COMMONS REGISTRATION ACT 1965

Reference Nos 206/D/631-636
206/D/625-630
206/D/756-757
206/D/742-747
206/D/750-751

In the Matter of (1) Trendrine Hill, Amalveor Down, Sperris Croft and Beagletodn Downs, in Zennor and Towednack; (2) Drove Road in Zennor, Madron and Towednack; (3) additional land (1 piece) at Beagletodn Downs, Towednack; (4) additional lands (3 pieces) to Tremeader Common, Beagletodn Downs and Amalveor Downs in Zennor and Towednack; and (5) unnamed lands (2 pieces) in Towednack, all in Penwith District, Cornwall

DECISION

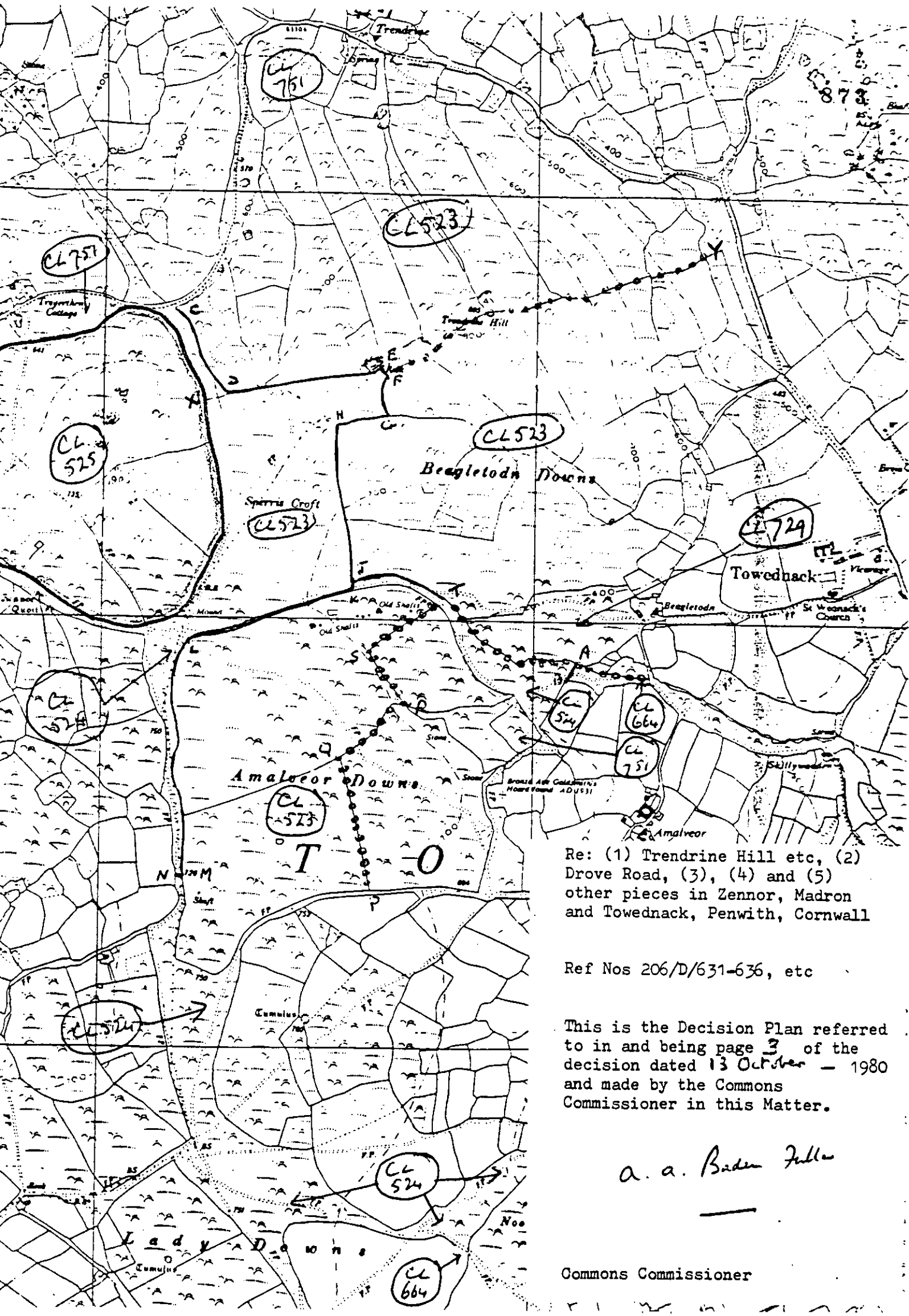
These 22 disputes relate to the registrations at Entry No 1 in the Land Section and at Entry No 1 in the Rights Section of Register Units No CL 523, No CL 524, No 729 and No CL 751 in the Register of Common Land maintained by Cornwall County Council and to the registration at Entry No 1 in the Land Section of Register Unit No 664 in the said Register, and are occasioned by (523) Objections Nos X708 and X709 and (751) Objection No X710 made by Mr William Frank Harding Ansell and Mrs Mary Davy Ansell and noted in the Register on 23 February 1971 and 1 March 1972, by (523) Objection No X779, (524) Objection No X780, (729) Objection No X782, (751) Objection No X784, and (664) Objection No X781 made by Mr William Edward Noy and noted in the Register on 21 April, 20 April, 19 April, 1 March and 19 April 1972, by (524) Objection No X790 and (664) Objection No X791 made by Mr Benjamin William Bolitho Sparrow and noted in the Register on 20 and 19 April 1972, by (524) Objection No X1217 made by Mr Richard George Paulton and noted in the Register on 30 November 1972 and by (523) Objections Nos X1228 and X1229 and (751) Objection No X1226 made by Mrs Eileen Beatrice Margaret Pilcher, Mr Graham Hope Pilcher and Mr George Willoughby Dunn and noted in the Register on 1 and 5 December 1972.

I held a hearing for the purpose of inquiring into the CL 524 and CL 523 disputes at Camborne on 16 May 1979. At this hearing Mr Willy Eduard Hendryck Maeckleberghe and Mrs Margo Oates Maeckleberghe on whose application the said Rights Section registrations were made, were represented by Mr T C Le Grice, solicitor of Pool Purchas and Le Grice, Solicitors of Penzance, (2) Mr W E Noy was represented by Mr J R Lloyd solicitor of J R Lloyd and Son, Solicitors of Hayle, (3) Mr Michael Hampden Smith, of High Conquer, Conquer Downs as successor of Mr R G Paulton was also represented by Mr Le Grice, (4) Mr B W B Sparrow was also represented by Mr Le Grice, (5) Mr W F H and Mrs C D Ansell were represented by Mr B Robert solicitor of Cornish and Birtall, Solicitors of Penzance. Additionally the following were present in person as having some possible interest in one or both of these lands: Mr Gordon Hollow Nankervis of Wicca Farm, Zennor, Mr Michael Parsons of Embla Vean, Towednack, Mrs M R Craze of Treamader, Zennor (she said she was part owner of some of the land), and Mrs A Symmons of Trenuyth House, St Ives. All persons present at the hearing either agreeing or not objecting I adjourned the proceedings.

I held a hearing for the purpose of inquiring into all the said disputes (being as regards the CL 523 and CL 524 lands an adjourned hearing) at Camborne on 14 May 1980. At this hearing (1) The West Cornwall Footpaths Preservation Society were represented by Mr H Miners their chairman; (2) Mr and Mrs Maeckleberghe were represented by Mr G D Calderwood solicitor of Vivian Thomas and Jervis, Solicitors of Penzance; (3) Mr Noy was represented by Mr Lloyd as before; (3) Mr M Hampden-Smith and (4) Mr B W B Sparrow were represented by Mr Le Grice as before; (6) Mr W F H and Mrs M C D Ansell were represented by Mr P J Smith solicitor with Cornish and Birtall, Solicitors of Penzance; and (7) Mrs Alison Symons as successor of Mrs E B M Pilcher, Mr G H Pilcher and Mr G W Dunn and (8) Mrs M R Craze were also represented by Mr Le Grice. The following (in addition to those who gave evidence) were present in person: Mr David Maden Slater of Lady Down Cottage, New Mill, Mr Barry Lewis of Lady Down Farm, New Mill, and Mr Donald Lawry of Higher Kerrow, New Mill.

The land ("the CL 523 land") in Register Unit No CL 523 for the purposes of exposition I treat as being divided into two adjoining areas; the north one, ("the Beagletodn/Sperris Croft Main Area") being a little more than 2/3rds of a mile from north to south and slightly less from east to west, and the south one ("the Amalveor Downs Main Area") being about ½ a mile or less long from north to south and about ½ a mile wide from east to west. The land ("the CL 524 Drove Lands") in Register Unit No CL 524 comprises for the most part numerous strips which in many places are about 100 yards wide although in some places much less, and also some irregular shaped pieces measuring up to 200 yards across and in some places much more; these Drove Lands from their most north point to their most south point and from their most west point to their most east point extend to about 2½ miles and about 1 mile. The Amalveor Downs Main Area is, except where it adjoins the Beagletodn/Sperris Croft Main Area, surrounded on all sides by some parts of the CL 524 Drove Lands. The land ("the CL 729 Beagletodn Subarea") in Register Unit No CL 729 is an area of about a ¼ mile from east to west and in most parts about 150 yards from north to south; the southwest side adjoins the Beagletodn/Sperris Croft Main Area and is at a lower level; its east side is near the dwellinghouse known as Beagletodn. The land ("the CL 751 land") in Register Unit No 751 comprises three areas: the first ("the Amalveor Downs Subarea") situated to the south of and about 100 yards from the Beagletodn Subarea and is about 100 yards long and about 70 yards wide; the second ("the Northwest Corner Area") is about 1 mile to the north of the Amalveor Subarea is bounded on the south by the Beagletodn/Sperris Croft Main Area and on the north by the public road the B3306; the third ("the Tremeader-Subarea") is situated between Tremeader Common which is part of Register Unit No CL 525 (not the subject of these proceedings) and the said B3306 road (opposite Eagles Nest, on the map and formerly called Tregerthen Cottage) is about ½ a mile southwest of the North Corner Area and about one mile northeast of the Amalveor Subarea, and is about 250 yards long. The land ("the CL 664 land") in Register Unit No CL 664 comprises two areas: one ("the Unnamed North Area) which is a short distance south of the CL 729 Beagletodn Subarea, and a short distance north of the Amalveor Downs Subarea, adjoins part of the CL 524 Drove Land, and is about 100 yards long and 20 yards wide: and the other ("the Unnamed South Area") is about ½ a mile to the south of the Amalveor Downs Main Area, adjoins on its south side the part of the CL 524 Drove Lands there situated, and is a triangular area having sides of about 60 or 70 yards.

The plan ("the Decision Plan") which forms page 3 of this decision is based on the Register Map of Register Unit No CL 525; apart from the south part of the



Re: (1) Trendrine Hill etc, (2) Drove Road, (3), (4) and (5) other pieces in Zennor, Madron and Towednack, Penwith, Cornwall

Ref Nos 206/D/631-636, etc

This is the Decision Plan referred to in and being page 3 of the decision dated 13 October — 1980 and made by the Commons Commissioner in this Matter.

a. a. Baden Fuller

Commons Commissioner

CL 524 Drove Lands and the west part of the CL 525 land, all the lands above-mentioned are included in the Decision Plan and I have marked on it their approximate position.

The Land Section registrations of Register Unit No 523 and No 524 were made on the application of The West Cornwall Footpath Preservation Society and in such Section there is a note of an application by Mr Walter Francis Lloyd. The Land Section registrations of Register Unit No 729 was made on the application of the said Society. The Land Section registration of Register Unit No CL 664 was made on the application of the said Mr Lloyd. The Land Section registration of Register Unit No 751 was made in consequence of the below mentioned application by Mr and Mrs Maeckleberghe for the registration of a right of common. There is only one Entry in the Rights Section of these Register Units (except CL 664 in which there is none), having been made on the application of Mr and Mrs Maeckleberghe of a right attached to the Carne (a house with fields, in all about 5 acres) "to graze 10 head of cattle and 2 horses; and to cut and take peat or turf; and to take tree loppings or gorse, furze, bushes or underwood" over the whole of the CL 523 land, the CL 729 Beagletodn Subarea, and the CL 751 land, and over the part of the CL 524 Drove Lands south of and adjoining the CL 729 land and west of the line AB, and over the part southeast of the CL 525 land and northwest of the CL 523 land (that is all the CL 524 Drove Lands except a very small piece at the northeast and except the parts south of a line near the southwest corner of the Amalveor Downs Main Area). In the Ownership Section of the CL 524 Drove Lands there are three Entries relating to three adjoining parts at the south end all of which are south of and off the Decision Plan and over none of which is any right claimed by Mr and Mrs Maeckleberghe; there are no other Entries in any of the Ownership Sections.

The course of the proceedings was as follows:- Mr Miners said his Society withdraws their application as regards the land in Register Unit Nos CL 523, CL 524 and CL 729 and then took no further part in the proceedings. Mr Calderwood on behalf of Mr and Mrs Maeckleberghe said that with a view to satisying the Objections made by Mr W F H and Mrs M C D Ansell and the Objections made by Mrs E B M Pilcher, Mr G H Pilcher and Mr G W Dunn, they withdrew any claim they might have that the right registered in the Rights Sections extended (A) over the Amalveor Subarea and the North West Corner Area (two of the areas of the CL 751 land) and (B) over that part of the CL 523 land which is north of the line (partly dotted) marked CDEY on the decision plan and over that part which is southeast of the line marked PQRSTA on the decision plan. All present were therefore agreeable to my excluding from the Land Sections these two areas of the CL 751 land and these parts CL 523 land (Mr Smith indicated that if I did the Objections of Mr and Mrs Ansell would be satisfied; and Mr Le Grice indicated that Mrs A Symons would be similarly satisfied as regards her right to take advantage of the Objections made by Messrs Pilcher, Pilcher and Dunn. Oral evidence was then given by Mrs M O Maeckleberghe. Interposing during such evidence, Mr Le Grice on behalf of Mr B W B Sparrow and on behalf of Mr M Hampden-Smith produced the documents specified in Parts I and II of the Schedule hereto. Oral evidence was also given (2) by Mr Harold Gordon Sennens who is now 75 years of age and had occupied Foage Farm for 30 years up to 5 years ago, (3) by Mr Charles Henry Symons who has lived in or around Zennor since he was a small boy (he is now 62 years of age), (4) by Mr Patrick Heron of Eagles Nest (formerly called Tregerthan Cottage), (5) by Mr Gordon Hollow Nankervis of Wicca Farm, (6) by Mr W E Noy, one of the Objectors, (7) by his son Mr William Joseph Roger Noy, (8) by Mr Ernest Thomas Berryman who is 78 years of age and who since about 1924 lived at the dwellinghouse Beagletodn and afterwards in the caravan nearby, (9) by Mr Robert Berryman Hollow who with his brother now is and since 1965 has been the

owner of Amalveor Farm in succession to his father and who has lived there all his life and (10) by Mr W F H Ansell (another of the Objectors), a recent purchaser from Mr and Mrs Noy of Churchtown Farm which includes all or much of the CL 523 land. In course of this oral evidence the documents specified in Parts III and IV of the Schedule hereto were produced.

After the hearing attended by Mr W E Noy, Mr W J R Noy, Mr and Mrs Ansell, Mrs Maeckleberghe, Mr P Heron, Mrs M R Craze, Mr R Hollow, Mr C H Nankervis (some of the time only) and others, I inspected the land over which Mr and Mrs Maeckleberghe claimed to have a right of common (a) by walking from a point on the B3304 road (somewhere near the point marked C on the decision plan) over Sperris Croft and Amalveor Downs and thence by the Carne back to the road; (b) by walking from St Wednack's Church by the dwellinghouse Beagletodn to the gate leading into the CL 524 Drove Lands near the point marked T on the decision plan.

By far the greater part of the hearing was taken up with the question whether the right registered on the application of Mr and Mrs Maeckleberghe existed at the date of registration (16 April 1970). Mr Noy was against this registration, the grounds of his Objections (Nos X779, X780, X781, X782 and X784) being: "That the land was not common land at the date of registration"; however Mr Lloyd explained that Objection X779 (relating to the CL 523 land) was intended to relate only to "the northern piece", meaning what I have called the Sperris Croft - Beagletodn Main Area. It subsequently became clear that as regards all the lands Mr Noy was only concerned with them to the extent that they were comprised in the 1953 conveyance.

I will consider first the question whether Mr and Mrs Maeckleberghe have any rights of grazing such as they have claimed, and if so over which and what part of the lands in these Register Units.

If land has been grazed as a right for 20 years a grant of a grazing right by the owner of the land may be presumed, see Tehidy v Norman 1971 2QB 528. By analogy with Section 16(2) of the 1965 Act, I consider that this 20 year period should be taken back from the date of the Objections made by Mr Noy (8 March 1971).

Mrs Maeckleberghe in the course of her evidence said (in effect):- Since they bought the Carne (1964) she and her husband had lived in the dwellinghouse at weekends and for holidays. The 10 fields they bought with it said (in the 1906 conveyance) to contain 5 acres 36 perches had since they became owners been grazed by Mr Sennens under a "grazing tenancy" (one day short of the year). One of her motives in making the registration was to be able to preserve the view of the surrounding land from the Carne which to the north-east included most of the land up to Tendrine Hill and to the east most of the Amalveor Downs; she was interested in preserving any right that the public might have over the land particularly to be able to walk over the footpaths and enjoy the surroundings. The house at Carne is old and includes a very large stone fireplace only suitable for burning turfs, furze, bushes and underwood.

Mr Sennens in the course of his evidence said (in effect):- Ever since he came to Foage Farm he had enjoyed grazing rights from the 10 fields of the Carne and from these fields he had put out cattle (a dozen or more) and horses (never more than 2) on to the open land near the Carne; there being no effective barrier, such animals could and often did graze on the land he knew as Beagletodn Downs and Amalveor Downs. After being questioned about a fence across the Sperris Croft/

Beagletodn Main Area and after some discussion he said "I don't know anything about the fence".

Messrs W E and W J R Noy in the course of their evidence were definite that there is now a fence across Sperris Croft/Beagletodn Main Area, and that there had been such a fence ever since they could remember (Mr W E Noy remembered back for 34 years), and that this fence being in need of repair about 9 or 10 years ago, was then renewed so as to appear much as it does now. However neither of them was able at the hearing to mark the line of the fence with any precision on any of the maps which were then available.

During my inspection the fence referred to by Messrs Noy was obvious; this fence ("the Principal Fence) was made up of upright posts joined by wire and fixed to a low stone wall; it is a substantial barrier for cattle and horses. Its position is on the Decision Plan from the points marked FGHJT and for some distance beyond the point T. I accept the evidence of Messrs Noy that the Principal Fence was renewed in about 1970 in the place of a then existing fence; along the line of the Principal Fence there are numerous upright iron posts which must have formed part of the before 1970 fence; this fence would (at any rate as long as the wire between the posts was maintained, have been a barrier (if not perhaps as good as that now existing) for animals.

So as regards the Principal Fence I prefer the evidence of Messrs Noy to that of Mr Sennens. Nevertheless I think this preference provides no good reason why I should not accept (as I do) the other evidence of Mr Sennens, particularly what he said about how he put out animals onto the open land near Carne. Having seen such land, I am not surprised that Messrs Noy had difficulty in delineating the Principal Fence on any map available at the hearing; these maps include many lines which are on the ground now no more than low stone walls or low banks; these walls and banks may be the sites of former walls or banks which were at one time more substantial; now they are no obstruction to animals and they or most of them apparently serve no divisive purpose and make the maps which delineate them confusing. During my inspection I found these maps difficult, and they would have been more so in the circumstances of the hearing. So without any adequate indication of the line of the fence about which he was being questioned, the vagueness shown by Mr Sennens in his answers about a possible fence is excusable.

I find that animals were put out onto the open land near the Carne by Mr Sennens as he described. I reject the contention of Mr Lloyd that this cannot be a basis for a presumed grant of a grazing right attached to the Carne because Mr Sennens only had a "grazing tenancy" of the Carne fields and/or because the animals so put out all came from his farm (Foage, a short distance to the south). He was able to put out these animals because of his grazing tenancy; so anything he did and any rights he acquired by so doing mustaccrue for the benefit of all persons having a legal or beneficial interest in the Carne. The ownership of the animals is in my view irrelevant.

Mr Sennens when he put out the animals was so I find not particularly concerned with where they went during the day. Apart from the Principal Fence, there was never any barrier which could prevent them going anywhere on the lands which are the subject of these proceedings or indeed on many other lands; as was said at the hearing there was no barrier against animals between the Carne and Penzance! In the ordinary way the animals would not go far before they were collected in the evening; but on occasions they might have to be collected as Mr Sennens said

from a great distance. Although his ignorance of the Principal Fence may be excusable, I infer from it that he did not often have far to go from the point where the animals were put out; at this point having regard to the slope of the land, the boundaries of those known as Sperris Croft, Trendrine Hill and Beagletodn Downs are not obvious.

Mr Sennens' lack of concern as to the nature of the right which he might exercise in or as a result of what he was doing acquiring is irrelevant to any question I have to determine; see De la Warr v Miles (1880) 17 Ch D 535; as I read the judgements in that case, on his evidence I can find (as I do) that attached to the Common there are rights of grazing over some land which at least includes the place where he put on the animals but the extent of the land over which the rights exist is a matter of law to be determined on the evidence I have about the land and not by anything Mr Sennens may have thought.

As I understood Mrs Maeckleberghe, she contended the land over which had a grazing right extended to any land over which the animals put out by Mr Sennens had ever grazed. I reject this contention because in my opinion a right for animals to graze on any land over which they might happen to stray from the point on which they were put out is not recognised by law; to put animals on any land with the intention that they may graze on any land the fences of which happen to be out of repair is wrongful and cannot be as of right. The land over which the right can be acquired by a presumed grant must in my view be a distinct piece of land over which a right of common could be granted and which could sensibly be regarded as a common or part of a common on which the animals were put; in respect of any other distinct piece of land the animals were strays or merely exercising a right by reason of vicinage (as to which see below).

As to the part of the Beagletodn/Sperris Croft Main Area east and north of the Principal Fence and south of the line EFY on the Decision Plan:- In the 1953 conveyance this part is treated as a piece of land distinct from any other lands which are by paragraph 1 expressed to be conveyed and which are not in the First Schedule expressed to be conveyed "Subject to rights of common if any" that is, stating the basis of the 1953 conveyance shortly this part is treated as an ordinary part of the farms therein called "Churchtown, Beagletodn and Skillywadden Farms". The Principal Fence is also evidence that this part of the Beagletodn/Sperris Croft Main Area was at all relevant times a distinct piece of land; before 1970 when the Principal Fence was renewed, it is not unlikely that animals crossed it (strayed), for I infer that this was one of the reasons why Messrs Noy renewed it; I find that the Principal Fence was at all material times a distinct boundary fence and that animals crossing it did so as strays from the other distinct piece of land on which Mr Sennens put them. This straying was not a grazing as of right consequential of any grazing as of right which may in respect of other land be ascribed to what Mr Sennens did. My decision is therefore that this part should be excluded from the land over which any rights attached to the Carne may be presumed to have been granted.

As to the part of the Beagletodn/Sperris Croft Main Area north of the line CDEY and to the North-west Corner Area of the CL 751 land I have no reason for not acting on the withdrawal made by Mr Calderwood at the beginning of the hearing as above recorded. My decision about this part and this Area is that it should be excluded from the land over which a right may be presumed to have been granted.

As to the part of the Beagletodn/Sperris Croft Main Area west and within the lines XDEFGHJKL on the Decision Plan:- In the 1953 conveyance this part so far as it is east of the "FP" line printed on the Register map is by the 1953 conveyance expressed to be conveyed "subject to rights of common if any"; these words coupled with the existence of the Principal Fence and its deliberate renewal in 1970 are indications that this part of land over which a grant of a right of common could sensibly be made. This part so far as it is west of the said "FP" line is included in the 1963 deed of covenant; of which Mr Heron said that he was the owner not only of it but of all the other lands mentioned in the deed (except some not now relevant to these proceedings which he had transferred to Mr Berryman) and that he had no objection to the rights claimed by Mr and Mrs Maeckleberghe. This part is near to and easily accessible from the point on which Mr Sennens put out his animals. In my opinion his animals so far as they from time to time graze this part were as of right doing something which was consequential on his putting out animals where he did; my decision is therefore that the grazing rights claimed by Mr and Mrs Maeckleberghe over this part should be presumed to have been granted.

As regards the CL 524 Drove Lands so far as they relate to the claim of Mr and Mrs Maeckleberghe:- The boundary of these lands where they adjoin the other lands with which these proceedings are concerned, is either a low bank or a low stone wall possibly marking the site of something at one time more substantial but now forming no barrier to men or animals. During my inspection there was some discussion as to the origin of these Drove Lands and also of these similar banks and walls which are marked on the Register Map and which now appear to serve no useful purpose; it was suggested that the old shafts, the remains of mining activities indicated on the Register Map and now to some extent apparent, show that there were numerous persons who owned or occupied the pieces of land so delineated and who worked in or were concerned with the mines, and that the Drove Lands were needed and used by pack animals taking away the produce of the mine and bringing in necessaries for these persons. However, it was not suggested that there was anybody now who could remember this state of affairs, and I cannot therefore in these proceedings act on this suggestion; although it may well be that some local historian could establish it with certainty*. Along the length of these Drove Lands there is a well marked footpath (in some places more than one), apparently much used by the public. In relation to Mr and Mrs Maeckleberghe's claim the part with which I am concerned is the area approximately triangular which is near the point L on the Decision Plan and the strip leading off this triangular area westwards to the Carne. As regards the triangular area, the east and west parts are dealt with by the 1953 conveyance and the 1963 deed of covenant in essentially the same way as the part above dealt with of the Beagletodn/Sperris Croft Main Area. Mr Heron made a similar concession. So my decision about the triangular area is the same. The said strip is part of the CL 524 Drove Lands on which as I understood Mr Sennens he put his animals; and to the extent of this strip at least they were grazed as of right; so my decision about it is also the same.

On appearance alone it is possible (in accordance with the said suggestion) that the CL 524 Drove Lands are ancient drift ways and may therefore for their whole width be highway; if this were so they would by reason of the definition of "Common Land" Section 22 of the 1965 Act have to be excluded from any registration made under it. This possibility was not dealt with at the hearing. Because subsection (2) of Section 21 of the Act makes it clear that

*Note:- W G V Balchin in Cornwall Landscape (1954) at pages 43 et seq. mentions Amalveor in Towednack and instances the outfield there as being originally prehistoric and later being divided into a multitude of small inclosures.

nothing in any decision of mine can prevent anyone hereafter claiming that land dealt with by me is a highway, I need not I think pursue this aspect of the matter. Upon similar considerations in relation to the possibility of the said footpaths being highway to the extent of their (very narrow) width I need not I think complicate these proceedings by considering the possibility that they should be excluded.

As regards the Amalveor Downs Main Area:- In the 1953 conveyance this land is by paragraph 2 expressed to be conveyed for three equal undivided eighth shares and in the Third Schedule it is remarked "Subject to rights of common (if any). The entirety is believed to be vested in the Public Trustee by virtue of the Law of Property Act 1925". Of it Mr Hollow said (in effect) that he and his brother both as owners of Amalveor Farm could put cattle on Amalveor Downs because they as owners of two eighths had "undivided rights". During my inspection it appeared that this Area being dry (it is higher than the surrounding land) could not be of much importance for grazing, and it may be that for this reason Mr Noy did not think fit to bother about it. However there could be grazeable grass there sometimes, and I accept Mr Sennens' statement that his cattle must have strayed over it sometimes (there being no barrier). In considering whether this straying can be the basis of a presumed grant, I must have regard to the law relating to rights of common by reason of vicinage; as to this see Halsbury Laws of England (4th edition) 1974 volume 5 paragraph 566 et seq; in short where distinct pieces of land with no fence between them are grazed, a person having a right to graze one of the pieces may be excused from trespass if they graze on the other piece, but this right is brought to an end if a fence between the 2 pieces is erected. It may be that if I had known nothing of the 1953 conveyance and Mr Hollow had said nothing I would not from the appearance of the Amalveor Downs Main Area be able to find that it was a piece of land distinct from any part of the Beagletodn/ Sperris Croft Main Area; but the appearance is consistent with it being distinct; having regard to the terms of the 1953 conveyance, and to Mr Hollows statement about the rights of Amalveor Farm over it, I conclude for the purposes of the law relating to commons by reason of vicinage, it is a distinct piece of land. So my decision is that as regards any presumed grant resulting from animals put out by Mr Sennens, such grant cannot in relation prove the Amalveor Downs Main Area be more than a right of common by reason of vicinage. Such a right is not in my opinion registrable under the 1965 Act. My decision is therefore as regards this Area that the registration made on the application of Mr and Mrs Maeckleberghe must be appropriately modified. It may be that this modification will having regard to the improbability of the Area ever being fenced from the CL 524 Drove Lands be as regards grazing of no practical consequences. This part of this decision although consistent with, is not based on the above recorded withdrawal by Mr Calderwood of the claims of Mr and Mrs Maeckleberghe over the east part of this Area; I have no note or recollect/of being informed why they so withdrew although this east part is clearly edged blue as "area withdrawal" on the copy map first mentioned at Part III of the Schedule hereto. I cannot I think ~~obtain~~ from the lack of interest of Mr Noy and of any other person at the hearing in pressing his objection as regards this Area conclude that I should not be as regards it, modify the registration made by Mr and Mrs Maeckleberghe, when on the evidence given at the hearing I am satisfied that this modification should be made.

As regards the part of the CL 523 land north of the line XD and west of the line CD and the Tremeader Subarea of the CL 751 land:- Mr and Mrs Maeckleberghe cannot sensibly have a right to graze this part and this Subarea unless they also have a right to graze the adjoining part of the CL 525 land. I am not in these proceedings concerned with the CL 525 land and cannot therefore either for or against any persons concerned with such land say anything which might benefit or prejudice them on contending for or against Mr and Mrs Maeckleberghe having any such rights. However I must as I see it as regards this part of this Subarea do the best I can on the evidence put before me in these proceedings. In these proceedings Mr Heron said that he was the owner of this part and the Subarea and the adjoining parts of the CL 525 land and conceded that the right claimed by Mr and Mrs Maeckleberghe extended to all three. Accordingly on these proceedings my decision is that the right does so extend at least to the said part and the said Subarea; and I disregard the possibility that as a result something which may happen on other proceedings relating to the CL 525 land my decision may produce a result which may not be sensible.

As regards the CL 524 Drove Lands:- My decision as to where the east and south sides of the above mentioned triangular area for the purpose of registration be considered as ending, must having regard to the nature of the land be arbitrary. Having excluded the Amalveor Downs Main Area from the registration, I reject the line adopted in the plan attached to the application of Mr and Mrs Maeckleberghe; my decision is that the end should be the line MN marked on the Decision Plan. As regards the east end of the said triangular area having regard to my decision about Beagletodn/Sperris Croft Main Area and the Amalveor Downs Main Area I consider that so much of the CL 524 land as lies between the parts I am excluding should also be excluded; my decision is therefore that the triangular area on the east ends of the line JK marked on the Decision Plan; so in the result there will be included a strip of land which although physically identical with part of the CL 524 land to the west as being registered in Register Unit CL 523 (being a strip extending westwards from the said line JK). As regards the CL 72 Beagletodn Subarea, and the Amalveor Downs Subarea of the CL 751 land, I exclude these land too upon considerations essentially the same as those set out above in relation to adjoining lands.

As regards the rights apart from grazing claimed by Mr and Mrs Maeckleberghe, to take peat or turf and to take tree loppings etc, there was no evidence from which I could presume the grant of any such rights and my decision is that to this extent that the registration made on their application should not have been made.

As regards to the registrations in the Land Section of these Register Units, to the extent that the lands so registered are subject to a grazing right in accordance with the above decisions, these registrations are in my opinion properly made as a consequence of paragraph (a) of the definition of common land in Section 22 of the 1965 Act (land subject to a right of common). The remaining lands can only have been properly registered if they are within paragraph (b) of the said definition (waste land of the manor). As to these remaining lands Mrs Maeckleberghe as I understood her claimed that some should remain on the Register because of the public footpath which ended near St Wednack's Church; and during my inspection she called

my attention to the padlock on the gate near the point T on the Decision Plan. In my view under the 1965 Act I am not in these proceedings concerned with public footpaths except in so far if at all their existence may be relevant to the definition of common land; in my opinion the mere existence of a public footpath is no evidence that the land over which it runs is waste land of a manor within paragraph (b) of the said definition. However as the question of the obstruction of the footpath was raised, I record that during my inspection Mr Noy said the padlocking of the gate was not intended as an obstruction and that he intended to provide a facility which would enable pedestrians at or near the gate easily to cross over the Principal Fence.

I have a letter dated 8 May 1979 from Mr W F Lloyd on whose applications some of the Land Section registrations were made; this letter contains nothing from which I could conclude that the remaining lands or indeed any of the lands with which I am concerned were ever waste land of a manor.

Against the registrations I have the documents produced on behalf of Mr Sparrow and Mr Hampden-Smith which show that parts of the CL 524 land have been dealt with as private property (inconsistently with their having been waste land of any manor). As being possibly public land; on appearance alone the CL 524 Drove Lands have perhaps the strongest case for being waste land of a manor; but there is the possibility, equally likely, of being driftways in accordance with the above mentioned suggestion made during my inspection as to their mining history.

In my view there is no evidence that these remaining lands in the Land Sections are waste land of a manor or have ever been connected with any manor. On such evidence as I have about their history (mainly to be inferred from their appearance and amounting to very little) indicates the contrary. My decision is that these remaining lands are not waste land of a manor and should therefore not have been registered.

As a result of the decision given above the descriptions now used of the land in the Land Section of Register Unit No CL 523, No CL 524, and No CL 751 will no longer be appropriate and should I think be modified as hereinafter provided.

For the above reasons:- I confirm the registration at Entry No 1 in the Land Section of Register Unit No CL 523 with the modifications: (a) that there be removed from the Register all the lands comprised therein except that west of and within the line CDEFGHJKL on the Decision Plan (the line DEFGHJ being the line of the now existing fence, the lines KL being a line delineated on the Register map as the present boundary of the registered land and the lines JK being a straight line in continuation of the line HJ), (b) that for the words "pieces of land called Trendrine Hill, Amalveor Downs, Sperris Croft and Beagletodn Downs" thereby substituted "the lands which or most of which is called Sperris Croft". I confirm the registration at Entry No 1 of the Land Section of Register Unit No CL 524 with the modification (a) that there be removed from the Register all the land now comprised therein except that north of the line MN on the Decision Plan (such line considered if produced as passing through the nearby figures "724" on the Register Map) and west of a straight line drawn approximately north-south through the "C" of "Sperris Croft" and the "D" of "Amalveor Downs" as marked on the Register Map; and (b) for the words "Several pieces of land known as Drove Road" there be substituted "A piece of

land being part of that known as Drove Road". I refuse to confirm the registrations at Entry No 1 in the Land Sections and at Entry No 1 in the Rights Section on Register Unit No CL 729. I confirm the registration at Entry No 1 in the Land Section of Register Unit No CL 751 with the modification (a) that there be removed from the Register two of the three pieces which together now make up the lands in this Register Unit being the most northerly and the most southerly of the said three pieces; and (b) for the words "the Three additional pieces of land known as Tremeader Common, Beagletodn Downs and Amalveor Downs" there be substituted "an additional piece of land to that known as Tremeader Common". I refuse to confirm the registration at Entry No 1 in the Land Section of Register Unit No CL 664. I confirm the registrations at Entry No 1 in the Rights Section of Register Unit No CL 523, No CL 524 and No CL 571 with the modifications (a) that in column 4 the words "and to cut and take peat or turf; and to take tree loppings or gorse, furze, bushes or underwood" be deleted; (b) that the concluding words in this column which now indicate the land over which is exerciseable the grazing right now registered be modified (in words to be selected by the Cornwall County Council as registration authority) to indicate that such land is that comprised in the whole of Register Unit No 523, 524 and 751 and the whole ~~and~~ that part (if any) of Register Unit No CL 525 as may be indicated in the Rights Section of Register Unit No CL 525; and (c) such other modifications as are necessarily consequential to the removal from the Register the lands as hereinbefore stated from the Land Sections of Register Unit Nos CL 523, CL 524, and CL 751.

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

TURN OVER

SCHEDULE

(Documents produced)

Part I on behalf of Mr B W B Sparrow

19 October 1970	Conveyance by Mr Norman Osobrne and Mrs Marjorie Osborne to Mr Benjamin William Bolitho Sparrow of fields and farmhouse known as Embla Farm containing 92 acres 2 roods and 2 poles.

Part II on behalf of Mr M Hampden-Smith

25 November 1977	Contract for sale by Property & Financial Syndications Limited with Mr Michael Hampden-Smith of about 32.35 acres part of Lady Downs Estate.
25 July 1977	Contract for sale by Sunningdale Securities Limited to Mr Hampden-Smith or about 7.0 acres of part of Lady Downs Estate.

Part III on behalf of Mr and Mrs Maeckleberghe

	Copy map on their application showing "attached" land over which rights claimed with area of withdrawl coloured blue and edged blue hatched black.
4 December 1964	Conveyance by Mr B H Wynter to Mr and Mrs Maeckleberghe of dwellinghouse and studio called Carne and 10 fields as shown on a plan annexed to conveyance dated 29 September 1906 "together with all common ways easements and other rights belonging thereto".
29 September 1906	Conveyance by Mr William Tolmie Tresidder to Mr John Tregerthen Short of the dwelling-house and fields therein described.
26 June 1963	Deed of Covenant by Mr Patrick Heron and Mrs Mary Delia Florence Heron with the National Trust for Places of Historic Interest or Natural Beauty.

Part IV by Mr Noy

31 December 1953	Conveyance by Lloyds Bank Limited as trustees under the will of Mr Hugh Dunston (he died 30 January 1948) to Mr William Edward Noy and Mrs Patricia Noy.

Dated the 13th day of October 1980

A. A. Baden Fuller

Commons Commissioner