some similar provision, and as a preparation towards abolishing levancy and couchancy. As a first step a right owner is required to state what he claims. Practically it is impossible for an ordinary person who having concluded that he has a right properly described as not limited by number to determine for himself the number by which his right is limited; by no mathematical or logical process can a number certain be deduced from uncertain premises, so any number put in the application pursuant to the note must to some extent be guess. Being a transitional provision in which Parliament has expressly stated that the number would be altered, it would be a hardship to applicants if they could without good reason be compelled to litigate the numbers which they relying on the note on the form have put forward.

The words in section 15 "treated as exercisable in relation to more animals...than a definite number" does not I think mean that when a number is inserted on the register pursuant to the section the owner of the right thereafter has under the section 10 the right against the whole world at all times to graze that number of animals. In my view section 15 does no more than provide an upper limit. If anybody wishes to claim that the number of animals grazed by anyone at any time is notwithstanding that it is less than the upper limit, excessive, his right to take legal proceedings about these is unaffected by the 1965 Act, except to the extent that section 10 is applicable. It may be therefore that in this case and in many other cases the number put on the register pursuant to section 15 may be of little practical importance.

It must not be understood as meaning that the numbers of animals stated in the register is never the concern of the Commons Commissioners, even when the right is not limited by number. If the right registered is a stint, the number will in general be



essential to identify the stint; in some circumstances the right intended to be registered will not be sufficiently identified unless the number is stated precisely; if the pasture is gated the numbers must inter se be proportionate to the gates registered otherwise the registration will cause confusion; there may be circumstances making it essential that even levancy and couchancy numbers should be registered so that each person who wishes to graze may know his rights as against the others wishing to exercise their rights. The test is I think whether the registration as the registration of a right is practically enough.

The circumstance that Mr Edgar Benjamin has objected to some only of the rights registered makes it practically impossible for the register to contain numbers which will be of any assistance in enabling a dispute about excessive grazing to be determined. If I were to adopt any levancy and couchancy or acreage formula the result must be a total number of animals in excess of the capacity of the Unit Land; if I adopt a formula in accordance with the capacity of the Unit Land, the numbers mentioned in Entries which have become final would clearly be excessive. I was told that Commander Lampen had made an Objection to all the Entries with a view to achieving some sort of agreement amongst the commoners which would enable the disputes about numbers to be settled by reference to the Register; if Mr Edgar Benjamin had adopted this form of objection, I might have been able to do this. On the above considerations, I conclude that I should deal with all Mr Edgar Benjamin's Objections to numbers on the basis of the above quoted notes on the Objection form; that is to say, it is enough that the applicant inserts a number to which he believes himself entitled. In the result the total number appearing on the register may to some appear quite absurd; this in this case will be of no practical consequence, because all concerned will know that such numbers represent no more than the belief of each individual applicant and that if any dispute arises as to excessive grazing the situation as regards each and every registered right will have to be investigated and determined by the court of other tribunal to whom the dispute may be referred.

As regards Entry No 7 made on the application of Mrs Powell, I am satisfied that the number she selected was in accordance with her belief at the time. The Objection made against her Entry by Mr Edgar Benjamin is arbitrary in that under any formula which I can imagine from anything he said or otherwise, he could equally well have made a similar objection to some of the other Entries to which he has made none; it would therefore be unjust to Mrs Powell that she should as against these other Entries be put in any worse position than if her Entry made on her own belief stood. Mr Hill was I think entitled to disregard any concession she made in the course of her evidence, at a time when he was not able to give her advice about it. My decision therefore is that Objection No 361 fails.

As to Entry Nos 13 and 14, I have no regard at all to the written statements produced by Mr P J Ward as made by or as taken from himself, his wife Mrs E A Ward, her aunt Mrs A E Powell and Mr R G D Williams, because they all gave ~~more~~ reliable oral evidence, and I also have no regard to the statement produced by him and made by Mrs L M Nicholls, because he should I think if he wished me to attach importance to it have arranged for her attendance. Mr Ward said (in effect):- He first knew these lands (Little Adawent and Little Castlefield Farm) in 1960 when he came there on the retirement of his father



in law (Mr Lewis Mark Powell). Since then he had grazed the Unit Land with sheep (in the region of 100 including "replacements"; not all adult, about 80 or 90 ewes) and some ponies (half a dozen); sheep he only brought in at lambing time or on other occasions for short periods. Little Adawent is about 2 acres with cottage and buildings, not now inhabited except at weekends; he is and has been since 1960 Mrs Low's tenant of the land held with but not including the cottage.

Mr Ward made two points:- According to the evidence in the 1911 proceedings the Court Rolls for the Manor of Garway showed that "all tenants whether free or customary inhabiting within the Manor, have free common pasture and pannage in and over the commons and wastes grounds there namely Garway Hill, Pengarstone, Gorst and Little Common...and other waste ground within the "manor"; presumably the Manor and the Parish are the same; Little Adawent is well within the Parish and must have rights over the Unit Land. The copy 1950 letter from Mr Lewis Mark Powell, which he had obtained from Mrs Low reads "Referring to Little Adawent there is no tide (?) grazing rights. All the commoners around here keep what they like. I kept 30 breeding ewes & 2 horses accordingly on the hill, also pigs & poultry running out there. I have myself grazed Garway Hill for nearly 50 years. When I purchased Little Adawent I bought it by open auction under Greenlands (an auctioneer) with the valuable grazing right to Garway Hill but I understood it was never entered upon the Deeds." The 1926 conveyance of Little Castlefield to Mr E E Moore contains the words: "Documents relating exclusively to the ppty described in the Third Schedule hereto which was formerly copyhold of the Manor of Garway in the County of Hereford but enfranchised by the Law of Property Act 1922."

Mrs A E Powell who was recalled said (in effect):- She is (the date of the hearing) 73 years of age, has lived in Garway all her life, at Rocks Bottom for 52 years and before that she was a maid with Miss Walters at the house where Mrs Lampen now lives. She married Mr William Powell in 1924. The owners and tenants of Little Castlefield Farm were:- She first remembered Mr William Lewis (owner); after him Mr Dan Powell (her brother in law) until he went to the Forces in 1915 (he did not come back to the Farm); after him his father, Mr Mark Powell (her father in law) until his death in 1922; after him Mr Lewis Mark Powell (her brother in law and Mrs Ward's father; he married in April 1922); he left in 1926 and was succeeded by Mr Jack Powell (no relation of hers) who was keeper of the Moore's (the owners); he was succeeded by the Saxtons (tenants); they were succeeded by the Blakes (tenants) who were there only a short time; and then in 1949 by Mr Lewis Mark Powell (Mrs Ward's father) who bought it. The ownership and tenancy of Little Adawent was as follows:- As she first remembered her grandfather, Mr Edwin Holly lived there until he died at the age of 86 years; he was succeeded by her uncle Mr James Holly who died there in 1930 (they were both tenants); in 1931 Mr Lewis Powell (her brother in law and Mrs Ward's father) bought it and lived there for a short time in the cottage; her aunt Miss Mary Holly was a lady's companion to Miss Walters and took it under her will; in 1949 Mr Brown bought it off Mr Lewis Powell and after him Mr Selwyn Powell was owner and Mr Lewis Powell was tenant of the land and was there until 1966. In some considerable detail Mrs Powell described how successive owners and tenants had grazed from Little Castlefield Farm and from Little Adawent animals on the Unit Land.



Mrs E A Ward in the course of her evidence said (in effect):- There had always been grazing from Little Castlefield on the Hill. Her father bought Little Adawent in May 1931 and lived there until 1949 and grazed the Hill from there; he sold it in 1949 to Mr Brown who in his turn sold to Mr Selwyn Powell; in 1949 her father bought Little Castlefield Farm and became tenant of Little Adawent and grazed on the Hill from there.

The abstract of title produced by Mrs Lampen included a conveyance dated 2 February 1891 of Little Adawent by Mr E Nicholas to Mrs Eleanor Waters and a deed of gift dated 21 June 1895 by which this and the other property to which the abstract related was conveyed by her to her daughter Mrs M W Waters, a will dated 21 April 1927 by which Mrs M W Waters devised and bequeathed all her property to Mary Holly absolutely and the death of such testatrix on 15 April 1930.

As to Mr Ward's first point, it does not I think follow that because land is within the Parish of Garway that it was at any relevant time also within the Manor of Garway; further I regard the newspaper report of what a witness said about the Court Rolls in the 1911 proceedings as somewhat uncertain; Mr James Holly is reported that he always understood the custom was 2 sheep to the acre; the judge seems to have taken the view that this custom was not clearly proved, or at least it was not clearly proved that the defendant had a right to distrain if more than 2 sheep were turned out; so the plaintiff succeeded. As to his second point, the words quoted from the 1926 conveyance relate to the property described in the Third Schedule; Little Castlefield is described in the Second Schedule, and the Third Schedule is said to be: "Not material to this abstract". Notwithstanding that I am against Mr Ward on his two points, I accept the evidence of Mrs A E Powell without qualification; I reject the statement which was made by Mr Edgar Benjamin while she was giving evidence that she had mistaken the extent of the grazing done on the Unit Land from these lands. I find that there was such grazing during the very substantial period described by Mrs Powell and accordingly that the rights of grazing from these lands on the Unit Land have been established by prescription. My decision is therefore that Objection No 468 as regards these Entries (the Objection does not challenge the numbers registered) fails.

As to Entry No 17, the land to which the rights are attached is in two pieces together containing about 168 acres. The south boundary of one of the pieces ("the Near Piece") is for about  $\frac{1}{3}$ rd of a mile the north boundary of the Unit Land; the Near Piece includes the farmhouse and buildings known as Old Kitchen Farm. The other piece ("the Far Piece") is a little smaller than the Near Piece, about  $\frac{1}{4}$  of a mile to the north of it (there is a track between them), and includes the farmhouse and buildings known as Bury Farm and Pennywink Farm.

Mr Goodwin said (in effect):- Under the 1968 agreement he is now and has been since 1968 the tenant of the Kentchurch Estate of both the Near Piece and the Far Piece which he understood were formerly threeholdings (the three farms above mentioned) which had been amalgamated before 1968 when he went there. He had always farmed the Far Piece and the Near Piece together as one farm, and throughout his tenancy he had run on the Unit Land 130 to 160 ewes and 25 to 30 Welsh mountain ponies.

Mr I J Morris said (in effect):- As predecessor of Mr Goodwin he had been tenant of the Near Piece and the Far Piece from 1952 to 1968. He exercised rights of grazing on the Unit Land up to 170 sheep and 20 ponies. He understood there was no numerical



limit, and that the rights attached to all three farms. When he took over the division between the Unit Land and the "Near Piece was an ordinary hedge, not effective for keeping animals in or out, he put up a post and wire fence.

Mrs L M C Brown said in effect:- Her mother (Mrs Smith) was tenant of Old Kitchen Farm from 1942 to 1952 when Mr Morris moved in; she and her mother lived there together and they kept 200 sheep and between 15 and 20 cows "We took the hill rights as previous tenants had done". The three farms were not amalgamated when her mother was tenant; they were not amalgamated as far as she knew before they went there. The tenant previous to her mother was Mr Thomas, but much earlier in the 1920's her uncle farmed Old Kitchen Farm and she knew that he exercised his rights because she used to go to visit him. Mr Edgar Benjamin never explained what he meant by the words "major part" in his Objection; so far as the relevant land can be regarded as two parts, clearly the Near Piece is the larger part. However this may be, I read the Objection as conceding that the registration is in order at least as regards part of the lands which together now make up the holding which comprises the Near Piece and the Far Piece.

In view of my observations above about numbers, it may not matter whether the rights are attached to the Near Piece or the Far Piece or both; however this may be, on the evidence and the appearance of the land I conclude that a right is established, if not under the Prescription Act 1832, at least as arising under a presumed lost modern grant based on 20 years use, see *Tehidy v Norman* 1971 2 QB 528. My decision is therefore that Objection No 469 fails.

As regards Entry No 16, although the land to which the right is attached is in the Register described as "Little Corras Farm", the map referred to makes it clear that the land known as Hill Farm is included. The farmhouse and buildings known as Little Corras Farm are about 300 yards from the nearest point of the Unit Land. The farm buildings known as Hill Farm are about 400 yards away.

Mr R G S Williams said (in effect):- He did not understand the Objection because Little Corras Farm and Hill Farm are all one. His father moved there in 1932, and when his father died in 1942 his mother took over from him and in 1954 he took over from her. His father had always used the land since he had been there; he had done so too. He ran anything from 100 to 120 ewes; he could not understand where Mr Edgar Benjamin got his numbers from.

Although Mr Williams conceded that because Hill Farm was in Garway Parish and Little Corras Farm was not, neither he nor Mr Edgar Benjamin suggested that having regard to the use described, the rights were not properly registered being attached to both farms. While Mr Williams was giving evidence, Mr Edgar Benjamin seemed prepared to concede that 3-7 sheep to the acre would be a reasonable calculation; whether or not he did make this concession, having regard to what I have said above about his Objections to numbers, I see no reason for reducing the numbers set out in this Entry to 35 sheep as suggested in the Objection. My decision therefore is that Objection No 470 fails.



No evidence was offered in support of Entry Nos 4 and 5 made on the application of Mr D E Jones or of Entry No 20 made on the application of Mr E G Brooman. I am unable from the evidence offered in support of the other Entries to conclude that there is any rule applicable generally to the Unit Land as to the persons who have grazing rights over it. Accordingly in the absence of any evidence my decision is that as regards these Entries Objection Nos 358 and 468 succeed.

For the above reasons, I refuse to confirm the registrations at Entry Nos 4, 5, 9, 10, 18 and 20 in the Rights Section, I confirm the registrations at Entry Nos 6, 7, 8, 13, 14, 16, 17 and 22 in the Rights Section without any modification, I confirm the registration at Entry No 23 in the Rights Section with the modification that in column 4 the words "right to graze 1 horse" be deleted, and I confirm the registration at Entry No 1 in the Ownership Section without any modification.

Mr Rollings on behalf of Mr Goodwin (Entry No 17), Mr Halpern on behalf of Mr Whistance (Entry No 22) and Mr Davis on behalf of Mr Powell (Entry No 7) asked for costs against Mr Edgar Benjamin. Mr P J Ward asked for his expenses, and Mr Davis pointed out that on the first day of the hearing both Mr P J Ward and Mrs E J Ward were represented by him professionally.

Mr Edgar Benjamin in answer to the claim for costs said he made his Objection for the purpose of finding out who the commoners were. *The stocking rights should be about 2-2 1/2 sheep per acre.* He criticised the absence of legal documents produced in support of some of the claims, and said that he had never been asked by me whether he had anything to say in evidence about Entry Nos 16, 17 and 22. He handed me a note of what he had been trying to say and this was read out by his son Mr J F Benjamin.

Notwithstanding that from my note I see that I never suggested to Mr Edgar Benjamin that he might deal with Entry Nos 16, 17 and 23 (the evidence in support of them had been given just before Mr Edgar Benjamin was invited to give evidence), I am satisfied that he had ample opportunity of giving any evidence about these Entries which he wished to; ~~even if~~ he made this objection, he did indicate the nature of the evidence which he considered he might have been able to give. In my view the motives of Mr Edgar Benjamin in making his Objection were not to benefit the other commoners generally or to serve any public interest; his Objections might benefit himself, and I am unable to find that he ever had any other motive. If the proceedings had taken only one day, I would have been disinclined to make any order for costs, because Mr Edgar Benjamin might have been taken by surprise as to the trouble and expense to which his Objections had involved the other parties; but between the first and the other days of the hearing more than 9 months elapsed, during which Mr Edgar Benjamin had ample opportunity of taking advice and of giving the explanation which the other parties at the first day of the hearing indicated that they needed, and generally helping to shorten and therefore reduce the costs of the proceedings. I think he should pay the costs of those who supported the Entries to which he has unsuccessfully objected not only because he was unsuccessful but because I consider that the way in which he persisted in his Objection after the first day of the hearing and — the way in which he conducted himself during the hearing was vexatious. He unnecessarily placed on the solicitors ~~and himself~~ an exceptional burden in the preparation and presentation of their client's case, because they had no proper advance information as to the points which might be made against them.





For the above reasons I shall order that Mr Edgar Benjamin pay to Mr S P Goodwin, Mr W A Whistance, Mrs A E Powell, Mr P J Ward and Mrs E A Ward the costs incurred by them in respect of these proceedings and I shall direct that such costs be taxed according to scale 3 prescribed by the County Court Rules 1936 as amended with the modification that the registrar shall have a discretion as to the amount to be allowed to the solicitors for preparing for and attending the hearing to the extent which under the said Rules such discretion can be conferred on him by the Court.

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.

FIRST SCHEDULE

A. Rights Section Entries

| Entry No                                  | Applicant   | Right:<br>S = sheep (or ewes)<br>P or H = ponies or<br>horses<br>C = cattle | Land to which right is attached  |
|---|---|---|--|
| <u>I. Entries which have become final</u> |   |   |  |
| 1   | W A Nicholls<br>deceased and<br>L M Nicholls;<br>owners | 30S   | Rock Mount; OS Nos 86 and 113 pt   |
| 2   | J Benjamin;<br>owner                                    | 35S      2C   | Hillside; OS nos 64, 76, 77,<br>87, 88 and 105   |
| 3   | C H Preece;<br>owner                                    | 80S 2P<br>Estovers  | White Rocks, Garway Hill; OS Nos<br>98, 99, 100, 101, 103, 104, 106,<br>107, 108, 108a, 154pt, 114 and 115 |
| 11  | Eva Caroline Smith;<br>owner                            | 20S 2P    4C  | Lower Castre; OS Nos 66 and 67   |
| 12  | Ethel Smith;<br>tenant                                  | 100S 8H 16C   | Belle Vue Farm; (map)  |
| 15  | J T Oldfield;<br>owner                                  | 2P<br>Estovers  | White Rock, Garway Hill; OS No 115   |



|    |                          |            |                          |
|----|--------------------------|------------|--------------------------|
| 19 | A Williams;<br>owner     | 100S 8P    | Mount Pleasant; OS No 69 |
| 21 | Edgar Benjamin;<br>owner | 150S 2P 9C | Old Garden; (map)        |

II. Entries subject to Objection No 358

Objection dated 25 September 1970L "No rights exist at all"; file 15/D/56

|   |  |                                   |  |
|---|--|-----------------------------------|--|
| 4 | D E Jones;<br>owner                        | 50S 2P<br>Turbary and<br>estovers | Cherry Orchard Farm; OS Nos 648,<br>696, 697, 698, 695, 689, 686, 690,<br>691, 663, 662 and 708 pt                         |
| 5 | D E Jones;<br>tenant                       | 50S 2P<br>Turbary and<br>estovers | The Larches, The Shody and The<br>Jockeys; OS Nos 645, 619, 659, 677,<br>724, 725, 674, 666, 665, 664, 667,<br>668 and 679 |
| 6 | David Lampen (now<br>Mrs Lampen);<br>owner | 1H 2C                             | White Rocks House; (map)   |
| 8 | Elizabeth Joan Ward;<br>owner              | 40S<br>Estovers                   | White House, Garway Hill; (map)  |
| 9 | H B F Smith;<br>tenant                     | 50S                               | The Plantation; OS No 635  |

III. Entries subject to Objection No 361

Objection dated 26 September 1970: "35 sheep sufficient for holding": file 15/D/57

|   |                   |     |                            |
|---|-------------------|-----|----------------------------|
| 7 | A E Powell; owner | 70S | Rock Bottom Cottage; (map) |
|---|-------------------|-----|----------------------------|

IV. Entries subject to Objection No 362

Objection dated 26 September 1970: "50 sheep 5 ponies 2 cattle sufficient for holding:  
file 15/D/58

|    |                              |             |  |
|----|------------------------------|-------------|--|
| 10 | Eva Caroline Smith;<br>owner | 100S 8H 16C | Belle Vue Farm; OS Nos 56, 56a, 70<br>and 699, 700, 701, 702 and 711 |
|----|------------------------------|-------------|--|

V. Entries subject to Objection No 466

Objection dated 27 July 1972: "no rights for Little Garway Farm...right for Pitto Hill  
grazing rights for about 25 sheep"; file 15/D/63

|    |                      |              |   |
|----|----------------------|--------------|---|
| 22 | W A Whistance; owner | 200S 10P 10C | Little Garway Farm; OS Nos 154, 156,<br>90, 96, 91, 95, 162, 102, 242, 94,<br>160, 161, 169, 170, 155, 159, 172,<br>97, 89, 74, 93, 75, 236, 253 & 65 |
|----|----------------------|--------------|---|

VI. Entries subject to Objection No 467

Objection dated 28 July 1972; "no rights exist at all"; file 15/D/62

|    |   |              |                         |
|----|---|--------------|-------------------------|
| 13 | The Trustees of the<br>Kentchurch Estate;<br>owners | 100S 8H or P | Kentchurch Court; (map) |
|----|---|--------------|-------------------------|

VII. Entries subject to Objection No 468

Objection dated 27 July 1972; "no rights exist at all"; file 15/D/59

|    |                              |                             |   |
|----|------------------------------|-----------------------------|---|
| 13 | P J Ward; tenant             | 50S 12H 12C                 | Little Adawent; OS No 143                           |
| 14 | Elizabeth Ann Ward;<br>owner | 100S 25H 25C<br>Cut bracken | Little Castlefield; OS Nos 117,<br>118, 119 and 123 |
| 20 | E G Brooman; owner           | 8S 1H or P                  | Chantry Cottage; OS No 63 pt                        |

VIII. Entry subject to Objection No 469

Objection dated 27 July 1972; "no rights for major part; part of the farm 50 sheep  
2 horses"; file 15/D/61

|    |                                   |          |                         |
|----|-----------------------------------|----------|-------------------------|
| 17 | I J Morris<br>(B Goodwin); tenant | 130S 20H | Old Kitchen Farm; (map) |
|----|-----------------------------------|----------|-------------------------|

IX. Entry subject to Objection No 470

Objection dated 27 July 1972; "No rights for Little Corras...; rights for Hill Farm,  
right to graze 35 sheep"; file 15/D/60

|    |                           |              |                           |
|----|---------------------------|--------------|---------------------------|
| 16 | R G D Williams;<br>tenant | 100S 8H or P | Little Corras Farm; (map) |
|----|---------------------------|--------------|---------------------------|

X. Entry subject to Objection No 471

Objection dated 27 July 1972; "rights have been included in No 11..."; file 15/D/64

|    |                                      |                           |                     |
|----|--------------------------------------|---------------------------|---------------------|
| 23 | F Crownshaw &<br>J Crownshaw; owners | 1H<br>Estovers & turbarry | Lower Castre; (map) |
|----|--------------------------------------|---------------------------|---------------------|

B. Ownership Section

Entry No 1 is of the ownership of Garway Parish Council to the whole of the Unit Land

Objection No 377 made by Mr J T Oldfield dated 29 September 1970; file 15/D/65: "...Garway  
Hill Common...owned by Arthur Ernest Lawley...at the date of his death 26 May 1920.  
His estate was administered by his widow...Garway estate was sold piecemeal to varying  
buyers; but the commons not finding a purchaser their ownership was retained by  
Mrs Lawley...clearly ownership...rests with Mrs Lawley...if that has failed...then...  
to the Crown..."

Objection no 357 dated 25 September 1970 made by Mr Edgar Benjamin: "No rights of  
ownership"



SECOND SCHEDULE  
(Attendance at hearing)

Day 1. 27 January 1976

Mr D E Jones (Entry Nos 4 and 5), Mr H F Smith (Entry No 9), Mr P E Morris (as successor of his grandmother Mrs E C Smith (Entry Nos 10 and 11) and Mr S B Goodwin (as successor of Mr I J Morris (Entry No 17) were represented by Mr A J R Rollings solicitor of David Allen & Carver, Solicitors of Hereford.

Mr W A Whistance (Entry No 22) was represented by Mr D M Halpern solicitor of Lamb Corner & Co, Solicitors of Hereford.

Mrs E A Powell (Entry No 7) was represented by Mr W J H Davis solicitor of T A Matthews & Co, Solicitors of Hereford.

Mr P J and Mrs E A Ward (Entry Nos 13 and 14) were represented by Mr J A L Evans solicitor of Gabb & Co, Solicitors of Hereford.

Sir Edmund Sargent of Radcliffe & Co, Little College Street, London SW1 and Lieutenant Commander J H S Lucas-Scudamore of Kentchurch Court, Hereford being the trustees of the Kentchurch Estate, were represented by Mr L J A Phipps land agent from W H Cooke and Arkwright, Land Agents of Hereford.

Garway Parish Council (Ownership Section Entry No 1) were represented by Mr T Nuttall their clerk.

Mr Frank Crownshaw attended on his own behalf and as representing Mrs G Crownshaw (Entry No 23).

Mrs E J Ward (Entry No 8), Mr R G D Williams (Entry No 16), Mr E G Brooman (Entry No 20) all attended in person.

Mr Edgar Benjamin (the Objector) attended in person being assisted throughout the proceedings by his son Mr John Benjamin.

Mr W J Burrough of White Rocks, Garway (as possible successor of Mr J T Oldfield also of White Rocks) (Entry No 15 and Objection No 377) attended in person.

Mrs L V Lampen (Entry No 6) sent a letter dated 15.12.75 which was handed in by Mr Evans.

Day 2. 9 November 1976

The representation was as above, save that Mrs L V Lampen attended in person and the following neither attended nor were represented, Mr D E Jones, Sir E Sargent, Commander Lucas-Scudamore and Mr F & Mrs G Crownshaw.

Days 3 and 4. 10 and 12 November 1976

Such of the above named as were concerned with the matters under discussion attended or were represented as above.



Inspection 13 November 1976

Mr J F Benjamin, and Mrs Whistance for all the time, Mr Goodwin for most of the time and Mrs Lampen at the beginning.

THIRD SCHEDULE  
(documents produced)

Day 1. 28 January 1976

(a) by Mr Burrough:-

8 November 1974

Letter from County Council to Burt Evans & Shawcross as to  
Objection No 417 made by Mr Oldfield

(b) by Mr Phipps:-

28 May 1824

Letter from John Lucy Scudamore to John Powell: "Do you deny  
the right of John Lucy Scudamore to turn on the common on  
Garway Hill" (he threatens an action for the impounding of  
sheep marked JLS)

28 March 1824

Letter J Powell in reply: "...the sheep was Edward Welling..."

28 May 1824

Letter John Lucy Scudamore to J Powell: "...the sheep bore the  
mark of John Lucy Scudamore Esq..?claim them tomorrow if you  
please but I shall order you to be prosecuted for pounding  
sheep..."

(c) by Mr F Cronshaw:-

Statement of evidence

7 February 1941

Conveyance by W Prosser to Eva Caroline Smith

1 July 1968

Conveyance by E C Smith to F Cronshaw

Day 2. 9 November 1976

(d) by Mr Whistance:-

12 June 1935

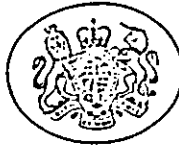
Conveyance by L Heath and C R Whistance to W A Whistance

10 December 1920

Conveyance by E W Lawley to W A Whistance



- 10 April 1935 Assent by administrators of W A Whistance in favour of L Heath, W A Whistance and C R Whistance in equal shares
- 17 August 1920 Answers to requisitions on title by Vendor's solicitors on sale of lots 40, 41 and 43
- 14 January 1920 Particulars of sale by auction of the Garway Estate of 2751 acres in 61 lots
- 25 March 1975 Letter from Ministry of Agriculture, Fisheries & Food to "r Whistance: Sheep subsidy for 1974: not all commoners have grazed
- (e) by Mrs L V Lampen:-
- 23 October 1847 Conveyance (original) by B Meredith to J Crump of  $\frac{1}{2}$  an acre of land together with cottage
- 1930 Abstract of title of the executor of Miss M W Waters to White Rocks House commencing with conveyance of 23 October 1847 as to part of the property and a conveyance dated 21 June 1890 to Miss A Crump as to the remainder of the property known as White Rocks House
- (f) by Mrs E J Ward:-
- 4 March 1964 Particulars of sale of "The White House"; one foolscap sheet, stencil issued by Tony Netting Chartered Auctioneer & Estate Agent, head office: Ross on Wye, other offices: Newent and Ledbury
- Answers by W H Trump & Roberts supposed vendor's solicitors who "further enquiries (Solicitors Law Stationery Society Limited Conveyancing 29 (short form))"
- 17 October 1967 Manuscript letter from Hubert E Hill to Mr Ward
- (g) by Mr P J Ward:-
- 28 November 1911 Extract from Hereford Times of proceedings in Hereford County Court by A Barrell against W White and others for assault and illegal impounding (examined 23 January 1976 by Gaff & Co)
- 19 July 1950 Copy letter sent by Mr L M Powell to T A Matthews & Co
- Unsigned statements made by or obtained from Mrs E A Ward, Mrs A E Powell, Mrs L M Nicholls, Mr R Williamd and Mr P J Ward
- 1949 Abstract of title of E H Moore to Little Castlefield commencing with a conveyance dated 25 July 1926



Day 3. 10 November 1976

(h) by Mr S B Goodwin:-

24 September 1968

Tenancy agreement granted by the Trustees of the Kentchurch Estate to S B Goodwin of Old Kitchen Farm, Bury Farm and Pennywink Farm

April 1964

Plan scale 1/2500 showing the three farms edged red

(i) by Mr R G D Williams:-

Ordnance Survey map (edition of 1920 scale 1/2500, showing Little Corras Farm, Hill Farm and much of White Rocks

(j) by Mr J F Benjamin:-

JFB1 24 June 1974

Letter from Ministry of Agriculture, Fisheries & Food to Mr Benjamin about Hill Sheep Subsidy, 1973

(k) by Mr G H Holman on behalf of the County Council as registration authority:-

21 November 1969

Application by Mr Edgar Benjamin for registration of rights (as registered at Entry No 21)

Day 4. 12 November 1976

(l) by Mr J F Benjamin:-

EB2 -

Statement by Mr Edgar Benjamin in answer to claim as to costs

(m) by Mr Nuttall:-

TN1 -

Statement as to way leave rents

Dated this 5<sup>th</sup> day of April 1977

*a. a. Baden Fuller*

Commons Commissioner