



Reference Nos 209/D/343
209/D/344

COMMONS REGISTRATION ACT 1965

In the Matter of the "open fields"
in Chagford, West Devon District,
Devon.

DECISION

This Matter relates to 41 registrations (not counting replacements) made under the 1965 Act. My decision is that on the basis (stating it shortly) that these fields for 3 months from 6 August belong to the Parish of Chagford, none of these registrations was properly made. The disputes which have occasioned this decision, the circumstances in which they have arisen and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 to 40 inclusive (1, 5, 8, 23 and 29 have been replaced by Nos. 46 and 47, Nos 57 and 58, Nos. 49 and 50, Nos. 53 bis, 54 and 55, and Nos. 52 and 53 respectively) in the Rights Section of Register Unit No. CL174 in the Register of Common Land maintained by the Devon County Council (the land in such Register Unit being described in the First Schedule hereto) and are occasioned by the Objections numbered, made by the persons, and noted in the Register on the days, specified in the Second Schedule hereto.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 8 and 10 February 1984. At the hearing Mr Simon Allister Lloyd Hill of Cuckoo Field, Chagford as successor in the title of Mr Robert Lloyd Hill who made Objection No. 422 and who applied for the registrations at Rights Section Entry No. 16 and Ownership Section Entry No. 1 was represented by Mr R F D Sampson solicitor with Woollcombe Watts and Co Solicitors of Chagford; (2) Mr Derek George Bennie and Mrs Sheila Ann Bennie of Beechlands Chagford as successors of Mrs Pixie Norma Smith who made Objection No. 481 and who applied for the registrations at Rights Section Entry Nos. 20 and 21 was also represented by Mr R F D Sampson; (3) Mrs Barbara Thompson Courtenay of 18 Orchard Meadow, Chagford and Mr Alan George Partridge of Drewsteignton as trustees of Chagford Association Football Club who made Objection No. 567 being among the successors of Frederick George Underhill who applied for the registration Ownership Section Entry No. 2 were also represented by Mr R F D Sampson; (4) Mrs O R Roberts as successor of (a) Mr Robert Jury who made Objection No. 65 and applied for the registration at Rights Section Entry No. 36, and (b) Mr Hugh Leslie Roberts who made Objection No. 686 and applied for the registration at Rights Section Entry No. 35, was also represented by Mr R F D Sampson; (5) Mr Michael John Sheridan who is another successor of the said Mr F G Underhill* was also

*Note:- I so noted at the beginning of the hearing; some of the documents produced were more consistent with his wife Margaret Anne Sheridan being successor.



represented by Mr R F D Sampson; (6), (7) and (8) Mr Eric John Andrews, Mr Thomas Hutchings and Mrs Edna Beatrice Mary Maggs who applied for the registrations at Entry Nos. 2, 28, 33 respectively attended in person; (9) Mr Peter Hill of 2 Lower Street Chagford as sole executor of his father Mr Charles Hill (he died 20 May 1983) who applied for the registration at Rights Section Entry No. 32, attended in person; and (10), (11) and (12) Mrs Gladys Geraldine Kerslake, Miss Avril Ruth Meredith and Mr Alexander Walter Meldrum who applied for the registrations at Rights Section Entry Nos. 34, 37 and 38 respectively, were represented by the said Mr P Hill.

The Unit Land comprises seven pieces together containing about 54 acres; four of these either adjoin or are easily accessible from the road running southwards out of Chagford known nearby as New Street and further off as Meldon Road, and the remaining three either adjoin or are easily accessible from the road running southwestwards out of Chagford known as Manor Road. All the pieces are within about \rightarrow half \rightarrow a mile from the middle of Chagford. They are more particularly described in the First Schedule hereto; the names therein given being in some cases those used at the hearing and in other cases invented by me for the purposes of exposition. The grounds of the Objections are stated in the Second Schedule hereto; those of the Rights Section Objections, although not expressly, inferentially question the rights over all the seven pieces.

All the Rights Section registrations, except those at Nos. 2 and 13, are of or include rights to graze; some include turbarry, estovers, and to take sand and gravel; that at Entry No. 13 comprises such rights with the addition of piscary and shooting; and that at Entry No. 2 is "to stray". All the registrations are from 6 August to 6 November.

Mr Sampson at the beginning of the hearing (8 February) produced the documents specified in Part I of the Third Schedule hereto as being the only documents (of a general character) available to Mr S A L Hill about the "Open Fields" at Chagford. Of these the most concise (SALH/1) is an extract from a paper by F Osborne (a local antiquarian now deceased), of which the now relevant words are:-

"The manors were Chagford or Cagefort, comparatively small; Taincome which since the early 13th century has been called Collerew and joined to Chagford; suthteng (South Teign); Risfort (Rushford); and Escapeleia (Shapley). They overlap the parish boundaries and present a number of problems, ... The 10 fields in Chagford thrown open each year from 6 August to 6 November are mentioned by the Rev T W Whale in a typescript headed "Extracts from the Book of Gleanings" found among the papers of the late Miss Legaweekes, F.HIST.S., which quotes a document dated 7 April 1516 setting out the freeholders' rights of common and the customary crop rotation; one or two out of the four fields according to this, had to be sown to corn each year and the remaining fields kept as meadows. Nowadays those outside the manor of Chagford are still debarred by custom from bringing their cattle into these open fields, which lie to the west of the town and were obviously late enclosures and not commons ...".

The 1904 cutting (SALH/3) refers to a Charity Commissioner's inquiry. The 1516



Document (SALH/2) apparently an award about lands therein described as:-
"four closes of land ... whereof the one close is called Horehile, the second is called Heylond, the third is called Langeland and the fourth is called Brodeland lyeing in the West Part of the Towne of Chagford aforesaid ..."

Mr Sampson in opening said (in effect):- "Horehile" survives to this day as Horehill or Orehill, and "Brodeland" as Broadland. As to the 1904 inquiry, the Charity Commissioners never made a scheme, although the cutting (SALH/3) shows there was wide support for it; it perhaps foundered over the difficulty of identifying the persons entitled to rights. The documents available being no more (SALH/1, 2 and 3), he could only suggest that any rights there may ever have been were of a limited class and should not be regarded as extending to the same class of persons as have rights over other commons of the parish (Chagford Common etc, in Register Unit No. CL173). It is common ground that the rights as at present understood do not have any control over the rotation of crops such as was in 1516 awarded (SALH/2); the period 6 August to 6 November does no more than provide that the field shall not be closed until the clearance of the crop. Objections Nos 685 and 686 are in effect to all the Rights Section registrations, because those omitted (Nos 35 and 36) are those made on the application of Mr H L Roberts and Mr R Jury, who were the Objectors.

Next in support of the registrations oral evidence was given by Mr Thomas Hutchings of 4 Nattadon Road, Chagford, being the same land as in Entry No. 28 described as "The land at Chaman ..."; he produced the documents specified in Part II of the Third Schedule hereto. The 1906 return (TH/3) amplified the press cuttings (SALH/3) under the heading "Proposed Recreation ground", as follows:

In 1902 the parish council of Chagford consulted the Charity Commissioners with a view to obtaining their authority for accepting a proposal made by the owner of certain fields in the parish which were subject to Lammas rights to pay a sum of 500l., to be expended on procuring a public recreation ground in commemoration of the coronation of King Edward VII, in consideration of the general common rights over those fields being extinguished. It appeared that the fields in question were some of a number of fields adjoining Milldown or Meldon, Nattadon, and Pedley Commons, which were subject to such rights; the mode of cultivating them by custom was wholly in the discretion of their owners; and the title deeds of some of the fields recited that they were subject to those rights of common (which were reserved out of the conveyance of them) belonging to the commoners of the commons above mentioned and described them as "common grounds". At the suggestion of the Charity Commissioners the parish council applied to the Board of Agriculture with a view to obtaining their sanction to carrying out the proposed arrangement, but on receiving an intimation from that Board that proceedings with their authority for this object, if practicable, would be attended with difficulty and expense, the council applied to the Charity Commissioners to appoint trustees of the common rights and establish a Scheme to enable the arrangement to be effected. Objections were, however, raised by the owners of other fields adjoining or near the fields in question who claimed under their deeds of title rights of common over these fields, and at the desire of the parish council, by direction of the Charity Commissioners, in order to ascertain whether any general agreement was likely to be attained in the matter, an Inquiry was held by Mr H Bowyear, an Assistant Charity Commissioner, at Chagford, on 23rd August 1903. It appeared at the inquiry that, with



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regard to the fields in question, rights of common were and had been for a long time exercised by all the inhabitants of Chagford from 6th August to 6th November yearly, but the owners of the adjoining lands above mentioned claimed such rights exclusively as appurtenant to those lands and objected to the proposed arrangement. In consequence of Mr Bowyear's Report the Charity Commissioners informed the parish council (December 1904) that their jurisdiction did not extend to dealing with rights claimed by private persons as matters of private property and not as part of the benefit to be received from a Charity, and the matter was not further proceeded with.

The general effect of the extracts from the Parish Council minutes (TH/4) may be gathered from the following:-

27.5.58 Annual meeting ... raised the question of the open gates at the bottom of Waye Hill which permitted cattle and particularly Dartmoor ponies to cross the road and endanger traffic ...

23/8/58 ... the Ministry of Agriculture requested more information with reference to the 10 fields under consideration for cessation of Common Rights ... It was reported that there was some interference to the common rights by the owners of O'er Hill ...

27/10/58 ... the name ... of the new owner of O'er Hill... Mr H L Roberts ...

28/9/59 Mr Hutchings of Chaman, Nattadon Road had notified Cllr. Smardon that the Triangular commonland field at the foot of Meldon Hill was padlocked. It was tilled to potatoes and had been so for the past 10 years ...

17/6/63 ... Mr R Lloyd Hill on behalf of owners of Open Fields in Chagford Parish ... they were prepared to pay £1000 to the Council to extinguish the common rights on these fields ...; (decision ask Mr F Osborne to give his observations)

15/7/63 Mr F J Osborne ... gave his observations on the proposed closure of the Open Fields in Chagford ... he said some years ago an offer was made for closure of some of these fields and it was made clear then that the Council were not the Trustees but the freeholders of the Manor of Chagford had control. Documents were produced which left the Ministry concerned in no doubt that a long legal battle would be involved and then no further action was taken ...

20/9/64. It was decided to display details about the Open Fields to parishioners on the Notice Boards

20/9/65 ... A letter from Mr F Hill ... clerk instructed to reply to that in 1964 the Council had brought the situation to the notice of the landowners ... the gates against the road are not unhinged in the interest of road safety ...

17/10/66 a complaint was received of certain Open Fields that had been cultivated had not been left open during the appropriate time after the crop had been gathered ...



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19/8/68 Mrs P Smith of Beechlands Chagford wrote ... she is aware of the need to open her field but was merely trying to prevent sheep from straying onto the road ...

18/8/69 Maj. Gen. Walkey of Linden Spinney Chagford expressed his concern at finding several gates of the open fields adjoining the common still locked ...

16/9/74 it was brought to the notice of the meeting that several fields were locked or barred in some way ... resolved the Commons Registration Committee should examine the situation ...

21/10/74 ... the fields in question, most of which were either padocked or blocked in some way ...

Mr Hutchings who is 67 years of age said (in effect):- He enjoyed common and grazing rights over the Unit Land by right of OS No. 698. His father in 1927 built on OS 698 a bungalow being 4 Nattadon Road. Before 1919 OS 698 was a field which belonged to Nattadon Farm which enjoyed common and grazing rights and it was also one of the Open Fields, open from 6 August to 6 November; the then owners Devon County Council sold the field OS 698 to Okehampton Rural District Council for a building site; they obtained an Act of Parliament to close the field. "What we did not know was that they extinguished the common rights and grazing rights of the Open Fields". His father and he had been grazing ponies on the Open Fields since 1927. The Estate (OS No. 698) is now and has been ever since about 1920 a housing estate comprising houses on both sides of Nattadon Road and on the east side of Meldon Road. Tenants of these houses put their stock on these Open Fields; geese, ducks, goats, ponies, pigs, using the rights that these fields could be used by "Cottagers". The largest land owner (meaning Mr Sheridan) of the Open Fields had not objected. He emphasised (TH/3):-

"An inquiry by ... Charity Commissioner ... 1903 ... with regard to the fields in question rights of common were and had been for a long time exercised by all inhabitants of Chagford from 6 August to 6 November yearly but the owners of adjoining lands claimed (rights) exclusively as appurtenant to those lands ..."

Orehill is OS No. 687; there is a gate from it onto Padley Common (part of CL173). He thought that Padley Common, Meldon Common etc should not have been all lumped together in the (1965 Act) Register, but rights over the Open Fields were over all of them. He as successor of his father claimed rights just because they put ponies down. He did not claim turbarry, stone etc; only grazing. The ponies grazed from 6 August to 6 November; before the war (1939-45) the owners (of the Open Fields) used to remove the gate; after the war some of them did not.

Next Mrs Edna Beartrice Mary Maggs of 28 Meldon Road (on the said estate) gave oral evidence by reference to the paper specified in Part III of the Third Schedule hereto. She said (in effect):- Her family had lived in Chagford for at least 280 years. No. 28 Meldon Road was built in 1925 and had always been in the possession of her parents and herself as a sole and original owners. "There has always been an understanding handed down to me that we have common



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rights on the Open Fields ... for three months of the year 6 August to 6 November and on Chagford Commons (CL173) rights of turbarry and estovers". They had regularly cut ferns and rushes on the commons. Her understanding is that the Open Fields (CL174) had always been available to all the inhabitants of Chagford for 3 months in the year. These fields are sold at below the current market value because of this stipulation. Not all the owners objected to the registration of their Open Field. Over the years several owners have offered sums of money with the proviso that the common right cease on their fields; by this action they are admitting that the common rights do exist on these fields. These facts can be verified from the minutes of Chagford Parish Council 17/6/63 and 17/10/77. She felt strongly as do many of the inhabitants of Chagford that this unique heritage should be respected and maintained.

Next, Mr Eric John Andrews whose father purchased Lower Weddicott Farm in 1925 and continued there until 1933 and who himself took occupation in 1956 and has been there ever since, in the course of his oral evidence said (in effect):- Shortly after 1956 he started using the commons attached to his holding, namely Meldon, Nattadon and the Chagford Commons; but because in his deeds there was no reference to the open fields he applied (on the Unit Land) for a right "to stray" (his registration at Entry No. 2 is so expressed). He had attached to his holding rights on Padley Common (part of CL174) and as the gates are open between Padley Common and the Open Fields it is conceivable that (his) ponies go through them. He agreed with Mrs Maggs that the fields had been thrown open a great number of years; they are unique in Chagford; a number of people bought their land knowing that they were thrown open. If people are given an opportunity (Chagford is a parish looking for building land) and if they could so use their Open Fields, their value would be astronomical; he urged me (as a result of my decision) "not to close the Open Fields for the 3 months"; they are unique in the British Isles.

Questioned by Mr Sampson, Mr Andrews explained (in effect) that by describing the Open Fields as open he did not mean that the gates were never shut; if animals there were not prevented by a gate from going on the road, it would be "suicidal".

Next (10 February) Mr Peter Hill (Entry No. 32) who is 47 years of age and has lived in the Parish all (?nearly all) his life and been a member of the Parish Council for (?) 26 years, in the course of his oral evidence said (in effect):- He had never himself grazed animals on the Open Fields, although there had been occasions when his father made use of them, running ponies on the Fields which adjoined Padley Common and Meldon Common; in his father's day ponies could roam between these areas. But in the last few years (20 years since 1964) roaming between the fields has been less possible. He based his claim on the Manor Rent Book, and "on that book we would claim our rights as expressed: inhabitants of the town (Chagford) as stated in 1903 documents (SALH/3 and TH/3)". → Mrs G G Kerslake (Entry No. 34) of 28 and 30 New Street (opposite the east end of the Track leading to Ore Hill, piece No. 4, and next "Chagford Junior Parochial School") has lived in the Parish for many years (now an OAP). He remembered while attending the School seeing ducks being driven along the road (New Street) from the Commons and Open Fields to the homes of their owner. The Open Fields do not flood; on them water collects. Mrs Kerslake does not herself graze; she feels inhabitants have rights. He could advance no argument for Miss A R Meredith (Entry No. 37) of 41 New Street and Mr A W Meldon (Entry No. 38) of 37/39 New Street, except they are residents



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(of Chagford) and their property would appear in the Manor Book. In his belief the persons who could exercise rights over the Open Fields were in two categories: (a) people whose property is recorded in the Manor Book and (b) the owners of the Open Fields themselves. The oldest inhabitants had always considered themselves to have rights. As to the May 1958 Parish Council minute; this related to the Open Fields of Mrs Smith and Mr Hill (pieces 5 and 6) on either side of the road Waye Hill (running upwards out of and in line with Manor Road); gates were thrown open enabling the free passage of animals and this endangered the traffic so there was a road safety element in the views of the Parish Council; their view (in 1958) was that the gates should remain on their hinges and could be closed but not locked; but because they thought they had no authority over the Open Fields, they did nothing. Before 1958 the gates were open and the Open Fields were grazed by ponies generally or sheep moving around. After 1958 it was accepted that the gates could be closed (to keep animals within); although some of the gates (to New Street or Meldon Road) continued open. In recent years gates of the Open Fields have (some of them) been kept closed (to keep animals out).

Next Mr E A Andrews continuing his oral evidence said (in effect):- He had known the Open Fields for 27 years. Of the farms named in the Register (Rights Section) he had seen at some time in the last 27 years cattle, sheep or ponies in the Open Fields from at least 12, during the 3 months 6 August to 6 November; they went in from Padley Common or Nattadon Common or Meldon Common through the open gates; he named the following (Entry Nos. in brackets):- (1) Mr Bennett of Quintatown Farm, (2) himself of Lower Weddicott Farm, (3) and (22) Mr A B McGlynn (or his son) of Briarfield, (6) Messrs A Stanbury of Teigncombe Farm, (9) Mr R S Perrott of Yellands Farm, (10) Mr J Rowe of land near Waye Barton, (18) Mr C W S Mortimore of West Corndon, (19) Mr L C S Mortimore of Shapley Farm, (23) Mr J R T Tilly of Buda Farm, (24) Mr B Mortimore of Factory Cross, (25) Mr M L Hill of land at Chagford (East Combe), (26) Mrs A Cox of Higher Weddicott Farm, (28) Mr T Hutchings of Chaman, and (39) Mr J S Mortimore of Down Park Farm.

Questioned by Mr Sampson, Mr E J Andrews said (in effect):- The grazing he described was in all the Open Fields except Mr Hill's field and Mr Smith's fields (pieces Nos. 5 and 6). Some of the farms he mentioned had stock in a lot of the fields, more than one. Although he was chairman of Chagford Commoners Association as regards the Open Fields he was not representing them in this matter and was here in a private capacity. Of the Entry Nos. he had mentioned the following appeared in the Manor Rent Book, Nos 1, 2, 6, 9, 18, 22, 23, 25 and 39 and the following were not in the book Nos. 3, 10, 19, 24, 26 and 28. There will be no need for No. 10 to be in the Book because it was Ellis land and they would not pay themselves. He thought that originally the fields all belonged to the Ellis family or their predecessors; it follows (he thought) those in the Book had paid for a right to continue to graze on the Open Fields.



Next, Mrs Barbara Thompson Courtenay who has since 1938 been associated with the Chagford Association Football Club, gave oral evidence in the course of which she produced the documents specified in Part V of the Third Schedule hereto. She said (in effect):- For nearly 20 years the Club has played football on the north part of Broadland (part of Piece No. 7); before 1971 as tenants of Mr F G Underhill who was president of the Club and afterwards as purchasers from him. She was one of the trustees named in the 1971 conveyance (FC/1); Mr R Stanbury one of the other trustees has since died. The Club first played at Cranafords (on the road between Chagford and Easton Cross); for one season they tried to play where there is now a cricket pitch (ie on Padley Common, since 1947 owned by the Parish Council); after that they disbanded for one season and then (1964) went onto Broadland as tenants of Mr Underhill. Since they went there a great deal of work has been done maintaining the pitch and keeping it in order. Nobody now grazes it because the gate has been kept closed; "if we got a lot of cattle on the pitch it would make quite a mess!". Answering Mr Peter Hill about the Parish Council Notice mentioned in their minute 6/9/64, advising the owners of the Open Fields that they should follow the custom of leaving the gates unclosed, or if they were closed leaving them unlocked); "We have followed the ruling of the notice that is we have kept the gates closed not locked". The Football season starts at the beginning of August (usually on the first Saturday there is a practice) and ends in May. For the last 2 years a member of the Committee has cut the grass and for it made a donation; before then on two occasions "we have let people graze sheep there but they made such a mess we decided that (cutting) was the answer". Otherwise she did not think anything was done about the grass. She did not know that there had been (as Mr Hutchings suggested) at one time (on Broadland) a ladies hockey pitch; but (if there was) times have altered; the referee comes and if the pitch is unplayable and the match is abandoned, there results a hefty fine by the South Devon League on the Club.

Next, Mr Derek George Binnie gave oral evidence in the course of which he produced the documents specified in Part VI of the Third Schedule hereto. He said (in effect):- He bought Beechlands in 1977 (DGB/1), and so was the successor Mrs P N Smith as maker of the Objection (No. 481) and owner of Broom Park (Piece No. 5). He knew about 5 August to 5 November (mentioned in the 1977 conveyance; the previous owner told him that nobody had grazed it for about 20 years. For his first 4 years, he kept the gate (across access to Broom Park from Manor Road) locked; after that somebody stole the lock and chain, but nobody grazed the field (Broom Park) save himself. Every year he had put in fertilizer, cut the hay, and grazed in between times; last year he did some drainage. He would not like to make any comment on the statement of Mrs P N Smith (as owner before him of Brown Park) recorded in the Parish Council Minute Book of the meeting on 19/8/68. If the gate was left open and animals went onto the road (down Way Hill into Manor Road) "somebody would be killed".

Next, Mr Robert Lloyd Hill (no connection with the said Mr Peter Hill) who has all his life (born 1909) lived in Chagford or in the immediate area, gave oral evidence in the course of which he produced the document specified in Part VII of the Third Schedule thereto. He said (in effect):- He owned one of the Open



Fields (piece No. 6) named Bowers Park being the land specified in the Objection (No. 422 made by him). When he acquired Bowers Park (1954, SALH/2bis), he knew about 6 August to 6 November. (Asked who he considered entitled to rights); "I would not really know". In the last 20 years he had seen 3 lots of animals turned out onto Bowers Park: (a) about 15 years ago sheep of Mr Mortimore; "I told him to produce his evidence; he did not; he took his sheep away"; (b) about 9 or 10 years ago, Mr Tilly drove his sheep over the hedge "he did not remove them; I removed them; he then went to the police and got nothing from them and then contacted the Parish Council and got nothing from them" and (c) about 3 years ago Mr Harry Dodd of Chagford put some ponies there pending the pony market; "he told me what he thought (which was) the workers of Chagford who used to go and do jobbing in the area with a pony or donkey cart to carry the tools and equipment, used to put their pony or donkey there to get into condition to start through the winter". His (the witness') son now cultivated about one-quarter of it (Bowers Park) as a commercial garden (as he had also done); sometimes mangolds and turnips, or kale, or barley; the pasture (the remaining part) had been reseeded. As to his offer to the Parish Council to pay £1,000 if they would close the Open Fields (Parish Council Minute 17/6/63), he made this offer on behalf of the six owners, then, Mrs Smith, Mr Jury, Mr Roberts, Mr Sheridan, Mr Underhill and himself.

Next, Mr Sampson produced the documents specified in Parts VII and VIII of the Third Schedule hereto, being documents relating to the title Mrs O R Roberts to the opposite Dennis Park Piece (No. 2) and Hore Hill (piece No. 4) and of Mr M J Sheridan (?Mrs M A Sheridan), relating to the Three Corner Field (piece No. 2) and Furze Park (piece No. 1).

Mr Sampson then made submissions to the following effect:- It was clear that the Open Fields were at one time subject to common rights; they were defined in the 1516 award in precise terms; but with the passage of time the identity of the persons entitled to exercise these rights has become undeterminable; they are therefore incapable of registration. The documents of title produced are imprecise even as to the dates sometimes 5 August sometimes 6 August sometimes none. The various interpretations put forward all lack precision as to those benefitting; cottagers or inhabitants of the town, or former manorial tenants. Some rights had been claimed in error; the basis of some of the claims was not known. As regards some of the registrations they should be disallowed for want of prosecution see re Iikley and Burley, C L 1983 vol 2 at para 416H. None of the persons seeking to support or object to any of the registrations have sought to distinguish among the various Open Fields, so they have been dealt with as an entirety (the Unit Land as comprised in CL174); so whatever may have been the usage of any particular field whether or not the owner of any particular field has made an objection, refusal of the confirmation of any registration should extend to the entirety, whether or not the owner of any particular field has made an objection.

Next, Mr Sampson dealt particularly with the registrations at Entry Nos 2 (E J Andrews), 28 (T Hutchings), 32 (C Hill), 33 (E B M Maggs), 34 (G G Derslake), 37 (A R Meredith), and 38 (A W Meldrum). If the numbers of animals mentioned in all the registrations are added together the total would be about 1,100 cattle, 600 ponies and 3,700 sheep. None should be confirmed; and to avoid conflicts, the registrations at Entry Nos. 35 (H L Roberts) and 36 (R Jury), should follow the others, being those not specified in the Objections he was supporting, and not be confirmed.



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On the day after the hearing (11 February I inspected the Unit Land, there being present when I began Mr E J Andrews, Mr T Hutchings, Mr D G Binnie, Mr R L Hill, his son Mr S L Hill, Mr M J Sheridan and Mr C Courtenay (husband of Mrs B T Courtenay who gave evidence); throughout my inspection I was attended by at least one of them.

Formally, because the grounds of the Land Section Objections Nos 422, 481 and 567 are limited to Pieces Nos 5 and 6 (Broom Park and Bowers Park) and part of 7 (Broadland), I could I suppose confirm without hearing any evidence or argument the Land Section registrations as regards the remainder of the Unit Land, see re West Anstey 1984 Ch 172; and formally too I could refuse to confirm any Rights Section registration as regards all the Unit Land notwithstanding that Messrs R Jury and H L Roberts when they made Objections Nos 685 and 686 were concerned only over the opposite Dennis Park Piece and Hore Hill (Nos. 3 and 4). As was apparent at my inspection there are numerous differences between the seven pieces which go to make up the Unit Land which must affect their utility and indeed even if pressed I would find it difficult to find an adjective which was relevantly applicable to all of them. However at the hearing no point was raised as to the very small differences specified in the Third Schedule hereto by which the pieces have in documents been dealt with and nobody put any argument directed about any one of the pieces particularly. I therefore accept the suggestion made by Mr Sampson (and repeated by others during my inspection) that I should as far as practicable treat all the pieces similarly and give the same decision about all of them. So I treat Objections Nos. 422, 481 and 567 as having been appropriately amended so as to extend to all the Unit Land, and Objections Nos. 685 and 686 (they contain no express limitations) as questioning the Rights Section registrations over each and every of the 7 pieces.

In many contexts the word "open fields" suggest an area of grass land adjoining or crossed by an unfenced public highway, and therefore open to any member of the public who cares to use the highway; the 7 pieces comprising the Unit Land are not, and have no resemblance to open fields in this sense. The Open Fields making up the Unit Land are fenced from the public highway nearest to them, and on appearance, I infer that they have been so fenced from before living memory. But they all have a gateway (and now all have a gate) leading to a convenient nearby highway. To some of the witnesses, their openness consisted in the gateway for 3 months after 6 August every year having either the gate lifted off its hinges, or left open, or left unlocked and therefore freely openable; with the result humans could freely enter either alone or with animals from off the public highway. To other witnesses their openness consisted in there during the said 3 months at least being no obstruction preventing animals being driven from or on their own going from the adjoining common, being Nattadon Common (piece No. 1), Meldon Common (piece Nos. 2 and 7) and Padley Common (piece Nos. 3, 4, 6 and 7); all these Commons are included in Register Unit No. CL174 about which I have given a decision of even date; exceptionally piece No. 5 does not adjoin any such Common.

It was generally accepted that the Unit Land comprised Open Fields in this sense and were for this reason so called. Most of the witnesses attempted some definition of the legal rights deducible from such openness. To all these definitions, some criticism is applicable; eg there cannot be in law a right to leave a gate unlocked, except possible as associated with a highway or a right of way. As to this criticism, I have the guidance of the Court of Appeal in *De la Warr v*



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Miles 1881 17 Ch D 534; of it Brett LJ said that he "is claiming to exercise the right, which he did in fact exercise, in respect of some alleged title, which could not be supported, is in my opinion wholly immaterial ..."; and Cotton LJ, having said "... and it is said here that these acts, if they are made out in fact to have been done ... were done, not under what the Court thinks would give a good defence, but as under a custom which the Court holds incapable of proof and not proved", and then (stating his own contrary view) "will see whether the acts which the defendant claims a right to do ... are such as could be supported as lawful by custom, prescription or grant ..."; and "it is said however that nearly all the persons who cut litter did it not in respect of their own particular farms but under general supposition that the (1693) decree gave them a right to do so or that there was some custom which justified it. In my opinion as I have already said, it is not necessary ... that the act done should at the time have been attempted to have been justified in any way which we think they can legally be justified ...". I think the above quoted observations although made in circumstances not exactly similar to this case, guide me to the conclusion that I must regard not what the witnesses thought was the legal justification of the acts they described but the acts themselves.

Nevertheless the descriptions given to me by witnesses as to what they thought were the rights they were supporting, are not wholly irrelevant. They were a helpful background to their other evidence, and the description by a witness of rights may in an appropriate context be understood as a description of the things which people have been doing.

As to the rights which "can legally be justified", I have in these proceedings to do what Cotton LJ thought should be done by the Court. There are I think only two possibly relevant rights justifiable by law: (1) a right of common appurtenant; and (2) ownership.

As to right of common appurtenant for 3 months in every year from 5 (or 6) August:- Seasonal rights were recognised by Sir G Jessel MR in *Baylis v Tyssen-Amhurst* (1877) 6 Ch D 500 at page 508; they are contemplated expressly in the definition of common land in section 22 of the Commons Registration Act 1965. Many such lands are called Lammas lands, the relevant period starting on 1 August new style or 11 August old style. The mention in the 1516 Award (SALH/2) of "the feast of St Jaymes the Apostell" leads me to suppose that 5/6 August mentioned in the modern documents I have is the day of the feast old style and therefore traceable back to the 1751 Act for correcting the calendar, see Williams on Rights of Common (1880) at page 74. Rights associated with Lammas day or some such time of the year are not unique to Chagford; as a Commons Commissioner I have dealt with land with such an association on several occasions; I have a distinct recollection of some one such in Herefordshire, Staffordshire, Leicestershire, and Somerset; and from discussions I have had, I conclude there must be at least 20 others in England or Wales.

As to the proof of rights of common during a limited period, findings such as I have made above about the openness of the Unit Land are not enough, as is shown by *Bayliss v Tyssen-Amhurst* supra were a pleading somewhat similar was struck out. But that such rights of common for limited period can be proved by usage is shown by the observations of Sir G Jessel MR at page 509; and I consider I should be guided by his statement: "that where long continued user



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is proved of a beneficial enjoyment of rights of this kind, the tribunal ought not to be astute to destroy those valuable rights on any technical notion that a legal origin could not be attributed to them. It is the duty of the Judges as far as it is possible to do so, to attribute a legal origin to the actual exercise of those rights ...".

But a right of common is not the only right by law capable of existing during part of a year. Land may be owned up to 5 August by one person and from 6 August to 5 November by another, see *Baxendale v Instow* 1982 1 Ch 15, citing at page 20 with approval *Welden v Bridgwater* (1595) Cro. Eliz. 421.

Much of the evidence before me was to the effect that in various ways the Open Fields were in the parish of Chagford following the 3 months from 6 August considered to be available for the use of the inhabitants of the parish generally. A public charitable trust for the benefit of the inhabitants of a parish is recognised by law, see *Goodman v Saltash* (1882) 7 AC 633 and other cases. Any uncertainty there may be as to the ownership and interests held for the benefit of the inhabitants of the parish was removed by section 17 of the Poor Act 1818 and the decisions of the court as to the effect of such section; by the section the church wardens and overseers of a parish were empowered to "accept and take hold in the nature of body corporate for and on behalf of the parish all land belonging to the parish"; in *Doe v Hiley* (1830) 10 B & C 885, Lord Tenterden CJ held that this section had the effect of vesting in the church wardens and overseers all the land belonging to the parish notwithstanding that the land was not acquired for purposes relating to the poor. This decision has since been treated as applicable to all land "belonging" to a parish in the popular sense of that expression", see *Doe v Terry* (1835) 4 A & E 274 at page 281 and *Haigh v West* (1893) 2 QB 19 at page 31; this last case although distinguished on the facts was recognised as stating law still applicable in *Wylde v Silver* (1963) 1 Ch 243 at page 271.

So on the evidence given at the hearing as summarised above, there are I think only two alternatives in law requiring my consideration. Either (1) the Unit Land is for 3 months from 6 August in every year subject to ordinary rights of common appurtenant; or (2) the Unit Land is for 3 months from 6 August in every year subject to a public charitable trust for the benefit of the inhabitants of Chagford. I have not overlooked that during the course of the proceedings some witnesses claimed that each and every inhabitant at Chagford had a right of common under which he was entitled to graze animals during the 3 month period; I am not considering this a possible alternative because it has been established that such a right is not recognised by law (except under a charitable trust), see *Gateward's Case* (1607) Cro Jac 152 and 6 Co. Rep. 59b, and the numerous subsequent cases in which this case has been explained. I have also not overlooked the claim of Mr Sampson that those he represented are owners of the Open Field under the conveyances he produced free from any rights; I reject this as a possible alternative because it is not supported by the evidence; I accept his submission that if it is not possible to attribute a legal origin to what people in Chagford were doing on and about the Unit Land during the 3 months, it follows that those represented by him may under their conveyances, in the absence of any one prepared to make against them a hostile claim, for practical purposes be the owners. But following the above quoted words of Sir G Jessel MR it is I think my duty "as far as it is possible to do so, to attribute a legal origin", and "not to be astute to destroy" rights "on any technical notion that a legal original could not be attributed to them".



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As between the two alternatives which I have considered relevant, there was little if any conflict about the facts stated by any witness from his or her own personal knowledge, but much conflict about the inferences to be drawn from these facts. In favour of there being rights of common appurtenant over the Unit Land and against it now being held for 3 months on a public charitable trust for the inhabitants of Chagford:- Many farmers with undoubted rights of grazing over Meldon Common, Padley Common and Nattadon Common have had animals on the Open Fields; the 1516 Award; and the circumstance that the Charity Commissioners were in 1906 not satisfied that they were subject to a charitable trust about which a scheme could be made by them; the habenda of the conveyances are appropriate to ownership for the whole of the year subject to possible rights of common. But contra:- At the 1903 hearing before Mr Bowyear the Parish Council and many others thought the Unit Land was the concern of the Parish; for some years (particularly about 10 years before 1969) the members of the Parish Council and others assumed that the Unit Land as Open Fields, was in some way the concern of the Parish; in 1963, the six then owners of the Unit Land attempted to negotiate a purchase from the Parish Council, of which attempt the only possible basis was that they believed that there was a Parish interest worth paying for.

In considering the conflicting inferences which might be drawn from the various facts which were emphasised by witnesses in the light of the evidence as a whole:- The 1516 award is not I think decisive; although rights of common are incidentally mentioned in it, it is not a grant of rights, it is an award as to how those claiming rights then acknowledged as existing are to use the fields; Mr Osbornes above quoted (SALH/1) accurately summarises the award; I have no evidence that the regulations awarded have, and I infer that they have not, been observed at any time within living memory; there is nothing in the Award identify the lands to which the rights assumed to exist are attached. The inactivity of the Charity Commissioners of 1906 was not a judicial decision that there was no interest in the Unit Land held on a charitable trust; they did no more than decide because of the rights of common then claimed they (having no jurisdiction to decide whether or not such rights existed) could not make a scheme; unlike the Charity Commissioners of 1906, I as a Commons Commissioner have this jurisdiction. The grazing described by Mr Andrews as done by farmers can as well (or better) be ascribed to them as inhabitants using Parish lands rather than to their possession of their farms (all in the Parish). Parish ownership for part of a year is extraordinary; it may well not have occurred to those drafting the conveyances so to describe the doubtful rights which they considered should in some way be mentioned in the habenda. The refusal of the Parish Council to entertain the £1,000 offer of Mr R L Hill was based on advice of Mr Osborne; I can without reflecting on him personally differ because I had the advantage of hearing a large number of witnesses at a public hearing and I can assume that any documents he had would have been brought to my attention. Recent activities of the owners obstructing local use of parts of the Unit Land and apparently accepted locally are not significant so far as they occurred after the registrations under the Commons Registration Act 1965 (in 1967 and 1968) and the objections (1970), because by then all matters relating to the Unit Land had become publicly controversial, and it would be proper for those who doubted the legality of such obstruction to await a hearing before a Commons Commissioner.



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In balancing these conflicting considerations, I can I think properly take into account the present appearance of the Unit Land and its relative situation in relation to the village and the CL174 Commons. My conclusion is:- from time immemorial the 3 months from 5/6 August have been particularly associated with the Unit Land as indicating an ownership during these 3 months different from that during the rest of the year; the Unit Land has during these 3 months as open fields been regarded as belonging to the Parish in in the "popular sense of that expression" as mentioned in Doe v Terry supra; the persons who have grazed them as described by Mr Andrews did not as of right exercise of a right of common appurtenant similar to the right they had over the CL174 land but as inhabitants along with others not having any rights over the CL174 land as inhabitants of the Parish, using land belonging to the Parish in the popular sense of that expression.

Notwithstanding that my conclusion is based on inferences on a few facts and surrounding circumstances, I consider that if I did not act on my conclusion, I should merely be being "astute" in a way not approved by Sir G Jessel as above quoted.

I have no direct evidence that the Unit Land was of the Manor of Chagford and Collarew; the surrounding circumstances are not enough on which to base a conclusion that the Unit Land was at any time now relevant waste land of any manor within the definition of common land in section 22 of the 1965 Act.

My decision is therefore the Unit Land is for the 3 months from 6 August in every year subject to public charitable trust for the benefit of the Parish of Chagford, is not subject to any rights of common within the meaning of the 1965 Act, is by operation of law during the said 3 months in the ownership of the Parish Council*, and is for all the year outside the 1965 Act. Pursuant to this decision, I REFUSE to confirm the Land Section registration at Entry No. 1 and the Rights Section registrations at Entry Nos. 1 to 41 inclusive and the registrations which have replaced any of them. So, in my view, it is open to the Parish Council ~~what~~ such consents as may be requisite under the Local Government Acts or otherwise, now if they think fit to accept an offer (if the price is proper) similar to that made by Mr R L Hill in 1963 about any of the pieces which together comprise the Unit Land.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that any 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.

*As successors of the church wardens and overseers, see the Overseers Order 1927, SR&O. 1927 No. 55.

FIRST SCHEDULE
(Unit Land)

1905 OS No.	Description	Ownership registered, claimed or reputed; and Objection No. (if any) particularly mentioning the piece	1905 OS acreage
769	<u>No. 1</u> ; "the Furze" piece; adjoins and slopes upwards from the east side of Manor Road; bounded on north by Dennis Park housing estate; adjoins on its west side Nattadon Common (part of CL173)	Included in Land Registrations Acts title no. P174293 (MJS/2); Mrs M A Sheridan (formerly Morecambe) wife of Mr Michael John Sheridan as owner	4.789
766	<u>No. 2</u> ; "Three Corner Field" piece; adjoins, and slopes downwards from the west side of Meldon Road	Owned by Mrs M A Sheridan under 1956 conveyance (MJS/1).	1.566
697 759	<u>No. 3</u> ; "Opposite Dennis Park" piece; Dennis Park Estate is east of Meldon Road; this piece is on the west side of the road opposite and slopes downwards from the road	No. 759 owned by Mrs O R Roberts under 1956 and 1975 conveyances and 1981 probate	2.794 3.301
687	<u>No. 4</u> ; "Hore Hill" piece; west of New Street; accessible from it by a short side road	Owned by Mrs O R Roberts under 1956 conveyance and 1981 probate	6.777
692	<u>No. 5</u> ; "Broom Park" piece	P N Smith Land Section Objection No. 481 on plan shows OS No. 4139 (6.32a) under 1961, 1972, 1973 and 1977 conveyances owned by Messrs D G and S A Bennie	6.322



689	<u>No. 6</u> ; "Bowers Park" piece	In Ownership Section of Register at Entry No. 1 Robert Lloyd Hill registered as owner; at inspection Mrs A L Hill claimed to be owner	7.980
694	<u>No. 7</u> ; "Broadland", piece	In Ownership Section of registration at Entry No. 2 Frederick George Underhill registered as owner. Now deceased. Under 1971 conveyance Football are owners of the north part (4.240 acres)	7.192 6.335 3.609

T.S.M. 1966



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SECOND SCHEDULE
(Objections)

Part I: Land Section

No. 422

By Robert Lloyd Hill; noted in the Register on 1 December 1970; ground, the land OS Nos. 5024 and 6135 ... was not common land at the date of registration and no common rights exist over it. Note: these OS Nos acreage 4.47 plus 3.50 are the same as piece No. 6.

No. 481

By Mrs Pixie Norman Smith; noted in the Register on 1 December 1970; grounds, "the land shown on the plan attached edged red is not subject to rights of common, the land not being common land at the date of registration". Note: edged red is OS No. 439 containing 6.32a, the same as piece No. 5

No. 567

By Chagford Football Club (per Mrs B Courtney); noted in the Register on 3 March 1971; grounds, the land-part 5008 and part 6107 on plan ... was not common land at the date of registration and no common rights exist over it; also the Club wish to improve the pitch by extending it to full size and to plough up and re-seed. Note: plan shows edged red north parts of OS Nos. 694 and 695 "est 4.240" (acres), being north part of piece No. 7.

Part II: Rights Section

Note: by reason of subsection (7) of section 5 of the 1965 Act, the Objections mentioned in Part I above are to be treated as also objections to all the Rights Section registrations.

No. 685

By Robert Jury; noted in the Register on 30 November 1970; applicable to Entry Nos. 1 to 34 and 37 to 40; grounds, the rights do not exist at all or alternatively if they do exist it is only for a restricted period in each year, ie from 5 August to 5 November. The land is not common land, but agricultural land which it is impossible to cultivate properly because of the open-period in each year which is a detriment to good husbandry. Note: at date of objection, Mr R Jury owned piece No. 3.

No. 686

By Hugh Leslie Roberts; noted in the Register on 30 November 1970; applicable to Entry Nos. 1-34 and 37-40; grounds, as in No. 685 above. Note: at date of objection Mr H L Roberts owned piece No. 4.



THIRD SCHEDULE
(Documents produced)

Part I: on behalf of Mr S A L Hill

SALH/1	1963	Extract from volume 95 of the Transactions of the Devonshire Association; Parochial History Section; page 69, Abstracts of Papers; F Osborne MA, Chagford before 1600
SALH/2	7 April 1516	Extract from Book of Gleanings (in manuscript) written and lent by the Rev J Whale to Miss E Lega-Weekes; headed "In Arbitration" being an award by Lewis Bray apparently executed (or intended to be) by John Carewe and 9 others "all Freeholders of the Manor of Chagford" and John Walcote the elder and John Charles "of and for the right ... of a comyn of pasture and estevers yn four closes of land of the said John Walcote and John Charles ..."
SALH/3	1904	Copy press cutting from (?) Western Times about an inquiry held for the Charity Commissioners by Mr Henry Bowyear, an assistant commissioner

Part II: by Mr T Hutchings

TH/1	--	Statement of evidence
TH/2	1905	OS map 1/2,500, Devonshire Sheet XC.5
TH/3	6 November 1906	Return and digest of endowed Charities (County of Devon); Parish of Chagford; ordered by the House of Commons to be printed, 12 February 1907
TH/4	27/5/58 to 20/11/81	Extracts from minutes of Chagford Parish Council about Open Fields, 4½ pages closely typed foolscap.



Part III: by Mrs E B M Maggs

EBMM/1	--	Statement of evidence
		Part IV: referred to by Mr E A Andrews
--	3 July 1947	Conveyance by George Colville Hayter-Hames to Parish Council of Chagford of Padley Common (part of CL174)
--	1918-1934	Manor Rent Book, Mrs Ellis, Lady of the Manor
		Part V: produced by Mrs B T Courtenay on behalf of Football Club (Broadland, part No. 7)
FC/1	23 June 1971	Conveyance by Frederick George Underhill to Barbara Thompson Courtenay, Richard Stanbury and Alan George Partridge as Trustees of Chagford Association Football Club, of part of Broadland OS part 695 containing 4.240 acres subject to "the grazing and other rights of the parishioners of Chagford ... between 5 August and 5 November insofar as such rights still are existing"
FC/2	11 November	Examined copy of conveyance by Gertrude Mary Gorwyn Lee to F G Underhill; habendum as above "... so far as such rights are still exercisable"
		Part VI: by Mr D G Bennie (Broom Park, No. 5)
DGB/1	29 September 1977	Conveyance by Catherine Anne Abbot MacLean to Derek George Bennie and Shelia Ann Bennie of Beachlands as shown on 2 August 1972 plan.



- DGB/2 1 November 1973 Conveyance by John Henry George Oakley to Catherine Anne Abbot MacLean of Beachlands as described on 2 August 1972 plan containing 28.5 acres "subject to the grazing and other rights (if and so far only as they exist) by the commoners of Chagford between 5 August and 5 November existing and affecting OS No. 4139"
- DGB/3 2 August 1972 Conveyance by Pixie Norman Smith to J H G Oakley
- 25 December 1961 Conveyance by Robert Jury to Pixie Norman Smith after reciting conveyance of 4 March 1957 by William Richard Ames and Charles Frank Ames to Robert Jury conveys field containing 15.117 acres by reference to a plan on the said 1957 conveyance" subject to the grazing and other rights by the commoners of Chagford between 6 August and 9 November so far as existing or affecting OS No. 692 part of the property conveyed"
- Part VII: by Mr R L Hill (Bowers Park, No. 6)
- SALH/2 6 November 1954 Conveyance by William Henry Hooper as personal representative of Sarah Stone who died 14 March 1949 of two fields at Bowes Park at OS Nos. 689 and 689a containing 7a.3r.36p. "subject to all grazing and other rights affecting the same exercisable by the commoners of Chagford"
- Part VIII: on behalf of Mrs O R Roberts
(opposite Dennis Park, No. 3 and
Hore Hill No. 4)
- ORR/1 10 May 1956 Conveyance by Elizabeth Emma Cumming to Robert Jury of OS No. 759 containing 3a.1r.11p. "subject to the grazing and other rights by the commoners of Chagford between 5 August and 5 November each year"



- 8 March 1956 Conveyance by Elizabeth Emma Cumming to Hugh Leslie Roberts of OS No. 687, Hore Hill, containing 6.737 acres subject to the grazing and other rights of the commoners of Chagford between 5 August and 5 November each year so far as extending or affecting the property thereby conveyed
- 7 October 1975 Conveyance by R Jury to Hugh Leslie Roberts of said premises
- 9 November 1981 Probate of will of H L Roberts (he died 28 September 1981) granted to Mrs O R Roberts

Part IX: on behalf of Mrs M A Sheridan

- MJS/1 8 March 1956 Conveyance by Nora Kathleen Gee and Barbara Lucy Lindsay as personal representatives of Herbert John Gerrish (he died 28 October 1955) to Margaret Ann Morecambe of the Little Park—otherwise the Three Corner Field being OS No. 766 containing 1a.2r. "subject to all rights of common or other customary rights existing over or affecting the same"
- MJS/2 -- Land certificate under Land Registration Acts, Title No. P174293 (being or including OS No. 768) showing as owners 5 June 1941 H J Osborne, 7 August 1946 B A Morecambe (subsequently married Michael John Sheridan) "The land in this title called Furze Park is subject to certain public rights of common"

Dated the 21st day of January 1985

A. A. Barden Fuller