



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/424

In the Matter of Haytor Down,
Ilsington, Teignbridge District, Devon

DECISION

Introduction

This matter relates to 53 registrations made under the 1965 Act. My decision as regards each of these registrations is set out in the Eighth (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen, and my reasons for the decision are as follows.

These disputes relate to the registrations at Entry Nos 1 to 6 inclusive, 8, 10 to 26 inclusive (20 replaced by Nos 67 and 68), 28, 30 to 41 inclusive (37 replaced by Nos 75 and 76), 43 to 47 inclusive (44 replaced by Nos 72 and 73), and 49 to 60 inclusive in the Rights Section of Register Unit No. CL25 in the Register of Common Land maintained by the Devon County Council and are occasioned by the Objections numbered, made by the persons and noted in the Register as specified in the First Schedule hereto.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 10, 12 and 13 April 1984. At the hearing: (1) Devon County Council as successors for part and Mr Antony Leonard Cullen and Mrs Audrey Dorothy Cullen as successors for the remaining part of Messrs Robert Cyril Longsdon and Helen Mary Longsdon who in the Ownership Section registration at Entry No. 1 are registered as the owners of the whole of the land ("the Unit Land") comprised in this Register Unit, and who (or one of whom) made Objections Nos 591, 592, 593, 1037 and 1038, were represented by Mr M D Sullivan-Gould solicitor with the Devon County Council; (2) Mr Herbert Hugh Whitley who made Objections Nos 573 and 968 and who applied for the Rights Section Registrations at Entry Nos 11 (alone as owner) and 17 (as owner with Mr H G Retallick as tenant) attended in person; (3) Mr Gerald Pilkington of Lounston Farm Bickington as successor of Mrs Selena Elizabeth Dymond who applied for the Rights Section registration at Entry No. 3, attended in person; (4) Mr Denis Charles Sullivan of Gorse Cottage, Bagtor as successor of Mr Douglas Gray Bazett Leahey (now deceased) who applied for the Rights Section registration at Entry No. 5 attended in person; (5) Mr Colin Noel Evans who applied for the Rights Section registrations at Entry Nos 8 and 9 (No. 9 being undisputed has become final) attended in person; (6) Mr Colin Bowden who applied for the Rights Section registration at Entry No. 12, attended in person; (7) Mr Richard Norman Wills who with Mrs Rosemary Isabel Elizabeth Anne Wills applied for the Rights Section registrations at Entry Nos 13 and 14 attended in person on his own behalf and as representing his nephew Mr Robert Charles Wills who is interested in these registrations (Mrs R I E A Wills has ceased to be so interested); (8) Mr Maurice Harold Retallick of Bagtor Barton, Ilsington as successor of Mr Harold George Retallick (he died in 1981) who applied (as tenant with Mr H H Whitley as owner) for the Rights Section registration at Entry No. 17



and (alone as owner) for the registrations at Entry Nos 18 and 19, and also as a person interested as applicant in the replacement registration at Entry No. 78 in the registration at Entry No. 13, attended in person; (9) Mrs Yvonne Ware of Middlecott, Ilsington as sole executrix and beneficiary under the will of Mr Alexander Herbert John Ware (he died in 1969) who applied for the Rights Section registration at Entry No. 22 and as the person who applied for the registration at No. 72, in part replacing No. 44, attended in person; (10) Mr John Peter Klinkenberg who applied for the Rights Section registration at Entry No. 29 (being undisputed now final) attended in person; (11) Mrs Bridget Symes of Tunhill Farm as successor of Mr John Luscombe Horton who applied for the Rights Section registration at Entry No. 37 was represented by Mr P J R Michelmores chartered surveyor of Michelmores Hughes, Chartered Surveyors of Newton Abbot; (12) Mr Michael Royce Sanders and Mr Gordon Clifford Sanders who applied for the Rights Section registration at Entry No. 39, attended in person; (13) Mr John Dale Crossman of 3 Sigford Cottages as successor with his wife Mrs Pearl Mary Crossman of her father Mr Harry Mortimore (he died January 1972) who applied for the Rights Section registration at Entry No. 40 and also as purchaser of part of Swine Park interested in the registration at Entry No. 4 attended in person on his own behalf and as representing her; (14) Mr Arthur Samuel Courtier who applied for the Rights Section registration at Entry No. 73 which replaced in part No. 44, attended in person; (15) Mr Kurt Eric Allerfeldt and Mrs Evelyn Jones Allerfeldt who applied for the Rights Section registration at No. 43 were represented by Mr A H D Mellor, solicitor of Tozers, Solicitors of Newton Abbot; (16) Mrs Anstice Brown who applied for the Rights Section registration at Entry No. 55 was also represented by Mr P J R Michelmores; (17) Dr Patrick Gerald Kidner and Mrs Grizelda Flora Kidner who applied for the Rights Section registrations at Entry Nos. 57 and 60 were represented by Mr R Keast solicitor of Stephens & Scown, Solicitors of Exeter; and (18) Mr Frank Perryman who applied for the Rights Section registration at Entry No. 58 was represented by Mr M G Cleave clerk with H Priscott & Co, Solicitors of Newton Abbot.

The land ("the Unit Land") in this Register Unit is a tract containing between 1 and 1½ square miles. For the purposes of exposition it may be regarded as having 4 sides; its southwest side (nearly straight about 1½ miles) adjoins and is open to Bagtor Common, being Register Unit No. CL26; its northeast side (nearly straight about 2 miles) adjoins and is open to other parts of Haytor Down being to the northwest Black Hill, Register Unit No. CL103 and being to the southeast Yarner Down Register Unit No. CL184; its northwest side (approximately straight and a little over 1 mile) adjoins enclosed lands (Holwell Lawn); and its southeast side (an irregular line) adjoins the built-up area of Haytor Vale and nearby enclosed farm lands. In the Ownership Section Cyril Longsdon and Helen Mary Longsdon are registered as owners of the whole of the Unit Land, and this registration being undisputed has become final. Much of the Unit Land is to the public easily accessible from the road which crosses it near Haytor Vale and which runs from Manaton some miles to the north to Hemsworthy Gate some miles to the south west. From this road the land slopes upwards to Haytor Rocks (1,490 feet) and to other high grounds having unusual rock formations, beautiful from the road, attractive to walk up to, and with rewarding views. Near to the road there are car parks, apparently much used by visitors coming for a pleasant walk and to enjoy the scenery.



Course of proceedings

Before or at the beginning of the hearing (10 April), I had the documents, specified in Part I of the Second Schedule hereto, and also a letter dated 23 March 1984 from Mr A L and Mrs A D Cullen to the County Solicitor saying (in effect) that they bought Leighon Estate from Mr R C Longsdon in November 1977 which Estate then included: (a) the northwestern corner of the Unit Land being the part not included in an earlier sale to the County Council, and (b) the Lordships of the Manors of Ilsington and Bagtor; and that their interests in these proceedings were identical.

Next:- Mr Keast said that the registrations at Entry Nos. 57 and 60 were withdrawn. Mr M D Sullivan-Gould said that Objection No. 591, so far as it related to the registration at Entry No. 5 (applicant Mr D G B Leahey of Gorse Cottage) was withdrawn, so that those he represented and Mr D C Sullivan (as successor of Mr Leahey) were agreed that I might confirm this registration. Mr Cleave on behalf of Mr Perryman said that the registration at Entry No. 58 was withdrawn. Mr P J R Michelmore said: (a) on behalf of Mrs A Brown and on the basis that the cattle grids at Hemsworthy Gate made it no longer possible to graze, the registration at Entry No. 55 (Blackslade Farm, Widecombe-in-the-Moor) was withdrawn, and (b) on behalf of Mrs J Symes as successor in part of Mr J L Horton and on a like basis, the registration at Entry No. 37 (Tunhill Farm, Widecombe-in-the-Moor) was withdrawn.

Having other business, I adjourned the proceedings to the day after the next.

Next (12 April), after I had recorded those present or represented, Mr R N Wills as secretary of the Ilsington Commoners' Association of which Mr H H Whitley is the chairman, explained that the Association as such would take no part in these proceedings because about them their members differed.

Next, Mr M D Sullivan-Gould opened the Matter saying (in effect):- Of the 59 (not counting replacements and omitting No. 6 which has been cancelled) Rights Section registrations, 6 being those at Entry Nos. 7, 9, 27, 29, 42 and 48 had (being undisputed) become final. Those at Entry Nos. 3, 5, 14, 22, 23, 24, 31, 40, 41, 51, 55, 57, 58 and 60, had been the subject of some agreement as specified in the third column of the Third Schedule hereto. About the remaining registrations, it seemed to him that the questions which required my consideration could be put under 3 headings: (i) as to straying rights; (ii) as to the two manors argument (the Unit Land is manorial and is therefore grazeable only by the commoners of the Manor of Ilsington to the exclusion of those of the Manor of Bagtor) against the one common argument (the Unit Land and Register Unit No. 26 being Bagtor Common are one common and are therefore grazeable together by commoners of both Manors); and (iii) as to the level of stocking.

I decided to consider straying rights first.

Mr Sullivan-Gould said that the rights expressed as "to stray" were at Entry Nos. 33 to 38 inclusive (37 having been replaced by Nos. 75 and 76), 49, 50, 55,



56 and 58 (as to Nos. 55 and 58, see Third Schedule hereto). He submitted that straying rights were not registrable under the 1965 Act as had been ruled on many occasions by Commons Commissioners (including myself); that there was no reason for treating exceptionally any of the Unit Land registrations expressed as "to stray".

Mr Mellor on behalf of Messrs Allerfeldt referred to the registration at Entry No. 43 being of a right "to graze ..." and about which the relevant Objection is No. 968 does "not exist at all". He submitted that the registration could be modified by inserting the words "by straying" after the words "to graze", that grazing and pasture are synonymous so an application for grazing is a good application even if it is only by reason of vicinage. He said that Messrs Allerfeldt did not claim to put animals onto Haytor Down (the Unit Land) but they can pasture them if they stray there, so all that is required is a clarification of the registration. He referred me to *Newman v Bennett* 1981 1QB 726 and to Halsbury Laws of England (4th edition 1974) vol 6 paragraph 566 (Common of pasture by reason of Vicinage) and to *Sewers v Glasse* (1874) there cited.

Nobody at the hearing making any other submission about registrations of "to stray", I then considered the two manors argument against the one common argument.

Mr Sullivan-Gould said he supported the two manors argument meaning that the only persons who had a right of common were those in occupation of lands the ownership of which could be traced back as having been of the Manor of Ilsington. In support of such argument he gave oral evidence in the course of _____ which he produced the Manor Book (CC/7) and the 1935 Sale _____ Particulars (CC/8) specified in Part II of the Second Schedule hereto. He said (in effect):- Throughout the Manor Book, each Manor is treated separately; at the last recorded entry made in 1937 listed are 13 owners of the Manor of Ilsington and 4 owners of the Manor of Bagtor; the Book shows that throughout the 19th century persons were presented to the Court Leet for fraudulent stocking, eg 15 January 1818 from Manaton, 13 October 1818 from Bovey and 31 October 1834 from Higher Sigford; although there had been a joint administration of the Manors and their two commons, meaning Bagtor Common (Register Unit No. CL26) and ilsington Common (the Unit Land) they were treated separately particularly in the perambulation of 29 October 1835 of the boundary between the two Manors. The 1935 Sale Particulars include the following subheading:- "Lots 7 to 15 (inclusive) comprising the Bagtor Estate, Ilsington embracing an area of about 792 acres with Rights of Common over about 255 acres ..." He identified the said 255 acres with the CL26 land in the Register called "Bagtor Common".* Anyone who cannot prove rights from Ilsington Manor has no right over the Ilsington Part of Haytor (the

*Note:- "Bagtor Common" is not so or otherwise named on the Particulars Map. "Bagtor Down" which is marked on the Particulars Map is outside both the Unit Land and the CL26 land, and is included in Bagtor Barton, Lot 8 being therein described as "Bagtor Down or Broadmoor 270 a.l.r.29.p, -.3r.22p. with perhaps also Newtake 14a.l.r.15p.



Unit Land). As to excessive grazing, he understood that the numbers specified in Longsdon Objections Nos. 592, 593, 1038 and 1039 were based on a grazing allowance depending on the extent of the inby land (excluding rough pasture and woodland): for each $\frac{1}{4}$ acre one head of cattle (2 cattle = $1\frac{1}{2}$ per acre), or the same number of ponies or the equivalent of 4 sheep for every head of cattle. He suggested that this allowance should be adopted by me; it would be a basis for any future arrangement for stocking which might become necessary and would operate fairly in relation to the inby land.

Questioned by Mr Mellor, Mr Sullivan-Gould agreed that the boundaries between the Unit Land and Register Unit CL184 (Yarner Down) was the same as that between the Parishes of Bovey and Ilsington.

Questioned by Mr H H Whitley, Mr Sullivan-Gould explained that he did not claim to have any local knowledge or to be able to say more about the Manor Book and the 1935 Particulars than could be deduced by looking at them. In the course of the discussion which followed between Mr Whitley and Mr Sullivan-Gould as to these documents, Mr Whitley produced the 1838 Tithe map and the 1841 Tithe Award specified in Part III of the Second Schedule hereto, and said that the farms relevant to the Manor/one common arguments were those specified in the Second column of the Sixth Schedule hereto. The witness agreed that Higher Sigford is not in the Manor Book mentioned as being in the Manor of Bagtor and that he thought it should be excluded because of the 1832 fraudulent stocking mentioned in the Book; he agreed that Rippon Tor mentioned in the 1835 perambulation is outside the Unit Land and also outside the CL26 land (see Register map); he could not comment on the possible motive of the perambulation, perhaps Lord Cranstown who appeared from the Book to be the successor in title of Lord Ashburton wanted the perambulation to see what he owned; he agreed that the Book appeared to show that there had been a joint administration between the two Manors and that there was certainly never a separate pound keeper or reeve appointed.

Questioned by Mr C N Evans, Mr Sullivan-Gould said that Objection No. 591 to the registration at Entry No. 8 (right does not exist at all) was still maintained. He did not agree that the registrations had been agreed as a result of anything which had happened at a meeting held on 2 April 1984 at which a possible mutual exchange arrangement of rights over the Unit Land and the CL26 land had been discussed.

Next oral evidence was given by Mr John Peter Klinkenberg of Smallacombe Farm (the registration at Entry No. 29 about this farm being undisputed has become final), in the course of which he said (in effect):- He had been farming Smallacombe since 1946. He was "a Haytor person". As he understood the position those of Bagtor who claimed rights over the Unit Land had registered rights over the 255 acres being the CL26 land for stock amounting to altogether 2,120 sheep, 105 bullocks and about 40 ponies; if that amount of stock is given an indisputable right over the Unit Land it will be to the detriment of the Haytor commoners as this could lead to gross overstocking of the Moor; this was one of the reasons why many commoners of Ilsington object to a lot of the claims put forward. In most cases no manorial dues have been paid for many years; he considered that only those people who had paid up to 1935 had grazing rights. The undisputed grazing rights had been mentioned by Mr Sullivan-Gould; so in the result there



should be two commons. There is no record of dues having been paid to Ilsington Manor by Bagtor farmers. On behalf of the commoners concerned he would like the old rule about levancy and couchancy to apply so that the stock from any one farm would be within the capacity of the farm; so he accepted the allowance put forward by Mr Sullivan-Gould as representing the view of Mr R C Longsdon except he thought 5 sheep (not 4 sheep as stated by Mr Sullivan-Gould) for every beast.

Questioned by Mr Whitley, about the meeting of 2 April 1984, Mr Klinkenberg said that the majority of the people at the meeting voted that the Unit Land and the CL26 land were two commons. The only persons now grazing on the Unit Land are himself from Smallacombe (Entry No. 8) and Mrs Ware from Middlecott (Entry No. 22).

Mr Whitley then said that the Manor Book showed that people from the Manor of Bagtor had paid rent and that during a conversation with Mr Washington Singer the then Lord of the Manors of Ilsington and Bagtor and his agent being then Mr Arthur Rendell, his father (Mr Whitley senior) was told that the Manors were amalgamated, that those farms within "the Manor ground" should not pay chief rent, meaning the farms owned by the person living in Bagtor House, being Bagtor Barton, Bagtor Mill, Crownley, Westabrook and Emsworthy and that this was subsequently confirmed by Major Beutelle to whom the Chief rents was paid and who was the owner in 1935 when Mr Whitley senior bought. About these events, Mr Klinkenberg was unable to comment because they occurred before his time.

Questioned by Mr C Bowden, Mr Klinkenberg agreed that some of the Haytor commoners had applied for rights on Bagtor Common and that their CL26 registrations had become final.*

Questioned by Mr C N Evans, Mr Klinkenberg said that on Bagtor Common the CL26 registrations were for a total 2,112 sheep, 533 cattle and 82 ponies had become final but he had been unable to find out how many of the applicants were Haytor commoners although quite a number of them would be Haytor commoners having he thought an "actual grazing right".

Questioned by Mrs Ware, Mr Klinkenberg agreed that at the April 1984 meeting she although one of the people from Haytor exceptionally was at the said vote among the minority.

Questioned by Mr Sullivan-Gould, about the Manors being separate, Mr Klinkenberg produced an extract from the Domesday Book obtained by his daughter-in-law from Newton Abbot library (JPK/1) specified in Part IV of the Second Schedule hereto.

Next, I considered the registration at Entry No. 44 (replaced by Nos. 72 and 77) being a right of estovers, turbary, to graze 150 sheep and followers 50 cattle and followers 25 ponies and followers and being within Longsdon Objection No. 1039, should be: "80 cattle or 80 ponies or 320 sheep". About these registrations Mr Arthur Samuel Courtier gave oral evidence in the course of which he explained (referring to the map specified in Part V of the Second Schedule hereto) the relative size and situation of the land in column 5 specified

*Note: final Unit Land registrations at Entry Nos. 7 (Honeywell), 9 (Little Sigford) and 48 (Bagtor House) appear as final CL26 registrations at Entry Nos. 4, 6 and 38.



at Entry Nos. 72 and 73 and suggested that the registrations be confirmed with an apportionment: No. 72, 3 cattle or ponies or 12 sheep, and No. 73, 77 cattle or ponies or 308 sheep. He agreed with Mr Sullivan-Gould that the holding (that specified in No. 44) is 119 acres and that his suggested apportionment was on the basis of a comparison of the inby lands specified at Entry Nos. 72 and 73.

Next I considered registration at Entry No. 8 being of a right attached to Sigford House, Bickington comprising 21 OS Nos and being within Longsdon Objection No. 591 "does not exist at all". In support of this registration Mr Colin Noel Evans gave oral evidence in the course of which he produced the documents specified in Part VI of the Second Schedule hereto and said (in effect):- The farm goes northeastwards from the house nearly as far as Smith's Wood Cottage, its north northeast boundary being the River Lemon and its southwest boundary being Bagtor Lane (that is it is between Sigford and Bagtor). He bought his farm in April 1949 and was then assured that his deeds supported the right as being on Haytor Down. His right was also supported by the entry in the Tithe Apportionment Award of 1843 (see the Seventh Schedule hereto); the Award after recording that Thomas Widger was owner and occupier and listing each field in detail ended with the words "right of depasture on Haytor Down". The farm is also mentioned in the Manor Book among the rents paid in 1937 and previous years "Manor of Bagtor ... Griffiths RWL: Sigford House, 6s". He thought the fact that it was entered in the Manor Book indicated that the Unit Land and the CL26 land were treated as one common. The farm had never been a part of the Bagtor Estate and accordingly the 1935 Sale Particular (CC/8) were not applicable to Sigford House. In 1951 he had ponies on Haytor Down and subsequently he ran a herd of Belted Galaways on Haytor Down from 1954 until 1968 when he had to sell his herd due to ill-health; during all that time no-one objected to his bullocks being there; in fact Mr Longsdon who was Lord of the Manor at the time entertained us (that is to say the Commoners) to a dinner at the Moorland Hotel on two occasions: "not the normal way to treat an unlawful intruder onto one's land!" He had been a member of the Ilsington Commoners' Association since 1950 and had paid his annual subscription to them. The stock which he had claimed was a number of bullocks he actually turned onto the Moor (by bullocks he included cows). They were on the moor from the end of May until late December each year. He was thus able to turn the whole of his farm to hay which he fed to the bullocks in his covered yard during the winter. His rights on Haytor were therefore essential to maintaining a viable enterprise. His claim at Entry No. 9 (part of Little Sigford OS Nos. 727 and 753) was on behalf of his nephew, of some of whose ground he (the witness) is the tenant and this had become final without any objection. He considered that there was no possible ground for objecting to his application. No owner of Sigford House was ever presented to the Court Leet Jury for fraudulent stocking in spite of the fact that they had stocked Haytor Down.

In answer to questions by Mr Sullivan-Gould, Mr Evans said (in effect):- There had been no objection to an identical claim by him over the CL26 land (CL26 Entry No. 5 being undisputed is now final); they could be the same bullocks, he was not claiming a doubling up. He did not accept entirely the suggestion that the grazing on the Unit Land and the CL26 land depended on which Manor land it was within. They were administered as one except the grazing was based on occupation of manorial land; as to whether Sigford House was within the Manor of



Bagtor he could only say "if I buy a property and it is stated on the deeds it has grazing rights on Haytor Down, I do not expect that to be wrong". If he only had a right on the CL26 land and not over the Unit Land it would affect the viability of his farm and those entitled to graze all went on the other side of the road between Hemsworthy Gate and Haytor Vale. There is nothing to keep sheep on the CL26 land (away from the Unit Land). He did not agree that the exclusion of animals on the Unit Land would not affect the viability of Sigford Farm.

Questioned by Mr Retallick, Mr Evans said he did not agree that it was possible for his stock from Sigford House Farm to get onto Bagtor Common (the CL26 land) without going onto Haytor Down (the Unit Land).

Next (13 April) I considered the registration at Entry No. 12 on rights attached to West Horridge to graze 200 breeding ewes and their followers and being within Longsdon Objection No. 592, "does not exist ... or should comprise fewer animals"; a similar registration at CL26 Entry No. 8 being undisputed has become final. Mr Colin Bowden in the course of his oral evidence said (in effect):- West Horridge Farm is southeast of Rippon Tor and south of Haytor. In 1956 he acquired some Scotch blackfaced ewe lambs from Scotland and leared them at Fitches Holts which are the quarries marked on the Register map near the southwest boundary of the Unit Land as "quarries (disused)"; they have remained there without any hindrance or objection from anyone and they have established themselves in that area away towards Holwell Tor and back to Saddle Tor. This is the area on which they now occupy and there are still sheep running out there and nobody has suggested that he had no right and nobody had asked him to remove them. There is a reference in the Manor Book to the occupier of Horridge being on the Jury. Mr John Gill (Horridge) was a bailiff for Mr Woodley of West Horridge.

Questioned by Mr Sullivan-Gould, Mr Bowden said 1956 was the first time he had stock on the Unit Land; at the time he was with his father who was tenant of West Horridge and he wanted to keep a few sheep of his own; he got these blackfaced ewes and put them on Haytor Down where he understood he had a right. His father had not stocked on Haytor Down ("not to my knowledge"). He had claimed identical rights over Bagtor (the CL26 land) because his flocks strayed across the boundary; in his view Bagtor Common is part of Haytor Down and his farm is part of Bagtor Manor. Horridge Common is private. The farm is about half a mile from the CL26 land. He claimed that the CL26 land and the Unit Land are one common for two manors: this is established by "practice". As to the Objection about numbers, his farm is 79 acres but he would take out 4 acres for buildings and wood, leaving 75 acres as a round figure.

After Mr Bowden had concluded his evidence, Mr Sullivan-Gould intervened to say that if I found any right attached to this farm had been established, those he represented would not object to the figure "200 breeding ewes".

Next (13 April) I considered the registration at Entry No. 39 of a right attached to Great Lounston of estovers turbary, to graze 70 cattle and 200 sheep and being within Whitley Objection No. 968 "does not exist at all" and Longsdon Objection



No. 1039, should comprise fewer animals. Before Mr Michael Royce Sanders gave evidence in support of this registration he and Mr Sullivan-Gould were agreed that if there was any right at all the number of animals should be "80 cattle or 320 sheep" as specified in Objection No. 1039. Mr Sanders in the course of his oral evidence produced the documents specified in Part VII of the Second Schedule hereto and said (in effect):- The plan (MRS/1) was with the farm when his father bought it in 1972; the farm comprises between 20 and 30 fields and the total area of 120a. 2r. 30 p and at the bottom of the index is written "with right of depasture on Haytor and Ramshorn Downs". The farm is all south of the road junction "Five Cross". He identified his farm with that described in the said Tithe Apportionment Award (relevant part MRS/2) owned by Reverend S Nosworthy and containing 120a. 2r. 30p. "with right of depasture on Haytor and Ramshorn Downs". Before him (the witness) the farm was owned by Mr Frank Berry and he did put stock on Haytor Down during the summer months as did his father before him.

Questioned by Mr Whitley who explained that his Objection No. 968 was because at the time of the registration the Ilsington Commoners Association thought the farms who had not paid a chief rent in 1935 should be objected to, Mr Sanders said (in effect):- He thought it made no difference whether the chief rent had been paid off or not, but he agreed that in the Manor Book, Great Lounston does not appear. His brother and he were now the owners in succession to his father who died in 1972 and who had purchased the farm from Mr Frank Berry in about 1955; they were in partnership with their father until his death.

Next (after a short period during which I heard another case) Mr Richard Norman Wills of Narracombe Farm who applied for the registration at Entry No. 13 (replaced on 24 May 1984, after the hearing by Entry Nos. 78 and 79) and No 14 and who supported the arguments of Mr Sullivan-Gould in the course of his oral evidence said (in effect):- Harkworthy Farm (Entry No. 13) is different from Narracombe (Entry No. 14) in that Mr Retallick is owner of part of it and he (the witness) was tenant of the other half owned by Mr G Owen; Harkworthy is south of the River Sig and north of the Ashburton Road from Sigford. He was willing to withdraw his claim for any rights attached to Harkworthy on the Unit Land because when he registered the rights in 1967 he did it from a consideration of the Tithe Map and the Tithe Award Schedule which said that the farm had a right on Haytor Down but afterwards when he saw the Manor Book he realised that the two manors were shown separately and if the two commons (the Unit Land and the CL26 land) were not taken together he felt that he should withdraw any rights on the Unit Land. All his life he had been interested in the history of the Parish of Ilsington; in the early days the Manors of Bagtor and Ilsington were separate but as long ago as the early part of the 17th century they became under one owner, the Ford family. He produced a copy of a Survey of Ilsington Manor 1566 specified in Part VIII of the Second Schedule the original of which is in the County Records Office; this showed the boundary of the waste of the common in Haytor; although some of the names have altered through the years, he could follow the exact boundary, and it was at that time exactly the same as the boundary of Ilsington Manor today. It shows the boundary of Ilsington before it was joined to Bagtor, that is the same boundary as that between the Unit Land and the CL26 land. It was on his part a lucky guess to stocking rate in the application of Harksworthy Farm being 92 acres complied with the formulas (the allowance



which is above mentioned Mr Sullivan-Gould stated at the beginning of the hearing); he thought the formula was a fair representation of the capacity of any inby land.

Questioned by Mr Whitley, Mr Wills agreed that the documents showed that the two Manors were joined under one ownership and the Court Leets were joined from then onwards and he thought that that was no proof at all that they were not two separate commons; they were treated separately in the Manor Book, at the 1835 perambulation when they put in new boundary stones; nobody knows the reason. The other evidence of them being two separate commons is the Tithe Award which mentions in some entries "Bagtor Common" and in others "Haytor Down"; there must be some reason for this distinction. He did not answer the statement put to him by Mr Whitley "really we have got to put the Tithe Map against the Manor Book and one would have thought that the owner of the Manor would have known as well as anybody else".

Questioned by Mr Evans about the Tithe Award at pages 24, 52, 56 and 58 (see the Sixth Schedule hereto), Mr Wills said (in effect):- The Tithe Award Schedule must be looked at with the Tithe map. The award and map produced is the parish copy.

Questioned further by Mr Whitley about modern usage, Mr Wills said (in effect):- Since the first World War when only a few people have stocked the Moor, the stock has extended over the whole of Haytor Down which includes CL103, CL184, CL25 and CL26 and they went as far as Trendlebere CL58 and CL57 because there was no physical boundary between them. Earlier than that each farmer of Ilsington stocked, each having his own lear; he knew that because his father was the last reeve and his grandfather before him and his father. After the first war when some people were not stocking the Moor, other people took over the lears. Between 1918 and 1939 people who had stocked the Moor gradually got less until today there are only three or four persons who are now concerned with stocking the Unit Land and the CL26 land. In or before 1935 there was a fear of sheep disease and Ministry directed slaughter; during the 1939-1944 war, lambs were slaughtered in their first year and there would be no point in putting them onto the Moor; cattle were slaughtered when they were young; before that the stocking was of steers and heifers; they gradually got less and after 1945 there was nothing except ponies who go outside the Manor boundaries. Soon after sheep and Galloway cattle were introduced, otherwise there would have been nothing but ponies. Cattle grids (from about 1977) stop the stock from going outside the Manor and straying off the Moor. The difference is that Manors of Haytor and Bagtor are in one parish but the other Register Units CL103, CL184, etc are in different parishes, Manaton, Bovey and Lustleigh but there are no physical boundaries between the parishes. Over commons which have boundaries (fences) animals are more loosely leared than they would be on other commons.

Next Mr Maurice Harold Retallick who was born in 1943, gave oral evidence saying (in effect):- His father came to Bagtor Barton (Entry No. 17) between 1935 and 1939, and became the owner of Crownley Park (Entry No. 18) and Bagtor Mill (Entry No. 19) in 1957. He (the witness) became the owner of Bagtor Barton in



- 11 -

1977 in succession to his father; his father died in 1981 and he then succeeded him at Crownley Park and Bagtor Mill. After his father came to Bagtor Barton, he made use of grazing on Haytor Down (the Unit Land) and at the present time he (the witness) grazed cattle and sheep there. Such grazing is very important to the farming enterprise as it makes the farm a viable unit. Part of the flock of sheep lear around Haytor rocks; this present flock has done so since the early 1950's, without hindrance or objection from anybody else. Prior to his father's occupation at Bagtor Barton Haytor Down was stocked by the previous occupiers, Miss Cross and Miss Blenkiron; before them the occupier was a Mr Fowler. As can be seen from the Manor Book (page 187) Mr Fowler was one of the reeves and was so described at a Court Leet in 1908. There are references in the Manor Book to the Manors of Haytor and Bagtor; Mr Cullen of Leighon in his evidence at the Black Hill CL103 inquiry (before me on 16 March 1984) recognised his (the witness) rights on Haytor Down contesting them as regards Black Hill. Two of the properties on the Bagtor Estate who have registrations on Haytor Down have already or will become final, being those made by Mrs Perrin of Bagtor Manor House (Entry No. 48 final on 1 August 1972) of Mr Leahey of Gorse Cottage (Entry No. 5, Objection No. 591 having been withdrawn at the beginning of the hearing as above stated) and of Mr Evans of Little Sigford (part Little Sigford at Entry No. 9 final on 1 December 1970). His evidence was (given by him) by way of modern usage with the historic facts (as stated by other witnesses). When as already stated (by Mr R N Wills) the stocking was altered on the Unit Land by a different type of stock, his (the witness's) family made use of the grazing currently available, and have done so continuously to the present time. His father was always invited to Mr Longsdon's dinner parties as a commoner of Haytor Down which as Mr Evans explained was an invitation which would not have been granted to someone illegally stocking their lands.

Questioned by Mr Sullivan-Gould, Mr Retallick said (in effect):- Before they bought Crownley Park and Bagtor Mill in 1957 they had not been in occupation so when he went back to the 1930's he was referring only to what he and his father had done from Bagtor Barton. The rights he claimed over the Unit Land and the CL26 land were for the same animals (the numbers should not be added together). Grazing on Haytor Down was necessary to make the farm viable because animals inevitably wander from one (the Unit Land) to the other (the CL26 land) and because Bagtor (the CL26 land) was smaller; stock graze on both commons; there is not enough on either; the lear is more or less along the ridge of the hill down to the Lemon valley. The sheep wander and the cattle follow more or less the same ground; there is no physical boundary, the animals can go right through to Trendlebere CL58 over Black Hill CL103. He had withdrawn all of his claims except CL103 Black Hill, the Unit Land, CL26 Bagtor Common and CL27 Grey Goose Nest. He claimed in part on the Manor Book and in part by prescription. He did not agree that either the 1566 survey (CC/12), or the Manor Book (CC/7) or the 1935 Sale Particulars (CC/8) were against his claim.

Next Mr H H Whitley gave oral evidence in the course of which he said (in effect):- As regards the evidence just given by Mr Retallick he called attention to page 107 of the Manor Book at 14 December 1857 (see Fifth Schedule hereto)



indicating that Crownley Park is in the Manor of Haytor. At the start of the 1965 Registration Act, no commoners were consulted as far as he was aware on the way the commons were to be numbered (the Land Section registration in this case and in a number of other registrations in the Dartmoor National Park were made by "the registration authority without application"); it has always been the custom for the Manor of Bagtor and Ilsington should be one common as was shown by the formation in 1952 of the Ilsington Commoners' Association. When this Association was formed he (the witness) was elected chairman, Mr Wills secretary and Mr Klinkenberg treasurer, and he and they were appointed to serve both Manors and perpetuated what appeared in the Manor Book showing that the reeve and the pound keeper were always the same for both Manors. (Mr Wills intervened to say that the pound was kept at Pinchaford Farm in the Manor of Ilsington); there must have been collusion between the two Manors. The drift roads all round the Moor indicates the method by which animals go to the Moor from the inby land; in this case (the Unit Land and the CL26 land) all the drift roads lead to the Manor of Ilsington. There is a record (in the Manor Book 1/11/1834) of a about "Mounslan"; for this reason he (the witness) did not register any right over the Unit Land but did register the right for "Mounslan Farm" over the CL26 land (Entry No. 15); the dispute was whether animals could be driven "along the road through Horridge Court by Bagtor Mill over Birchanger to Haytor Down and the same way returning"; his point was: the 1834 decision was that persons going onto the Moor had no right to cross people's private land. He remembered the sheep lears before the last war (1939-45) of Mr Philp and Mr Codd; they were on each side of Saddle Tor (within the CL26 land and near its boundary with the Unit Land); they were both commoners listed in the Manor Book as being of Ilsington Manor (the witness was referring to the Unit Land registration at Entry No. 7, final on 1 December 1970 made on the application of Messrs A and B Philp of a grazing right attached to Honeywell Farm, Ilsington to graze 40 cattle, 130 ewes and followers and to the registration at Entry No. 42 final on 1 August 1972 made on the application of Mr R W C Beard of a grazing right attached to Combe Farm to graze 50 bullocks, 50 ewes); he (the witness) knew about Mr Philp's lear and Mr Codd's lear; Mr Codd was succeeded by Mr Beard at Combe Farm. He (the witness) thought that Mr Bowden also grazed on the same area of Haytor Down (both sides of Saddle Tor). He (the witness) submitted that the overwhelming evidence was that from the start of the Manor Book to the present day that the two Manors had been treated together.

Questioned by Mr Sullivan-Gould who suggested there was contrary evidence to this submission, Mr Whitley said (in effect):- He did not know of any contrary evidence. He did not regard the "Rights of Common over about 255 acres" mentioned in the 1935 particulars (CC/8) as contrary evidence. The Bagtor Estate included the ownership of the 255 acres*; when his father acquired it he was told by the owner of the other side (meaning the predecessor of Mr Longsdon) that it was all one common. He (the witness) conceded that this was not mentioned in the

*Note:- CC/8 "...Lot 7 will include all the estate and interest of the Vendors (personal representatives of Mrs Alice Louisa Wilson) in part of Haytor Down extending to about 255 acres which for many years formed part of the Manor of Bagtor ... The Purchasers of this Lot shall not require the Vendors to define their estate and interest in Haytor Down aforesaid ..."



conveyance (obtained by his father) but insisted that it was the custom as was apparent from the Manor Book, "long usage since 1800". He did not agree that the contrary could be deduced from there being two Manors or by there having been in 1835 a perambulation; then "they walked up the boundary to see the land they bought, same as I did when my father bought". As to Bagtor Barton (Entry No. 17; CC/8 Lot 8) he sold it (?1971/1976) to Mr Retallick.

Next (after about 30 minutes during which I considered the disputes relating to the CL26 land), Mr Wills handed in the summary as specified in Part VIII of the Second Schedule explaining that those registrations therein indicated "no redemption" did not appear in the Manor Book as paying rents redeemed in 1936 or in any previous list, and those marked "without the Manor", where outside.

Next Mr Sullivan-Gould made general submissions on the whole matter:- As regards numbers (fewer animals, Objection Nos. 593 and 594), some had been agreed at (Entry Nos. 3, 14, 24, 31, 40 and 51); in the absence of any evidence to the contrary, the registrations at Entry Nos. 10, 16, 21, 30, 45, 46, 47, 53 and 68 (including I suppose No. 67 which with No. 68 replaced No. 20) and being within Longsdon Objections Nos. 593 and 1039 should only be confirmed with the modification suggested in the said Objections (fewer animals). In the absence of any evidence in support of them the registrations at Entry Nos. 1, 2, 4, 15, 32, 52 and 59 within Longsdon Objections Nos. 591, 592 and 1038 and within Whitley Objection No. 968 (rights do not exist at all) should not be confirmed. As to excluding claimants from outside the Manor of Ilsington that is those of the Manor of Bagtor it is a question of fact whether Bagtor and Ilsington are one manor or two manors. To those of one manor there cannot legally be a custom of that manor to have a grazing right over the common of another manor; they can therefore only establish such a right if at all by prescription that is by use for 30 years before September 1970. The evidence of Mr Evans (Entry No. 8) went back no earlier than 1951, that of Mr Bowden (Entry No. 12) went back no earlier than 1956 and that of Mr Retallick as regards Bagtor Barton (Entry No. 17) no earlier than 1950 and as regards Crownley Park and Barton Mill (Entry Nos. 18 and 19) no earlier than 1957; Mr Whitley as regards Westabrook Farm (Entry No. 11) gave no evidence of use at all; the confirmation of all these registrations should be refused.

Next I said I would inspect the Unit Land.

Next Mr Evans contended that as to the lack of evidence about the registration at Entry No. 8 before 1951, there was no evidence that his predecessor had not stocked the Moor; and said that grazing earlier must have existed because the farm was then a very mixed farm.

Next Mrs Ware produced some documents and made some observations, directed so it seemed to me to Whitley CL26 Objection No. 969 (rights do not exist at all) and not to Longsdon Unit Land Objection No. 1039 (fewer animals); so I have dealt with these documents and observations in my CL26 decision of even date.



Inspection

On 14 April I inspected the Unit Land in the presence of Mr H H Whitley, Mr C Bowden, Mr M H Retallick, Mr E Evans and Mr R N Wills and others much helped by a Land Rover provided by one of them. Starting from Hemsworthy Gate we went to the highest point of the boundary between the Unit Land and the CL26 land observing the boundary stones pointed out to me as we descended to the south corner of the Unit Land and then went on along the road by Bagtor, Horridge, and Mountsland, back to Hemsworthy Gate. The drift roads mentioned by Mr Whitley in his evidence were pointed out.

Two manors v one common

Much, perhaps the greater part, of the hearing was concerned with this question, it being generally assumed that my answer depended primarily on the Manor Book (CC/7), the 1841 Tithe Award and the 1935 Particulars (CC/8); and that as part of the historic background I should consider the Domesday position (JPK/1) and the 1566 Survey (CC/12).

As to a common being in more than one manor, I have the judgement of Jessel MR in *Commissioners of Sewers v Glasse* (1874) 19Eq. 134; the defendants were the lords of several manors; of one of their defences he said at page 153

"They say that the common ... is what I may call manorial; that is that the beasts were marked within the precincts of each manor, that the turning out was always within the manor, and that the rights therefore were limited to each particular manor, and of course as to other wastes beyond could not be substantiated as common appurtenant ... the singular part of the case is that ... a great number of persons ... swear affidavits going the whole length of the defences, as to the rights being manorial ... therefore the point could be very easily tried as a matter of fact ... when the witnesses came to be cross-examined ... manifestly untrue ... To use a familiar phrase the whole of this part of the case (of the defendants) broke down".

Commissioners of Sewers v Glasse is perhaps the most famous of all the cases dealing with common land relating as it did to Epping Forest and having far reaching consequences, the judge having the help of 6 QCs and 14 junior counsel and of evidence and arguments lasting 23 days. His above quoted criticism of the evidence he had is certainly not applicable to any given at my hearing; nevertheless from that criticism and the rest of his 16 pages judgement I deduce that because a piece of land is partly in one manor and partly in another manor as a matter of law is not by itself decisive that it should be treated as two commons so that those who have grazing rights over one cannot have grazing rights over the other; and that whether as regards grazing rights the piece is one or two commons is a question of fact.

Jessel MR considered the exercise of the rights claimed for 60 years and upwards sufficiently established that the rights extended to all of Epping Forest and not merely over the part of it which was in the same manor as the land of each claimant and thus impliedly rejected the argument that the rights claimed were legally



impossible because they pre-supposed that the custom of one manor somehow regulated the grazing of the waste of another manor.

But I do not read the judgement as a decision that the manorial history is to be disregarded. The ways by which a right of common may by law be established are: (1) by an express grant; (2) by prescription at common law; (3) under the Prescription Act 1832; and (4) by a presumed grant, see *Tehidy v Norman* 1971 2QB 528 at page 543. To which must be added (5) by statute, particularly the Law of Property Act 1922, Schedule XXI para. (4) by which following the 1926 universal enfranchisement of copyhold and customary freehold lands, any commonable rights existing under the custom of a manor are continued notwithstanding that the land to which they are attached has become freehold; on this point para. (4) follows section 22 of the Copyhold Act 1894.

So in considering the Manor Book, the Tithe Award and the 1935 Particulars, I try to keep in mind the legal principles applicable to each of these ways. In this context, I have no need to consider the Domesday and 1566 document (JPK/1 and CC/12) because they add nothing to what is deducible from the Manor Book.

The Manor Book

In it the proceedings of the Jury between 1818 and 1923 are recorded: from the start until 1866 as of the Manors of Ilsington Bagtor and Natsworthy, and after 1869 as of the Manors of Ilsington and Bagtor (omitting Natsworthy). The successive Lords of the Manors are (the same for all or both) were George Templer to 1826; Edward Adolphus Duke of Somerset from 1831 until his death between 1853 and 1857, then his son of the same name until 1884; Revd prebendary Richard Robbins Wolfe from 1888 to 1899; and Washington Meritt Grant Singer from 1902 to 1923.

Between and after the records of the Jury proceedings are rentals of these Manors, the lands being separately listed for the Manor of Ilsington and the Manor of Bagtor, from 1821 to 1937. The items of the business of the Jury particularly relied on at the hearing are specified in the Fourth Schedule hereto.

The Book contains no evidence of there ever having been an express grant of a right of common by the Lord of the Manor either with the consent of the homage or at all.

As to a possible link between the obligation to pay a rent and a right of common over the waste of either or both Manors:- Generally a person who for the use of the land of another pays a rent to the owner, acknowledges he has no rights, see *Gardner v Hodgson* 1903 AC 229; but this generality must be qualified by the possibility that the payment was pursuant to a rent charge, per Lord Lindley *ib.* I infer that the rents recorded in the Book were such and therefore did not prejudice any rights of common the payer enjoyed. But I infer also that the rents were charged on the lands in respect of which they are in the Book expressed to be payable and decline to infer that they were charged only on the right of common enjoyed with such lands.



- 16 -

So I conclude that there is no necessary link between the lands listed in the Book as subject to rents and the rights of common from time to time expressly or impliedly considered by the Jury. Indeed any other conclusion would leave out enfranchised land held by the Lord as freeholder and by him let on lease; for whether or not rent was extinguished by merger on such an enfranchisement, a Lord would not pay rent to himself and his steward could properly not record anywhere a notional rent; but nevertheless the right of common would continue to exist if not as between persons holding in fee simple, at least as a quasi right of common such as recognised in *Musgrave v Inclosure* (1874) LR 9QB 162. So I conclude that the Book is not evidence that all the lands in it recorded as being liable to rent necessarily have a right of common over the waste lands of either or both Manors or that the land in it not recorded as liable to any rent necessarily has no such right.

The Book is importantly relevant in this case as it is some evidence of what on and about the Unit Land was between 1818 and 1923 being done and is also some evidence that during all these years there was close co-operation in the matter of exercising rights of common between those concerned with lands of the Manor of Ilsington and of the Manor of Bagtor, particularly that throughout this period the poundkeeper and the reeve were the same for the two Manors, and that there is no record of anyone of one of the Manors being presented for grazing on the waste land of the other. This evidence except for the Tithe Award and the 1935 Particulars, was at the hearing in no way contradicted. By itself it is indecisive as to which of the lands with which I am concerned had in 1968 rights attached to them as registered; but it may importantly fill an evidentiary gap in some of the other evidence I have.

Tithe Award

By the Tithe Act 1836 section 64, stating its wording shortly: "every statement in an apportionment (the Award) shall be deemed to be satisfactory evidence of the matter therein stated". The effect of this section was considered in *Knight v David* 1971 1WLR 1672 when it was held, following the view expressed in 1877 by Jessel MR that "satisfactory" meant for the purpose of the Tithe Act 1836.

Accordingly I conclude that the Tithe Award does not decisively establish the existence when it was made of any right of common therein mentioned or decisively establish any other fact with which I am concerned.

Nevertheless the Tithe Award is both at common law and under the Civil Evidence Act 1968 some evidence of any fact recorded in or deducible from it; see *Knight v David* supra. But such evidence is not conclusive as to any fact and must necessarily be balanced against the other evidence if any about the same facts.

The Tithe Award makes a distinction between "Haytor Down" and Bagtor Common", and records some of the lands as having "right of depasture" on either Haytor Down or Bagtor Common. The Valuer who prepared the Award was concerned to some extent with rights attached to lands with which he was dealing as they



- 17 -

would affect their value; so his record is both at common law and under the 1968 Act some evidence of some weight that such a right did exist at that date.

It may be technically that the Award is in law some evidence that there were attached to such lands no other rights of depasture other than those mentioned. Bearing in the mind the Valuer was not directly concerned with the extent of any right of depasture which he mentioned and that in 1841 the value of the land to which the right mentioned was attached would not be much affected by whether the right was limited to the CL26 land or extended both over the CL26 land and the Unit Land, I consider the evidential value of the Tithe Award as showing that there was no right of depasture on the Unit Land in 1841 attached to Bagtor Mill or Westabrook of very little weight; a few straws perhaps which in an otherwise evidentiary vacuum might be decisive but its weight when balanced against any contrary conclusion which might be drawn from the Manor Book would be as of straws against lead.

1935 Particulars

The words quoted by Mr Sullivan-Gould from the heading in these Particulars (CC/8) to lots 7 to 15 must be read with Condition of Sale No. 14:

"Lot 7 (Bagtor House) will include all the estate and interest of the Vendors in part of Haytor Down extending to about 255 acres which for many years formed part of the Manor of Bagtor subject nevertheless to the right of pasture granted thereover in favour of Lots 8, 9, 11 and 15, and subject also to any other rights of pasture or other rights now existing thereover in favour of any other person or persons without obligation on the Vendors to define the same ..."

The omission in the Condition 14 of lot 10 (Bagtor Mill) elsewhere in the Particulars expressed to include "valuable rights of pasturage on pt Haytor Down about 255 acres" is I think a clerical or printers error.

I infer that in 1935 it was locally thought that the Vendors being the personal representatives of Mrs Alice Louisa Wilson, as owners of the Bagtor Estate had a valuable possible interest in the CL26 land; so it was consequentially necessary to particularise the right of pasturage over it attached to lots 8, 9, 10, 11 and 15. But it was not consequentially necessary to specify the right of pasturage if any attached to the Bagtor Estate or to the parts of it let as farms over the Unit Land; any such rights would in the conveyances without any express mention pass to each purchaser under section 62 of the Law of Property Act 1925. As evidence that there were in 1935 no such rights, the Particulars are in my opinion of little weight, comparable with my said straws.

There is a conflict (not explained at the hearing) between the Manor Book (CC/7) and the Particulars (CC/8), in that the Book is some evidence that the persons in it recorded as Lords of the Manor were the owners of the CL26 land and the Particulars are some evidence that Mrs A L Wilson and her predecessors back to R B Baron Ashburton who died between 1820 and 1823, were (or were locally



considered to be) the owners*. So I cannot infer that the October 1835 perambulation recorded in the Manor Book was (as was suggested at the hearing) provoked by a change of ownership consequential on the July 1835 death of the Rt Hon J E Baron Cranstown mentioned in the 1935 Particulars. But it is or may be significant that between 1817 and 1831 in the Manor Book under the heading "Bagtor Manor" Lord Ashburton is listed among those paying rents as being of the "tenement" of Bagtor, but (unlike the others so listed) there is in the Book a blank in the column recording the rent due from him; some evidence that he as owner of Bagtor was concerned with the subject matter of the Book although not liable for any rents.

One or two commons?

At the hearing and also during my inspection, I was requested if not expressly at least impliedly to determine for the benefit of all concerned whether the Unit Land and the CL26 land were two commons with the assumed consequence that none who had a right of common over one could properly have a right over the other, or whether they were one common with the assumed consequence that all who had a right of common over one necessarily had a right over the other. By answering affirmatively one or other of these questions, it was suggested that the future management of the grazing on both the Unit Land and the CL26 land would be much simplified, and also suggested, so I understood, that my answer should be deduced from the Manor Book and the Tithe Award, possibly with the help of the 1935 Particulars but without regard to anything which had happened since, thus incidentally simplifying my own task because the particular circumstances of the farm mentioned in any 1965 Act registration would be irrelevant to any decision of mine.

The essence of this request was that the Unit Land and the CL26 land could not properly be such that rights to graze on both could not co-exist with rights which were limited to one or the other.

So I must consider whether this approach to the conflicting evidence and arguments put before me at the hearing accords with the law.

In considering other Register Units, I have often heard evidence about the Unit being the same or distinct from another Register Unit, and as regards some particular disputed registration or group of registrations given a decision according to the facts as I found them; see for example my CL103 (Black Hill) decision of even date. But also in considering other Register Units, I have given decision recognising that there may be attached to land right not only over the whole of one Register unit but also over the whole or some part of another Register unit.

*Note: the Ownership Section of Register Unit No. CL26 contains no Entry, so there will sometime in the future be an inquiry as to ownership held by a Commons Commissioner under Section 8 of the Commons Registration Act 1965.



Clearly a grant of a right of common can be made in all sorts of ways so the questions I am requested to answer about them could not be proper. Such questions seem to me equally improper as regard claim under the 1832 Act or otherwise based on usage, because any such claim is essentially based on the hypothesis the right claimed could be the subject of a grant.

Further the general answer to the question put to me would in the circumstances of this case be contrary to the Commons Registration Act 1965 under Section 1 of which a right of common which has not been registered ceases to be exercisable, and under Section 10 of which the final registration of a right of common is conclusive evidence of the matters-registered. Of the final registrations in the Unit Land register, some in the CL26 Register are repeated in full and some are repeated not at all. So my answer to the questions could have no general effect without any exception.

In my opinion I cannot properly answer the questions proposed and must consider the evidence and arguments offered for and against each registration, and give my decision on the balance of probabilities in accordance with principles accepted in the High Court in comparable circumstances.

But as regards each registration the Manor Book although not decisive is important and the Tithe Award and the 1935 Particulars may be relevant. But in considering them, I apply the principles set out in *Copestake v West Sussex* 1911 2Ch 331, where at page 340 it was said (in effect) as regards a public right any presumption ought to be drawn with reference to the circumstances existing at the time when the question arises and it would not be right to raise a presumption from a state of circumstances proved to have existed 30 or 50 years ago ignoring all that had happened since. Such principles are I think applicable to the to be drawn from evidence about rights of common. In this case, the questions arose in or about 1968 when the registrations were made. In applying the Manor Book, the Tithe Award and the 1935 Particulars, I must not ignore such matters as the dinners given to Commoners by Mr Longsdon, and the formation of the Islington and Bagtor Commoners Association by persons interested in grazing either on the Unit Land or the CL26 land, and therefore possibly interested in grazing on both.

Bagtor Barton, Crownley Park
and Bagtor Mill

The relevant registrations are at Entry Nos 17, 18 and 19.

In the CL26 Register the corresponding registrations are at Entry Nos. 16, 17 and 18, which being undisputed have become final.

In the 1935 Particulars these farms at lots 8, 11 and 10 respectively. Lot 8 is therein stated to be in the occupation of the Mrs E M Cross and C H Moore who had sublet to Messrs Retallick by permission.



I accept the evidence of Mr Retallick (as being within his own knowledge) that there was grazing by his father and himself on the Unit Land from Bagtor Barton from the early 1950s and from Crownley Park and Bagtor Mill from 1957 and that nobody challenged it before the Longsdon Objection Nos. 591 and 592. From the Manor Book, Mr Longsdon's parties for commoners, and the formation in 1952 of a Commoners Association for persons of Haytor and Bagtor, that those concerned with the Unit Land and the CL26 land had many things relating to grazing worth discussing together and I cannot imagine what they could be unless some of them grazed on both.

On my inspection although the boundary between the Unit Land and CL26 land as marked by stones was clear enough, it was obvious that the grazing on both sides would be practically convenient to many. The situation of Bagtor Barton, Crownley Park and Bagtor Mill in relation to the CL26 land (see the 1935 Particulars plan) is such that they probably would have rights of common over the CL26 land such as are now (being undisputed) finally registered; and if there was any co-operation at all between the commoners of the Unit Land and the CL26 land those from these farms would be among those most likely to have something to co-operate about. I conclude that the grazing described by Mr Retallick was as of right.

Mr Sullivan-Gould contended that such grazing was not for long enough to establish a right. I accept that for the purposes of the Prescription Act 1832, grazing to establish a right must be for at least 30 years and that by section 16 of the 1965 Act such 30 years is to be measured back from the date of the objections (in this case 25 September 1970). I also accept that for the purposes of establishing a presumed grant in accordance with the principles of *Tehidy v Norman* supra, the 20 years exercise of a right is either by analogy or because it could not afterwards be as of right measured back also from the date of the relevant objections. But these minimum periods are not relevant to prescription at common law applicable to rights which could have existed from time immemorial, such as those referred to in the Manor Book.

The Manor Book shows that between 1818 and 1923 rights attached to at least one farm have existed over both the Unit Land and CL26 land, and that such rights were associated with the Manors of Ilsington and Bagtor. The 1935 Particulars show farms then part of the Bagtor Estate were at one time owned by Lord Ashburton; a person treated in the Manor Book as being between 1818 and his death as the tenant of the "Bagtor Manor" tenement not subject to any rent and as such having an interest distinct from Mr Templar and the Duke of Somerset. It is therefore likely that the rights claimed for these farms of the Bagtor Estate have existed from time immemorial.

The grounds of the Objections are very shortly stated. I have no evidence as to what Messrs Longsdon or those advising them actually had in mind. About those most stressed at the hearing by Mr Sullivan-Gould on behalf of their successor, I have expressed my views under this and other headings in this decision.



That many of those of Haytor Vale at the April 1984 meeting voted against the Unit Land being treated as one common in the hope of excluding those of Bagtor and making the grazing on the Unit Land for those of Haytor more valuable, or at least more manageable, is I think irrelevant.

The evidence of Mr Wills that there was a falling off in the grazing between about 1935 and about 1950, is not by itself against the claim, in that mere non-exercise of a right of common is no evidence of abandonment, see *Tehidy v Norman supra*.

All that remains against these registrations is that they are not supported by the Tithe Award and the Farms are not particularly mentioned in the Manor Book, and that possibly Mr Retallick should have provided some evidence not based on hearsay of the grazing if any of his father's predecessors in title.

In favour of these registrations, I have the appearance and locality of the farms in relation to the Unit Land raising a strong probability that the co-operation so evident from the Manor Book between the two Manors must have at least have extended to these farms of the Bagtor Estate. Balancing the conflicting considerations applicable, I conclude that the rights attached to these farms as registered have existed from time immemorial.

As to the alternative grounds of Objection No. 592 applicable to Crownley Park and Bagtor Mill, that the registrations should comprise fewer animals, I have in support of these grounds the general evidence of Mr Sullivan-Gould as to how the objections numbers were calculated. A comparison of the acreages of lots 8, (even if that of the Newtake in accordance with the usual practice is not counted), 10 and 11, suggest that the numbers in the registrations at Entry Nos 18 and 19 are excessive. I shall therefore give effect to these grounds.

So summing up all under this heading, my decision is that the registration at Entry No. 17 was in all respects properly made and the registrations at Entry Nos 18 and 19 were properly made subject only to "12 cows and followers or 48 ewes and followers" being substituted for "16/14 cows ... and 85/65 ewes ...".

Sigford House

The relevant registration is at Entry No. 8.

In the CL26 Register the corresponding registration is at Entry No. 5, which being undisputed has become final.

As appears in Part VI of the Second Schedule hereto there have been 4 grants (1925, 1928, 1936 and 1949) of Sigford House expressly made with "rights of grazing on Haytor Down". Such grants as acts of possession are evidence of the existence of such right, see *Blandy-Jenkins v Dunraven*, 1899 2 Ch 121.

That Mr Evans himself only grazed from 1954 until he retired, does not prevent him relying on other evidence in support of the rights he claimed, see under the preceding heading.



The 1834 Entry in the Manor Book relating to "Higher Sigford (even doubtfully assuming it can be treated as against) is I think on balance outweighed by the other evidence for Sigford House.

Generally I accept the arguments recorded under the heading "Course of Proceedings" put forward by Mr Evans and concluded that this registration at Entry No. 8 was in all respects properly made.

Great Lounston

The relevant registration is at Entry No. 39.

In the CL26 register the corresponding registration is at Entry No. 33; in the CL26 proceedings this registration is subject to Ilsington Commoners Association Objection No. 969, "does not exist at all". I have yellow form dated 30 July 1973 signed W A Sanders and G C Sanders agreeing to "my registration Entry No. 33 (rights) being cancelled".

Mr Sanders relied on the Tithe Award. As above explained such award is evidence that the existence of a right. I have no reason for not acting on this evidence. The objection relating to fewer animals was as above recorded conceded. My decision about this registration is therefore that it was properly made subject to "80 cattle or 320 sheep" being substituted for "70 cattle 200 sheep".

Westabrook

The relevant registration is at Entry No. 11.

In the CL26 Register the corresponding registration is at Entry No. 13, which being undisputed has become final.

Mr Sullivan-Gould against the registration said that there was no evidence of grazing of the Unit Land from Westabrook. The absence of any such evidence would have been fatal to the registration if Mr Whitley had relied solely on the 1832 Act or on some grant to be presumed from usage in accordance with *Tehidy v Norman* supra; but as I understood him, he relied on the "amalgamation" of the Manors to be deduced from the Manor Book, the 1935 Particulars, what Mr W M Singer and Mr A Rendell told his father and the situation of Westabrook in relation to the Unit Land and CL26 land. I decline to discredit Mr Whitley's arguments about "amalgamation" merely because he offered no evidence of actual grazing; not having been questioned by Mr Sullivan-Gould about actual grazing, he had no opportunity of explaining why no such evidence was offered.

So the case for this registration depends on whether I can as regards the Bagtor Estate, or at least as regards the Westabrook part of it, deduce from the documents and oral evidence, taken as a whole that there has been as regards Westabrook an amalgamation of the Unit Land and the CL26 land.



During my inspection I saw the apparent convenience to some farms of grazing both the Unit Land and CL26 land together. On the plan attached to the 1935 Particulars, Westabrook like the other farms of the Bagtor Estate having rights over the CL26 land, such combined grazing is obviously convenient. The Manor Book shows co-operation between the 2 manors for more than 100 years. Mr Rendell could not have spoken as he did unless he thought the "amalgamation" was relevant to grazing from the Bagtor Estate.

All these considerations are relevant to prescription at common law. Giving these diverse matters the best consideration I can, I accept Mr Whitley's contention that as regards the Bagtor Estate and particularly Westabrook, the Unit Land and the CL26 land (the 2 manors) had by about 1940 for grazing purposes become amalgamated. My decision accordingly is that this registration was properly made.

Harkworthy Farm

The relevant registration is at Entry No. 13.

The corresponding CL26 registration is at Entry No. 14, which being undisputed has become final.

Mr Wills said that the registration was withdrawn. The reasons he gave for so withdrawing were less favourable to himself than some of my observations elsewhere in this decision; nevertheless I consider I should act on this withdrawal, because as I understood it it was part of the agreement made about Narracombe Farm specified in the Third Schedule hereto.

West Horridge

The relevant registration is at Entry No. 12.

In the CL26 Register the corresponding registration is at Entry No. 8, which being undisputed has become final.

The grazing described by Mr Bowden cannot be decisive for this registration because it started in 1956, less than 20 years before the relevant Objection. About this I accept Mr Sullivan-Gould's submission.

The grazing described by Mr Boden started in 1956, was not consciously in succession to anything done by any predecessor and I cannot infer from anything he said about it that it was as of right. So if this registration is to be supported at all, it must be from the Manor Book (West Horridge was not in the 1935 Particulars of the Bagtor Estate). The situation of West Horridge, not near the CL26 land and even further away from the Unit Land is against there being a right attached to it over the Unit Land in addition to the CL26 land. Contra, I have the co-operation shown by the Manor Book between those concerned with the Unit Land and CL26 land.

Balancing the conflict as best I can and not overlooking the occasional references to Horridge in the Manor Book, my conclusion is that no immemorial right attached to West Horridge is established by the Manor Book or anything else said at the hearing. I have not overlooked that West Horridge is not far from Westabrook about which I have formed a different conclusion; but their situation and history are different. As I have already said I am unable to find that for grazing purposes the Unit Land and the CL26 land are for all farms one common, and I can find nothing



- 24 -

about West Horridge historically connecting it for grazing purposes to the Unit Land. Accordingly my decision is that this registration at Entry No. 12 was not properly made.

Agreement

I consider I can properly act on the agreements recorded in the Third Schedule hereto with the consequence that my decision is that the registrations at Entry Nos 3, 5, 14, 22, 23, 24, 31, 40 and 51 were properly made if modified as in the Fourth Column of such Schedule specified and the registrations at Entry Nos 41, 55, 57, 58 and 60 were not properly made.

Straying

For the reasons given under the heading "Straying" in my decision dated 30 June 1983 about the Forest of Dartmoor (CL164) I consider that in the absence of special circumstances (none was suggested) a registration expressed as "to stray" should be avoided. Accordingly my decision is that none so expressed was properly made, being those at the following Entry Nos (omitting Nos 55 and 58 mentioned in the Third Schedule hereto), that is to say Nos 33 to 38 inclusive (37 having been replaced by Nos 75 and 76), 49, 50 and 56.

Others

The registration of the following Entry Nos are specified in the grounds of one or more of the Objections as "does not exist at all", that is to say:- Nos 1, 2, 4, 5, 8, 11, 12, 13, 15, 17, 18, 19, 21, 25, 26, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 49, 50, 52, 54, 55, 56, 57, 58, 59 and 60. Of these Nos 8, 11, 12, 13, 17, 18, 19 and 39 are mentioned above under the heading Sigford House, Westabrook, West Horridge, Harkworthy, Bagtor Barton, Crownley Park, Bagtor Mill and Great Lounston; Nos 5, 41, 55, 57, 58 and 60 are mentioned under the heading Agreements and Nos 33 to 38, 49, 50 and 56 under the heading Straying. Leaving only those within such grounds of objection Nos 1, 2, 4, 15, 21, 25, 26, 28, 30, 32, 43, 52, 54 and 59; some of these are mentioned adversely in Mr Wills' list (RNW/10); but whether or not so mentioned, the grounds put the registrations wholly in question and in the absence of any evidence or argument in support of them I conclude that none were properly made. Among these I make no exception of No. 43 which Mr Mellor suggested should be amended by inserting the words "by straying"; if so amended I would have avoided it for the reasons set out above under the heading Straying.

There remain only the registrations at Entry Nos 10, 16, 44, 45, 46, 47, 53, 67 and 68 to which the only Objections were those the grounds of which were "fewer animals". As regards the registration of Entry No. 44 (replaced by Nos 72 and 73) I shall give effect to these grounds in the way suggested by Mr Courtier at the hearing as above recorded. As regards the others I shall give effect to the said grounds as set out in the Seventh Schedule hereto.



Final

The effect of my decisions herein before contained is set out in the Eighth (and last) Schedule thereto, which should be treated as part of this decision.

Because much of this decision relates to persons who were not present or represented at the hearing and is dependent on agreements and 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 any 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 8 of the Eighth 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 the notice of the decision is sent to him, require me to state a case for the decision of the High Court.

TURN OVER



FIRST SCHEDULE
(Objections)

Part I: made by Robert Cyril Longsdon
and Helen Mary Longsdon

No. 591; noted in the Register 30 November 1970; applicable to Entry Nos. 2, 4, 5, 8, 11 and 17; grounds, the right does not exist at all.

No. 592; noted in the Register 24 November 1970; applicable to Entry Nos. 1, 12, 13, 15, 18 and 19; grounds, the right does not exist at all or should comprise fewer animals as set out in the Objection.

No. 593; noted in the Register 24 November 1970: applicable to Entry Nos. 3, 10, 14 and 16; grounds, the right should comprise fewer animals as set out in the Objection.

Part II: made by H H Whitley
of Welstor

No. 573; noted in the register on 30 November 1970; applicable to Nos. 2 and 15; grounds, right does not exist, "this is a manorial common, the chief rent was not redeemed by the owner of this farm under the Law of Property Act".

Part III: made by Ilsington
Commoners Association (Hon Secretary R N Wills); (chairman H H Whitley)

No. 944; noted in the Register on 9 December 1971; applicable to Nos. 30, 32, 43, 52, 57, 59 and 60; grounds, this is a manorial common and the rights do not exist at all.

No. 968; noted in the Register on 18 December 1972; applicable to Nos. 21, 25, 26, 28, 30, 32, 33, 34, 36, 37, 39, 41, 43, 49, 50, 52, 54, 55, 56, 57, 58, 59 and 60; grounds, rights do not exist at all.

Part IV: made by Robert Cyril Longsdon

No. 1037; noted in the Register on 11 September 1970; applicable to Nos. 33, 35, 49, 52, 58 and 60; grounds, the right does not exist at all.

No. 1038; noted in the Register on 11 September 1970; applicable to Nos. 32, 34, 36, 37, 38, 43, 50, 55, 56, 57 and 59; grounds, the right does not exist at all or should comprise fewer animals as set out in the Objection.

No. 1039; noted in the Register on 11 September 1970; applicable to Nos. 20, 21, 22, 23, 24, 26, 30, 31, 39, 40, 41, 44, 45, 46, 47, 51, 53 and 54; grounds, the right should comprise fewer animals as set out in the Objection.



SECOND SCHEDULE
(Documents produced)

Part I: Before or at beginning of hearing

- 3 April 1984 Letter to Commons Commissioners from Harold Michelmores & Co, Solicitors of Newton Abbott on behalf of Mr J D Crossman of Higher Sigford Farm, Bickington agreeing that his registration of grazing rights at Entry No. 40 should be limited to 82 cattle or 82 ponies or 328 sheep.
- 9 April 1984 Letter to me as Common Commissioner from R N & R C B Wills; prepared to withdraw claim for grazing rights on the Ilsington Manor part of Haytor Down (CL25) and to substitute straying rights provided CL25 and CL26 are considered two separate commons; if considered as one common the CL103, CL184, CL58 and CL81 should be added.
- 10 April 1984 Letter to Commons Commissioner from George Wills agreeing Entry No. 67 be reduced to 23 cattle or 23 ponies or 90 sheep.

Part II: by Mr M D Sullivan-Gould (or by him referred to)

- CC/1 3 December 1970 Letter (yellow form) referring to Obj 593 was signed by S E Dymond agreeing registration at Entry No. 3 being amended.
- CC/2 2 October 1972 Letter (yellow form) referring to Obj 1039 and was signed S Madge agreeing Entry No. 23 being amended.
- CC/3 8/1/74 Letter (yellow form) referring to Obj 1039 and was signed Nora E Lupton and F G Lupton agreeing Entry No. 24 being amended.
- CC/4 7/10/72 Letter (yellow form) referring to Obj 1039 and was signed by H J Willcocks agreeing to Entry No. 31 being amended.



- 28 -

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|------|--------------|--|
| CC/5 | 24 Feb 1972 | Letter (yellow form) referring to Obj 916 signed by Reginald J Keen agreeing to Entry No. 41 being cancelled. |
| CC/6 | 24/9/72 | Letter (yellow form) referring to Obj 1039 signed by Edwin E Hunt agreeing to Entry No. 51 being amended. |
| CC/7 | 15 July 1818 | Manuscript Book bound in velum entitled Manor of Ilsington & Bagtor, for contents, see Fourth Schedule hereto. |
| CC/8 | 1935 | Sale particulars, auction by Michelmores Loveys & Sons: Lots 7 to 15 (inclusive) comprising the Bagtor Estate Ilsington embracing an area of about 792 acres with Rights of Common over about 255 acres... date for completion 23 December 1935. |

Part III: produced by Mr H H Whitley

| | | |
|----|------------------|---|
| -- | 1838 | Tithe Map, Ilsington. |
| -- | 31 December 1841 | Tithe Award (apparently contemporary copy) for the parish of Ilsington; the 1838 map being therein referred to. |

Part IV: by Mr J P Klinkenberg

| | | |
|-------|----|--|
| JPK/1 | -- | Extract from Manorial History in Newton Abbot library, being page 3 headed "Doomsday Manors...ILESTTINTONIA, Ilsington...BAGATHORA (Bagtor) ..." |
|-------|----|--|



Part V: produced by Mr A S Courtier

ASC/1 -- Map specified in column 5 of Rights Section registration at Entry No. 44; part Middlecott, part Oldertown, and part Glebe; "together with straying rights onto CL26, CL103 and CL184".

Part VI: by Mr C N Evans

CNE/1x -- Photograph - 5" x 3", of about 50 or more Belted Galloway cattle.

CNE/1 -- Statement (of evidence) with extracts from deeds of Sigford House. - CNE/2-5 below.

CNE/2 1925 Abstract of title of Sigford House commencing with a conveyance dated 29 September 1925 marked original abstract produced, by H E Reece to M J Hewlett "together with rights of grazing on Haytor Down".

CNE/3 29 February 1928 Conveyance by M J Hewlett to R W H Griffiths of Sigford House, 6la. 3r. 37p, "together with all rights of grazing on Haytor Down in respect of the said property hereby conveyed".

CNE/4 10 November 1936 Conveyance by R W H Griffiths to William Whitley of Sigford House: 6la. 3r. 37p "together ... as above".

CNE/5 20 January 1949 William Whitley to Colin Noel Evans, ditto.

Part VII: produced by Mr M R Saunders

MRS/1 -- Plan of South or Great Lounston Estate of Miss Alice Margaret Nosworthy.

MRS/2 1841 Extract from said Tithe Award.



Part VIII: by Mr R N Wills

| | | |
|--------|---|---|
| CC/12 | 1560 (inquiry held 17 Aug 8 Eliz) | Copy (original in County Records Office): Survey of Ilsington Manor from the document entitled "The Lord Dynham's Lands" in the Exeter City Library; on behalf of the share of Henry Compton, Esquire, one of the Lords of the Manor ... Free tenants ... (total 4s/2d; customary tenants ...) (total £14. 13s. 1d... Demene and Barton lands ...) "total 78s.0d... Waste: item The said waste is bounded as followeth..." |
| RNW/10 | -- | Manuscript list of CL25 registrations. |

TURN OVER



THIRD SCHEDULE
(Registrations agreed before or at hearing)

| Entry No | Applicant and land to which rights attached | Relevant circumstances | Decision |
|----------|---|---|---|
| 3 | Selina Elizabeth Dymond; Lounston Farm | Objection No. 593 should be "40 bullocks <u>or</u> 200 sheep". She signed yellow form (CC/1) dated 3 December 1970 agreeing. At hearing (12 April) Mr Pilkington agreed | CONFIRM with MODIFICATION in column 4, substitute "40 bullocks or 200 sheep" for "100 sheep and 40 bullocks" |
| 5 | Douglas Gray Buzett Leakey; Gorse Cottage | Objection No. 593; withdrawn on first day of hearing | CONFIRM without any modification |
| 14 | Richard Norman Wills and Rosemary Isobel Elizabeth Anne Wills; Narracombe Farm | Objection No. 593 should be "133 cattle <u>or</u> 40 horses <u>or</u> 442 sheep". At hearing (12 April) Mr R N Wills agreed | CONFIRM with MODIFICATION in column 4 substitute "133 cattle or 40 horses or 442 sheep" for "442 sheep, 133 cattle, 60 horses". |
| 22 | Alexander Herbert John Ware; Middlecott | Objection No. 1039: should be "4 cattle <u>or</u> 4 ponies". At hearing (12 April) Mrs Y Ware and Mr M D Sullivan-Gould agreed "6 ponies or 2 bullocks". | CONFIRM with MODIFICATION in column 4, substitute "6 ponies or 2 bullocks" for "6 ponies 10 bullocks" |
| 23 | Seymour Madge; Moor Lea and Hinds Ground, part Pinchaford, Haytor | Objection No. 1039, should be "40 cattle <u>or</u> 40 ponies <u>or</u> 160 sheep". He signed yellow form (CC/2) dated 2 October 1972 agreeing amendment. At hearing (12 April) Mr A S Courter said Mr S Madge died some years ago, his widow still owned some of thisland, she sold the rest to Mr and Mrs Atkinson | CONFIRM with MODIFICATION in column 4 substitute "40 cattle or 40 ponies or 160 sheep" for "15 sheep 10 cattle 10 ponies". |
| 24 | Frank Guilbert Lupton and Dora Ellen Lupton (owners) and Arthur Samual Courtier (tenant); OS No. 34 in Ilslington | Objection No. 1039, should be "6 cattle <u>or</u> 6 ponies <u>or</u> 22 sheep. Messrs Lupton signed yellow form (CC/3) dated 8/1/74 agreeing amendment | CONFIRM with MODIFICATION in column 4, substitute "6 cattle or 6 ponies or 22 sheep" for "10 sheep 5 cattle 5 ponies". |



- 31 Herbert James Wilcocks; part Glebe and part Town Barton
Objection No. 1039 should be "12 ponies or 12 cattle or 48 sheep. He signed yellow form (CC/4) dated 7/10/72 agreeing amendments
CONFIRM with MODIFICATION in column 4, substitute "12 ponies or 12 cattle or 48 sheep", for "20 cattle 50 sheep 10 ponies".
- 40 Harry Mortimore; Higher Sigford Farm
Objection No. 1039 should be "82 cattle or 82 ponies or 328 sheep". Letter dated 3 April 1984 specified in Part I of Second Schedule hereto. At hearing (12 April) Mr J D Crossman agreed
CONFIRM with MODIFICATION in column 4, substitute "82 cattle or 82 ponies or 328 sheep" for "120 cattle 80 ponies 200 sheep".
- 41 Reginald James Keen; Little Glebe
Objection No. 968 does "not exist at all". He signed yellow form (CC/5) dated 24 Feb 1972 agreeing registration being cancelled
Confirmation REFUSED
- 51 Headwig Elizabeth Hunt; Outalong, Green Lane
Objection No. 1039 should be "2 livestock units". She signed yellow form (CC/6) dated 24/9/72 agreeing amendment
CONFIRM with MODIFICATION in column 4 substitute "2 grazing units" for "4½ grazing units"
- 55 Anstice Brown; Bickslade Farm (to stray)
Objections No. 968 does "not exist at all"; No 1038 should be "40 cattle or 40 ponies or 160 sheep". At hearing (10 April) Mr Michelmores withdraw on cattle grid basis
Confirmation REFUSED
- 57 Patrick Gerald Kidner and Grizelda Flora Kidner; Beckhams in Manaton
Objections No. 968 does "not exist at all", No. 1038 should be "70 cattle or 70 ponies or 280 sheep". At hearing (10 April) Mr Keast withdraws.
Confirmation REFUSED
- 58 Frank Perryman; Southbrook Farm (to stray)
Objection No. 968 does "not exist at All". At hearing (10 April) Mr Cleave withdraws
Confirmation REFUSED



- 33 -

| | | | |
|----|---|---|----------------------|
| 60 | Patrick Gerald Kidner and Grizelda Flora Kidner; Cleave Hill | Objection No. 968 does "not exist at all". At hearing (10 April) Mr Keast withdraws | Confirmation REFUSED |
|----|---|---|----------------------|

Note: Entry No. 37 not included in this schedule because Mr Michelmores statement at the hearing (10 April) about it could only relate to part.

FOURTH SCHEDULE

The Manor Book

Foolscap bound in vellum, entitled "MANOR OF ILSINGTON AND BAGTOR"
Begins (pages of minutes) 15 January 1818 from Manor of Ilsington,
Court Baron of George Temple; pages of rentals) 1818 Manors of Ilsington
Bagtor and Notsworthy.

15 January 1818 presentation to court for fraudulent stocking from Manaton
Parish.

13 October 1818 ditto from Bovey Parish.

31 October 1834 ditto: Nicholas and Jonas Mortimore of Higher Sigford "for stocking
Haytor Down with sheep having no right to do so".

21 November 1834 Minute of evidence taken at Ilsington Bagtor and Notsworthy
Courts as to a right of path claimed by Mr J Rowell across Rippentor common,
disputed by Messrs Woodley & Honywill.

29 October 1835: peramulation of boundary between manors or Bagtor and
Ilsington.

14 December 1857 We present the late mining company having left a portion of
the boundary wall dilapidated adjoining Crownley Park the property of Lord
Cranstown within the Manor of Haytor, the Duke of Somerset has consented to present
the tenants with the sum of 10 shillings towards the repairing the same.



29 November 1923 Leet Jury and Homage Jury (last recorded entry of their meetings)
Steward, Arthur Rendell.

Rents lists to Michaelmas 1817, 1821, 1824, 1826, 1829, 1831; (3 years) 1888, 1890,
1894, 1896, 1899, 1905, 1908, 1911, 1914, 1917, 1920 and 1923.

Chief Rent lists relating to manors of Bagtor and Ilsington, 1926, 1927 and yearly
onwards to 1937.

FIFTH SCHEDULE
(1841 Tithe Award)

Peter Gillard, Land Surveyor ... appointed Valuer. The total sum to be paid
by way of Rent Charge in lieu of Tithe gross is £647.10.0.

24. Thomas Widger (land owner and occupier); Widdicombe-Sigford; 36a.1r.34p.
with right to depasture on Haytor Down.

Nosworthy, Reverend Stephen (land owner) and Mortimore, George (occupier)
South or Great Lownstone; 120a.2r.30p. "with right of depasture on Haytor and
Ramshorn Downs".

52 ... Honeywell ... "with right of depasture on Haytor Down.

56 ... Bagtor Mill ... "with right of depasture on Bagtor Common.

58. ... Westabrook ... "with right of depasture on Bagtor Common.

List of Commons including "1034 (map No.) Ramshorn Down, Common Land 7a.0r.18p;
1864 (map No.) Haytor Down, Common Land 1072a.1r.0p.

TURN OVER



SIXTH SCHEDULE

(Farms particularly mentioned by Mr Whitley when questioning witnesses)

| Unit Land Entry No. (relevant Objection No.) | Land to which right is attached and name of applicant for registration and 1935 lot no. if any. | Corresponding CL 26 Entry No (all final) |
|--|---|--|
| 5 (Obj. 591) | Gorse Cottage; D G B Leahey | none |
| 11 (Obj. 591) | Westabrook; H H Whitley (lot 9) | 13 |
| 12 (Obj. 592) | Horridge (west); C Bowden | 8 |
| none | Horridge (east); H H Whitley | 9 |
| none | Mountsland; H H Whitley | 15 |
| 17 (Obj. 591) | Bagtor Barton; H G Retallick & H H Whitley (lot 8) | 16 |
| 18 (Obj. 592) | Crownley Park; H G Retallick (lot 11) | 17 |
| 19 (Obj. 592) | Bagtor Mill; H G Retallick (lot 10) | 18 |
| 48 (final) | Bagtor House; A L Perrin (lot 7) | 38 |
| none | Emsworthy (lot 15) | none |

SEVENTH SCHEDULE

(Fewer animals not elsewhere particularly in these schedules)

Note:- the below confirmation follows the grounds of Objections Nos. 593 and 1039.

Entry No. 10, Lenda Farm, Mrs Margaret Garish. CONFIRM with MODIFICATION in column 4 substitute "60 cattle or 240 sheep for "65 cattle 120 sheep".

Entry No. 16; Candy Farm; Mr Sidney Land; CONFIRM with MODIFICATION in column 4 substitute "30 cattle or 30 horses or 100 sheep" for "30 cattle, 100 sheep, 20 horses".

Entry No. 45; land at Sigforā; William Discombe Thorn and John Reginald Thorn; CONFIRM with MODIFICATION in column 4, substitute "5 cattle or 5 ponies or 20 sheep" for "16 cattle or 16 ponies 64 sheep".

Entry No. 46; land in Ilsington; William Discombe Thorn and John Reginald Thorn; CONFIRM with MODIFICATION in column 4, substitute "10 cattle or 10 ponies or 40 sheep" for "32 cattle or 32 ponies 128 sheep".



Entry No. 47; Oxenham Farm; Wilfred Garner Besence; CONFIRM with MODIFICATION in column 4 substitute "6 cattle or 6 ponies or 24 sheep" for "12 cattle or 12 ponies or 25 sheep".

Entry No. 53; Part Little Sigford; David William Coysh; CONFIRM with MODIFICATION in column 4 substitute "3 cattle or 10 sheep" for "3 cows, 3 calves 10 ewes 10 lambs".

Entry No. 67 (in part replacing No. 20); Town Barton Glebe and part Town Barton Farm; George Wills; CONFIRM with MODIFICATION in column 4, substitute "23 cattle or 23 ponies or 90 sheep" for "26 cows or mares and followers and 87 ewes and their lambs".

Entry No. 68; (in part replacing No. 20) another part of Town Barton Farm; Peter Robert Sean Cullun; CONFIRM with MODIFICATION in column 4, substitute "3 cattle or 3 ponies or 10 sheep" for "4 cows or mares and 3 followers and 13 ewes and their lambs".

EIGHTH SCHEDULE
(Decision Table)

1. For the reasons set out under the headings Sigford House; Westabrook and Bagtor Barton I CONFIRM the registrations at Rights Section Entry Nos. 8, 11 and 17 without any modification.
2. For the reasons set out under the heading Crownley Park and Bagtor Mill, I CONFIRM the registrations at Rights Section Entry Nos. 18 and 19 with the MODIFICATION in column 4 substitute "12 cows and followers or 48 ewes and followers" for "16/14 cows and their followers and 85/65 ewes and their followers".
3. For the reasons set out under the heading Great Lounsdon I CONFIRM the registration at Rights Section Entry No. 39 with the MODIFICATION in column 4 substitute "80 cattle or 320 sheep" for "70 cattle 200 sheep".
4. For the reasons set out under the heading Harksworthy and West Horridge I REFUSE to confirm the Rights Section registrations at Entry Nos. 12 and 13.
5. For the reasons set out under the heading Agreements, I CONFIRM the Rights Sections at Entry Nos. 3, 14, 22, 23, 24, 31, 40 and 51 with the MODIFICATION stated in the fourth column of the Third Schedule hereto, I CONFIRM the Rights Section registration at Entry No. 5 (also mentioned in such Schedule) without any modification; and I REFUSE to confirm the Rights Section registrations at Entry Nos. 41, 55, 57, 58 and 60 (being the only other registrations mentioned in such Schedule).
6. For the reasons set out under the heading Straying I REFUSE to confirm the registrations at Rights Section Entry Nos. 33 to 38 inclusive (37 having been replaced by Nos. 75 and 76); 49, 50 and 56.
7. For the reasons given under the heading Others:- I REFUSE to confirm the Rights Section registrations at Entry Nos. 1, 2, 4, 15, 21, 25, 26, 28, 30, 32,



43, 52, 54 and 59; I CONFIRM the registrations at Entry Nos. 72 and 73 which replace No. 44, as regards No. 72 with the MODIFICATION in column 4 substitute "3 cattle or ponies or 12 sheep" for "3 sheep and followers, 1 cow and follower 1 pony and follower", and as regards No. 73 with the MODIFICATION in column 4 substitute "77 cattle or ponies or 308 sheep" for "147 sheep and followers, 49 cattle and followers, 24 ponies and followers"; AND I CONFIRM the Rights Section registrations at Entry Nos. 10, 16, 44, 45, 46, 47, 53, 67 and 68 (67 and 68 replace No. 20) ^{WITH} the MODIFICATIONS against such numbers specified in the Seventh Schedule hereto.

8. Any application under any liberty to apply in this decision granted should be made within THREE Months from the date on which notice of this decision was sent to the persons entitled to have it, but so that application may be made to a Commons Commissioners to enlarge this three month period. Any such application should in the first instance be by letter to the Clerk of the Commons Commissioners stating the alteration in this decision which the applicant considers should be made and the evidence (identifying the documents relied on) which would be adduced if the Commissioner directs a further hearing. A copy of the application should be sent to any person who might be adversely affected by it being granted, and also the County Council for their information 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 those concerned are agreeable. Of such further hearing notice will be given only to the persons who on the information available to the Commons Commissioner appears to him to be concerned with the registration in question. Any person wanting to be given notice of any 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 18th — day of March — 1985

A. A. Baden Fuller

Commons Commissioner