



Reference Nos 209/D/404
209/D/405

COMMONS REGISTRATION ACT 1965

In the Matter of Holne Moor, Holne,
South Hams District, Devon

DECISION

These disputes relate to the registrations at Entry Nos. 2, 3, 6, 10, 16, 17, 20 to 24 inclusive, 26 to 30 inclusive, 39, 45, 49 to 53 inclusive, 57, 58 and 60 to 71 inclusive (68 has been replaced by Nos. 77, 83 and 84) in the Rights Section and at Entry Nos. 1 and 2 in the Ownership Section of Register Unit No. CL153 in the Register of Common Land maintained by the Devon County Council and are occasioned as regards the Rights Section registrations by Objections Nos. 366 and 905 to 910 inclusive, 912 to 918 inclusive and 920 to 923 inclusive made by Holne Parish Council and noted in the Register on 27 November 1970 and 29 or 30 June or 6 July 1971; by Objections Nos. 470, 471 and 472 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 26 February 1971 and by Objections Nos. 796 and 1141 made by Devon County Council and noted in the Register on 25 January 1971 and 14 August 1972; and as regards the Ownership Section registrations by them being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 10 May 1984. At the hearing (1) and (2) Holne Parish Council and Devon County Council were represented by Mr P A J Browne senior solicitor with the County Council; (3) the Attorney-General for the Duchy of Cornwall was represented by Mr C Sturmer, the Land Agent for their Dartmoor Estate; (4) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bouchier Sayer applied for the Rights Section registration at Entry No. 3 attended in person on her own behalf and as representing him; (5) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the Rights Section registration at Entry No. 4, was also represented by Lady S R P Sayer; (6) Mrs Frances Jill Jukes of 9 Grande Rue Les Alluets Le Roi, 78580 Maule, France as successor of Mr Edward Hopcroft Woodward and Mrs Isabella Amelia Woodward who applied for the Rights Section registration at Entry No. 39, was represented by Mr R W Lewis, solicitor of Woollcombe Watts & Co, Solicitors of Newton Abbot; (7) Mrs Eleanor Nancy Smallwood who applied for the Rights Section registration at Entry No. 54 was also represented by Lady S R P Sayer; and (8) Mr David John Powell of Holne Court, Holne who as tenant of Mrs E N Smallwood is concerned with the registration at Entry No. 54, attended in person.

The land (the "Unit Land") in this Register Unit is a tract approximately square each side of which is about 2 miles long; its south boundary adjoins Buckfastleigh Moor (Register Unit No. CL146), most of its west boundary adjoins the Forest of Dartmoor (Register Unit No. CL164) and its north boundary is the River Dart on the other side of which is Spitchwick Common (Register Unit No. CL33). Of the 71 original Rights Section registrations, that at Entry No. 55 has been cancelled, having been superseded by No. 70; in addition to the said 37 disputed registrations, there are 32, being Nos 1, 4, 5, 7 (replaced by Nos. 86 and 87), 8, 9, 11 to 15 inclusive, 18, 19, 31 to 38 inclusive, 40 to 44 inclusive, 46, 47, 48 (replaced by Nos. 80 and 81), 54, 56 and 59 which being undisputed, have become final. The grounds of the said Objections and the Entry Nos. to which they



respectively relate are set out in the First Schedule hereto. As to Entry No. 25, see Part III of the First Schedule hereto. As to the Ownership Section registrations, see the Second Schedule hereto.

Course of Proceedings

At the beginning of the hearing there was a discussion in the course of which: (a) Mr Browne said that the County Council would not be pursuing County Council Objections Nos. 796 and 1141; (b) various views were expressed as to the effect of the letters specified in Part II of the Third Schedule from Brigadier I S McW Henderson and his Solicitors; (c) Mr Sturmer on behalf of the Duchy conceded that the part of the Unit Land lettered A on the Register map (about $\frac{3}{4}$ of the whole) except about 300 yards of the bed of the O Brook (part of the northwest boundary of the Unit Land) is now owned by Devon County Council; and (d) about Entry No. 39 Mr Lewis said and Mr Browne disagreed that because the land (Pixies House etc) was 45 acres it followed from the grounds of Objection No. 916 that the registration would be in order if modified so as to be limited to 30 bullocks or ponies and 120 sheep.

Next Mr Browne opened the proceedings by saying (in effect):- The disputed Rights Section registrations being in question, I as Commons Commissioner must (before confirming them at all) be satisfied that they really exist. The Holne Commoners Association have rightly advised Holne Parish Council that the Unit Land is waste of the Manor of Holne and accordingly the rights of common over it are limited to lands within the Manor (being the same as the Parish). The registration at Entry No. 39 was irregular because the land (Pixies House etc) is in the parish of Buckfastleigh West, in which there is a common (Register Unit No. CL146) over which rights attached to lands in that parish have been registered. The Rights expressed as "to stray" (specified in Part II of the First Schedule hereto) are irregular because straying rights are not registrable.

Mr Browne asked leave to amend the grounds of all the Holne Parish Council Objections relating to such registrations by including additionally: "Straying rights are not registrable", the relevant Objections being specified in the said Part II. Additionally Mr Browne asked for leave to amend the grounds of Holne Parish Council Objection No. 914 applicable to Entry Nos. 22, 23, 26, 28 and 60 by including: "The right does not exist outside the Manor of Holne"; and also to amend the grounds of Holne Parish Council Objection No. 916 applicable to Entry Nos. 39, 61 and 62 by substituting "Of the land in the Parish or Manor of Holne" for the words "of the land".

I said that my then view was that I should allow these amendments as asked for on the terms that those concerned would have liberty to apply to re-open the hearing within 3 months of my decision

Mr Browne drew attention as regards Objection No. 905 to the yellow form relating to Entry Nos. 50 and 51, said that the "Newtake" part of the following Objections was withdrawn being Nos. 366, 906 and 907 applicable to Entry Nos. 2, 68 and 57 (specified in Part I) and Nos. 915, 918, 921 and 923 applicable to Entry Nos. 30, 52, 67 and 71 (specified in Part II of the First Schedule hereto), and said that the land mentioned in Entry No. 2 was in the application (CC/1) said to contain 3.96 acres (same as 1977 conveyance specified in Part II of the Third Schedule hereto).



Next, oral evidence was given by Mrs Gillian Ann Gray who is now and has been since May 1983 chairman and since 1976 a member of Holne Parish Council and has lived for 33 years in the Parish, in the course of which she made observations about the Rights Section registrations at Entry Nos. 6, 45, 57 and 68 (replaced by Nos. 77, 83 and 84) as recorded in Part I on the First Schedule hereto preceded by "GAG:- ...". She said (in effect):- It is and has been well known in the parish that the stocking rate of the Unit Land is 2 cattle or 2 ponies and 8 sheep for every acre: there is about it a booklet by Mr David Scott (now deceased) which clearly so states; her husband is a farmer and a member of Holne Commoners Association and it is certainly not the wish of local farmers that persons outside the Parish should stock the Common (the Unit Land).

Next oral evidence was given by Mr David John Powell who has been a member of the Holne Commoners Association since 1962 and is now their vice chairman, in the course of which he produced the documents specified in Part IV of the Third Schedule hereto. From the 1926 particulars (PC/1) he referred me to:-

"HOLNE MOOR AND VENVILLE RIGHTS -- The whole of the agricultural holdings in Holne Parish are sold with the benefit of the right to the purchaser to stock Holne Moor as at present enjoyed by the respective tenants. The purchasers or their tenants will be entitled to stock Holne Moor in the proportion of two bullocks or two ponies and eight sheep for every three acres of their holdings. The various holdings will also be sold with the benefit Venville rights over Dartmoor Forest as enjoyed by the Vendor and her tenants. This right is subject to the payment of a small annual charge to the Duchy of Cornwall ...".

From the memorandum of evidence (PC/2) he referred me to:-

"5. In the Parish and Manor of Holne the right is for a number certain viz. two bullocks or two ponies and eight sheep for every three acres of land occupied. Elsewhere ..."

From the 1933 conveyance (PC/3) he referred me to:-

"... the Manor or Lordship of Holne ... and ... all ... subject ... No. 5 ... (rights of tenants) ... to stock Holne Moor in the proportion of 2 bullocks or 2 ponies and 8 sheep for every 3 acres of their holding"

He has regularly attended the Court Baron held by the Lord of the Manor; various presentments are made; the regular one is to do with water (various leats) and grazing is not really discussed. Apart from gates between the Unit Land and inby land (in the Parish) animals cannot from other parishes easily get onto it; no other animals have been deliberately put onto the Unit Land without their owners being of the Parish. As to strays, it is the responsibility of the reeve, and the owner if he can be traced (as he usually can be) is notified and he comes and takes them off, as for example happened on 2 occasions recently when a bull was impounded.

Mr Browne said that the Holne Manorial Book has entries from 1790 until today but it contained nothing helpful about the stocking of the common.



Mr Lewis then submitted that I should not allow any amendment to Objection No. 916 because by so doing I would in effect be allowing a new objection out of time; I said I would allow the amendment and would hear any submissions by Mr Lewis as to the terms of such allowance, eg adjourning the proceedings. —————→
Mr Lewis then said that his client was really interested in having a right on CL146 (Buckfastleigh Moor), and he was therefore prepared to go ahead with the evidence he would then give.

Mr Lewis in the course of his oral evidence referred to the documents specified in Part V of the Third Schedule hereto. From the CL148 decision he quoted:-

"I have therefore come to the conclusion that the commons of Devon are as a whole subject to Venville rights which have existed from time immemorial"

From the CL190 decision he quoted:-

"The commons of Devon are but one common and the fact that a Venville tenant has exercised his rights over the part of the Common which he finds most convenient does not justify an influence that he intended to abandon his rights over the rest"

The CL190 conclusion was that there had been no abandonment and this conclusion was confirmed in the 1979 judgement of his Honour John Finlay QC who —————→
stated:-

"There is a geographical area called the Commons of Devon over the whole of which some persons who are called Venville tenants have a right of common".

His arguments may be summarised in 4 propositions:- (1) his client is a Venville tenant; (2) Venville tenants are entitled to exercise their rights over the Forest and the Commons of Devon which is a continuous belt of land adjoining the Forest; (3) the Commons of Devon are but one common over all and every part of which the Venville tenants may claim their rights; (4) the Unit Land in question forms part of these Commons. Holne Common (the Unit Land) adjoins Buckfastleigh Moor (CL146) which may be termed his client's "home common"; that being the case the reality of the situation is that animals of the predecessors in title of his client would probably have grazed there as well as on their home common; as can be seen from the Devon County Council map (FJJ/10); further Buckfastleigh Moor (CL146) is small when compared with Holne Moor (the Unit Land) which adjoins it, and therefore his client's predecessor in title would have grazed there. He submitted there was no positive evidence of abandonment and referred to re Yateley Common 1977 LWLR 840. He understood that the existence of Venville rights was supported by Devon County Council in the Sheepstor case (CL188) where the circumstances were similar to those of his client. Her land certificate (FJJ/11) shows the extent of her land.

Next oral evidence was given by Mr C Sturmer who has been since 1970 the Land Agent for the Duchy Dartmoor Estate, and been with the Duchy since 1965; about the registrations of piscary and pannage at Entry Nos. 26 and 28, the general effect of his evidence was that rights of piscary and pannage did not exist over Dartmoor for the reasons he had given when giving evidence at my July 1983 hearing about the Belstone commons (CL73), some of which he mentioned. Nobody at the hearing objected to his giving evidence by reference to what he then said and which is recorded at page 4 of my Belstone decision specified in Part VI of the Third Schedule hereto.



Next Mr Browne said that as an employee of the County Council his instructions were not to get involved in any way with any questions about Venville, but the Parish Council for whom he was acting in these proceedings wished him to submit on their behalf that I should refuse to confirm any registration of rights of common attached to lands outside the Parish or Manor of Holne. Lady Sayer then said that of the 3 registrations with which she was concerned those at Entry Nos 4 and 54 had become final but that at Entry No. 3 was subject only to County Council Objection No. 796 which was not being pursued; to this Mr Browne said that the County Council as owner of the Unit Land conceded the registration and that the Parish Council (they had not made any formal Objection to it) did not now object to my confirming it.

This concluded the hearing in May; except I adjourned until July the further consideration of the ownership of the bed of the O Brook. As appears in the Second Schedule hereto, on 18 July Mr Sturmer conceded the County Council ownership, so I can now give a decision about the Ownership Section registrations as set out in such Schedule.

Pixies House

As above appears the registration (No. 39) of the rights attached to this land was the only one contested at the hearing. The relevant Objection as amended puts the registration wholly in question and accordingly the burden of proof lies on those wishing to support it.

Mr Lewis' submissions so far as they are based on Venville, conflict with each other: the CL148 and CL190 decisions and the High Court judgement being for him, and the CL164 and CL188 decisions being against him. The differences between these decisions are consequential on the differences between the evidence and arguments put before Mr G D Squibb QC and myself; none of them can be applicable to this registration because Mr Lewis apart from referring to the decisions offered no relevant evidence about Venville; this is reason enough for my rejecting his Venville submissions. But even if I treated as now before me all the evidence about Venville given at my CL164 and CL188 hearings and at the other hearings held by me at which Venville was mentioned, I should for the reasons set out in my CL188 decision, reject Mr Lewis' Venville submissions.

Mr Lewis also submitted that I should infer actual grazing by the predecessors in title of his client on their home common of Buckfastleigh Moor (CL146), and infer that animals grazing there would also graze on the Unit Land.

As stated in my CL146 decision of even date, two days after my CL146 hearing I inspected the CL146 land from the track leading to it from Scorriton (that is from a part of this track where it ceases to ascend and drops down as a path to the River Mardle, and where the boundary between the CL146 land and the Unit Land begins). From the map referred to by Mr Lewis (FJJ/10) and what I saw on my inspection it is possible and perhaps likely that animals lawfully on the CL146 land from time to time stray onto the Unit Land; but I cannot infer either from the map or anything I saw on my inspection that the grazing of any animals from Pixies House and the lands held with it as of right on the CL146 land, were also as of right on the Unit Land. So I have no evidence on behalf of Mrs Juckes supporting the registration, and this is reason enough for my deciding against it.



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Additionally I have as above recorded the evidence of Mr Powell on which I find that for over 50 years the Unit Land has been grazed by those of the Parish and Manor of Holne (the same area) on the basis of 2 cattle or 2 ponies and 10 sheep for every 3 acres; such finding is consistent with the as of right grazing on the Unit Land being for no lands other than those in the said Parish or Manor. Pixies House and lands are not within the Parish or Manor, and this is another reason against the registration.

In the absence of any evidence that any rights over the Unit Land were ever attached to Pixies House, I have no reason for considering whether any such rights as there might have been, have in some way been abandoned.

The circumstance that the Parish Council having local knowledge are agreeable to the registration at Entry No. 3 of rights attached to Old Middle Cator which is neither in the Parish nor the Manor of Holne being treated exceptionally, provides no reason why I should treat registration at Entry No. 39 similarly.

For the above reasons my decision is that the registration at Entry No. 39 was not properly made.

Old Middle Cator

The registration at Entry No. 3 is of rights attached to land of Sir Guy and Lady Sayer in the parish of Widecombe-in-the-Moor, and therefore outside the general rule which I have as above stated found to exist on the evidence of Mr Powell. There is no reason in law why there should not be an exception to a general rule excluding lands outside the Parish or Manor, if there are special circumstances. There is this difference between Old Middle Cator and Pixies House: Holne Parish Council did not make any Objection to Entry No. 3, and also through Mr Browne at the hearing said they were agreeable to my confirming it; nobody at the hearing suggested that I should do otherwise. The circumstance that the County Council did not pursue Objection No. 366 is by itself no evidence as to the validity of the registration; but having regard to the close association established at the hearing between Holne Parish Council and the Holne Commoners Association and to the probability of them both being fully informed of local conditions, I consider I can properly treat their agreement as some evidence in support of the registration; and I need not therefore consider either why the applicants thought that their registration was proper or consider why the Parish Council agreed, notwithstanding its exceptional nature, to it being confirmed; it may be that their agreement had in it some element of compromise. However this may be, my decision is that the registration was properly made.

Straying

For the reason given under the heading "Straying" in my CL164 decision dated 30 June 1983, the registrations specified in Part II of the First Schedule hereto, being expressed as "to stray", must be irregular unless they would be proper if "graze" was substituted for "stray", or there are other special circumstances. In the absence of any evidence of any such circumstances, my decision is that they were not properly made.

But because the Objections to the said registrations (except those at Entry Nos 30, 52, 67 and 71, as to which see below) do not put them wholly in question, and therefore persons concerned to support them may for that reason have not attended or not been represented at the hearing in the reasonable



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expectation that their registrations would be confirmed with no more modification than that required by the grounds specified in the Objection applicable to it, I give to such persons liberty to apply to a Commons Commissioner to set aside this part of my decision and to reopen the hearing. Any such application should be made within THREE MONTHS and otherwise as specified in paragraph 6 of the Fourth Schedule hereto.

The registrations at Entry Nos 30, 52, 67 and 71 are by Objections Nos 915, 918, 921, and 923 put wholly in question (it being said in the grounds that the lands to which rights are attached were Newtakes); accordingly the persons concerned to support them by not attending or being represented at the hearing were wholly at risk and should therefore not have the benefit of any liberty to apply merely because the Newtake ground was withdrawn and by amendment another ground for avoiding the registration wholly was inserted.

Note the registration at Entry No. 67 is included both in Objection No. 912 and Objection No. 921.

Others

About the Rights Section registrations at Entry Nos 2, 6, 45, 57 and 68 (replaced by Nos 77, 83 and 84), I had at the hearing the information recorded in Part I in the First Schedule hereto. Upon a consideration of such information, my decision is that these registrations were properly made either as they were originally made or as they would be if they were modified as specified in the said Part I.

About the Rights Section registrations at Entry Nos 22, 23, 26, 28, and 60 the Objection as at the hearing amended put them wholly in question. In the absence of any evidence or information in support of them, my decision is that none of them was properly made. But because the grounds of the Objections as originally made did not put the registrations wholly in question, and therefore persons concerned to support them may for this reason have not attended or not been represented at the hearing in the reasonable expectation that their registration would be confirmed with no other modification than that requisite from the grounds of the Objection applicable to it, I give to such persons liberty to apply to a Commons Commissioner to set aside this part of this decision and to reopen the hearing. Any such application should be made within THREE MONTHS time limit and otherwise as specified in paragraph 6 of the Fourth Schedule hereto.

About the Rights Section registrations at Entry Nos 49, 50, 51, 61, and 62 the grounds of the Objections put them wholly in question. In the absence of any evidence or information in support of them, my decision is that none of them was not properly made.

About the Rights Section registration at Entry No. 53, I have no note or recollection of anyone at the hearing saying anything particular. The registration unlike any other in the Rights Section, or (as far as I can recollect) any other in the Dartmoor National Park is extraordinary in that it is expressed as "over that part of the land comprised in this register unit as lies within the Forest



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of Dartmoor" without defining the part which the applicants considers to be within the Forest. The Ownership Section registration by the Duchy of the lettered B part is consistent with they having at one time thought that such part was within the Forest; it being generally accepted that all the Forest is owned by the Duchy, I infer from the withdrawal of their ownership claim and the acceptance by all present at the hearing of County Council ownership, that no part of the Unit Land has at any now relevant time been part of the Forest. The registration is wholly at risk by reason of Duchy Objection No. 470, which although not supported by the Duchy at the hearing (they being no longer concerned) was at least impliedly supported by the Parish Council. It is unlikely that there could be attached to land in Okehampton any right of common over land so far away as the Unit Land. In the absence of any evidence or information supporting the registration, my decision is that it was not properly made.

Final

The effect of my above detailed decisions is set out in the Fourth (and last) Schedule hereto. The incidental matters therein referred to are part of my decision.

Because much of this decision is dependent upon agreements or statements made in the course of the hearing about which there may be some mistake or error which ought to be corrected without putting those concerned to the expense of an appeal to the High Court, I give liberty to apply to any person who might be affected by any such mistake or error. Such application should be made within the THREE MONTHS time limit and otherwise as specified in paragraph 6 of the Fourth Schedule hereto.

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

FIRST SCHEDULE
(Rights Section)

Note: "s", "c", "b" and "p" mean sheep, cattle, bullocks and ponies respectively; and "lettered B part" means the part of the Unit Land (strip near west boundary) lettered B on the Register Map.

Part I: Summary of all except final and to stray

No. 1

Ernest Smerdon: FINAL

No. 2

Reginald Lewis Kenyon; owner; The Shanty Forestoke, Holne (Stoke Shallows); graze 8c and 32s.

Representation: None, but see Part II of Third Schedule as to possible interest of Brigadier and Mrs Henderson.

Objections:- Holne PC No. 366, (a) The right does not exist at all, the land to which it is alleged to be attached being "Newtake", alternatively (b) the right should comprise fewer animals, namely 2 cattle or 2 ponies or 8 sheep".

Newtake part of Objection withdrawn by Mr Browne. Application (CC/1) shows area of the Shanty to be 3.296 acre, and, therefore the numbers should be 2c or 2p and 10s.

For reasons under heading Others, CONFIRM with MODIFICATION substitute "2 cattle or 2 ponies and 10 sheep" for "8 cattle and 32 sheep".

No. 3

Guy Burchier Sayer and Sylvia Rosalind Pleadwell Sayer; owners: Old Middle Cator, Widecombe-in-the-Moor; cut peat and turves, take stone, sand and gravel and heath and fern, graze 2c or p, 10s.

Representation, Lady S R P Sayer in person on her own behalf and representing him.

Objections:- County Council No. 796, "the right does not exist at all".

For reasons under heading Old Middle Cator, CONFIRM without any modification.

No. 4

David Miller Scott; FINAL.

No. 5

Geraldine Audrey Christine Case; FINAL.

No. 6

Kathleen Joan Le Clair, Exeter Diocesan Board of Finance; owner as sequestrator of Benefice of Holne; Glebe of Holne Benefice, Holne; cut turfs and bracken.

Representation:- None.

Objections:- Holne PC No. 908, right should comprise fewer animals, viz 10 bullocks or 10 ponies and 40 sheep.

GAG:- The land is former glebe containing 14.07 acres (Mr Brown said should therefore be 9b or 9p and 37s).

For reasons under heading Others, CONFIRM with MODIFICATION substitute "9 bullocks or 9 ponies and 37 sheep" for "45 sheep, 30 bullocks or ponies".

No. 7 (replaced by Nos 86 and 87)

Barclays Bank Ltd (replaced by Henry James and John William French, and Winifred Marie Verdie); FINAL.

No. 8

Charles Nigel Clarke and Henry William Algernon Kemmis and Norman Perryman; FINAL.

No. 9

Gladys Emma Moore; FINAL.

No. 10

John Henry Bickford; to stray, see Part II.

No. 11

Bennah Ltd and Francis Arthur Perryman; FINAL.

No. 12

Bennah Ltd and William Rodney Perkins; FINAL.

No. 13

Bennah Ltd and Arthur Henry Brown; FINAL.

No. 14

Bennah Ltd and Lewis George Petherick; FINAL.

No. 15

Marjorie Winifred Hayter; FINAL.

No. 16

John Andrew Wemyss Taylor; to stray, see Part II.

No. 17

Kathleen Olive Mary Crowther; to stray, see Part II.

No. 18

Hubert Cornish Fox; FINAL.

No. 19

John David Cooke-Hurle; FINAL.

No. 20

John Owen Mann; to stray, see Part II.

No. 21

Reginald Norrish; to stray, see Part II.

No. 22

Louise Grace Warne and Elias Anthony Warne; owners; Greendown Farm, West Buckfastleigh; graze 10p, 150s, 30b.

Representation:- None.

Objection:- Holne PC No. 914, "That each right is restricted to that number of animals (a) which the applicant is entitled to graze on CL146 and/or CL162 and/or CL164 and/or CL180, or (b) which represents 2 bullocks or 2 ponies and 8 sheep for every 3 acres of land to which the right is attached - whichever is the less".

Grounds of objections amended by inserting "in the parish or manor of Holne".

For the reasons under the heading Others, subject to the LIBERTY TO APPLY specified under such heading CONFIRMATION REFUSED.

No. 23

CS Colwell & Son; owner, tenant (of part); Scorrilton Farm, West Buckfastleigh and Holne; graze 50b or 50p and 200s.

Representation:- None.

Objection:- Holne PC No. 914, see Entry No. 22 above.

Grounds amended, see No. 22 above.

For the reasons under the heading Others, subject to the LIBERTY TO APPLY specified under such heading CONFIRMATION REFUSED.

No. 24

Donald Pearse; to stray, see Part II.

No. 25

Francis George Pratt; (to stray) FINAL, but query see Part III of this Schedule.

No. 26

Wilfred John Cecil Risdon; owner; Wallaford Farm, West Buckfastleigh; estovers, turbary, piscary, pannage, graze 60b and 60p and 240s.

Representation:- None.

Objections:- Duchy No. 471, right "for piscary does not exist" on lettered B part. Duchy No. 472, right "for pannage does not exist" on said part. Holne PC No. 914, see Entry No. 22 above.

Grounds of No. 914 amended, see No. 22 above.

For reasons under the heading Others, subject to LIBERTY TO APPLY as specified under such heading CONFIRMATION REFUSED.

No. 27

James Edmund Mabin and Sylvia Maude Mabin; to stray, see Part II.

No. 28

Theresa Mary Webber and David French Webber; owner and tenant; Hawson Farm and Scoriton Gate, West Buckfastleigh; estovers, turbary, piscary, pannage, graze 64b or p, 256s.

Representation:- None.

Objections:- Duchy Nos 471 and 472, see Entry No. 26 above. Holne PC No. 914, see Entry No. 22 above.

Yellow forms dated April 1 1971 signed T M Webber reference obj 471 and obj 472, agree to registration "being amended". At hearing grounds of No. 914 amended, see Entry No. 22 above.

For reasons under the heading Others, subject to LIBERTY TO APPLY as specified under such heading CONFIRMATION REFUSED.

No. 29

Cyril Leonard Pearse; to stray, see Part II.

No. 30

Donald Pearse; to stray, see Part II.

No. 31

Holne Parish Lands Charity; FINAL.

No. 32

David Miller Scott; FINAL.

No. 33

H D and E M Pearce Gould; FINAL.

No. 34

Lewis Oliver Perkins; FINAL.

No. 35

Alexander George Cousins; FINAL.

No. 36

Philip Robert Lane-Joynt; FINAL.

No. 37

Robert Ewing Adam; FINAL.

No. 38

Leonard Jackson; FINAL.

No. 39

Edwin Hopcroft Woodward and Isabella Amelia Woodward; owners; Pixies House and adjoining fields in Buckfastleigh West; estovers, turbary, take sand and gravel, graze 33b or p and 133s.

Representation:- Mrs F J Jukes as successor of Messrs E H and I A Woodward was represented by Mr R W Lewis.

Objection:- Holne PC No. 916, "That each right is restricted to that number of animals which represents 2 bullocks or 2 ponies and 8 sheep for every 3 acres of the land to which the right is attached".

Grounds of Objection amended by inserting "in the parish or manor of Holne". At the hearing evidence and arguments for and against this registration.

For reasons under the heading Pixies House CONFIRMATION REFUSED.

No. 40

Francis Arthur Perryman; FINAL.

No. 41

James Barnes Townsend; FINAL.

No. 42

Florence and Albert Edward Tozer; FINAL.

No. 43

Raymond George Mortimore and Anne Bourverie Mortimore; FINAL.

No. 44

Perge Albert Norrish; FINAL.

No. 45

George Ernest Jonathan Gawthorn; owner; Holne Cott in Holne and Widecombe-in-the-Moor; turbary, estovers, take stone and sand, graze 12b or p and 18s.

Representation:- None.

Objection:- Holne PC No. 917, "That the right does not exist at all, the applicant having become the owner of part of the common land comprised in this Register Unit".

GAG:- The reason for the Objection was that the Parish Council thought that the Lord of the Manor could not have grazing rights; but they have now learnt that the present owner is not the Lord of the Manor and so the Objection is withdrawn.

For the reasons under the heading Others, CONFIRM without any modification.

No. 46

Hugh Clarkson and Mary Isobel Clarkson; FINAL.

No. 47

Mary Isobel Clarkson; FINAL.

No. 48 (replaced by Nos 80 and 81)

Lorna Dulcie Christabel Vanstone; FINAL.

No. 49

Edward Cauntor; owner; OS Nos 1118 etc at Hexworthy, Lydford; estovers, turbary, take sand and gravel, graze 50b and followers, 60p and followers, 600s and followers.

Representation:- None.

Objection:- Holne PC No. 905, "rights do not exist at all".

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 50

Mildred Theresa Irene Coaker; tenant; Slade, Hexworthy, Lydford; estovers, turbary, take sand and gravel, graze 49b and followers, 49p and followers, 245s and followers.

Representation:- None.

Objection:- Holne PC No. 905, "rights do not exist at all".

Yellow form dated 1 Jan 1973 signed M T I Coaker, ref Obj 905, agree Entry No. 50/51 being cancelled.

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 51

Mildred Theresa Irene Coaker; owner; Slade comprising OS Nos 1977 etc, Lydford; estovers, turbary, take sand and gravel, graze 15b and followers, 15p and followers, 75s and followers.

Representation:- None.

Objection:- Holne PC No. 905, "rights do not exist at all".

Yellow form signed by M T I Coaker, see No. 50 above.

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 52

Michael Burton Ogle; to stray, see Part II.

No. 53

Peter Gerald Ansell; owner part, OS 0772 and 1968, tenant remainder; Upcott House, Borough of Okehampton; estovers, piscary, shooting, turbary, pannage, take sand, gravel, earth and stone "over that part of the land comprised in this register unit as lies within the Forest of Dartmoor".

Representation:- None.

Objection:- Duchy No. 470, right "does not exist" on lettered B part.

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 54

Eleanor Nanch Smallwood; FINAL.

No. 55

CANCELLED (superseded by No. 70).

No. 56

Alys Lorna Pyke; FINAL.

No. 57

Frederick William Vanstone; owner; Glen Rowan, Michelcombe, Holne; estovers, turbarry, take stone, sand and gravel, graze 3b or horses 12s.

Representation:- None.

Objection:- Holne PC No. 907, "(1) the right does not exist at all, the applicant's land being "Newtake" to which no rights of common attach, (2) alternatively that the right should comprise fewer animals, viz, 2 bullocks or 2 ponies and 8 sheep, (3) this registration appears to conflict with No. 68, each applicant claiming to own land to which the right is attached.

Newtake part of grounds withdrawn by Mr Brown. GAG:- This should be considered with No. 68 (see below under heading No. 68); in the result No. 57 should be confirmed and No. 68 altered.

For the reasons under the heading Others, CONFIRM without any modification.

No. 58

Semaj John Dance; to stray, see Part II.

No. 59

Moirs Hands; FINAL.

No. 60

Stephen Thompson Theobald; owner; Bowerdon Farm, Buckfastleigh West; estovers, turbary, graze 82b or p and 328s (2b or 2p and 8s for every 3 acres of the farm).

Representation:- None.

Objection:- Holne PC No. 914: for grounds see No. 22 above.

Grounds amended I inserted "in the parish or manor of Holne".

For the reasons under the heading Others, subject to LIBERTY TO APPLY specified under such heading CONFIRMATION REFUSED.

No. 61

Ellen Amy Joyce Worthington; owner; Mill Cottage, South Zeal and fields known as Great Close etc in South Tawton; turbary, estovers, piscary, take wild animals, birds, fruit, stone, sand and gravel, rushes, heather and bracken, graze 55s, 10c, 7p.

Representation:- None.

Objections:- Duchy No. 470, right "does not exist" on lettered B part. Holne PC No. 916 "That each right is restricted to that number of animals which represents 2 bullocks or 2 ponies and 8 sheep for every 3 acres of the land to which the right is attached". County Council No. 1141, the right does not exist at all.

Grounds of No. 916 amended by inserting "in the parish or manor of Holne".

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 62

Vera Ellen Knapman; owner; Mill Farm, South Tawton; turbary, estovers, piscary, take wild animals, birds, and fruit, stone sand and gravel, rushes, heather and bracken, graze 70s, 20c, 10p.

Representation:- None.

Objections:- Duchy No. 470, right "does not exist" on lettered B part. Holne PC No. 916, see Entry No. 61 above. County Council No. 1141, the right does not exist at all.

Grounds of No. 916 amended by inserting "in the parish or manor of Holne".

For the reasons under the heading Others, CONFIRMATION REFUSED.

No. 63

Charles Perryman; to stray, see Part II.

No. 64

Norman Devonport; to stray, see Part II.

No. 65

Percy Waye; to stray, see Part II.

No. 66

Thomas Donald Beard; to stray, see Part II.

No. 67

Cyril Leonard Pearse; to stray, see Part II.

No. 68 (replaced by Nos 77, 83 and 84)

William Samuel French, Ernest Edgar French, Henry James French (T/A W J French & Sons), (replaced by Ross Ian Gray, Group Houses Ltd, and Henry James French and John William French), owners Michelcombe, Dodbrooke, Inglette, Hill Farm and Cottlands, tenant Glebe Land and land at Great Coombe, all in Holne (owner Hill Farm, 83 owner OS Nos 6473 and 6580, 84, owners/tenants rest) edged red on map; turbarry, take sand, stone, cut heath rushes and bracken, graze 190p or c 76s and their progeny.

TURN OVER



Representation:- none.

Objection:- Holme PC No. 906, "(1) as to such part or parts of the applicants land as consist of "Newtakes" the right does not exist at all; (2) that as to the remainder of the applicants land (or alternatively as to the whole) the right is restricted to that number of animals which represent to bullocks or 2 ponies and 8 sheep for every 3 acres of the applicants lands; (3) the registration appears to conflict in part with No. 57, each applicant claiming to own certain of the land to which the right is attached".

Mr Brown said that the Newtake Part of the Objection is withdrawn. GAG:- Glen Rowan mentioned in Entry No. 57 is and has for about 3 years been owned by Mr Richard Mitchell and was previously owned by Mr Vanston. The map attached to the application and the registration at Entry No. 68 comprises a much larger area which included Glen Rowan; the applicants W S French, E E French and H J French are the uncle, father and uncle of the witness (GAG) and the No. 57 land has never been owned by any of them. As to the sale since the registration the No. 77 and the No. 83 lands have always been part of the lands owned by Messrs French (W J French & Sons); the No. 78 land includes No. 57. Mr Brown suggested that No. 68 and its replacement be modified by excluding No. 57 land.

For the reasons under the heading Others, CONFIRM the registrations at Entry No. 68 with the modification that from the land described in column 5 of the said Entry there be removed the land described in column 5 of the registration at Entry No. 57 with the consequential result on the replacement Nos. CONFIRM the registrations at Entry Nos. 77 and 83 without any modification and CONFIRM the registrations at Entry No. 84 with the MODIFICATION that from the land described in column 5 the said Entry No. there be removed the land described in column 5 of the registration at Entry No. 57.

No. 69

William Samuel French, Earnest Edgar French and Henry James French (W J French & Sons); to stray, see Part II.

No. 70

Norman Charles Cooper and Kathleen Ethel Cooper; to stray, see Part II.

No. 71

John Gordon Stanley Coaker and Diana Gertrude Coaker; to stray, see Part II.



Nos. 72, 73, 74, 75, 76, 78, 79, 82 and 85

Not registration of any rights.

Nos. 77, 83 and 84

See No. 68 above.

Nos. 80 and 81

See No. 48 above.

Nos. 86 and 87

See No. 7 above.

Part II: to stray

The following Entry Nos. being of disputed registrations are expressed as "to stray": Nos. 10, 16, 17, 20, 21, 24, 27, 29, 30, 52, 58, 63 to 67 inclusive and 69 to 71 inclusive.

Representation:- none.

Holne PC Objections:-

- No. 909 applicable to Entry No. 10.
- No. 910 applicable to Entry Nos. 16, 17, 65 and 66.
- No. 912 applicable to Entry Nos. 20, 24, 29, 63, 64, 67 and 69.
- No. 913 applicable to Entry Nos. 21 and 27.
- No. 915 applicable to Entry No. 30.
- No. 918 applicable to Entry No. 52.
- No. 920 applicable to Entry No. 58.
- No. 921 applicable to Entry No. 67.
- No. 922 applicable to Entry No. 70.
- No. 923 applicable to Entry No. 71.

The grounds of these Objections are the rights restricted to the number of animals which the applicable is entitled to graze on ... (some other register unit); and/or the right is restricted to that number of animals which represent



2 bullocks or 2 ponies and 6 sheep for every 3 acres of land on which the right is attached: and/or the right does not exist at all over the applicants land being "Newtake" which no right of common is attached.

Yellow forms:- Dated 11.10.71 signed J A W Taylor ref Obj 910 agree to registration at Entry No. 16 being amended. Dated 6 July 1972 signed C J W Crowther ref Obj 910 agreeing to Entry No. 17 being amended. Dated 15/7/71 signed in Devonport ref Obj 912 by agreeing Entry No. 64 being amended. Dated 25 July 1973 signed Ernest French ref Obj 912 agreeing Entry No. 69 being amended.

Mr Browne said that the Newtake part of the grounds of Objection Nos. 915, 918, and 921 were withdrawn from the applicable to Entry Nos. 30, 52 and 67.

For the reasons under the heading Straying, subject to LIBERTY TO APPLY specified under such heading as regards all the registrations specified in this Part of this Schedule except those next hereinafter mentioned CONFIRMATION REFUSED; and as regards the registrations next mentioned (to which such liberty to apply is NOT applicable) CONFIRMATION REFUSED, that is to say Nos. 30, 52, 67 and 71.

Part III: Entry No. 25

This registration was made on the application of Frederick George Trant of a right attached to land in Buckfastleigh West to stray cattle or ponies or sheep from CL146 and CL164.

This Entry No. is specified in Holne PC Objection No. 912. At Entry No. 72, it is recorded that the registration being undisputed became final on August 1972. In the reference dated 16 February 1977 to a Commons Commissioner of the disputes occasioned by Objection No. 912, the figure "25" has been deleted.

In these circumstances there is no reference to a Commons Commissioner about the registration, and so as regards it: NO DECISION.

SECOND SCHEDULE (Ownership)

The Ownership Section registration at Entry No. 3 which being undisputed has become final, records the ownership of the South Devon Water Board of the part of the Unit Land lettered C on the Register map, being about one quarter of the whole, situated west and south of the Venford Reservoir.

The Ownership Section registration at Entry No. 1 which being in conflict is not final, records the ownership of Major John Davy Cooke-Hurle of the part of the Unit Land lettered A on the Register map (being all except that lettered C).



The Ownership Section registration at Entry No 2 (also in conflict) records the Ownership of HRH Charles Prince of Wales, Duke of Cornwall of the part of the Unit Land lettered B on the Register map being a strip by and within the west boundary about $1\frac{1}{4}$ miles long from north-south and having an average width of about 200 yards and having at its north boundary the O Brook.

At the beginning of the hearing Mr Sturmer said that except as regards the Ownership of the bed of the O Brook he conceded that the part lettered B was in County Ownership so except as regards the bed of the Brook, I should refuse to confirm registration at Entry No. 2; on the application of him and Mr Browne I adjourned the consideration of the ownership of the bed of the Brook until July.

On 18 July between hearings of other matters at Exeter, Mr Sturmer said that in this particular case the Duchy conceded that the CL153 portion of the O Brook is in the ownership of the County Council ~~but~~ maintained their view for any *(but)* future case that might arise about the boundary of the Forest of Dartmoor (Register Unit No. CL164) formed by a river, that the whole of the river is in the ownership of the Duchy.

On the other side of the O Brook boundary of the Unit Land is the Forest of Dartmoor (CL164). I am not concerned in these proceedings to determine whether the boundary between the Unit Land and the CL164 land is the north bank or south bank or (as I would on the information before me think the more likely) the middle line, of the Brook. I conclude from Mr Sturmer's concession that the registration at Entry No. 2 was not properly made.

I have no note or recollection of any evidence at the hearing being particularly directed to the County Council being the successor in title to Major J D Cooke-Hurle of his interest in the Unit Land. The 1984 letter (Part I in the Third Schedule hereto) indicates that Major G E J Gawthorn (the applicant for the Rights Section registration at Entry No. 45) was his first successor (a Mrs G A Gray said that he was at one time Lord of the Manor); further Mr Sturmer and others at the hearing seemingly treated the County Council ownership as generally recognised. However this may be, my concern is with the ownership of Major J D Cooke-Hurle on 28 May 1968 being the date of his registration.

As to this:- But for the Duchy registration at Entry No. 2, the Cooke-Hurle registration at Entry No. 1 would under section 7 of the 1965 Act have become final without any reference to a Commons Commissioner. In the circumstances of this case I consider this to be reason enough, there being at the hearing no contrary suggestion, for my concluding that the registration was properly made and further it is consistent with the 1953 conveyance (PC/3) produced.

My decision about Ownership is as stated in paragraph 5 of the Fourth Schedule hereto.



THIRD SCHEDULE
(Documents)

Part I: about Major J D Cooke-Hurle

20 March 1984

Letter to Commons Commissioners from Osborne Clarke, Solicitors of Bristol: Major J D Cooke-Hurle now deceased, before his death sold the Manor of Holme Holme Moor and Combestone Farm and all his other land in the parish to Major G E J Gawthorn of The Cottage, --Holme.

Part II: Brigadier I S Mc W Henderson (referred to)

19 April 1984

Letter to Commons Commissioners from Trower Still & Keeling, Solicitors of London enclosing certified copies to conveyances for Stoke Shallows (4 acres) and adjoining land at Holme (23 acres) listed their client Mr I Henderson.

14 April 1977

Conveyance by Lloyds Life Assurance Ltd (under a legal charge dated 18 October 1973 by David Alexander Braham) to I S Mc W Henderson and Marie Beatrice Henderson of two fields "Higher Newtake and Lower Newtake situated ... in Holme ... containing in the whole 3.926 acres ..."

30 September 1983

Conveyance by Aileen Shirley Thomson to I S Mc W Henderson and M B Henderson of "Fields ... comprising ... 23.45 acres ... edged red ...", with an acknowledge for production included conveyance of 20 October 1971 by Hugh Clarkson and Mary Isabel Clarkson and (Glebeland) of 1 November 1955 by Lord Bishop of Exeter to Messrs E French, J S French, W S French and M J French.

20 April 1984

Letter to Commons Commissioners from Brigadier I S Mc W Henderson.



Part III: produced by Mr Browne from Documents held by
County Council as Registration Authority

- 11 March 1968 CC/1. Application for registration by
Lt Col R L Kenyon (being that leading
to Rights Section No. 2).
- 17 January 1968 CC/2. Application by F W F Vanstone of
registration of rights attached to
Glen Rowan (being that on which Rights
Section No. 57 was made).

Part IV: produced by Mr D J Powell

- 17 September 1926 PC/1. Sale Particulars for auction by
Alfred Savill & Sons of outlying
portions of Holne Estate comprising
1,240 acres.
- May 1956 PC/2. Memorandum of evidence submitted
by Dartmoor Commoners Association to the
Royal Commission on Common Land (printed
with the Minutes of Evidence heard by
them on 30 April 1957).
- 9 February 1933 PC/3. Conveyance by Arthur Moon to
Alice Mary Cooke-Hurle of the Manor
or Lordship of Holne.

Part V: referred to by Mr Lewis

- 17 February 1976 Decision of Chief Commons Commissioner
G D Squibb QC re Headland Warren, CL148.
- 30 June 1983 Decision of myself re Forest of Dartmoor,
CL164.
- 30 June 1983 Decision of myself re Commons in
Sheepstor, CL188.
- 30 May 1977 Decision of Chief Commons Commissioner
G D Squibb QC, re Hentor Warren, CL190.
- 26 October 1979 Judgment about case stated re CL190 of
His Honour Judge John Finlay QC, sitting
as a judge of the High Court.



13 July 1982

FJJ/10. Map prepared by County Council showing "Commons of Devon".

FJJ/11. Certified copy of Land Certificate Title No. DN130710 showing Frances Jill Jukes with title absolute to land at Higher Combe, Buckfastleigh, (Pixies House).

Part VI: referred to by Mr Sturmer

2 November 1983

Mr decision re Commons in Belstone (CL73) after hearings in March and July 1983 at which Mr Sturmer gave evidence about piscary and pannage.

FOURTH SCHEDULE
(Decision Table)

1. I CONFIRM without any modification the Rights Section registrations at the Entry Nos. next below specified being the Nos. in Part I of the First Schedule hereto under which appears the words "CONFIRM without any modification", that is to say Nos. 3, 45 and 57; and also 77 and 88 which replace No. 68 in Part.
2. I CONFIRM with the MODIFICATIONS hereinafter mentioned the Rights Section registrations at the Entry Nos. next below specified being the Nos. in Part I of the First Schedule hereto under which appear the words "CONFIRM with the MODIFICATION", that is to say Nos. 2, 6, and 68 and also No. 84 which replace No. 68 in Part; the modification applicable to each Entry No. being that specified in such Part as applicable to it.
3. I REFUSE to confirm the Rights Section registrations at the Entry Nos. next below specified, being the Nos. in Part I and Part II of the First Schedule under which appears the words "CONFIRMATION REFUSED and under which there is no reference to any liberty to apply, that is to say: (Part I) Nos. 39, 49, 50, 51, 53, 61 and 62, and (Part II) Nos. 30, 52, 67 and 71.
4. Subject to the liberty to apply hereinbefore granted under the headings Straying and Others, I REFUSE to confirm the Rights Section registrations at the Entry Nos. next below specified being the Nos. in Part I and Part II of the First Schedule hereto under which appear appear the words "CONFIRMATION REFUSED and under which a liberty to apply is mentioned, that is to say (Part I) Nos. 22, 23, 26, 28 and 60; and (Part II) Nos. 10, 16, 17, 20, 21, 24, 27, 29, 58, 63 to 66 inclusive, 69 and 70.
5. I CONFIRM without any modification the Ownership Section registration at Entry No. 1 (Major J D Cooke-Hurle) and I REFUSE to CONFIRM the Ownership Section registration at Entry No. 2 (HRH Charles Prince of Wales, Duke of Cornwall).



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

Dated this 12th — day of July — 1985.

A. A. Baden Fuller

Commons Commissioner