



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/49
209/D/50
209/D/51
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209/D/54

In the Matter of Haldon Moors,
Bishopsteignton, Teignbridge
District, Devon

DECISION

These six disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No CL. 21 in the Register of Common Land maintained by the Devon County Council and are occasioned by the Objections numbered, made and noted in the Register on dates as follows:- (D/49) No 136 made by Dr Basil Cowley Morton Palmer, Miss Marjorie Joan Morton Palmer, Mrs Alberta Jennette Cosserat, Mrs Vera Muriel Beal, Dr Steven Smith and Mr Frederick William James and noted on 16 October 1970, (D/50) No 284 made by Rt Hon Anthony Gerard Edward Noel 5th Earl of Gainsborough and Mr Patrick Eyre and noted on 18 December 1970, (D/51) No 290 made by Mrs Magdalen Sleeman and noted on 18 December 1970, (D/52) No 967 made by Teignmouth Urban District Council and noted on 16 February 1972 (D/53) No 973 made by Teignmouth (Haldon) Golf Club Company Limited and noted on 2 March 1972, and (D/54) No 995 made by Major Ranulf Courtauld Rayner and noted on 20 July 1972.

The Chief Commons Commissioner Mr G D Squibb, MC, held a hearing for the purpose of inquiring into the disputes at Paignton on 25 January 1977, and on the application of Mr C S Rawlins of counsel and without hearing any evidence adjourned the hearing. I held a hearing for the same purpose at Exeter on 18, 22, 23 and 24 November 1977. At this hearing, (1) Bishopsteignton Parish Council on whose application the registration was made was represented by Mr C S Rawlins of counsel instructed by Stephens & Scown, Solicitors of Exeter, (2) Dr B C M Palmer, Mrs M C M Palmer, Mrs A J Cosserat, Mrs V M Beal, Dr S Smith and Mr F W James were represented by Mr R A Beal who is the husband of Mrs V M Beal, (3) the Earl of Gainsborough and Mr Anthony Nicholas John Sullivan of 26 Old Bailey, London (he is the successor in title of Mr P Eyre) and (4) Mrs M Sleeman were represented by Mr Ian B Savill solicitor with W H Stone & Co, Solicitors of Exeter acting as agents for Bischoff & Co, Solicitors of 79-83 Chiswell Street, London EC1, (5) Teignbridge District Council were represented by Mr S Rollinson solicitor with their Solicitor, (6) Teignmouth (Haldon) Golf Club Company Limited were represented by Mr M A Sutton solicitor of Tozers, Solicitors of Teignmouth and (7) Major R C Rayner attended (part of the hearing) in person.

The land ("the Unit Land") of this Register Unit comprises two pieces. The larger piece is, if the very considerable irregularity of the northwest side be disregarded, approximately a triangle with sides of about (northwest) $1\frac{1}{2}$ miles, (south) 1 mile and (east) $1\frac{1}{2}$ miles; its total area (as I calculate by adding up the figures given in the 1841 Tithe Award) is a little over 600 acres; one of the roads from Exeter to



Teignmouth (the higher, B3192) crosses the piece near to and within the east side; it is crossed by numerous other public roads of local (although compared to B3192 of minor) importance. The smaller piece is just under a mile north of the north corner of the larger piece, is on the east side of the B3192 road, and contains (according to the 1841 Award) a little more than 32 acres.

At the hearing no evidence was given about the smaller piece. It is coloured red on the plan attached to Objection No 995 (made by Major Rayner). Mr Rawlins said he could not support its registration. Nobody contending the contrary, in the absence of any evidence, I conclude that it was not properly made; hereinafter I shall use the expression "the Unit Land", except where the context otherwise requires, as meaning the larger piece.

The grounds of objection were all to the effect that some part particularised in a map attached to the Objection (being the part with which the Objector was concerned) was not common land. For the purposes of exposition (following with some variations the plan put in by Mr Rawlins), I divide the Unit Land as follows:-

- (1) "the North Brown Piece" being the part of the Unit Land north of the road which from Ashcombe goes by Ashcombe Tower to enter Luton from the southeast;
- (2) "the National Trust Piece", being the part of the Unit Land (other than the North Brown Piece) which is east of the B3192 road;
- (3) "the Rayner Piece", being that part of the Unit Land which is south of the said Ashcombe-Luton road, west of the B3192 road, west also of the northeast-southwest road from Ashcombe Tower to Kingsteignton (being the road which crosses the Unit Land south of Humber Down and north of Whitewell) and east of the road from Teignmouth to Luton, except the small piece not coloured red on the plan annexed to Objection No 995 (made by Major Rayner) being for the most part a steep bank near to where the said Teignmouth-Luton road is joined by the said Ashcombe-Luton road;
- (4) "the Small Brown Piece" being the said small piece so excepted;
- (5) "the Morton Palmer Piece" being the southeast part of the Unit Land, approximately triangular and bounded by three roads which are there situated;
- (6) "the South Brown Piece", being that part of the Unit Land south of the road from Teignmouth via the Unit Land to Kingsteignton which is not coloured on the plan annexed to Objections Nos 967 and 973 made by Teignmouth UDC, and Teignmouth (Haldon) Golf Club Limited being rough ground which is situated at Whitewell;
- (7) "the Golf Club Piece, being a triangular piece bounded on the northwest by the said Ashcombe-Kingsteignton road, on the east by the B3162 road and on the south by the said Teignmouth-Kingsteignton road and includes the part of the Unit Land which is south of such last mentioned road and which is not included either in the Morton Palmer Piece or in the South Brown Piece;
- (8) "the Westerland Cottage Piece", being that part of the Unit Land situate on the southwest end occupied with such cottage;
- (9) "the Gainsborough Piece", being that part of the Unit Land edged red on the plan annexed to Objection No 284 (Lord Gainsborough and Mr Eyre), being a piece which includes Humber Down and is crossed by Three Trees Lane;
- (10) "the Sleeman Piece", being the part of the Unit Land southwest of and open to the said Teignmouth-Luton road east and open to the said Ashcombe-Kingsteignton road as edged red on the plan annexed to Objection No 390 (Mrs Sleeman), being a triangular area together with a narrow strip extending southward by the Ashcombe-Kingsteignton road to the Gainsborough Piece, both the area and the strip being very small compared with the other pieces now being described;
- (11) "the West Brown Piece", being the remainder of the Unit Land west of the Teignmouth-Luton road and west of the Ashcombe-Kingsteignton road and north of the Gainsborough Piece. None of the grounds of Objection refer to any of the Brown Pieces or to the National Trust Piece or to the Westerland Cottage Piece; but I have a letter dated 14 November 1977 written by Nichelmores, Solicitors of Exeter in which they on behalf of the National Trust for Places of Historic Interest or Natural Beauty contend that the National Trust Piece



(given to them by a deed of gift dated 21 October 1948 from H L Holman) should not remain on the Register unless the Parish Council show that it has "at all material times been waste land and also part of the Manor of Bishopsteignton". There are no Entries either in the Rights Section or in the Ownership Section of this Register Unit.

On the first day of the hearing Mr Rawlins, Mr Rollins and Mr Sutton said that the Parish Council had reached an agreement with the District Council and the Golf Club Company to the effect that the land mentioned in Objection Nos 967 and 973 (the Golf Club Piece) should be removed from the Register in return for certain restrictions on the development and use of the land and certain other stipulations enforceable by the Parish Council as set out in a deed which the parties had executed. This deed was read at the hearing. "Nobody present objecting, I said that I would remove the Golf Club Piece from the Register in accordance with the agreement unless something occurred later at the hearing (nothing did) indicating that I should not.

The course of the proceedings was as follows:- Oral evidence in support of the registration was given (1) by Mr H C Walker who is a member of the Parish Council, has lived in the Village since early 1959, and has done a considerable amount of research into the geography and history of the area including spending many hours at the Devon County Archives searching through old deeds and records, (2) by Mr W G Treen who is 85 years of age and who has lived in the Village for 50 years, (3) by Miss M C Thornton who is a member of the Parish Council and has lived at Bishopsteignton since 1960, and (4) by Mrs J Rooke who is now the chairman of the Parish Council; in the course of this evidence the documents specified in Part I of the First schedule hereto were produced or referred to mostly by Mr Walker but in some cases by Mr Rawlins. Interposed during the giving of this evidence, (5) Mr M G Dickinson, who is the senior assistant archivist of the Devon Records produced a copy certified on 11 March 1845 of the Bishopsteignton Tithes Award dated 31 October 1842, (6) Mr Beal speaking in relation to Objection No 136 (relating to the Morton Palmer Piece) made a statement, and (7) Major Rayner in support of Objection No 995 (relating to the Rayner Piece) gave oral evidence. In support of Objection No 284 (relating to the Gainsborough Piece), evidence was given (8) by Mr G Penn-Barrow (affidavit sworn 16 November 1977) who is land agent for Lord Gainsborough and Mr Sullivan, (9) by Mr A J Blackburn (affidavit sworn 16 November 1977) who is a member of Bischoff & Co, Solicitors of London who act for Lord Gainsborough and Mr Sullivan and who produced the documents specified in Part II of the First Schedule hereto, and (10) by Mrs M M V P Sleeman orally who is a tenant of the Gainsborough Piece and the owner of the Sleeman Piece. During this last mentioned evidence, there was interposed (11) the oral evidence in support of the registration of Mr A E Shambrook who is 69 years of age and has lived at Bishopsteignton for the last 60 years.

On the day after the hearing, I inspected much of the Unit Land for most of the time accompanied by Mrs Rooke, Miss Thornton, Mr Walker, Mrs Sleeman and Mr J Brown (contractor for Mrs Sleeman) and for some of the time alone.



The greater part of the hearing was taken up with the Gainsborough Piece, although much of what was said in support of the registration of this piece related to the remainder of the Unit Land.

The case of the Parish Council was that the Unit Land was "waste land of a manor not subject to rights of common" within paragraph (b) of the definition of common land in section 22 of the 1965 Act; as interpreted by the High Court in re Chewton 1977 1 WLR 1242; that is, that it was (i) waste land of a manor immediately before 1 January 1926 when copyhold tenure was finally abolished by the Law of Property Act 1922, and (ii) it still was waste land at the date when the registration was made (25 July 1968).

In the course of the evidence, questions were asked apparently directed to ascertaining the purpose of the Parish Council in effecting, and what might be the consequences, of the registration. On this aspect of the law relating to common land, the 1965 Act is somewhat obscure; it may be that Parliament contemplates further legislation. I have no jurisdiction to decide the effect of a registration (being only concerned to determine whether a registration was properly made); accordingly I treat the evidence given in answer to these questions as only relevant in so far as it helps me to determine whether re Chewton supra is applicable.

Many of the documents produced in support of the registration were of conveyances or other assurances of land near the Unit Land containing general words such as: "with all commons, wastes...". General words of this character have since 1881 been deemed to be included in all conveyances of land, see Law of Property Act 1925 section 62, replacing Conveyancing Act 1881 section 6(2); before 1881 it had for some centuries been the practice to include some such words in all conveyances. Although the inclusion of these documents in the collection of Mr Walker adds greatly to its historical interest, and I am grateful for the trouble he has taken in making it so complete, I must I think disregard all such documents, so far as they are relied on as showing that the grantees acquired rights of common attached to the lands thereby assured.

However among the documents extracted by Mr Walker bearing dates before 1800 there are a number which refer to rights of common over some particularised piece of land: 1712 (PC/4 No 18) "common of pasture upon Hall Downe"; (Act of 12 Geo 2, No 21) "common of pasture for all commonable beasts in or upon Humber Moore and Radwaye Downe"; 1771 (No 22) "common of pasture for all cattle with appurtenances in Haldon otherwise Halldowne"; 1774 (No 23) "on Halldon and Radway Down"; 1775 (No 24) "common of pasture for all manner of cattle with appurtenances in Haldon als Halldown"; 1779 (No 25) "with common of pasture for all manner of beasts and cattle upon the said common called Halldown otherwise Blackdown"; 1779 (No 26) "together with common of pasture for all manner of beasts upon the common or down called HALLDOWN otherwise BLACKDOWN". These documents are all evidence that rights of common then existed over the lands referred to.

That there was at one time a Manor of Bishopsteignton (or Bishops Manor) appears from the Act of 1738 (PC/4 No 21) and the 1833 indenture (PC/4 No 29); this indenture, after reciting that the Manor or Lordship of Teignton Episcopi otherwise Bishopsteignton stood limited to such uses as the Reverend John Comyns the Elder and his son, the Reverend John Comyns the Younger should appoint and that Messrs Cornish and Wood are together entitled to Higher Rostain to which there was appurtenant a right of common of pasture and hurbary "on a certain common or waste within the said Manor", witnessed that Messrs Cornish and Wood might approve (the Common)". The Manor is also mentioned in White's Directory 1850 (AJB 12).



That there was also at one time a Manor of Lindridge appears from the 1832/33 survey (PC/21) which records that the Lindridge Estate was then the property of "Rev John Templer deceased" and then included the Manor of Lindridge and (among other properties) Home or Parkside Farm consisting of (among other lands) the following (Tithe Nos subsequently given which more or less correspond in brackets):-

(333)	232	Plantation on Haldon	Wood	0.2.27
(325)	237	Haldon Park	Furze	18.1.36
(326)	238	Haldon Park	Furze	7.3.39
(330)	240	Plantation on Humber Down	Wood	15.2.19
(332)	241	Humber Down	Furze	56.1.6

Remarks: The farm comprises a variety of soil...and the two large rough grounds Haldon and Humber Downs are of but little value beyond affording furze for fuel etc and a run for young stock at particular seasons".

This Manor too is mentioned in White's directory 1850 supra.

No later document being an assurance of land and containing a reference to either of these Manors was produced to me. But something of the 1806 thinking about them emerges from the memorandum of 7 July 1806 (PC/4 No 27) which records that Mr J Templer in consequence of Mr J Comyns having agreed to refer to Messrs Donnhall Hill & Heelyer to apportion the commons between them...Mr J T conceived that not having held a Court for the reputed Manor of Lindridge...the Manor may be lost & of course not worth Mr J T's contending for....If Mr C means to object to Mr J T riding over his waste on Haldon in the occasional pursuit of his amusements, and thinks proper to prosecute him for the same he will probably recover a farthing damages - but Mr J T does not wish to break in upon Mr C's manorial rights & ... will avoid as much as possible giving him either trouble or expense...". The annexed map (PC/16) although it marks Humber Moor and Radway Down on one side of the road from Bishopsteignton to Dawlish, relates in detail only to lands on the other side.

In the Second Schedule hereto, I set out the relevant part of the schedule to the 1842 Tithe Award. I regard this Award as evidence of the then appearance of the Unit Land and of the then reputed owners and occupiers.

Reading the documents above referred to and in the light of the present appearance of the Unit Land, I conclude that plot ~~thereon~~ numbered 328 (area 274.3.4) was at one time waste of the Manor of Bishopsteignton in 1849 owned by Reverend ~~Jones~~ J Comyns and that plot no 329 (area 17.0.11), which is the east part of the Gainsborough Piece ("the 17 Acre Triangle") was at one time waste of the Manor of Lindridge. I attach importance to the present appearance of the Unit Land, because plot nos 328 and 329 are still pieces of land distinct from the surrounding land and I cannot imagine how either separately or together they could in the 19th century have been anything but waste land of a Manor. Further I identify these two plots as being at least within the descriptions of Hall Downe etc quoted above from the 18th century documents.

Dealing now particularly with the Gainsborough Piece, I am relieved from having to consider Tithe Nos 325, 330, 331, 333 and 334, because Mr Walker in the course of his evidence said that these lands had been withdrawn by the Parish Council (see PC/9 as amended by PC/20).



As regards the Gainsborough Piece except these withdrawn lands and except the 17 Acre Triangle, being Tithe Nos 279, 326 and 332:- I must now consider whether it can in some way be regarded as having been or since become part of Haldon Common mentioned in the Tithe Award. I reject the suggestion that Lindridge must be regarded as a sub-manor of the Manor of Bishopsteignton; of this I have no evidence. The description in the Tithe Award "Haysman Piece", Haldon Brakes " and "Humber Moor" and as then being tenanted, is against these three Tithe Nos being then waste land. Humber Down (as No 332 is now known) is distinctly marked on the maps produced to me as something different from Haldon Moor; standing on Humber Down and looking up towards the 17 Acre Triangle (and the rest of the Unit Land beyond) I conclude that Humber Down would in the past as now have always appeared to be a piece of land distinct from plots 328 and 329. I was not persuaded by any of the oral evidence given to me as to how Humber Down was used by local inhabitants with the knowledge of the witness, that I ought to regard Humber Down as somehow having become part of the land locally known as "Haldon Down" (being plots 328 and 329). I am not persuaded by the geological maps showing the underlying strata that I can put the boundary of Haldon Common on the west side of Humber Down; as an indication of the boundary, the present appearance of the Unit Land is I think more significant. The description of the boundary of the Unit Land annexed to Mr Walker's statement, is I think no more than a description of the boundary of the Unit Land as registered; it is not evidence of what is or was locally reputed to be included in Haldon Common. So I conclude that these Tithe Nos 279, 326 and 332 ceased sometime before 1842 to be part of Haldon Common and have never again become part of it.

I must consider whether Humber Down (considered independently of Haldon Common) and the 17 Acre Triangle can properly be regarded as being waste land of a manor at the end of 1925 (being the date mentioned in the judgment of re Chewton supra).

The earliest of the documents of title produced by Mr Blackburn is dated 1934, and in it Humber Down and the 17 Acre Triangle is included in the description "Woodland and uncultivated waste lands in hand extending to about 204.819 (acres)", so even if this document be reflected back to 1925, it points either way.

Mr Treen gave evidence about the fence erected by Lord Cable in about 1924 along the southwest boundary of the 17 Acre Triangle, saying (in effect):- The Gainsborough Piece and much other land then belonged to Lord Cable. Mr Ryder was his manager. On his instructions he (Mr Treen) did the job from start to finish. There was then peat on the part next the fence (Rippons Cover); this peat was sold on behalf of Lord Cable to the villagers; the land was not cultivated in any way. The fence kept gypsies out of Rippons Cover. At the time Humber Moor was soggy and wet and there was no cultivation on it.

About the fence (and also about the then proposed Golf Club) there were Parish Meetings on 4 March 1924, 22 August 1924 and 20 January 1925, and the number of contemporary documents relating to these meetings were produced by Mr Walker (PC/13). Lord Cable's solicitors claimed that the land on Haldon which he had fenced was exclusively his own property "having been purchased by him from the late Captain Templer", see their letter 13 June 1924 (PC/13; ZA); the letter adds that if the inhabitants of Bishopsteignton derive pleasure from walking on the land, Lord Cable has no desire to prevent this. Another contemporary document states that the meeting of Parochial Electors recorded its appreciation of the act of Lord Cable as reported in Mr Michelmores letter and an undertaking to remove the fencing on Little Haldon and to replace it outside his plantation (PC/13, DE).

Mr Shambrook said (in effect):- He remembered the 1924 fence being put up. As a protest some of the councillors cut the wires. The fence is still there.



During my inspection I saw the fence now along the southwest boundary of the 17 Acre Triangle. It appeared to be an old fence, but I am inclined to the view that some repairs must have been done to it from time to time since it first existed. I conclude that when the fence was erected in 1924 that there was a very considerable public complaint but this did not prevent the fence remaining there. On the other hand, I also conclude that the fence was never a very serious obstruction to any member of the public who was minded to walk over the 17 Acre Triangle. In my opinion it did not change the character of the 17 Acre Triangle and at the end of 1925 it could still properly be described (as it could before 1924) as being waste land.

Notwithstanding the great time and trouble taken by various persons in investigating the history of these lands, to form an opinion as to the manorial status of Humber Down and the 17 Acre Triangle at the end of 1925, I have very little to go on. As to Humber Down, my opinion is that, having concluded that it was never at any relevant time part of Haldon Common properly so called, the indications that it is or might at one time have been waste land of the Manor of Lindridge are so slight (the Tithe Award shows it differently from Haldon Common in that W Vooght was tenant), that I ought not unless the present appearance supports such indications (which it does not) act on them. As to the 17 Acre Triangle, my opinion is that the indications already mentioned as to it being part of Haldon Common and as to it having been at one time waste land of the Manor of Lindridge are sufficiently substantial and being supported to some extent by the evidence of Mr Treen and by what I myself infer about its appearance 50 years ago from what it looks like now, that I ought to act on such indications and conclude as I do that at the end of 1925 it was waste land of a manor.

Mr Savill's main contention was that whatever might be my conclusion about the manorial status, no part of the Gainsborough Piece was on 24 July 1968 waste land. As to this:-

Whatever may have been the effect in 1924 of Lord Cable's fence, its continued existence up to 1968 provided a basis for treating the 17 Acre Triangle and the rest of the Gainsborough Piece as being private land over which the public had no interest. Under the 1963 and 1964 conveyances (AJB2) the Gainsborough Piece (and some other land) was dealt with as something distinct from the rest of the Lindridge estate. Mrs Sleeman in the course of her evidence said (in effect):- She has been interested in being an owner of forestry lands since 1963. She acquired the Gainsborough Piece for this purpose in 1964 (referring I suppose to the 1964 conveyance). After her purchase she dedicated the land for forestry purposes (referring I suppose to the agreement dated 30 May 1967 mentioned in the January 1971 agreement, AJB4). Before 1968 in preparation for forestry development drainage works were done and fences were erected on the Gainsborough Piece.

Mr Penn-Barrow stated that the plantation of trees was programmed to be carried out between 1968 and 1972, "compartment no 11" (containing 7.3 hectares, according to his plan corresponding for all practical purposes with the 17 Acre Triangle) was planted in 1968. He does not in his affidavit say whether this was done before or after 25 July.

When I inspected the Gainsborough Piece, the trees planted as described by Mr Penn-Barrow were apparent (apart from those destroyed by the fire of 1976 mentioned by him); the trees pointed out to me were Corsican and Lodge Pole pine, in places, and Larch and Western Hemlock in other places; there were other varieties including, I think, some Douglas Fir.



In my opinion land does not cease to be waste land within the meaning of the 1965 Act merely because there are on it numerous trees which have a value for timber, but it is not waste land within the meaning of the Act if it has been developed for forestry purposes as the Gainsborough Piece has. I attach no significance to the destruction effected by the 1976 fires (the damage resulting which was extensive owing to the lack of available water has to some extent been made good by new planting). In my opinion no part of the Gainsborough Piece is now waste land within the meaning of the 1965 Act.

Some of the trees which existed before Mrs Sleeman's development were pointed out to me and although they may have been of some value for timber they were not I think by themselves enough to change the character of the land to waste land. So I am left with the question whether the development had by 25 July 1968 proceeded far enough to change the character of the Gainsborough Piece, and particularly of the 17 Acre Triangle. As to this I am not I think obliged to limit myself to what a person walking over the land on the 25 July 1968 would have noticed; although he would I think have noticed if he had looked carefully the new fences and ditches described by Mrs Sleeman and realised if he had thought about it that some sort of forestry development was in the air. In my opinion I can properly have regard to the deeds under which Mrs Sleeman acquired the land; as she explained in the course of her evidence, that the 1968 conveyance was a family matter and under the leases (AJB3), or so for all purposes with which I am concerned she remained in substance the owner as she became in 1964; for her the whole of the Gainsborough Piece was one piece of land intended to be developed for forestry purposes without any distinction. A letter dated 17 October 1967 from the Parish Council to Brigadier Sleeman notified him that the Council intended to claim Haldon "as a Village Green", (AJB/5); this letter was put to Mrs Sleeman in cross-examination; I do not regard it as showing that she was not in 1968 proceeding with her development in good faith without any thought of any proceedings such as these. My conclusion is that her development had proceeded far enough for the whole of the Gainsborough Piece in general and for the 17 Acre Triangle in particular to have ceased before 24 July 1968 to be waste land in any now relevant sense.

For the above reasons my decision is that Objection No 284 (Lord Gainsborough and Mr Eyre) wholly succeeds.

As to the Sleeman Piece:- Part of it is now arranged as a car park, and is obviously for this purpose a very pleasing place. It appears now to be all waste land, and there are a number of indications in the evidence before me and nobody suggested to the contrary, that it had always been such. Apart from the documents produced by Mrs Sleeman, I would have inferred that it was at the end of 1925 part of the waste of the Manor of Kingsteignton formerly owned by Rev J Comyns rather than of the waste of the Manor of Lindridge formerly owned by Rev J Templer; but the documents show that she acquired ownership of it from those entitled to the Lindridge Estate. It may be that in this respect the Tithe Award is mistaken. However this may be, I do not regard the inconsistency between it and Mrs Sleeman's documents as preventing me from reaching the conclusion which in other respects seems to me clear enough that the Sleeman Piece is and always has been waste land of a manor in every now relevant sense.

For the above reasons my decision that Objection No 290 (Mrs Sleeman) wholly fails.

As to the Morton Palmer Piece:- Mr Beal read out a statement saying (stating its effect shortly) that the land is private property, that if the parishioners felt that they were doing a public service by having it registered as common land,



he hoped they would nevertheless recognise the existing lawful rights of land owners and that it seemed the law attached so much importance to the outward appearances which it accepts as evidence of waste land that if the owners were set about trying to prove that it wasn't waste land it might cost thousands of pounds. Mr Beal explained that after consideration the owners had decided that they had no objection to my confirming the registration as regards the area shown on the plan attached to their objection. Mr Rawlins on behalf of the Parish Council agreed that certain pieces of land which Mr Beal thought might be included in the registration were not in fact included and thanked Mr Beal (and those he represented) for his courtesy.

When I inspected the Morton Palmer Piece, it appeared to me to be waste land and I record that I think Mr Beal somewhat overstated the case against him. The Morton Palmer Piece is part of Tithe No 328, and I have no reason for not applying the conclusion I have reached as above stated that the whole of this Tithe No is now and has always been waste land of a manor in every now relevant sense. Mr Rawlins was I think entitled having regard to what Mr Beal said, to conclude that the Parish Council need not call any evidence about the Morton Palmer Piece, although in fact I was given some information by Miss Thornton about a tea house which used to be near there.

On the considerations outlined above, my decision is that Objection No 136 (Dr Morton Palmer and others) wholly fails.

As to the Rayner Piece:- Major Rayner in the course of his evidence read a statement which he had prepared as executor of his father, Brigadier Sir Ralph Rayner and produced a letter dated 22 November 1963 to Sir Ralph from his solicitors saying that the Piece was bought by the Trustees in 1954 and that they were then registered at the Land Registry with an absolute title but that neither the conveyance to them nor the conveyance to Haldon Aerodrome Limited when it was bought in 1938 made any reference at all to commoner's rights.

The first point made by Major Rayner was that his father had always been more than generous with the land at Haldon and elsewhere belonging to the family estate and that the public had always been encouraged to walk across land to enjoy it, and he contended that such generosity and encouragement could not be evidence that the Rayner Piece was properly registered. Although Major Rayner did not during his evidence particularise how Sir Ralph Rayner encouraged the public, in the course of my inspection I saw on some nearby land, apparently part of the Ashcombe Estate one or two notices such as I have set out in the Third Schedule hereto. I accept his contention that such encouragement is of no significance in this case.

As already explained I am concerned to determine whether the Rayner Piece is within the words (not very easy to construe) "waste land of a manor" in the 1965 Act.

For a period before the 1939-45 war the Rayner Piece was used as an aerodrome and the remains of one of the buildings can be seen. An extract from Express & Echo of 11 June 1930 (PC/25) was produced that the aerodrome had recently been fenced, that the Parochial Committee had objected, and that Mr W R Parkhouse, the Aerodrome Managing Director, had explained in a letter that the fence was for the safety of the public and was in no sense an endeavour to enclose any of the open space"; it was moved that the letter be copied in the minute book "as it would then be evidence for future generations". During the 1939-45 war, the Rayner Piece (with some of the adjoining land) was used for defence purposes (RNAS); I had no detailed evidence about this use, although I infer that during the war period and as long as the requisition lasted, the public was effectively excluded. In the absence of precise evidence, I infer that the pre-war civilian use was never extensive.



In *Re Yateley* 1977 1 WLR 840, the High Court considered (among other things) the land on which there had at some time been a much more extensive aircraft use than anything that could have taken place at Haldon and concluded that such use could not in the circumstances prevent the land from being waste land of a manor within the meaning of the 1965 Act; see page 853. In my opinion the aircraft use is of no significance in this case.

At present the Rayner Piece has a fence around most of it and the land has on it tracks for the convenience of horse riders; the fence is sufficient to discourage motorists from attempting to park on the land but it would not (there are gaps in it) discourage those who might wish to walk over it. Major Rayner said (in effect):- The fence was erected in about 1960. When he suggested to his father that he might graze sheep on Haldon Moor they put it to their farm manager, and he was advised that grazing was impossible because of the flint as also because of the flint it would be impracticable to ride horses over the Rayner Piece but for the track which he and his father had provided. The fence kept out cars and motorbicycles and prevented the dumping of bottles (such as might injure horses).

The minute of a special Parish Meeting held on 31 July 1963 which was attended by Sir Ralph Rayner and at which he explained his views about the fence, was produced (PC/23); I have no note or recollection of Major Rayner being asked about it particularly, although I record that it seems to me that his attitude as he explained it to me was in all relevant respects the same as the attitude of Sir Ralph Rayner as recorded in this minute.

The Rayner Piece is part of Tithe No 328, and for the reasons already given I conclude that it was at the end of 1925 waste land of the Manor of Bishopsteignton, and unless the fence and the riding track mentioned by Major Rayner were enough to prevent it being waste land on 25 July 1968, it is still waste land of the Manor in every now relevant sense of these words. Although as a general rule enclosed land cannot be waste land, not every fence around waste land changes its character. Having regard to the purpose of the fencing as stated to me by Major Rayner (and as stated at the 1963 meeting by Sir Ralph Rayner), in its present appearance, I do not regard it as being significant upon any "waste land" question. Land does not cease to be waste land merely because people ride horses over it, and it cannot I think be significant that for horses tracks have been made. My conclusion that the Rayner Piece is now and has always been waste land.

For the above reasons my decision is that Objection No 995 (Major Rayner) fails except as regards that part of the Unit Land (using these words in their sense on page 1 of this decision) which is on page 2 called the smaller piece (which is the land just under a mile north of the north corner of the larger piece mentioned on page 1). As to this smaller piece my decision is that the Objection succeeds.

I have not disposed of all the parts of the Unit Land referred to in any of the Objections. As a general rule a person who has made a registration of any land need not I think call evidence to support its propriety as regards any part of the land to which no objection has been made, because if such part had been separately registered, its registration would have become final under section 7 of the 1965 Act without any hearing before a Commons Commissioner. Nevertheless I have I think jurisdiction under the 1965 Act by reason of there being at least one Objection to the registration to consider the propriety of any land included in it; so I will say something about each of the pieces to which no objection has been made.



As regards the Westerland Cottage Piece, in the course of my inspection it became apparent that it would be absurd for this land to remain on the Register if the Gainsborough Piece was removed, and I understood from Mrs Rooke that she on behalf of the Parish Council accepted this view. Similar considerations apply to the part of Three Trees Lane not included in the plan attached to Objection No 284 (Lord Gainsborough and Mr Eyre). I conclude therefore that the Westerland Cottage Piece and this part of Three Trees Lane ought to be removed from the Register.

As to the National Trust Piece:- I see no reason for not applying the general rule above mentioned. I had no evidence of, nor did I on my inspection see anything which suggested that the registration of this Piece was improper, and I see no reason for calling upon the Parish Council to deal with this Piece particularly. However, as I have read the above mentioned letter dated 14 November 1977 from Michelmores, I record for their benefit that in my opinion the Parish Council have shown at all material times that the National Trust Piece has been waste land and has been part of the Manor of Bishopsteignton; it is part of Tithe No 328 and my conclusion as set out above in relation to such Tithe No is applicable; the National Trust Piece is unfenced, and apart from a conveniently situated and very large car park, appears to be common land in every relevant meaning of these words; there is no reason why I should deal with car park separately.

As to the Small Brown Piece:- In all now relevant respects, it is apparently the same as the Rayner Piece, and I have no reason for dealing with it differently.

As to the South Brown Piece:- Although this is part of Tithe No 518 in the Award described as "Great Newtake", it is now, and looks as if it has been for some time, waste land, possibly because it is or includes "Whitewell". In the absence of any evidence about it, particularly, I feel no difficulty in concluding that it is common land like the rest.

As to the North Brown Piece and the West Brown Piece:- Only part of the North Brown Piece is part of Tithe No 328 which I have concluded has at all relevant times been waste land of the Manor of Bishopsteignton. The rest are in the Award described as "Newtake", "Lower Newtake", "Higher Newtake" and "Brakes". On appearance I felt some doubt whether they could properly be registrable as common land, but I felt no certainty, and accordingly it being possible that these Newtakes and Brakes could somehow after the 1842 Award have reverted to Haldon Common, I conclude, that in the absence of any objection relating to these pieces particularly, I have no good reason for not applying the general rule above mentioned.

For the reasons set out above, I confirm the registration with the modification that there be removed from the Register: (1) the land edged red on the plan submitted with Objection No 284 and made by Lord Gainsborough and Mr Patrick Eyre, (2) the part of Three Trees Lane bounded on the north, east and south by such last mentioned land, (3) the part of the land comprised in this Register Unit which is near or around Westerland Cottage which is situated south or west of the said Objection No 284 land, (4) the land coloured red on the plan attached to Objection No 967 made by Urban District Council of Teignmouth and (being the same land) the land coloured pink on the plan attached to Objection No 973 made by Teignmouth (Haldon) Golf Club Company Limited and (5) the detached part of the land comprised in this Register Unit being about one mile north of the rest on the east side of the B3192 road and containing a little more than 32 acres being the most northerly of the two pieces of land coloured red on the plan annexed to Objection No 995 made by Major R C Rayner.



After the hearing I was informed by Stephens & Scown and by Stone & Co (letters dated 4 January 1978) that it was agreed between their respective clients that I should make no order for costs so far as concerned them. I do not think fit to make an order for costs against any person who attended or was represented at the hearing. I regret that these proceedings have involved some of the persons concerned in such very large costs and expenses, and that my decision owing to the obscurity of the 1965 Act may give rise to questions as to the benefit which will to the public result from it. It may be one of such persons could with advantage make representations about this when the new legislation relating to common land which is apparently contemplated by the 1965 Act comes up for consideration.

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

FIRST SCHEDULE

Part I. Documents produced on behalf of the Parish Council

- | | | |
|---|-----------------|--|
| 1 | - | Plan showing Unit Land and the parts of it mentioned in each of the Objections |
| 2 | 8 November 1974 | Circular letter sent by Parish Council's solicitors to all Objectors |
| 3 | - 1977 | Recently made deed between Teignbridge District Council, Teignmouth (Haldon) Golf Club Limited and Bishopsteignton Parish Council |
| 4 | - | Blue-backed loose leaf folder containing extracts and photocopies of 37 documents obtained by Mr Walker |
| | 1044 | (1) Charter of Dawlish, see "On the Early History of Dawlish" by J B Davidson, July 1881 |
| | 1551 to 1879 | (2) to (26) Various conveyances, mortgages and an Act of Parliament of which only the following mention particularly a common, Nos |
| | 7 July 1806 | (27) Memorandum of the position between Mr J Templer and Mr Comyns as to waste on Haldon |
| | 1817 | (28) Conveyance |
| | 1 March 1833 | (29) Inclosure agreement |
| | 1844 | (30) and (31) Agreement for commutation of Tithe and Tithe Apportionment Award |
| | 1845 | (34) Solicitors' account |



- 12 April 1869 (33) Conveyance
- 1870 (34) Inclosure Award for Parish of Dawlish
- 1873 and 1880 (35) and (36) Conveyance
- 1924 (37) Memorandum of Association of Teignmouth (Haldon) Golf Club Limited
- 5 1968 OS map Newton Abbot area Sheet SX 87/97; 1/2500
(1 mile = 2 $\frac{1}{2}$ " approx)
- 6 1970 ~~Map~~ Map Institute of Geological Sciences, Sheet 339 Teignmouth;
dift edition; 1 inch = 1 mile
- 7 - Map indicating land (part of Gainsborough Piece) which the
Parish Council agreed should be withdrawn
- 8 1939 Copy of Tithe Award map (hung up on wall during hearing)
- 9 - Statement by Mr N C Walker of his evidence to which was
annexed a description of the boundaries of the Unit Land
signed by Miss M Thornton, Mrs A Atkinson, Mr E Atkinson
and Mr Walker, and an extract from "Exeter and Its Regions"
edited by F Barlow(Exeter 1969)
- 10 Map showing boundaries of Unit Land with 650' and 700'
contours
- 11 - Enlargement of geological map showing greensand and
Blackdown beds
- 12 - Map showing letterings mentioned in statement about
boundaries appended to no 9 above
- 13 - Loose leaf folder containing miscellaneous documents
obtained by Mr Walker
- March 1832 (PQ) Exeter Evening Post, chairman's address to Grand Jury
- 12 March 1924 (RS) Record of meeting signed by chairman F W Pook April 7
1924
- 17 April 1924 (TV) Letter from Parish Council to Golf Club
- 17 April 1924 (VW) Letter from Michelmore & Co (Solicitors of Lord Cable)
- 1.5.1924 (XY) Letter from Golf Club
- 2 August 1924 (BC) Notice of Parish Meeting held on that day
- 20 January 1925 (DE) Notice of Parish Meeting of that day with print of
letter from H G Michelmore about Lord Cable's fence
- 30 June 1924 (ZA) Letter from H Michelmore about fence
- 19 November 1965 Print of letter sent to all local authorities in England
and Wales by the Ministry of Land and Natural Resources



- 1 April 1969 Letter from Ministry of Housing and Local Government to Municipal Borough Councils, Urban and Rural District Councils and Parish Councils (England)
- 14 1890 and 1891 OS map 6" = 1 mile
- 15 1906 OS map 6" = 1 mile
- 16 Photograph copy of plan annexed to 1806 Memo (PC/4 No 27) with manuscript transcription
- 17 Enlargement of Tithe map around numbers 328, 329, 330 and 332
- 18 Statement of Mr Walker as to the derivation of the word "Radway"
- 19 Further copy of Tithe Award map
- 20 Statement by Mr Walker as to land withdrawn from Gainsborough Piece
- 21 1832 to 1833 Report of survey of Lindridge Estate under the direction of the 'the High Court by Daniel Smith & Son
- 22 - -
- 23 31 July 1963 Minute of Parish Meeting signed by W J Rydon 9 March 1964 (original Minute Books available at the hearing)
- 24 - -
- 25 11 June 1930 Extract from Express & Echo relating to fencing part Haldon Moor
- 26 - -
- & 27 - -
- 28 - Extract from Shorter Oxford Dictionary "cultivate" and "crop"

Part II. Documents produced on behalf of Lord Gainsborough,
Mr Sullivan and Mrs Sleeman

- AJB1 Plan showing freehold land owned by the Trustees and part currently leased to Mrs Sleeman
- AJB2 12 December 1934 Conveyance Rt Hon L S Baroness Cable, as successor of Rt Hon E Baron Cable (he died 29 March 1927) with the concurrence of Trustees to Lindridge Estate Ltd of Lindridge of about 982.47 acres
- 29 June 1961 Conveyance by Lindridge Estate Ltd to Lady R. McC Benthall of Lindridge containing about 1000.720 acres



- 13 November 1953 Vesting deed by Lady Benthall as settlor to Sir A P Benthall and Mr L J Collins (trustees of a settlement made by her) by reference to the 1951 conveyance
- 16 March 1963 Conveyance by them to Corthorne Estate Co Ltd (~~con sale~~)
- 10 June 1963 Conveyance by them to Economic Forestry Ltd of about 326.167 acres (subject to a timber agreement)
- 13 March 1964 Conveyance by Economic Forestry (Management Services) Ltd to Mrs M Sleeman of about 207.143 acres (subject to said timber agreement)
- 15 January 1968 Conveyance Mrs Sleeman as settlor to Rt Hon A G E N Earl of Gainsborough and Mr P Eyre (trustees of a settlement dated 29 March 1967 made by her) of (inter alia) the 1964 conveyance land (also land in Hereford and Wilts)
- 5 April 1977 Appointment of new trustee, Mr A N J Sullivan in the place of Mr P Eyre
- AJB3 1968, 1970 & 1977 Leases and surrenders relating to the interest of Mrs Sleeman in the 1964 conveyance land
- AJB4 26 January 1971 Forestry Commissioners dedication agreement with Lord Gainsborough and Mr Eyre relating to Humber Woods about 194 acres (being all the Gainsborough Piece); this recites a deed of covenant dated 30 May 1967 between the Commissioners and Mrs Sleeman by which the said land was made subject to a Forestry dedication covenant
- AJB5 1967 to 1973 Correspondence between Bischoff & Co and Parish Council
- AJB6 17 August 1973 Letter from County Council about withdrawal of part of Gainsborough Piece
- AJB7 1974-1977 Correspondence between Bischoff & Co and Stephens & Scown
- AJB8 1968 to 1975 Correspondence between Bischoff & Co and Iliffe's, as to information held by Economic Management Services Limited
- AJB9 1973 Correspondence between Bischoff & Co and Bird & Co and Michelmore & Co as to information held by Cable Trust
- AJB10 5 June 1975 Letter from Chamberlain Bros and Michelmore to Bischoff & Co written by the manager of Lindridge Estate from 1940 to 1957; Estate broken up on the death of Sir E Benthall; the northeast extremity (the Sleeman Piece) long been used by picnickers with cars ~~cars~~
- AJB11 1970 Correspondence Bischoff & Co with Tithe Redemption Office (copy of relevant part of Tithe Award)



AJB12 1970, 1973

Correspondence Bischoff & Co with County Archivist in earliest directory for Devon (White's 1850) there are 4 Manors in the Parish of Bishopsteignton: Bishopsteignton & Radway held by Rev John Comyns, Luton held by Lord Clifford and Lindridge held by the Rev James A Templer no Inclosure Award - the Gainsborough Piece and the Sleeman Piece not included in the Little Haldon Award

Schedule

Part B

No 1	23 October 1968	Letter County Council of Common Registration
No 6	1970	Letter from Historical Manuscripts Commission
No 13	1972	Attendance at Public Record Office
No 14	-	Attendance at Director General of Ordnance Survey
No 15	15	Attendance at Institute of Historical Research
No 16		Attendance at House of Lords Record Office
No 17		Attendance at Commons Registration Society

SECOND SCHEDULE

(1842 Tithe Award Schedule: so far concerns the Unit Land)

Plot No	Owner (occupier in brackets if different)	Description	Area A.R.P.	Identification with the Pieces into which the Unit Land is treated as divided
327	Lord de Clifford (John & James Vooght)	Newtake Common	88.2.25	South part of the West Brown Piece
273	Lord de Clifford (James Vooght)	Outer Brake Pasture	14.3.21	The remainder of West Brown Piece except on the north side (see No 272 below)
328	Rev J Comyns	Haldon Common	274.3.4	Part of North Brown Piece All National Trust Piece All Rayner Piece All Small Brown Piece All Morton Palmer Piece All Sleeman Piece All Golf Club Piece north Teignmouth-Kingsteignton road