



COMMONS REGISTRATION ACT 1965

Reference Nos: 209/D/340-342
(inclusive)

In the Matter of Chagford Common,
Meldon Common, Nattadon Common,
Padley Common, Weekbrook Down,
Week Down, Steniel Down, and
Jurston Green all in Chagford,
West Devon District, Devon.

DECISION

Introduction

This Matter relates to 111 registrations (not counting replacements) under the 1965 Act. My decision as regards each of these registrations is set out in the Second (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen, and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 to 107 inclusive (8, 13, 14, 17, 61, 70, 72, 76 and 105 having been replaced by Nos. 113 and 114, Nos. 136 and 137, Nos. 143 and 144, Nos. 119 and 120, Nos. 132, 133 and 134, Nos. 122, 123 and 124, Nos. 116 and 117, Nos. 126 and 127, and Nos. 130, 139, 140 and 141 respectively) in the Rights Section and at Entry Nos. 3, 4 and 5 in the Ownership Section of Register Unit No. 173 in the Register Common Land maintained by the Devon County and are occasioned by Land Section Objections Nos. 323 and 560 made by Leslie Albert Arscott and Clara Hela Arscott and by Ian Lawrence Satow respectively and noted in the Register on 3 December 1970, and by Rights Section Objections Nos. 297 and 712 made by Chagford Commoners' Association and noted in the Register on 2 and 27 November 1970, Nos. 456, 457, 458 and 459 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 1 March 1971, No. 525 made by North Devon Water Board and noted in the Register on 22 January 1971, Nos. 570, 571 and 572 made by Chagford Parish Council and noted in the Register on 1 March 1971 and No. 650 made by Major A C Arden and noted in the Register on 1 March 1971, and by the Ownership Section registrations at Entry Nos. 3, 4 and 5 being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 8, 9 and 10 February 1984. At the hearing (1) Messrs Leslie Albert and Clara Hela Arscott who made Objection No. 323 were represented by Mr J P Sedgman, solicitor, of Stone & Co, Solicitors of Exeter; (2) Chagford Commoners' Association who made Objections Nos. 297 and 712 were represented by Mr R Keast, solicitor of Stephens & Scown, Solicitors of Exeter; (3) the Attorney-General for the Duchy of Cornwall who made Objections Nos. 456, 457, 458 and 459 and who applied for the registrations in the Ownership Section at Entry Nos. 3 and 4, was represented by Mr C Sturmer, the Land Agent of their Dartmoor Estate; (4) South West Water Authority as successor of North Devon Water Board who made Objection No. 525 was represented by Mrs F G Canning, solicitor in their Legal Department; (5) Chagford Parish Council who made Objections Nos. 570, 571 and 572 and who applied for the registration (now final) at Ownership Section Entry No. 6 were represented by Mr R F D Sampson, solicitor with Woollcombe Watts & Co, Solicitors of Chagford;



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(6) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bouchier Sayer applied for the registration at Entry No. 6, attended in person and as representing him; (7) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the registration at Entry No. 7, was represented by Lady S R P Sayer; (8) Messrs Arthur John Mortimore and Maurice Henry Mortimore who applied for the registration at Entry No. 16 were also represented by Mr R Keast; (9) Mrs Eleanor Nancy Smallwood who applied for the registration at Entry No. 65 was also represented by Lady S R P Sayer; (10) Mr Thomas Hutchings who applied for the registration at Entry No. 75 attended in person; (11) Mrs Edna Beatrice Mary Maggs who applied for the registration at Entry No. 84 attended in person; (12) Mrs Patricia Anne Gibson as successor (in part) of Mr Gordon Edward Hughes who applied for the registration at Entry No. 92 attended in person; and (13) Mr Thomas George Pollard of Beetor Farm, North Bovey as tenant of Mr Rowden Sawdye Windeat who applied for the registration at Entry No. 102 was also represented by Mr Sampson.

The land ("the Unit Land") in this Register Unit comprises three tracts and six comparatively small pieces, containing together about 1,575 acres. Of the tracts, two are known as Chagford Common, one being about $1\frac{1}{2}$ miles long from north to south and situate between Batsworthy on the west and Frenchbeer on the east, and the other (U-shaped), being about 2 miles long from north to south and situate between Hurston Ridge on the west and the B3212 road on the east. The third tract is Meldon Common being about $\frac{1}{2}$ of a mile long from north to south, and situate a short distance south of Chagford Village, and including Meldon Hill (1,279 feet). Of the six pieces: (1) Nattadon Common is irregularly shaped approximately $\frac{1}{4}$ of a mile or less across, and situate northeast of Meldon Common on the other side of the road leading southwards from the Village; (2) Padley Common is approximately triangular with sides of about $\frac{1}{4}$ of a mile long, adjoins the north side of Meldon Common and lies between it and the Village; (3) Week Down has a frontage of about 300 yards to and is on the north side of the road running southeastwards from the Village to Middlecott; (4) Steniel Down being about $\frac{1}{4}$ of a mile long and about 200 yards wide is next to the road from Yellands Cross to Lettaford Cross and near to Langford Bridge; (5) Jurston Green is approximately triangular with sides of about 200, 200 and 100 yards; and (6) Weekbrook Down is approximately triangular with sides of about 100, 100 and 500 yards situate about 1 mile east of the Village and on the south side of the road running eastwards from it. Most of the Rights Section Registrations are of or include rights of grazing; mostly over Chagford Common only, but with some over the whole of the Unit Land, some over Padley Common and Meldon Down only, and some over other combinations of the tracts and pieces which together make up the Unit Land; 8 of the registrations are rights which do not include grazing and 4 are of rights expressed as "to stray". In the Ownership Section at Entry No. 1, Mr James Henry Endacott is (finally) registered as owner of Jurston Green, at Entry No. 3 and 5 HRH Charles Prince of Wales, Duke of Cornwall is registered as owner of all Chagford Common, at Entry No. 4 Barclays Bank Ltd as executors of Sir George Colville Hayter Hames are registered as owners of the greater part of Chagford Common and also of Meldon Common, Nattadon Common and Week Down, and at Entry No. 6 Chagford Parish Council are registered (finally) as owners of Padley Common.



Course of proceedings

First, (8 February), oral evidence was given by Mr Leslie Albert Arscott in support of Objection No. 323, the grounds of which are "... Weekbrook Down was not common land at the date of registration". In the course of his evidence he produced the documents specified in Part II of the First Schedule hereto, and said (in effect):- He and his wife in 1959 purchased Great Weeke Farm; it (more than 120 acres) included (as appears from LAA/2) OS No. 563 (containing 0.626 acres being Weekbrook Down as delineated on the Register Map), and OS No. 565 on which stand Weekbrook Cottages. He is now concerned with the east part ("the plot") of OS No. 563, bounded on the west by the stream. In 1967 they sold Weekbrook Cottages including the west part of OS No. 563 to Mr Ian Lawrence Satow; it was then tenanted. Mr Satow (personally) took possession in 1969, and then erected a fence along the western boundary of the plot. At about the same time he (the witness) erected a fence along the northwestern boundary of the plot (against the road) and grubbed up the hedge which divided it from OS No. 655 (4.152 acres east and south-east of the plot), so the plot and OS No. 655 became one field. He had known OS No. 563 since 1936. Although until he put up the fence it was not fenced from the road, between 1936 and 1960 no one other than the owners from time to time of Great Weeke Farm all of whom he knew personally, used the land or exercised common or any other rights over it or entered upon it. The only exception was an annual day on which the children of the hamlet of Great Weeke were allowed to have a fete of some sort on it, only as he understood with the permission of the owner. He also recalled that until shortly before he purchased the Farm, there was a permanent building on OS No. 563 which was used for the storage of silage and farm implements exclusively by the owner.

I then having other business, adjourned the hearing.

Next, (9 February), I considered Satow Objection No. 560, the grounds of which are in effect that (a) OS No. 565 on which stand Weekbrook Cottages and which is not included in the Register, (b) the part of OS No. 563 described by Mr Arscott as being west of "the plot" and (c) the western part of "the plot", are not common land. No evidence or argument was offered by Mr I L Satow who neither attended nor was represented.* However in answer to my question, nobody at the hearing offered any reason against my giving effect to both the Arscott Objection and the Satow Objection and concluding that the part of the Unit Land known as Weekbrook Down should not have been included in the Register.

Next (9 February) Mr Sturmer referred to the conflict between the Duchy Ownership Section registrations at Entry Nos 3 and 5 and the Barclays Bank Ownership Section registration at Entry No. 4, and suggested that on the basis of the letter dated 28 November 1983 and specified in Part I of the First Schedule hereto, I should confirm Nos 3 and 5 without any modification and confirm No. 4 with the modification that any land specified in Nos 3 and 5 should be removed. Nobody at the hearing then or later suggested that I should do otherwise.

Next Mr Sturmer mentioned Duchy Objection No. 456 applicable to the Rights Section registrations at Entry Nos 6, 7, 41 to 58 inclusive, and 65, the grounds of which are (in effect) that the rights do not extend over the Duchy owned part of the Unit Land (Chagford Common). Mr Sturmer said that the Objection was withdrawn. Because Chagford Commoners Association ("CCA") Objection No. 297 is applicable to the same

*Note:- He was present on 8 November 1983 when this case with others was first listed, but was then owing to other business not reached.



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Entry Nos (and also to Nos 3, 64, 79, 80 and 88), the grounds of which are that the right does not exist at all and because such Objection was not withdrawn, the procedural position was not simplified by the Duchy withdrawal.

Next Mr Sturmer mentioned Duchy Objections Nos 457, 458 and 459 applicable to the Rights Section registrations at Entry Nos (458 to) 23 and 64, (459 to) 31 and 64 and (459 to) 9 and 64, the grounds of which are (in effect) no shooting, no piscary and no pannage over Chagford Common. In answer to my question, nobody at the hearing suggested that I should not give full effect to these Objections.

Next, Mr Sturmer mentioned that the Rights Section registrations at Entry Nos 74 to 107 are not included in any Duchy Objection although those at Entry Nos 77 and 107 and Nos 79, 80 and 99 included shooting and piscary.

Next mention was made of Arden Objection No. 650, applicable to Rights Section registrations at Entry Nos 6 and 7, the grounds of which are that the rights do not exist over Steniel Down. Lady Sayer said that the Objection is conceded because it was not likely that these registrations extended over Steniel Down.

Next Lady Sayer said that it was also not claimed that the Rights Section registrations at Entry Nos 6 and 7 extended over either Meldon Common, or Padley Common or Nattadon Common or Week Down or Jurston Green. Entry No. 65 with which she was also concerned is in the Register expressed to be limited to Chagford Common.

Next, Mr Sampson said that the Parish Council Objections Nos 570, 571 and 572 applicable to Nos 6, 7, 11, 12, 13, 17, 21, 23, 24, 28 and 36, to Nos 60, 62, 68, 73, 75, 78, 84, 89 and 92, and to Nos 95, 97, 100, 102, 104, 105 and 107 the grounds of which are: "the right does not exist over all the land to which it is stated to be exercisable" were intended only to be applicable (as therein indicated) to Padley Common.

Next Mrs P A Gibson referred to the Rights Section registration at Entry No. 92, and asked that it be modified by substituting "graze" for "stray".

Lady Sayer said that she had no notice of CCA Objection No. 297 and that she and those she represented had not been informed and claimed that I should therefore confirm the registrations at Entry Nos 6, 7 and 65 because (as I understood her) there was no subsisting Objection which affected her or them. Mr Keast having indicated that he did not accept this contention, I said that I would determine as a preliminary question whether Objection No. 297 had been effectively made against Lady Sayer and those represented by her.

On this question Lady Sayer gave oral evidence in the course of which she produced the statement (Sayer/31) specified in Part III of the First Schedule hereto. Such statement, so far as relevant to the preliminary question is:- "There was originally one objection No. 456 registered against our venville rights on Chagford Common; this was an objection by the Duchy but this was subsequently withdrawn ... There is no Land Section dispute concerning Chagford Common. There is therefore no objection to our rights registration thereon and we request you to confirm the registration at Rights Section Entry No. 6 without any modification".



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Questioned by Mr Keast, Lady Sayer said (in effect):- All they had from the County Council was the notice (Sayer/32) she produced (relating only to Objection No. 457). They had had other documents from the County Council, some of which were in the bundle (Sayer/33) which she produced and which included copies of 7 notices of reference (forms 36) dated 4 November 1977. The "not us" on that one of the said notices which referred to Objection No. 247 was in the handwriting of Sir Guy Sayer. It was his signature on the yellow form dated 14 Nov. 1970 which is on the Commons Commissioners file 209/D/341 and which has a reference "KJ/CR/Obj 297".

Mr Keast in support of Objection No. 297 having been made produced the County Council notice specified in Part IV of the First Schedule hereto. Under the Commons Registration (Objection and Maps) Regulations 1968, an objector having signed an objection on Form 26 (Schedule to the Regulations) is required (by the notes at the head of the form) to "send or take it to the registration authority"; he is not required to do any more; under the Regulations the responsibility for notifying the applicants for the registrations to which the objection relates falls on the registration authority (Devon County Council). Among the documents sent by the County Council to the Commons Commissioners on the basis of which this hearing was arranged, are a copy of the Register containing a note made on "2nd Nov. 1970" of Objection No. 297 made by "Chagford Commoners Assn", copy of an Objection numbered 297 apparently signed on behalf of "Chagford Commoners Assn", and the reference (form 36) dated 4 November 1977 and signed on behalf of the County Secretary. I find that as far as the CCA are concerned their Objection was made in accordance with the Regulations.

On my stating this finding and after some discussion as to whether any possible failure by the County Council duly to notify Lady Sayer and those she represented of the Objection having been made could possibly make the Objection void for all purposes, and with the agreement of Mr Keast and Lady Sayer, I adjourned generally for a day to be fixed the further consideration of the Rights Section registrations at Entry Nos 6, 7 and 65 except as regards Weekbrook Down.

Next (9 February) Mr Thomas Hutchings of 4 Nattadon Road, Chagford gave oral evidence in support of the Rights Section registration at Entry No. 75, being of rights attached to "Chaman" of turbary and to graze over Chagford Common, Meldon Common, Nattadon Common and Padley Common. The only Objections specifying this registration particularly are Water Board Objection No. 525 relating to strips along or off the west side of Nattadon Common, and Parish Council Objection No. 571 relating to Padley Common. Mr Hutchings after explaining that Chaman and 4 Nattadon Road are the same premises, read as his evidence the statement (TH/10) specified in Part V of the First Schedule hereto: in it he said (in effect):- He had common rights over Padley Common by right of OS No. 698 and of the enjoyment of his father and himself since 1927 when he (his father) built a bungalow on 4 Nattadon Road. OS No. 698 was an "open field" (see my decision of even date about Register Unit No. CL 174); in 1919 the then owners, Devon County Council sold it to Okehampton District Council for a building site. "An Act of Parliament was obtained to extinguish the common rights for this field to be closed for all time". His father (now deceased) and he had lived there (4 Nattadon Road) ever since the bungalow was built. He claimed common rights by undisturbed usage since 1927 which usage he described in his statement (TH/10).



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Mr Sampson put to Mr Hutchings the 1947 conveyance and the 1948 consent (PC/2 and PC/3) specified in Part VI of the First Schedule hereto; of them Mr Hutchings said that being on the Parish Council at the time, he knew all about them. By the 1947 conveyance Mr G C Hayter-Hames as donor conveyed to the Parish Council land (a little more or less than that in this decision called Padley Common) as "forming part of the common land of the Manor or reputed Manor of Chagford free of all rights of the donor but subject to all commonable rights now vested in any other person as tenants or former tenants of the said Manor or reputed Manor or otherwise howsoever; the Council to hold the property thereby conveyed for the purposes of subsection (i) and (ii) of section 4 of the Physical Training and Recreation Act 1937 or some one or more of them and not to be used for any other purposes. By the 1948 consent the Minister of Agriculture and Fisheries pursuant to section 194 of the Law of Property Act consented to the erection of a boundary fence of concrete posts and chain link fencing as indicated on the plan (southwest, south and southeast of Padley Common) and the erection of a pavilion, shelter, cricket pitch, tennis courts, children's playground, paddling pool and other work.. Mr Hutchings readily agreed with Mr Sampson that any ancient rights attached to OS 698 had been determined and that new rights could only be established by user from his house since 1927 and that any such user was with the knowledge that the Parish Council could exclude it by fencing.

Next (9 February) Mrs Patricia Anne Gibson gave oral evidence about the Rights Section registration at Entry No. 92 made on the application of Mr Gordon Edward Hughes being of a right attached to Batsworthy-on-the-Moor in Gidleigh to stray 66 cattle or ponies 320 sheep onto the whole of the Unit Land from CL134 (Gidleigh Common) and CL164 (North Quarter of the Forest of Dartmoor). The only Objections specifying this Entry No. particularly are Water Board Objection No. 525 relating to strips along and off the west boundary of Nattadon Common and Parish Council Objection No. 571 relating to Padley Common. At her request I read out the letter specified in Part VI of the First Schedule in which she made a number of statements of a general character about Batsworthy-on-the-Moor, about local history and the difficulties she and her husband Mr John Peter Gibson had had about registration of common land, particularly about a ruling given by myself (under the heading "Straying") in my decision dated 30 June 1983, re Forest of Dartmoor, CL164) against registrations of "to stray" and because the Unit Land adjoins their "gate to Moor", asked: "How can we let the animals out of the gate if you rule against to stray on CL173 because part of the common is a memorial field in Chagford 3½ miles away".

There was some discussion about the extraordinary situation of the farm in 1969 known as Batsworthy-on-the-Moor; it is (or was see below) about 66 acres, approximately triangular, its southwest and longest side, a little under ½ a mile adjoining Gidleigh Common (CL134), its north side being the North Teign River which on this side for about half its length adjoins Gidleigh Common and its west side which for about half its length adjoins a detached part of Gidleigh Common (CL134) and for the other half adjoins the Unit Land (CL173). Mrs Gibson explained (as is apparent from Entry Nos 146 and 147 which have since the date of the hearing replaced that at Entry No. 92 that she and her husband own part only (about 11 acres) of Batsworthy-on-the-Moor (as specified in Entry No. 92) and said that the remainder is either owned by or tenanted by Mr E C and Mrs R A Reynolds of Batsworthy Farm. Mr Keast said that the CCA, in view of the nearness of Batsworthy to the Unit Land and of Mr & Mrs Gibson being members of the Association and because Batsworthy is



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in such an extraordinary situation in relation to the Unit Land and Gidleigh Common (CL134), agreed to the registration being modified by substituting "graze" for "stray" provided that it was limited to the Frenchbeer part of Chagford Common (meaning of the two tracts so called that one which includes Kestor or Castor rock).

To this Mrs Gibson agreed.

Next (9 February) Mrs Edna Beatrice Mary Maggs gave oral evidence in support of the Rights Section registration made on her application at Entry No. 84 of rights attached to 28 Meldon Road of turbary, estovers and to graze 2 ponies 12 ducks over Meldon Common, Padley Common and Nattadon Common. The only Objections specifying this Entry No. particularly are Water board Objection No. 525 relating to strips along and off the west boundary of Nattadon Common, and Parish Council Objection No. 571 relating to Padley Common. She produced the statement (EBMM/10) specified in Part VII of the First Schedule hereto and said (in effect):- Her family had lived in Chagford for at least 280 years and at 28 Meldon Road for almost 60 years, which has always been in the possession of her family and now of herself. There had always been an understanding handed down to her that they had rights of turbary and estovers on Chagford, Meldon, Padley and Nattadon Commons. Her family previously her father and now her husband had regularly cut ferns and rushes on these commons. This right has been enjoyed unhindered for over 50 years. As to rushes and fern her father had them for bedding for poultry and pilling (? clamping) potatoes; her husband for potatoes and dahlia tubers.

Questioned by Mr Sampson she said (in effect):- She had never exercised grazing (although her grandfather did) so she was not claiming grazing and only mentioned what she would like to have. As to the questions put to Mr Hutchings (repeated to her by Mr Sampson), she did not know until recently that on the sale of the building estate to the District Council rights attached to it had been extinguished, and as to the right of the Parish Council to fence, they did not in fact fence. The bracken and fern they cut was from Padley Common; they went onto it at the most convenient point, which (by reference to the map) she identified as the southeast corner.

Next (9 February) in support of the Parish Council Objection No. 570, 571 and 572, no rights over Padley Common (applicable as aforesaid), Mr Sampson produced the affidavit (PC/4) of Mr Francis Henry Smardon specified in Part VI of the First Schedule hereto. He (now aged 81 years and having resided in Chagford for upwards of 58 years) said (in effect):- He had been well acquainted with the farming community and its customs and practices, and had served for 28 years on Chagford Parish Council and was a member of its Commons Registration Committee when the registrations and objections pursuant to the 1965 Act were considered by the Council and Committee. The Parish Council was the owner of Padley Common which was conveyed to them subject to common rights. Only those whose properties formerly paid dues to the Manor of Chagford and Collerew were entitled to common rights over Padley Common. Considering the various registrations the Committee referred to the Manorial Rent Roll and entered Objections against registrations; (i) in respect of properties which had not paid dues to the ancient Manor and thus did not appear in the Rent Roll (whether situated in the parish or not); (ii) in respect of modern properties situated on part of earlier premises which latter did not appear on the Rent Roll and (iii) in respect of claims by



Rogers (Entry No. 21) Hutchings (Entry No. 75) and Maggs (Entry No. 84) as being modern properties built on a former "open field" known as "Dennis Park" on the basis that common rights attaching to Dennis Park were extinguished when rights over it were released when the land was acquired by Okehampton Rural District Council for housing purposes. All the registrations to which no objection was made are in respect of properties within the parish which appear in the Rent Roll and thus are recognised by the Parish Council as entitled to rights of common over Padley.

Mr Sampson then produced the Manorial Rent Roll (PC/5) referred to by Mr Smardon; it included annual entries of rents paid up to 1938. The Rent Roll is now held by Messrs Rendells of Chagford as agents the Lord of the Manor, Sir George Hayter-Hames who succeeded Mrs Ellis by purchase.

Mr Hutchings accepted that the Manorial Rent Roll showed no payment in respect of Dennis Park being OS No. 698 as it was and now is: premises on both sides of Nattadon road and on the east side of part of Meldon Road.

Next Lady Sayer said (in effect):- She had been to the office of the County Solicitor who had lent her a paper which is in fact Objection No. 279; it was the first time she had seen it; having shown it to her husband she realised that the matter had been pursued in files held at their home. She had difficulty about some of her papers (this one is more than 14 years old), her husband being in hospital. She now accepted that the Objection had been put in. She was very sorry for coming to the hearing without it.

Mrs Maggs contended that her right of common (as registered at Entry No. 84) was unopposed as least as regards fern and rushes.

Next (9 February) Mr Sampson referred to the registration at Entry No. 102 made on the application of Mr Rowden Sawdye Windeat as owner of Beetor Farm: turbarry, to cut ferns, bracken and rushes, take stone, sand and gravel, to graze 30 cows 100 sheep and 10 ponies over the whole of the Unit Land. This registration is particularly specified in the following Objections: Water Board No. 525 about the strip along the west side of Nattadon Common, Parish Council No. 572 relating to Padley Common and CCA No. 712 the grounds of which are "the claim for grazing rights should be amended to stray only on this register unit". Mr Sampson said that Padley Common could by agreement be excluded from this registration, but was otherwise supported by Mr Thomas George Pollard as tenant of Mr Windeat.

Mr Pollard who is 37 years of age and who has been since 1964 tenant of Beetor Farm (the buildings are marked "Beetor" on the Register map, a little under a mile east of the northeast corner of Chagford Common) in the course of his oral evidence said (in effect):- During his tenancy, cattle from the farm had run over North Bovey Common being part of Register Unit No. CL148 (Headland Warren, Combe Down, etc.) and Chagford Common (being part of the Unit Land). Their grazing area was oval shaped as he indicated on my copy of the Register map TUVWXY, the centre of which is near Challacombe Cross (the junction of the B3212 road between Princetown and Moretonhampstead, and a minor road leading southwards towards Widecombe-in-the-Moor). From Mrs M E Croft* who had grazing rights on Chagford Common he had bought 12 acres of ground situated next to Beetor Farm northwest of Furze Park between the 2 roads. He had not grazed on the remainder of Chagford Common. Beetor Farm was an old holding having been in his (his uncle's) family for

*Note: Being I suppose the applicant for Entry No. 105..



hundreds of years. Beetor Farm is not in the parish of Chagford; all of it is in the parish of North Bovey. The part of the CL148 land where he grazed he knew as Shapley Tor, Birch Tor, Challacombe Road and Caravan Hill; the part of the Unit Land where he grazed he knew as Bush Down. He considered Bush Down (for grazing purposes) part of North Bovey Common "since 1905 we have been on the common". There was no North Bovey Commoners Association (so he could not answer questions about use of others of common land in North Bovey). He had no documentary evidence in support of his claim; he did not think there are any documents because his family had been there since 1600. He was quite content if his claim succeeded for his area to be limited (in the Register) to the part of Chagford Common he described.

Next (9 February) about the exercise of rights of the Unit Land generally and about the claim of Mr Pollard particularly, oral evidence was given by Mr Eric John Andrews who has occupied Little Weddicott Farm since 1956 and who is now chairman of the Chagford Commoners Association (in existence since 1947). He said (in effect):- The Unit Land comprises all the commons in the Manor of Chagford Collarew (he named the commons specified in the heading of this decision other than Weekbrook Down); by and large registrations are rights over all these commons although some have registrations over some only. The Manor from 1918 (or before) to 1936 (or after) was owned by Mrs Ellis; she had the rents shown in the Manorial Rent Roll (PC/5); in about 1936 the rents were redeemed at 20 years purchase. The Committee (of the Association) had gone through the registrations and only objected to those which were not within the Rent Roll (rent paid in respect of the holding); conversely they accepted the registrations of rights attached to farms identifiable in the Rent Roll. In this part of Devon for every parish there were commons for the parish; farms not within the parish did not have rights over the Chagford Common and any of their animals there were strays. He agreed with Mr Smardon's affidavit (PC/5) particularly paragraph 4. The larger farms were easily identifiable with those mentioned in the Rent Roll; some of the smaller not so easily identifiable were individually considered by the Committee (of the Association) and the claims of those which were doubtful were treated as valid. Generally he regarded the Committee as authoritative and accepted their views.

As to the claims of Mr Pollard, Mr E J Andrews after explaining that Mr Pollard is his nephew said (in effect):- "He has no right in our common, we have no right in his common; it is as simple as that". Any animals of Mr Pollard on Chagford Common were strays. Chagford Commoners jealously regarded their parish boundaries; provided Mr Pollard put animals on his common, it was accepted that one of the hazards of the open moors was that animals might stray to another common. But it is not for them deliberately to lead their stock on another person's common. As to what Mr Pollard had bought from Mrs M E Croft, this was only 15 months ago. Mr Pollard is not a special case; his lead runs as far as but not across, the parish boundary.

Next Mr Keast against the claim of Mr Pollard submitted (in effect):- It is quite clear that Beetor Farm is not within the Manorial Records and that only farms in the parish of Chagford do appear therein. Any usage from Beetor Farm is of recent origin. Any of his animals on Chagford Common should be treated as strays. The matter is not of academic importance only, because the effect of allowing this registration would be to double his entitlement on the commons (meaning the Unit Land, CL148 and CL164), particularly as there are no visible boundaries between any of them. My decision should enable the Unit Land to be grazed on a regular basis.



Mr Sampson in support of the claim of Mr Pollard submitted (in effect):- There was a long established leas for Beator Farm over the area shown to me (TUVWXY on my copy of the Register map). This is not a device to increase the grazing right. I should not be put off by what might be the effect upon other moors; there was nothing wrong in the rights claimed overlapping the parish boundary and no difficulty in managing the commons would result. Straying could in particular circumstances include a right of grazing.

Next (9 February) Lady Sayer gave oral evidence in support of the registrations at Entry Nos 6, 7 and 65 during the course of which she read her said statement (Sayer/31) saying (in effect):- Cator is an ancient holding which they purchased "with its venville and manorial rights" in 1928. It has 2 acres of land on which they keep livestock, and "we have exercised our common rights of grazing turbary and estovers throughout the whole period of our ownership". The rights are exercisable on the Forest of Dartmoor and the adjoining commons known as the Commons of Devon which form a ring around the central Forest. Their status was established by the decision of the Chief Commons Commissioner dated 12 March 1976 about Register Unit CL148 and again by another decision of his dated 29 June 1977 about Register Unit No. CL190 and confirmed by a judgement of the High Court dated 11 January 1980. The Duchy who made an Objection have withdrawn it.

Lady Sayer in answer to questions by Mr Keast said (in effect):- The "agricultural buildings" at Cator comprise a large shed which accommodated ponies and a smaller shed for a donkey for her grandchildren, and a like shed for an Atco motor mower. Now she does not graze any animals from the property but she had grazed ponies. She agreed that Cator does not appear in the Manorial Rent Roll and could not say whether her ponies ever grazed on Chagford Common. One of her ponies had been found near Princetown so it may have grazed on Chagford Common. She agreed she had no positive evidence that any grazing from Cator had been on Chagford Common and could not remember when she had ever taken turf from there; but she regarded this as immaterial to these proceedings; they had "turf ties on the Forest", and she was entitled to take turf from Chagford Common. The venville position was in 1890 made perfectly clear and it was clear from their deeds that they had venville rights. They had not ever taken stone or fern from Chagford Common but she could have done so if she had wanted to.

Next Mr Keast made submissions against the claims of Lady Sayer referring me to my decisions dated 30 June 1983 re the Forest of Dartmoor (CL164) and re Ditsworthy Warren, etc in Sheepstor (CL188).

Next (10 February) Mr Keast produced the table specified in Part VIII of the Second Schedule hereto summarising the Rights Section registrations with a note against each of the relevant Objections. This and Mr Keast's observations on it have been helpful to me in the preparation of this decision.

Next (10 February) Mrs Canning referred to Water Board Objection No. 525 (applicable to Nattadon Common only) the grounds of which are that the rights of common do not extend over the land shown on the plan enclosed therewith and thereon coloured green or should be modified to the extent necessary to enable the board to exercise their easements and rights. The plan so coloured comprises a strip about 9 yards wide extending along or very near and within the west boundary (about 350 yards) of Nattadon Common and two strips off at right angles



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each about 90 yards long. She submitted that any confirmation that I might make of any registration within the Objection should be subject to the "Water Authority Provision" as set out in paragraph 2 of the Second Schedule hereto and in support of such suggestion called as a witness Mr Peter Hill who is 47 years of age and has lived in the parish of Chagford all his life.

Mr Hill said (in effect):- He understood that the water supply for Town of Chagford was in about 1860 put in by the Reverend George Hayter-Hames, the water having an underground source from the watershed at Nattadon. Later in the 1900's, the supply was enlarged by Chagford Parish Council acting for Okehampton Rural District Council as agent; the source of the water was enlarged; and a reservoir was built a short distance north of Nattadon Common where marked on the Objection plan. There were pipes and inspection chambers along and on the land coloured green on the Objection plan. The North Devon Water Board came into existence in 1945 and took over the works shortly afterwards; the South West Water Authority succeeded them on 1 April 1974. He (the witness) had never heard of there being any conveyance of any interest in these strips by the Rev G Hayter-Hames or any of his successors; no such conveyance was (so the witness thought) ever necessary because the family had always lived in the neighbourhood (and must therefore have known about the water supply).

It was then pointed out that present at the hearing was Lady Ann Hames wife of Sir George Hayter-Hames. She indicated that although not wishing to take any part in the proceedings, she could say that she knew of no such conveyance.

Next (10 February) Mr Colin Sturmer who has since 1965 been employed by the Duchy of Cornwall and since 1970 been the agent for their Dartmoor Estate gave oral evidence in support of the Duchy Objection Nos. 457 (no shooting), 458 (no piscary) and No. 459 (no pannage) in the course of which he produced the documents specified in Part IX of the First Schedule hereto. He said (in effect) in general the Duchy had taken steps to prevent any person not by them particularly authorised, shooting and fishing on common land owned by the Duchy; anybody caught fishing or shooting would be asked to desist. Nobody who had been so caught and so asked had ever claimed to do so by right. He believed that this policy was in continuation of what had been done before his time, such belief being supported by the documents he produced. As to pannage there are no oak trees on the Unit Land and as far as he knew no pigs had ever grazed there.

Mr Sturmer pointed out that the Duchy Objection did not (owing to some mistake he thought) extend to Entry No. 77 which included "shooting", No. 91 which included grazing "10 ducks", No. 98 which included grazing "6 ducks and 6 geese" and No. 99 which included "piscary pannage". To this Mr Andrews said that the Association would not wish to support a registration which contained shooting, piscary or pannage.

Next (10 February) Mr Sampson said that since the Parish Council made their Objection No. 572, further consideration had been given to the inclusion in it of Entry Nos. 97 and 104 made on the application of Mr C Serpell and Mrs M Shirley-Price and they were satisfied that the lands referred to in these registrations were part of Gibbons Meadow mentioned in the Manorial Rent Roll. He therefore asked that as regards these registrations the Objection should be considered as withdrawn, so that as far as the Parish Council are concerned they could both be confirmed without any modification.



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Next Mr Sampson made submissions about my excluding Padley Common from the registrations at Entry No. 6 (Sir G B and Lady S R P Sayer), 7 (D M Scott), 25 (T Hutchings), 24 (E B M Maggs) and 92 (G E Hughes).

Inspection

On 11 February attended by Mr E J Andrews and Mr T G Pollard, I inspected the part of Chagford Common over which Mr Pollard had at the hearing claimed to have a right of grazing. Subsequently unattended, I motored along the public roads which adjoin or cross the three tracts and six pieces which together make up the Unit Land.

Weekbrook Down

This piece of the Unit Land is subject to Arscott Objection No. 323 and Satow Objection No. 565. I had the evidence above summarised against the inclusion of this piece in the Land Section registration; nobody supported its inclusion. My decision is therefore that the Land Section should be modified by excluding the piece.

I had evidence that the remainder of the Unit Land was generally regarded as part of the waste land of the manor of Chagford and Collarew and subject to at least one (as hereinafter appears many more than one) right of common and therefore within the definition of "common land" in section 13 of the Commons Registration Act 1965. Accordingly my decision is that as regards this remainder the Land Section registration was rightly made and should therefore be confirmed in accordance with paragraph 1 of the Decision Table being the Second Schedule hereto.

By subsection (7) of section 5 of the 1965 Act, the Arscott and Satow Objections Nos 323 and 565 are to be treated as objections to all the Rights Section registrations. My decision is therefore that all such registrations should be modified at least to the extent necessarily consequential on the exclusion of the Weekbrook Down from the Land Section registration.

As to whether by reason of the said subsection (7), any of the Rights Section registrations should be further modified, see below.

Water Authority

From the evidence above summarised, I conclude that any right to dig stone, sand or gravel there may be on Nattadon Common, has become subject to some sort of restriction against any interference with the water pipes and inspection chambers which have so long for the benefit of the inhabitants of Chagford existed there; and that accordingly any such registrations should in some way be modified appropriately.

Nobody at the hearing suggested that the Water Authority Provision put forward by Mrs Canning was not appropriate for giving effect to this conclusion. Similar Provisions have been agreed about similar registrations over the Forest of Dartmoor



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(Register Unit No. CL164) and other Commons in the Dartmoor National Park. My decision is accordingly.

Objection No. 525 specifies 62 registrations. Of these the following contain no reference to taking stone, sand or gravel and the modification will therefore not be applicable to them whether or not on other considerations I consider it proper to confirm or to refuse to confirm them:- Nos 3, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 28, 33, 34, 36, 59, 60, 61, 62, 66, 68, 71, 73, 75, 76, 78, 81, 82, 83, 84, 87, 91, 92, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105 and 107. These Water Authority Provisions will however apply to the remaining 14 registrations all of which contain a right of some kind to take stones, sand or gravel:- Nos 6, 7, 23, 30, 31, 40, 67, 86, 88, 89, 90, 93, 94 and 102; of these 14 registrations Nos. 6, 7, 86, 88, 90 and 102 will be avoided for the reasons appearing below under the heading "Others"; so in the result the Water Authority Provision will become applicable only to Nos. 23, 30, 31, 40, 67, 89, 93 and 94.

4 Nattadon Road/28 Meldon Road

These registrations at Entry Nos 75 and 84 were made on the application of Mr T Hutchings and Mrs E B M Maggs respectively. No. 75 is over Chagford Common, Meldon Common, Nattadon Common and Padley Common; No. 84 is over Meldon, Padley and Nattadon Commons. Both are within Parish Council Objection No. 571 which if not originally was by Mr Sampson at the hearing limited to Padley Common.

Both Mr Hutchings and Mrs Maggs when giving evidence accepted that in 1919 when OS No. 698 was acquired for building a housing estate (now known as Dennis Park), all rights attached to it over other lands were extinguished; by Act of Parliament, Mr Hutchings seemed to think. I have been unable to trace any local Act dealing particularly with OS No. 698 and I cannot think of any section of any general Act which would necessarily have this effect; so I feel some difficulty in inferring that the mere acquisition of OS No. 698 by the District Council for building necessarily extinguished any rights over Padley Common which were then attached to it. So I next consider whether there were in 1919 any such rights.

OS No. 698 in 1919 was considered to be one of "Chagford Open Fields" about which at this Unit Land hearing I had little information although about them at a contemporary hearing concerned with Register Unit No. CL174 I had much information, see my decision of even date. This information does not support and in my view is if anything against there being any such rights so attached. So even assuming that OS No. 698 was held with Nattadon Farm as Mr Hutchings said and even assuming that (about this I have no evidence) there were rights over Padley Common attached to such Farm, an "open field" owned with the Farm would be special; at least enough to negative any inference that there were attached to it all the rights attached to the Farm. Further, that none of the plots on the Dennis Park Estate are mentioned in the Manor Book (PC/5), is an indication that after 1919 neither OS No. 598 nor any of the plots into which it was divided had such rights. In the absence of any evidence of any rights being in 1919 attached to any part of the Dennis Park Estate, I conclude that there were then no such rights. So Mr Hutchings and Mrs Maggs to succeed must establish rights by usage either under the Prescription Act 1832 or under some presumption of a grant in accordance with the principles stated by the Court of Appeal in *Tehidy v Norman* 1971 2QB 528.



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Mr Hutchings described his usage (TH/10):-

"My late father and I have lived here ever since the bungalow was built, he took turbary and estover and I have carried on where he left off. I first grazed ponies on Padley in 1932 and my ponies are grazing there still. I take bracken for the garden, rushes to cover my potato clam, bean sticks for the garden and I expect I am one of the few who still cut vags (peat) on common land for fuel".

As to grazing his claim (in his registration) is for 20 sheep and 5 ponies or cattle; according to the supplemental Register map, 4 Nattadon Road is a dwelling-house on a plot having a frontage of about 45 feet and a depth of about 140 feet (about 1/7th of an acre). He said nothing about sheep or cattle and never quantified the ponies. To establish a right of common appurtenant, it is not enough for Mr Hutchings that ponies owned by him or his father were on Padley Common; it is necessary that they should be grazing there "as of right" within the legal meaning of these words. I have to consider whether "he believed himself to be exercising a right or merely doing something which he felt confident that the owner would not stop but would tolerate because it did no harm", see *Beckett v Lyons* 1967 1Ch 449. Further the grazing to be as of right must not have been secretly; the absence of deception is not enough, see page 42 of my decision dated 30 June 1983 re Forest of Dartmoor (CL164). I cannot infer that the ponies of Mr Hutchings and his father while grazing would not only be generally recognised as belonging to them, but would also be accepted as grazing there in exercise of a right appurtenant to 4 Nattadon Road. Under *Tehidy v Norman* supra the relevant period is 20 years, so I am not concerned (except so far as it can be reflected backwards) with his grazing after 26 September 1970 (the date of the Objection). The admission (extracted by Mr Sampson in cross-examination) that during the relevant period Mr Hutchings was a member of the Parish Council and knew that they were the owners contemplating using Padley Common as a recreation ground puts in question whether his grazing was "as of right" and to make it necessary for him to explain in detail how he had or could graze 20 sheep and 5 ponies or cattle. In the absence of any such explanation and having regard to the inherent improbability of there being such right of grazing attached to a plot of land as small as 4 Nattadon Road, I find that any such grazing was not as of right.

His taking bracken, rushes and bean sticks is not within the registration; in it the only addition to "graze" is turbary. As to turbary, without any explanation as to how and where he cuts peat, I cannot infer that this taking was as of right.

For these reasons I conclude that as regards Padley Common at least registration was not properly made and therefore as against Mr Hutchings Objection No. 571 wholly succeeds.

As to the usage of Mrs Maggs, the rights claimed are: "turbary, estovers, to graze 2 ponies 12 ducks". As above stated she at the hearing did not claim a right to graze. As to turbary and estovers, "the understanding handed down", so far as it related to things done more than 60 years ago, could not relate to 28 Meldon Road, and is therefore irrelevant. As to things done from 28 Meldon Road, the consideration set out above about 4 Nattadon Road are applicable. Even assuming (which I doubt) that rights of turbary (digging turves and peat)



and estovers (taking wood) could include taking fern (bracken) and rushes, a usage of taking fern and rushes could not conversely support a claim to rights of turbary and estovers. Further I consider that in the context of the size of her holding (no larger than 4 Nattadon Road) the taking of fern and rushes which she described was within the above quotation from *Beckett v Lyons* supra, something which an owner "would tolerate because it did no harm". So I reject the contention that the absence of any opposition to her taking fern and rushes established a right. As to the absence of any opposition, in the sense of formal Objection, Parish Council Objection No. 571 puts in question all the registration at Entry No. 84 whatever may be the meaning of turbary, estovers.

For these reasons, mostly the same as those applicable to 4 Nattadon Road, I conclude that as regards Padley Common at least the registration at Entry No. 84 was not properly made and therefore as against Mrs Maggs Objection No. 571 wholly succeeds.

Entry Nos. 75 and 84 also include Meldon Common and Nattadon Common, and No. 75 includes Chagford Common. Neither of these Nos. is specified in either of the CCA Objections; so these entries if Padley Common and the Water Authority Nattadon strips had never been included in them, would, but for the Arscot and Satow Objections, have become final under section 7 of the 1965 Act without any hearing before a Commons Commissioner. Nevertheless the Entry Nos. are before me in question by reason of the said 3 last mentioned Objections and I must give a decision about every part of them; in my view I am not by some arithmetical subtraction process obliged to assume that the registrations were properly made as regards Meldon Common, Nattadon Common and Chagford Common; if the evidence I have about their propriety in relation to Padley Common, has brought out incidentally that they were not properly made as regards the other three Commons. From the relative situation of these Commons and their present appearance, I conclude that if there are not attached to 4 Nattadon Road and 28 Meldon Road any rights over Padley Common, there could not sensibly be any rights so attached over the other three Commons. There is I think no good reason why I should not give effect to this conclusion; so my decision is as stated in paragraph 3 of the Second Schedule hereto, confirmation of the registrations at Entry Nos. 75 and 84 is refused.

Venville

Under this heading I consider the registrations at Entry Nos. 6, 7 and 65, at the hearing supported by Lady S R P Sayer. They were all in question under CCA Objection No. 297; in addition Nos. 6 and 7 were in question under Parish Council Objection No. 570 and Arden Objection No. 650.

By giving evidence in support of these registrations as above summarised, I understood Lady Sayer to be abandoning the adjournment of their consideration to a day to be fixed which I had earlier in the hearing granted as above stated for her benefit.



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Arden Objection No. 650 which related to Steniel Down, was at the hearing conceded by Lady Sayer; so my decision is that this Objection wholly succeeds, so that the registrations at Entry Nos. 6 and 7 must be modified at least by excluding Steniel Down from column 4.

The registrations are essentially the same as those considered in my decision dated 30 June 1983 about land in Sheepstor (Ditsworthy Warren etc being CL188) and which for the reasons therein set out I refused to confirm. At the CL188 hearing in 1982 about these registrations evidence was adduced and arguments made in some detail by a solicitor acting for Lady Sayer and those she represented at this Unit Land hearing. The solicitor dealt in detail with the 1976 and 1977 decisions, the 1980 judgement and the 1979 letter mentioned in Lady Sayer's statement (Sayer/31) and the 1890 clarification (History of the Rights of Common on the Forest of Dartmoor and the Commons of Devon published by the Dartmoor Preservation Association, printed octavo) mentioned by her when questioned. Her evidence and argument at this Unit Land hearing added nothing to the said CL188 evidence and arguments. I am not persuaded by anything in her said statement that I should not adhere to the reasoning set out in my said CL188 decision, and accordingly in relation to these Unit Land registrations for the reasons therein set out my decision is the same.

That these registrations are included in Duchy Objection No. 456 which has been withdrawn provides no reason why I should not give effect to the CCA Objection No. 297 which includes these registrations and which was supported at the hearing.

I do not accept the allegation by Lady Sayer that she has ever in any now relevant sense exercised the rights specified in registration at Entry No. 6. Her evidence to this effect was made on the assumption that the Unit Land and the Forest of Dartmoor, are all one common; an assumption which for the reasons set out or referred to in my said CL188 decision is I think mistaken. In accordance with the evidence of Mr E J Andrews I find that there was no grazing on the Unit Land from the lands in Widecombe-in-the-Moor and in Holne mentioned in these three registrations. I conclude therefore that these registrations are not supported either by prescription at common law or under the Prescription Act 1832, or by any grant presumable in accordance with *Tehidy v Norman* supra.

For the above reasons my decision is that these registrations were not properly made and that as against them Objection No. 297 wholly succeeds. Accordingly as stated in paragraph 4 of the Second Schedule hereto confirmation of them is refused.

Batsworthy-on-the-Moor

Under this heading I consider the registration at Entry No. 92, which was on 19 April 1984 (after the hearing) replaced by Nos. 146 (edged red) and 147 (edged blue and green). This registration is particularly mentioned in Parish Council Objection No. 571; it is also in question under subsection (7) of section 5 of the 1965 Act by reason of the Arscott and Satow Objections.



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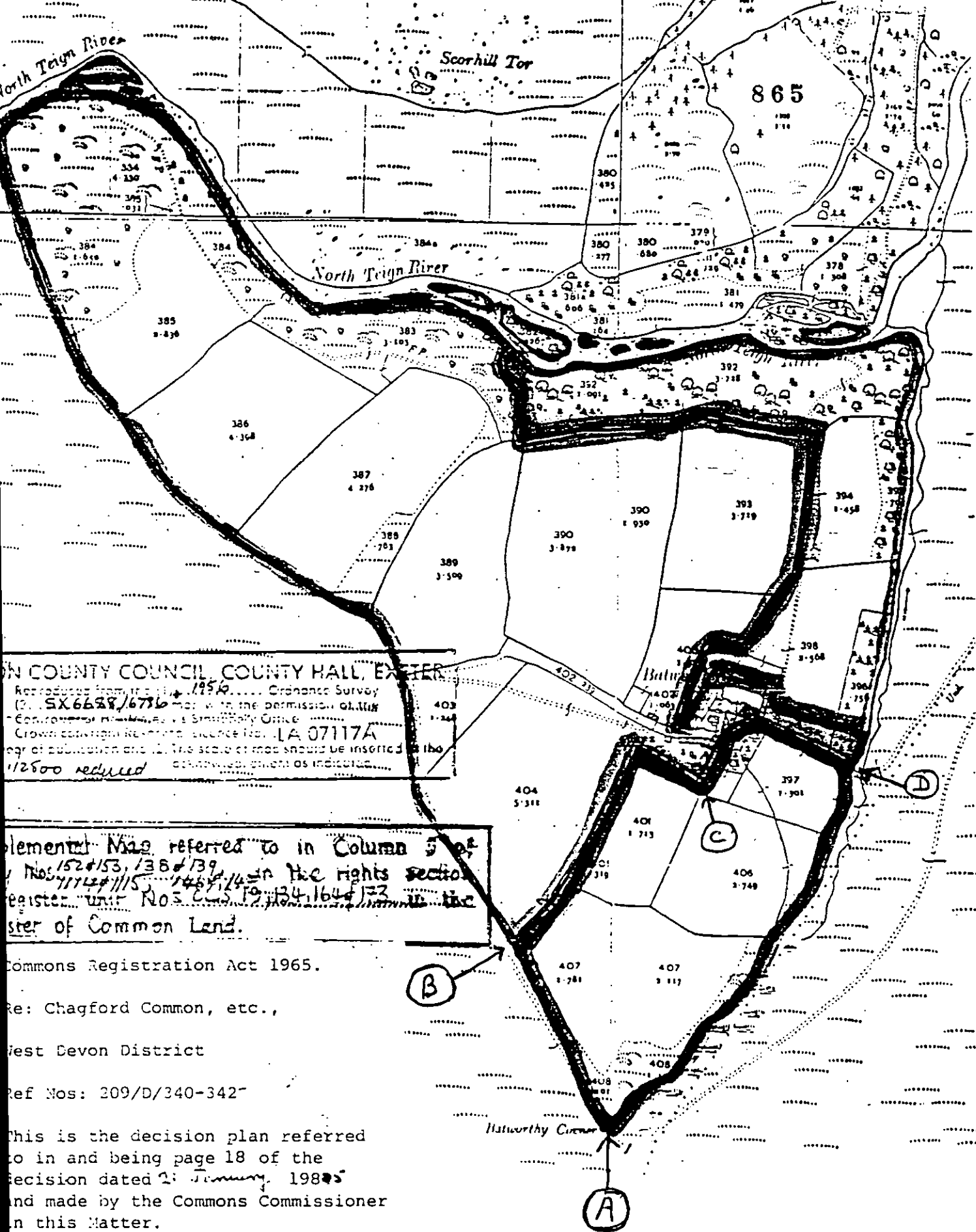
About this registration I had the above summarised evidence of Mrs P A Gibson and consequential discussion; and also the above recorded agreement of Mr Keast on behalf of CCA and Mrs Gibson that registration should be confirmed with the substitution of "graze" for "stray" with the limitation of it to the Kestor part of Chagford Common.

The discussion was on the basis of the registration being now expressed as "to stray" would by me be avoided in the absence of any evidence or argument about it, but with liberty to apply for a further hearing should any person concerned wish to adduce evidence of its propriety. This assumption was correctly made see below under the heading "Others" about Entry Nos. 73, 100 and 106. I adhere the view I expressed at the hearing that I ought to give effect to the agreement about Entry No. 92 so made by Mr Keast and Mrs Gibson.

One of the consequences of doing this will be that the Parish Council Objection No. 571 as regards this registration wholly succeeds.

My note of the discussion does not show whether it was intended to apply to the whole of Batsworthy-on-the-Moor as specified in Entry No. 92, or to apply only to the 11 acres mentioned by Mrs Gibson as having been recently acquired by her and her husband; also I had at the hearing no particularised description of such 11 acres. It was I think implicit in the discussion made at the hearing that the agreement related only to the 11 acres because in 1969 this part of the farm, unlike the remainder, did not adjoin and had no convenient access to Gidleigh Common (CL134); and I give effect to the agreement accordingly. As to the locality of the 11 acres after the hearing I have had from the County Council as registration authority a copy of the supplemental map referred to in the registrations at Entry Nos. 146 and 147; page 18 of this decision is an uncoloured copy of such map, the land edged red on the map being thereon marked "ABCD".

So my decision as regards Entry Nos. 92, 146 and 147 is as stated in paragraph 5 of the Second Schedule hereto; but in case I misunderstood the agreement reached at the hearing I give to the persons who applied for the registrations at these Entry Nos. and to any other persons present or represented at the hearing or entitled to be heard at it and to their successors in title liberty to apply for an alteration of this part of my decision; any such application should be made within the three months time limit and otherwise as specified in paragraph 12 of the Second Schedule hereto.



DEVON COUNTY COUNCIL, COUNTY HALL, EXETER
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Elementary Map referred to in Column 5 of
 Nos 152 & 153, 138 & 139
 Nos 111 & 115, 148 & 149 in the Rights section
 Register unit Nos 225, 19, 134, 164 & 133 in the
 Register of Common Land.

Commons Registration Act 1965.

Re: Chagford Common, etc.,

West Devon District

Ref Nos: 209/D/340-342

This is the decision plan referred
 to in and being page 18 of the
 decision dated 21 January, 1985
 and made by the Commons Commissioner
 in this matter.

C. A. Butler

Commons Commissioner



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The relevant registration at Entry No. 102, was made on the application of Mr R S Windeat and at the hearing supported by Mr T G Pollard.

The grounds of Objection No. 712 although expressed as "... should be amended to stray only ...", in my opinion puts the whole registration in question, because such an amendment was not accepted by Mr Pollard and because I would for the reasons below stated under the heading Others have avoided the registration if it had been so amended.

Mr Pollard both at the hearing and during my inspection described the part of the Unit Land over which he wished the registration to extend. His description was not precise and during my inspection I concluded that I could supply the necessary precision and accordingly I define the part ("the CL 173 Green Coombe Part") of the Unit Land with which I am now concerned as being the part of the Unit Land situated east of the middle line of the public road (fit for motor traffic) which starts at a point on the B3212 road from Postbridge to Moreton Hampstead marked "GP" on the Register map a little under $\frac{1}{2}$ mile south-west of Challacombe Cross and not far from the figure "1412" on the map, and runs north-eastwards towards Jurston. The east boundary of the CL 173 Green Coombe Part (also part of the east boundary of the Unit Land) is a small stream which rises in some wet ground near the south end of the CL 173 Green Coombe Part and flows northwards down to Jurston and then on to join the River Bovey not far from its source at Langford Bridge. On the other side of the said boundary is the north part ("the CL 148 Land") of Register Unit No. CL 148, in the Register described (for the purposes of this decision not altogether appropriately) as "a tract of land about 1,617 acres called Coombe Down, Hookney Down and Headland Warren in the Parish of North Bovey".

I conclude therefore that except as regards CL 173 Green Coombe Part (as above defined), the CCA Objection No. 712 as regards this registration wholly succeeds, and accordingly my decision is to this extent at least the Unit Land is free from any rights of common attached to Beetor Farm.

I accept the evidence of Mr E J Andrews and from it infer that the Unit Land is grazed on a parish basis meaning that grazing from lands outside the parish is generally regarded as irregular; but from this inference it does not follow that all the graziers in the parish exercise one right vested in the inhabitants of the parish as such; such a right is not recognised by law, see Gatewood's case (1607) Cro.Jac 152 and 6 Co. Rep 59b and the numerous cases explaining it. However this does not prevent there being numerous pieces of land in a parish, each having appurtenant to it a right of common which is practically identical with all the others, see *De la Warr v Miles* (1881) 17 ChD 535 at page 586. I conclude therefore that the circumstance that the grazing of the Unit Land has been generally on a parochial basis does not as a matter of law automatically preclude my finding right of common appurtenant to Beetor Farm over the CL 173 Green Coombe Part has been established by usage either under prescription at common law, or under the Prescription Act 1832, or under a grant presumable in accordance *Tehidy v Norman supra*.



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I therefore now consider whether there was grazing on the CL 173 Green Coombe Part as described by Mr Pollard; and if so whether such grazing was as of right within the legal meaning of these words for a sufficiently long period to establish a right; and if so whether whether such right is as Mr Keast suggested somehow linked with the rights appurtenant to Beetor Farm over the CL 148 Land (Headland Warren etc).

Having gone so far in the preparation of this decision I looked at the CL 148 Register (copy in the office of the Commons Commissioners) and found that no right attached to Beetor Farm had been therein registered at any time. I also looked at the application (copy in the office of the Commons Commissioners) dated 12 December 1969 and made by Mr R S Windeat (being that referred to in the Unit Land registration at Entry No. 102; in it he claimed no rights over the CL 148 Land, although he did claim rights over the Unit Land and also for other Register Units. The Unit Land registration at Entry No. 102 does not mention the CL 148 as Land, although it does mention the 4 other Register Units, CL 19, CL 134, CL 164 and part CL 176 (Throwleigh, Gidleigh, the Forest and South Tawton).

At the conclusion of the hearing and of my inspection, I was under the impression that Mr Pollard had throughout his evidence spoken on the basis that there was attached to Beetor Farm (being a farm in North Bovey) a right to graze the part of the CL 148 Land which he at the hearing identified with the letters "TUVWXY", an area more than twice as large as the CL 173 Green Coombe Part. I was also under the impression that Mr Sampson, Mr Keast and Mr Andrews spoke on the same basis.

The possibility that my said impression or the said basis was mistaken might put a different aspect on all that was said at the hearing and all that I saw on my inspection. Accordingly about this registration at Entry No. 102, I consider I ought not to give a decision without giving those concerned an opportunity of making representations to me as to the relevance if any of there being no registration in the CL 148 Register of any rights attached to Beetor Farm. Accordingly as stated in paragraph 6 of the Second Schedule hereto I now give no decision about the registration at Entry No. 102 (except that it could not apply to any part of the Unit Land other than the CL 173 Green Coombe Part) and I give liberty to the persons in such paragraphs specified to make representations to me about the matters under this heading mentioned, such representations to be made within → SIX WEEKS and otherwise as in such paragraphs specified. If pursuant to such liberty any representations are received in the office of the Commons Commissioners I shall having regard to their content either direct the hearing to be continued as regards this registration or give a decision on what happened at the February 1984 hearing or give such other direction as seems to me to be just. But to achieve finality as regards this registration, I now say, that if no such representation is received in the office of the Commons Commissioners with six weeks of this decision being sent out (or such extended time as a Commons Commissioner shall allow) I shall as regards the registration at Entry No. 102 give a second decision on the basis that there is not appurtenant to Beetor Farm any right of Common over any part of the CL 148 Land and that those at the hearing who presented evidence on the basis that there was such



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a right (as I now think Mr Pollard, Mr Andrews, Mr Keast and Mr Sampson did) mistakenly overlooked that there was no such right.

Shooting, piscary and pannage

About the above I accept the evidence of Mr Sturmer and, conclude, nobody suggesting otherwise; that the Duchy Objections Nos. 457, 458 and 459 wholly succeed. My decision is therefore that the registrations at Entry Nos. 23 and 64, Nos. 31 and 64 and Nos. 9 and 64 should if they are otherwise (as 9, 23, and 31 are see below under the heading Others) properly confirmable should be modified by deleting "or 150 pigs" (No. 9), "shooting" (No. 23), "piscary" (No. 31) and "turbary piscary pannage" (No. 64).

As regards the registration at Entry Nos. 77 and 99 particularly mentioned by Mr Sturmer, his evidence is equally applicable to them and Mr Andrews as CCA chairman agreed they should be modified. These registrations are only in question by reason of sub-section (7) of section 5 of the Commons Registration Act 1965 consequentially on Arscott and Sutor and Objections Nos. 323 and 560, the grounds of which have nothing to do with shooting and pannage. Nevertheless having jurisdiction bearing in mind that the only evidence I had about these registrations was that of Mr Andrews who otherwise supported them as approved by the CCA I conclude that having jurisdiction subject to the liberty to apply next granted I should to produce conformity in the register modify them as suggested by Mr Sturmer.

Accordingly my decision in respect of the registrations at Entry Nos. 77 and 99 if they are otherwise (as they are see below under the heading Others) properly confirmable be modified by deleting "shooting" (No. 77) and "pannage" (No. 99); but because Mr Alfred Joseph Baker and Mr Alexander Walter Meldron who applied for the registration may not have known that this modification would be suggested at the hearing and might be able to justify shooting or pannage, I give to each of them and their successors title liberty to apply to set aside this part of this decision; such application should be made within the THREE MONTHS limit and otherwise as specified in paragraph 12 in the Second Schedule hereto.

Others

CCA Objection No. 297 the grounds of which are the right does not exist at all extends to the following registrations (omitting Nos. 6, 7 and 65 dealt with under the heading Venville); Nos. 3, 41 to 58 inclusive, 64, 79, 80 and 88. The grounds are generally expressed putting each registration in question as regards all the tracts and pieces which together make up the Unit Land. No evidence or argument was offered in support of any of them and I have the evidence of Mr Andrews above summarised against them. Additionally as regards Nos. 46, 49, 54 and 58 I have letters (yellow forms) sent to County Hall referring to "Obj 297", signed by Lt-Col P R Lane-Joynt, 46, Mr E H Woodward (49) and



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W H Norrish (54 and 58) agreeing to their cancellation. My decision is therefore that the registrations were not properly made and should not be confirmed.

CCA Objection No. 712 the grounds of which are:- ... claim for grazing should be amended to stray only on this registration unit, extends to the following registrations (omitting No. 102 dealt with under the heading Beetor Farm):- Nos. 17 (replaced by Nos. 119 and 120), 72 (replaced by Nos. 116 and 117), 86, 90 and 95. for the reasons stated under the heading "Straying" in my decision dated 30 June 1983 in re Forest of Dartmoor (CL 164), I consider that a right "to stray" is not properly registrable; so if the registrations were amended I would refuse to confirm them; in the result the Objection puts each of these registrations wholly in question and accordingly upon the same considerations as are set out in the preceding paragraph, my decision is that these registrations were not properly made and should not be confirmed. However because it is possible that the applicants for these registrations did not attend the hearing in belief that their registrations would be confirmed with the amendment suggested in the Objection, I give to Messrs Arthur Charles Endacott and Florence Edith Endacott, Lt-Col John Rose Terry, William Hamlyn White, Mr & Mrs J B Graham, Mr Christopher George Hill, Mr James Duning and Mr Edwin George Harvey who applied for these registrations and their successors in title liberty to apply to set aside this part of this decision. Such application should be made within the THREE MONTHS period and otherwise as specified in paragraph 12 of the Second Schedule hereto.

Parish Council Objections Nos. 570, 571 and 572, the grounds of which are that the right does not extend over Padley Common, are applicable to the following registrations (here omitting Nos. 75, 84 and 92 being 4 Nattadon Road, 28 Meldon Road, and Batsworthy-in-the-Moor, and omitting the Nos. specified in the two preceding paragraphs) Nos. 11, 12, 13 (replaced by Nos. 136 and 137), 21, 23, 24, 28, 36, Nos. 60, 62, 68, 73, 78 and 89, and Nos. 97, 100 and 104, 105 (replaced by Nos. 130, 139, 140 and 141), and 107. Of these I shall as requested by Mr Sampson on 10 February treat Nos. 97 and 104 as free from Objection No. 572. The Objections as regards Padley Common put the registrations in question; in the absence of any evidence or arguments supporting these registrations I conclude that they were not properly made as regards Padley Common, and accordingly if otherwise confirmable (as all except Nos. 21, 73 and 100 are) my decision is that these registrations (except also Nos. 97 and 104) should all be modified by excluding Padley Common. Exceptionally I conclude that the registration at Entry No. 21 made on the application of Mr W E A Rogers was not in any respect properly made because to it the considerations above set out under the heading 4 Nattadon Road/28 Meldon Road are applicable; and exceptionally also I conclude that the registrations at Entry Nos. 73 and 100 being of rights of "to stray" are not proper for the reasons set out under the said CL 164 heading "straying"; accordingly as stated in paragraph confirmation of them is refused as stated in paragraph 9 of the Second Schedule hereto. However because it is possible that the applicant Mr W E A Rogers, and Messrs Irish Bros and Mrs Alice Mary Wells for these registrations did not attend the hearing in the belief that their registration would be confirmed with no greater amendment than the deletion of Padley Common, I give to them and their successors in title liberty to apply to set aside this part of this decision. Such application should be made within the THREE MONTHS period and otherwise as specified in paragraph 12 of the Second Schedule hereto.



The registration at Entry No. 106, although not specified in any Objection particularly, is in question under subsection (7) of section 5 of the 1965 Act, see above under the heading Weekbrook Down. The registration being expressed as a right "to stray" is for the reasons set out in my said CL164 decision under the heading Straying, in the absence of special circumstances irregular, and my decision is therefore that it was not properly made. However because it is possible that Mr William Gordon Hambley did not attend the hearing in the belief that the registration would be confirmed, I give to him and his successors in title liberty to apply to set aside this part of this decision. Such application should be made within the THREE MONTH period and otherwise as specified in paragraph 12 of the Second Schedule hereto.

The registrations confirmation of which is not hereinbefore stated to have been wholly refused, are listed in paragraph 10 of the Second Schedule hereto. Against ~~these~~ there was no CCA Objection, and the evidence of Mr Andrews was to the effect that they were properly made, subject only to such modification as in accordance with anything hereinbefore stated about them particularly, ought to be made to them. My decision therefore about them is as set out in the said paragraph 10.

Ownership

I consider that I can and should act on the suggestion made by Mr Sturmer on 9 February as hereinbefore stated. My decision is accordingly as set out in paragraph 11 of the Second Schedule hereto.

I suggest for the consideration of Devon County Council as registration authority that subsection (3) of section 6 of the Commons Registration Act 1925 may be applicable to the Ownership Section registration at Entry No. 2 (Collihole).

Final

Because much of this decision relates to persons who were not present or represented at the hearing and is dependent on agreement or statements about which there may herein be some mistake or error which ought to be corrected without putting the parties to the expense of an appeal, I give to any person affected by such mistake or error liberty to apply about it; such application should be made within the THREE MONTHS period and otherwise as specified in paragraph 12 of the Second Schedule hereto.

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.



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FIRST SCHEDULE
(Documents produced)

Part I: sent to Clerk of Common Commissioners before hearing

--	24 November 1983	Letter to Clerk of Commons Commissioners from Michelmores, Solicitors of Exeter, on behalf of Barclays Bank Trust Company Limited as executors of Sir George Hayter-Hames withdrawing their claim to ownership at Entry No. 4 so far as conflicting with the Duchy registrations at Entry Nos. 3 and 5.
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Part II: by Mr L A Arscott

LAA/1	--	Statement of evidence of Mr L A Arscott.
LAA/1/P	--	Copy plan annexed to below mentioned conveyance.
LAA/2	13 September 1960	Conveyance by William Michael Coniam Ellis and Mary Margaret Coniam Ellis to LAA and C H Arscott.
LAA/3	--	Photograph of Objection 323 land taken from the adjoining road looking south.

Part III: produced by or put to Lady Sayer on preliminary question

Sayer/31	--	Statement headed "...Entry No. 6 ... on behalf of Sir Guy and Lady Sayer..."
Sayer/32	1 March 1971	CR Form 28 (notice of objection) referring to Duchy Objection No. 327.
Sayer/33	--	Bundle of documents received by Lady Sayer from County Council about CL173 including 7 copy Forms 36 (notice of reference to a Commons Commissioner) relating to Objection Nos. 297, 323, 456, 560, 570, 575 and 650 (that relating to No. 297 marked "not us").



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Sayer/34 14 November 1970 Letter (yellow form) to County Council signed "G B Sayer": County Council reference "KJ/CR/Obj/297", agreeing to Entry No. 6 being amended (so far as not over the Commons of Devon).

Sayer/35 --

Sayer/36 25 October 1983 Letter from Chagford Parish Council.

Part IV: by Mr Keast on preliminary question

CCA/1 2 November 1970 Form 27 stamped Devon County Council, modifying Entry in Register of Objections: No. 297 addressed to Chagford Commoners' Association with pencil memo "Recd 13/11/70".

Part V: by Mr Thomas Hutchings

TH -- Statement of intended evidence.

Part VI: on behalf of Parish Council of Chagford

PC/2 3 July 1947 Conveyance by George Colville Hayter-Hames to Parish Council of Chagford.

PC/3 29 April 1948 Consent by Minister of Agriculture and Fisheries for the erection of fences on Padley Common under section 194 of the Law of Property Act 1925.

PC/4 7 November 1983 Affidavit of Francis Henry Smardon.

PC/5 1918 to 1934 Foolscap note book and ruled account book: "The Manors of Chagford and Colterew: amount of rent due to the said Manors Michaelmas 1918; Mrs Mary Elizabeth Taylor Ellis, Lady of the Manor".



Part VI: by Mrs P A Gibson

PAG/1 3 November 1983 Letter to Commons Commissioner.

Part VII: by Mrs Edna Beatrice Mary Maggs

EBMM/10 -- Statement by Mrs E B M Maggs with regard to Chagford, Meldon, Padley and Nattadon Commons.

Part VIII: by Chagford Commoners Association

CCA/1 -- Table of the registrations of this Register Unit showing the names of the applicants, rights registration, the lands to which rights are attached, parts of the Unit Land over which the rights are attached and the relevant objections (10 double foolscap pages).

CCA/2 -- Table (4 pages foolscap) showing Entry Nos. headed "approved", "approved subject to objections..." "consider", and "reject".

Part IX: on behalf of Duchy

Duchy/1 -- Specimen fishing licences, salmon week, salmon season, trout season, trout day and trout week.

Duchy/2 28 March Letters about shooting.
8 June
22 August 1908

23 April Letters about shooting.
24 May and
27 July 1910

10 September 1932 Letter listing persons who shoot at a rent.

2 October 1981 Letter enclosing £5 rent for permission to shoot over Riddon Ridge.

22 July and Exchange of letters between Duchy
5 August 1953 and Devon River Board as to the Board's Bailiffs asking fisherman to produce their Duchy permits.



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28 January 1954

Letter to F Warne about payment by Duchy for ensuring that fishermen in duchy waters have appropriate Duchy fishing ticket.

Before 1900

Specimen grant by Warden of the Stannaries in Cornwall and Rider and Master Forester of the Forest and Chace of Dartmoor of licence to hunt with Harriers from 1 October 18-- to 31 May 18--.

Duchy/3

4 November 1983

Letter from Woolllcombe Watts & Co, Solicitors of Chagford on behalf of Mrs J Philips of Lower Shapley (Entry No. 9), she does not wish to pursue her claim as regards pannage.

SECOND SCHEDULE
(Decision table)

1. For the reasons stated under the heading Weekbrook Down I confirm the Land Section registration at Entry No. 1 with the modification that there be removed from the Register Weekbrook Down being the part of the land comprised in this Register Unit which is east or northeast of the road which runs northwards from Yellam to Great Weeke and thence westwards to Chagford.
2. For the reasons stated under the heading Water Authority and for the purpose of enabling some of the modifications herein directed to be conveniently registrable, I direct Devon County as registration authority to make an entry in the Rights Section which by reference to such map if any as they think fit to provide is to the following effect:- In this Rights Section the Water Authority Provision means: provided the right to dig or take stone, sand and gravel and/or the right to take dig or take any one or more of them shall not extend to or so as to interfere with any water pipes or inspection chambers on the parts of the land in this Register Unit which are coloured green on the plans enclosed with Objection No. 525 made by North Devon Water Board (such parts being on Nattadon Common).
3. For the reasons stated under the heading 4 Nattadon Down/28 Meldon Road. I refuse to confirm the Rights Section registration at Entry Nos. 75 and 84.
4. For the reasons stated under the heading Venville, I refuse to confirm the Rights Section registration at Entry Nos. 6, 7 and 65.



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5. For the reasons stated under the heading Batsworthy-on-the-Moor, I confirm the Rights Section registration at Entry No. 92 with the modification for the whole of column 4, substitute "to graze 11 cattle or ponies or 53 sheep on the more northwesterly of the two tracts included in this Register Unit and known as Chagford Common, being the tract which includes Caster (or Kestor) Rock; and for all in column 5, substitute "the land in Batsworthy-on-the-Moor in Gidleigh as shown edged in red within the boundary on the supplemental map bearing the number of the registration at Entry No. 146; and with the consequential result that I confirm the replacement registration at entry No. 146 with the said modification in column 4 and I refuse to confirm the registration at Entry No. 147.
6. Except as stated under the heading Beetor Farm about the Rights Section registration at Entry No. 102, I now give no decision and I give to Mr R S Windeat, Mr T G Pollard to the Chagford Commoners Association and any other person concerned with the registration or their successors in title liberty to make representations about the basis on which persons at the hearing spoke about it and which I am now under the impression was mistaken; such representation should be made within SIX WEEKS of this decision being sent out (or such extended time as a Commons Commissioner may allow) and should in the first instance be by letter to the Clerk of the Commons Commissioners.
7. For the reasons stated under the heading Others, I refuse to confirm the Rights Section registrations at Entry Nos. 3, 41 to 58 inclusive, 64, 79, 80, and 88.
8. For the reasons stated under the heading Others subject to the liberty to apply therein given, I refuse to confirm the Rights Section registration at Entry Nos. 17 (replaced by Nos. 119 and 120), 72 (replaced by Nos. 116 and 117), 86, 90, and 95.
9. For the reasons stated under the heading Others, subject to the liberty to apply therein given, I refuse to confirm the Rights Section registration at Entry No. 21 made on the application of Mr William Ernest Arthur Rogers, No. 73 made on the application of Messrs Irish Bros No. 100 made on the application of Mrs Alice Mary Wells, and No. 106 made on the application of Mr William Gordon Hambley.
10. For the reasons stated under the heading Others I confirm the Rights Section registrations at the following Entry Nos. subject to the modification if any applicable to them as hereinafter specified, that is to say, Nos. 1, 2, 4, 5, 8 (replaced by Nos. 113 and 114), 9, 10, 11, 12, 13 (replaced by Nos. 136 and 137), 14 (replaced by Nos. 143 and 144), 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 59, 60, 61 (replaced by Nos. 132, 133 and 134), 62, 63, 66, 67, 68, 69, 70 (replaced by Nos. 116 and 117), 71, 74, 76 (replaced by Nos. 126 and 127), 77, 78, 81, 82, 83, 84, 87, 89, 91, 93, 94, 96, 97, 98, 99, 101, 103, 104, 105 (replaced by Nos. 130, 139, 140 and 141), and 107 with the following modification:-
- (A) applicable to Nos. 11, 12, 13 (replaced by Nos. 136 and 137), 23, 24, 28 and 36 Nos. 60, 62, 68, 78 and 89 and to Nos. 97, 104, 105 (replaced by Nos. 130, 139, 140, and 141) and 107 in column 4 (except No. 68) after the words "comprised in this register unit" insert "except Padley Common" and in column 4 (No. 68) delete "Padley" and transpose "and" as grammatically requisite.



- (B) applicable to Nos. 9, 23, 31, 77 and 99, in column 4, delete "or 150 pigs" (No. 9) "shooting" (No. 23), "piscary" (No. 31), "shooting" (No. 77), and "pannage" (No. 99).
- (C) applicable to Nos. 23, 30, 31, 40, 67, 89, 93 and 94, in column 4 add at the end "subject as regards digging or taking stones, sand and gravel to the Water Authority Provision in this Rights Section defined".
- (D) applicable to all subject to such modification as is necessarily consequential on the removal from this register unit of the land specified in paragraph 1 of this schedule, deleting in column 4 any reference therein to "Week Brook Down" which would not now be appropriate.

11. For the reasons stated under the heading Ownership, I confirm the Ownership Section registrations at Entry Nos. 3 and 5 without any modification; and I confirm the Ownership Section registration at Entry No. 4 with the modification that in column 4 there be removed from the registration any land within the registrations at Entry Nos. 3 and 5.

12. Where in this decision a liberty to apply is given such application should be made within THREE MONTHS from the day on which the decision is sent out (or such extended time as a Commons Commissioner may allow) and should in the first instance be by letter to the Clerk of the Commons Commissioners stating the mistake or error and the applicant's reason for thinking it should be corrected. A copy of the application should be sent to any person who might be adversely affected by the application being granted and for their information to the County Council as registration authority. As a result of the application the Commons Commissioner may direct a further hearing, unless he is satisfied that the error or mistake is obvious and all concerned are agreeable. Of such further hearing notice will be given only to those persons who on the information available to the Commons Commissioner appear to him to be concerned with the registration in question. Any person who wishes to be given notice of such further hearing should by letter inform the Clerk of the Commons Commissioners as soon as possible specifying the registration a further hearing about which he might wish to attend or be represented at.

Dated the 21st day of January 1985.

A.A. Bates Fuller

Commons Commissioner

CORRECTED by substituting paragraph 10 of the Series Schedule (Decree 1881) '85' for '84'

A.A. Bates Fuller
29 June 1987