COMMONS REGISTRATION ACT 1965

WEST ANSTEY COMMON

DEVON

DECISION

OF

Mr A A BADEN FULLER, COMMONS COMMISSIONER

Hearings at Exeter, Dulverton and london
in June and October 1985

Clerk of the Commons Commissioners
Golden Cross House
Duncannon street
London
WC2N 4JF

Reference Nos:-
209/D/234-243

COMMONS REGISTRATION ACT 1965

Reference Nos: 209/D/234 to 243 inclusive

In the Matter of West Anstey Common, West Anstey, North Devon District, Devon

DECISION

Introduction

This decision relates to 11 registrations made under the 1965 Act. My decision as regards each of these registrations is set out in the Fifth (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen and my reasons for my decision are as follows.

The disputes relate to the registrations at Entry No. 1 in the Land Section, and at Entry Nos 1 to 10 inclusive in the Rights Section, of Register Unit No. CL143 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 529 (to the Land Section registration) made by Mr E J Nicholls and Mr G E Nicholls and noted in the Register on 3 March 1971, by Objection No. 584 (to the Rights Section registration at Entry No. 1) made by O P J Weaver and noted in the Register on 3 March 1971, by Objection No. 603 (to the Rights Section registration at Entry No. 1) made by Leslie J Earl and noted in the Register on 17 December 1970, and by Objection No. 604 (to the Rights Section registrations at Entry Nos 1 and 7) and made by John William James Milton.

The land ("the Unit Land") in this Register Unit is a tract of about 714 acres which is approximately rectangular. Its south boundary (a little under 1½ miles long) is for the most part the road between Badlake Gate (at the southeast corner of the Unit Land) and the entrance to Ringcombe Farm (south of the southwest part of the Unit Land). Its east boundary is a nearly straight line from Badlake Gate to a point about 100 yards east of Slade Bridge over Dane's Brook, except that about 300 yards north of Badlake Gate there is a part ("the Twitchen Common Part") of the Unit Land about 250 yards long from north to south and about 100 to 140 yards wide projecting eastwards from such line. Its north boundary (except for a small part east of Slade Bridge) is Dane's Brook. Its west boundary (slightly convex) is well fenced (stone and/or thorn) from the adjoining land (either part of Molland Common or enclosed lands of Lyshwell). From east to west across the Unit Land runs the Ridge Road (a through public road fit for motor traffic) from Five Cross Ways (between 1 and 2 miles east of the Unit Land) thence across the Unit Land by the Memorial Stone (to Froude Hancock 1865-1933 of the Devon & Somerset Staghounds) through Molland Gate* (on the west boundary of the Unit Land) thence straight on open to and across Molland Common. Northwards from the Ridge Road, the Unit Land slopes down to Dane's Brook, in places steeply so as to form a gully-like valley and other irregularities; southwards from the Ridge Road the Unit Land slopes down less steeply and more evenly to the road which (as above stated) forms its south boundary; south of this road are the enclosed farmlands of West Anstey extending onwards to the River Yeo nearly 2 miles further to the south.

*Note:- On the Register and OS maps called "Anstey Gate", because I suppose those concerned with Molland Common would so call it.

The Land Section registration was made on the application of "Arthur John Milton, Chairman of the West Anstey Parish Meeting". The Rights Section registrations are summarised in the First Schedule hereto; all are in question by reason of Objection No. 529 and sub-section (7) of section 5 of the Commons Registration Act 1965; the grounds of Objections Nos 584, 603 and 604 are summarised in the First Schedule hereto. The Ownership Section registrations are summarised in the Second Schedule hereto; they relate to all the Unit Land except the Twitchen Common Part of which there is not now (and never has been) any registered owner; as in such Schedule appears all the disputes about these Ownership Section registrations were resolved in January 1982.

Mr Commons Commissioner L J Morris Smith held a hearing for the purpose of inquiring into the disputes on 25 November 1981 and by his decision dated 29 January 1982: (a) he excluded from the Land Section the part of the Unit Land which is about one-eighth of the whole, is marked on the Register Map as Woodland Common, is south of the Ridge Road and edged red on the plan attached to Objection No. 529 and of which Messrs Ernest John Nicholls and George Elston Nicholls are registered as owners; (b) he confirmed the Rights Section registration at Entry No. 1 made on the application of Wallis Searle Whitmore, reducing the number of animals grazeable to 110 sheep and 15 cattle (instead of 220 sheep and 40 cattle) and excluding from the land over which the right is exercisable over the area lettered A and B on the Register map (thereon marked as Anstey Money Common); (c) he confirmed the Rights Section registration at Entry No. 7 (made on the application of Fred Davey of rights attached to Lyshwell with the modification that such rights were only to be exercisable over Anstey Rhiney Moor being the areas lettered E and D on the Register Map lying north of the Ridge Road; and (e) he confirmed the Ownership Section registrations at Entry Nos 1, 2 and 3 with the modificatins stated in the Second Schedule hereto giving no decision about Entry No. 4 relating to Woodland Common (lettered "F") on the Register Map made on the application of Messrs E J and G E Nicholls which being undisputed had become final.

Under cover of a letter dated 23 March 1982 a copy of the said decision was sent by the Clerk of the Commons Commissioners to the persons concerned to have it.

By an order of the High Court of Justice made on 30 March 1983 by His Honour Judge Paul Baker QC (sitting as a Judge of the High Court) it was ordered (among other things) that Hugh Michael James Harrison be at liberty notwithstanding that the time by Order 93 rule 16 of the Rules of the Supreme Court had expired to apply to L J Morris Smith a Commons Commissioner requiring him to state a case in respect of his decision dated 29 January 1982.

At the request of Hugh Michael James Harrison a case dated 16 May 1983 was stated by the Commons Commissioner for the decision of the Court pursuant to section 18(1) of the Commons Registration Act 1965 under RSC Order 56 rule 9.

By an order of the High Court of Justice dated 12 October 1983 and made by the Honourable Mr Justice Whitford, an originating notice of motion dated 26 May 1983, made by Hugh Michael James Harrison as appellant against the said 1982 decision was dismissed with costs. His Lordship's judgment is reported in the 1984 Law Reports under reference re West Anstey Common 1984, 1Ch 172.

By an order of the Court of Appeal (Sir John Donaldson MR and Slade and Lloyd LJJ) dated 18 December 1984 the said order of 12 October 1983 was set aside and in lieu thereof it was ordered pursuant to section 18 of the Commons Registration Act 1965 that all matters relating to the registration of Common Land and of rights of common in the Register of Common Land maintained by the Devon County Council under Register Unit CL143) be remitted to the Chief Commons Commissioner or another Commissioner other than Mr Morris Smith for re-hearing and determination according to law, and that there be no order for costs below and that the appellants' costs of the appeal shall be taxed and paid by the respondents. Their Lordships' judgments are reported under reference re West Anstey Common (April) 1985 2WLR 677 and (October) 1985 Ch 329.

Pursuant to the said 1984 order I held a hearing for the purpose of inquiring into the disputes at Exeter on 25, 26 and 27 June, at Dulverton on 8, 9, 10 and 11 October and at London on 16, 17 and 18 October 1985. At the hearing (1) Mr Hugh Michael James Harrison of Ringcombe Farm, West Anstey as successor of his father Mr Edward Michael Harrison who applied for the Ownership Section registration at Entry No. 2 and as the owner of West Ringcombe Farm being the land specified in the Rights Section registration at Entry No. 3, was represented by Sir Frederick Corfield QC and Miss Ann Williams of counsel instructed by Risdon & Co, solicitors of Minehead; (2) (a) Mr Oswald Philip John Weaver who made the said Objection No. 584 and who applied for the Right Section registration at Entry No. 2, (b) Mr John William James Milton who made the said Objection No. 603, who applied for the Rights Section registration at Entry No. 5 and for the Ownership Section registration at Entry No. 1 and as successor of his father Mr Arthur John Milton deceased who applied for the Rights Section registration at Entry No. 6; (c) Mrs Elizabeth Mary Burton of Churchtown Farm, Mr Albert James Tarr and Mrs Margaret Joyce Tarr of Luckworthy Farm, Molland and Somerset County Council (concerned as being the authority for the Exmoor National Park) as successors of Mr Benjamin James Burton deceased who applied for the Rights Section registration at Entry No. 8, were all represented by Mr R M K Gray QC instructed by Crosse, Wyatt & Co, Solicitors of South Molton; (3) (a) Mr Ernest John Nicholls and Mr George Elston Nicholls who made the said Objection No. 529 and who applied for the Rights Section registration at Entry No. 10 and for the Ownership Section registration at Entry No. 4; (b) Mr David Francis Bassett and Mrs Diana Crystal Bassett of Twitchen Farm as successors of Mr Wallis Searle Whitmore who applied for the Rights Section registration at Entry No. 1; and (c) Mr Philip Veysey and Mrs Leslie Ann Veysey of Venford as successor of Leslie James Earl who applied for the Rights Section registration at Entry No. 9 were all represented by Mr P F Pugsley, solicitor of Hole & Pugsley, Solicitors of Tiverton; (4) Mr T C Keigwin of Old Vicarage, West Anstey being vice-chairman of West Anstey Parish Meeting attended in person; (5) The Badgworthy Land Company Limited who applied for the Ownership Section registration at Entry No. 3 were represented by

Mr V Townsend, ARCS of Michelmore Hughes, Chartered Surveyors of Exeter; and (6) Mr Alan Best of Churchtown Cottage, West Anstey as "a parishioner" attended in person.

Course of proceedings

On 28 March 1985 in London I held a preliminary hearing for the purpose of giving directions as to the date and place of the final hearing and as to any other matters about which any person concerned might want an interlocutory direction. At this hearing Mr N D Ayre, solicitor of Crosse Wyatt & Co, and Mr J Maitland-Wilson solicitor of Risdon & Co represented the persons (or some of them) who were at my said June/October hearing represented by Mr Gray QC and Sir Frederick Corfield QC. Mr Ayre and Mr Maitland-Wilson agreed that an exchange of documents was desirable.

Before my said June/October 1985 hearing I received the documents specified in Part I of the Third Schedule hereto. In her letter dated 7 June 1985 Miss P J Tuckett (applicant for the Rights Section registration at Entry No. 4) said her claim was withdrawn. In their letters of 20, 22, 23, and 24 June 1985 Lady Diana Loram, Mrs Katharine Craft, Mrs Angela Keigwin and Mrs Celia Bedford made the points summarised in the said Part I. With letters dated 5, 20 and 21 June 1985 Risdon & Co sent 6 bundles (encased) of documents as specified in the said Part I.

In the course of my June/October hearing I understood that the documents so sent by Risdon & Co were "agreed" but not so as to preclude objection as to their admissibility. At the end of the hearing very few if any of these documents were from the bundles read by me, particularly I was not referred either to the paper dated 25.5.83 signed by Sir Frederick Corfield or (except as hereinafter otherwise recorded) the copy affidavits or copy contemporary letters included in the bundle. Notwithstanding that apparently little use was made of these bundles at the hearing, I thank those concerned, because the proceedings were shortened by Mr Gray and Mr Pugsley knowing that any document produced if included in any bundle was agreed, and because the bundles were conveniently an alternative source of copies of documents which were referred to as agreed.

At the beginning of the June/October hearing Mr Pugsley asked me to decide as a preliminary question whether I could or could not in these proceedings give a decision under which the part of the Unit Land lettered F on the Register map would remain registered (in the Land Section) as common land. He said (in effect):- The part so lettered is Woodland Common of which Messrs Nicholls are registered (finally since 1972) as owners (it is the part specified in their Land Section Objection No. 529). During most of the 1981 hearing Mr B J Burton (through his solicitor Mr C M B Sessions) in opposition to the Objection claimed that the rights registered by him at Rights Section Entry No. 8 extended over Woodland Common; at about 5 pm, Mr Burton abandoned (a written note to his solicitors) his claim; so the Commissioner was able to decide (as he did in his 1982 decision as above stated) that Woodland Common should be excluded from the (Land Section) registration

(so it ceased to be common land). Since such decision Messrs Nicholls as owners have fenced off Woodland Common from the rest of the Unit Land. The Court of Appeal proceedings related only to the Harrison land (lettered D on the Register map) owned by the appellant (Mr H M J Harrison); Slade L J in his judgment says he "would ... remit the matter for a rehearing ... with a direction to hear and determine the validity of the registration in the land section and rights section under CL143 insofar as these respective registrations affect the Harrison land ..."; see 1985 2WLR 677 at page 690, now also 1985 1Ch 329 at page 345. These proceedings should therefore extend only so far, so that the 1982 decision so far as it benefitted Messrs Nicholls (Woodland Common no longer Common Land) will stand.

Mr Gray contended that Woodland Common was in question in these proceedings so it could under my decision remain registered (both in the Land Section and as subject to any of the rights of common appearing in the Rights Section); he referred me to the order of the Court of Appeal as drawn up (it contains no words such as "so far as these registrations affect the Harrison land") and also to pages 686 and 690 of the WLR report.

I said I would then give no decision on the preliminary question, so in the result I would hear evidence both ways and finally decide the question in my written decision given at the end of the hearing.

Next Mr Pugsley opened the case for Mr D F and Mrs D C Bassett claiming:- (1) They are the owners of the Twitchen Common Part (as above defined) which contains about 6 acres, and I should therefore direct their registration as owners. (2) They as owners of Twitchen Farm have grazing rights over various portions of the Unit Land but not (they did not so claim) over the Woodland Common Part. And (3) They claim that there are no grazing rights over the Twitchen Common Part so it should be shown in the Register as free from grazing rights to anybody other than Messrs Bassett. Mr Pugsley outlined the case by reference to the documents DFB/1, 2, 3, 4 and 5 specified in Part II of the Third Schedule hereto, and said that Mr William Hill who gave evidence at the 1981 hearing about Twitchen Farm between 1921 and 1929 was by reason of his age unable to come and repeat his evidence at this hearing.

Next oral evidence was given by Mr David Francis Bassett who with his wife has been the owner since 1982 (conveyance DFB/9) of Twitchen Farm and who had lived in the area before moving there for about 28 years (since he was about 13 years of age), in the course of which he produced or referred to the documents specified in Part II of the Third Schedule hereto. He (among other things) said (in effect):- The place locally known as Anstey Gate is across the Ridge Road at the northwest corner of OS No. 476, that is on the Ridge Road at or near the east side of the Unit Land and not where marked on the Register map (and the other OS maps) at or near the west side. The stock from his farm turned out onto the Twitchen Common Part which is about 6 acres and on which there is no water in a dry summer so in summer there is no intention that the stock shall live and stay on the Part and they can from it go easily onto the remainder of the Unit Land.

Next (25 June) Mr Townsend on behalf of the Badgworthy Land Company Limited handed in the document (BLC/1) specified in Part III of the Third Schedule hereto, and Sir Frederick Corfield and Mr Townsend said that they were agreed that the Ownership Section registrations should be (had rightly been): at Entry No. 3 confirmed without any modification, and at Entry No. 2 confirmed with the modification that the land lettered E on the Register map should be excluded. Mr Gray called attention to the habendum of the 1925 conveyance (BLC/1): "subject to any stocking and grazing rights, right of common and any other rights of whatever nature or description thereover" and to Badgworthy Land Company Limited having made no Objection. Mr Townsend said that the conveyance (BLC/1) had come from their South Molton office and that he personally knew nothing of the facts relating to the matters in question in these proceedings.

Next Mr D F Bassett continued his evidence in the course of which he described the gates onto the Twitchen Common Part from his Farm and how he during his ownership grazed the Unit Land from it and about it gave other information thereby usefully introducing the more detailed information I later received.

Next (25 and 26 June) Mr Gray opened the case on behalf of those he represented. He referred to the three separate methods of prescribing for a right of common specified in Tehidy v Norman 1971 2QB 528 at page 543, to the disapproval at page 553 of what was said in White v Taylor (No. 2) 1969 1Ch 160 at page 195, and to Megarry and Wade on Real Property (5th ed. 1984) page 876 (lost modern grant). He stressed that no physical distinction could be drawn on the ground between the parts of the Unit Land, it being all open common over which grazing animals can wander at will; so that the "concept of straying" is a nonsense. He produced the documents specified in Part IV of the Third Schedule hereto.

Next (26 June before JWJM/19-23 were produced), Mr A Best said (in effect):- He had been to the Public Record Office and looked at the West Anstey Tithe Apportionment Award and the map dated 1839 attached to it. In it (Schedule) appeared (for convenience I have inserted the quantities in A.R.P. from JWJM/22):-

633	Anstey Rhiney Moor	Moor	310 3 24
634a	ditto	Moor	90 1 31
			401 1 15
634	Guphill Common	...	67 2 23
635	Anstey Money Common	...	178 2 28
637	ditto		17 2 34
			197 1 22
636	Woodland Common	...	105 2 37
638	Twitching Common	...	51 2 30
651	Venford Common	...	92 0 39
651a	Great Common	...	120 2 17
			212 3 16

He (Mr Best) thought that the Award clearly recorded the above as being in the

ownership of Rev George Maximillian Slatter, the incumbent of West Anstey, and therefore submitted that these Commons are Church Glebe, ie common land to be administered on behalf of the Parish.

Next Mr Gray produced JWJM/19-23, indicated some of the evidence that he would be calling, and submitted that the status of Woodland Common was in these proceedings at large, that so far as common rights are concerned the Commissioner's 1982 decision is a dead letter, and that I should therefore reject Mr Pugsley's argument on the preliminary question.

Next (26 June) oral evidence was given by Mr Wilfred Ernest Hill (called by Mr Pugsley); he (among other things) said (in effect):- From 1954 to 1961 he was living at Dulverton about 3 miles from Twitchen Farm (Entry No. 1) and he used to help Mr Keep during the last 3 years he was farming there with shearing, docking and dipping; at that time the hedge at the side of the road (or track) between the Ridge Road and Badlake Gate was not stockproof, so Mr Keep's stock would "go over the fence and on to the Common"; they were allowed to run over the bank (meaning that between the Twitchen Common Part and the rest of the Unit Land). In 1961 he successfully tendered for the tenancy of the Farm, including the "6 acre bit" (meaning the Twitchen Common Part); from the agents/auctioneer (meaning Mr Phillips) he understood that there was a grazing right attached to the farm and that nobody but he would have any right over the Twitchen Common Part. He from top to bottom rebuilt the hedges of the Farm (meaning exclusive of the Twitchen Common Part) against the Common (meaning the Unit Land including such Part). He identified the gates on to the Common by reference to the plan DFB/10, being the same as those identified by Mr Bassett earlier in the hearing, being two and one from OS Nos. 475 and 494 respectively. Subsequently just after Mr Whitmore died he purchased the Farm and remained there until 29 September 1981. After making good the hedges against the Common his practice was in Spring to turn sheep and cattle onto the Common (ewes, lambs, cows and young stock); fairly regularly in Spring 400 ewes and lambs (that is 200 ewes) in Spring, bringing them in for shearing at the end of June then leaving them out until the Autumn; although not compulsory they were dipped every year at the end of July. Cattle (turned out) comprised 40 cows plus calves running together (the heifers were brought in). Stock did not stay on the Twitchen Common Part but spread right over "the whole Common"; there was not a very good water supply on the south side, so cattle and sheep went over to the north side to the Brook; there is no regular water supply in Longstone Combe. Nobody said he was not entitled to graze stock on the Common except Mr Weaver who said that he should keep away from his part; but he did not bother with what Mr Weaver said and carried on as before. As to the cattle grids in 1961: not all (of those now there) were put up at the same time: the one at Badlake Gate was not the first; that at the Molland end of the Ridge Road has been there a long time, that at Guphill Gate had (in 1961) recently been finished, and they were at Anstey Gate (meaning place locally so called adjoining the north side of Twitchen Common Part) and by Slade Bridge; negotiations about the grids were done by his landlord. He remembered at Anstey Gate there being about 60 years ago an actual gate; he rode over the Unit Land when he was 10 years old, and had done so frequently since, hunting; during the last 20 years perhaps twice a

month and for 30 years before that once a month (fox and stag hounds); before the cattle grids the Common was not heavily stocked and during the war (1939-45) there was very little stock there because tank training was going on; for the next 15 years after the end of the war there was still not a lot of stock on the Common..

Mr Pugsley read to the witness his February 1983 affidavit (DFB/4): as to paragraph 4, Mr Hill said stock were on the Twitchen Common Part and ran onto the rest of the Common; he agreed that they strayed onto Mr Harrison's land and grazed there. As to paragraph 5:-

"It is a surprise to me that the present owners of Twitchen Farm are claiming grazing rights over the Common for I myself was never aware that any existed",

He said : "I was always aware there was a grazing right".

Questioned by Sir Frederick Corfield, Mr Hill (among other things) said (in effect):- He agreed that there is free access, OS No. 476 to the Twitchen Common Part. There is spring water on Woodland Common (the lettered F part); in winter not a lot of water there, → depending on how the spring is dug. Paragraph 5 of his February 1983 affidavit (DFB/4) is not true : "I could not have read it right". The fence on the south side of the Ridge road meaning that between the road and farm was stockproofed (meaning in his time). The north side of the Twitchen Common Part was not fenced from the road.

Questioned by Mr Gray, Mr Hill said (in effect):- The affidavit (DFB/4) came he thought from Mr Harrison; it was read out to him by a solicitor in his office, having then been ——→ prepared; he had not seen anybody make hand written notes of anything he had said. "Q. Did you pay much attention to this document you went over to swear? A. Not really" Mr Gray asked the witness to look at a copy of his November 1981 declaration, obviously expecting some comment; the witness looked at the document handed to him very carefully, seemed very puzzled, and paused noticeably long time. Mr Gray then read it out to him; the witness observed about paragraph 3 "that would be West Anstey Common" and seemed unable to comment on paragraph 4. Very hesitatingly he agreed when Mr Gray said he was told by Mr Pugsey that it had been prepared for Mr. Morris Smith. ——————→ ——————→After the midday adjournment the witness questioned further by Mr Gray about his November 1981 declaration explained (in effect) ——————→that the sheep and cattle mentioned in paragraph 3 went on to "the common" ——→ either from the 6 acre bit (meaning the Twitchen Common Part) which had never been hedged against the rest of the Unit Land, or from the west side of OS475, and when on it they were left to go wherever they liked. Further questioned by Mr Gray the witness either agreed or said that it was common practice for other farmers to exercise similar rights, there was no barrier across the Common and no difference between the 6 acre bit and the rest of the Common, the animals on it could go anywhere.. He had known the Common since before the war having been there sometimes 3 times a week; the stocking of the Common dropped during the war but never stopped altogether and there was not much difference before the war or during the war; the stocking picked up after the war and had since very much increased. The only enclosure was of the part made recently by Mr Nicholls of Woodland Common but apart from it there have never been any kind of enclosure.. The registration at Entry No. 1 was made by Mr Whitmore, the only objection to his grazing was that made by Mr Weaver

(WHO DID NOT CONSULT HIM.)

on one occasion: his sheep were always identifiable by the mark 'WH'.

Questioned by Mr Pugsley Mr Hill agreed that Mr Crossman's sheep were marked 'TC'; he had 'occasionally' on the 6 acres (the Twitchem Common Part) seen sheep so marked.

Next (26 June) oral evidence was given by Mr John Frederick Charles Keep (called by Sir Frederick Corfield) who said (in effect):- He owned Twitchen Farm from February 1954 to September 1961, and had a working bailiff; "I visited it 3 or 4 times a week". As to his turning out stock onto the Moor, he fenced part; when he started OS 308 and OS 476 were enclosed, but he enclosed OS 471 by fencing it from the Ridge Road, ploughing it and seeding, and so it was reclaimed. When he took over the Farm it was never (? properly) fenced over on the west side; he recalled stock grazing over on the west but they were nothing to do with him; he had two very good neighbours, Mr Crossman and Mr Nicholls, "could not have had better neighbours". He did not enquire whether they put stock onto the Moor. He sold in 1961 to Mr Whitmore. When he (the witness) took over the farm the fences were in a bad state; he bought from Mrs Archer Thompson; she was on her own.

Questioned by Mr Gray, Mr Keep said (in effect):- The 6 acre piece (the Twitchen Common Part) was never fenced on its west side as far as he knew, and there was nothing to distinguish this Part from the Moor, as the north and west sides were open; and he saw stock on it during all the period he was there, OS 476 is the part which he enclosed. There were 2 gates and 1 gate on the west side of OS 475 and 494 respectively; "Q. Were the gates used for the purpose of putting stock through them? A. No never" He did not know whether Mrs Archer Thompson had stock, she was difficult to converse with, her health being not good. He kept 130 breeding ewes and 40 to 50 beef cattle during his period as owner; during that period he did not pay any attention to grazing on the Moor as it did not affect him. There were there cattle and sheep and ponies as well and they had access to all the Moor including 6½ acres (the Twitchen Common Part).

Questioned by Mr Pugsley he said (in effect):- He with a concrete post and wire fence enclosed the part by the Ridge Road, but otherwise the fences on the Farm were within the period of his ownership old existing hedges. The gates mentioned opened and shut and the hunt went through them regularly. He did not remember his stock getting out but "we are talking of over a quarter of a century ago!" He had (for the Farm during his ownership) only one bailiff namely Mr Sidney Sloman and the main management of it was left to him "Q. If your stock had got out to the Common, would you have considered your stock was trespassing on the land of another? A. Oh yes certainly". The Farm condition was very bad when he took over from Mrs Archer Thompson.

Next (26 June) oral evidence was given by Mr Edward Roy Nesfield (called by Sir Frederick Corfield) who had been the Agent of Mr E M Harrison for Ringcombe Farm. He said (in effect):- The first tenant was Mr Davey, and more recently Mr Crossman. As to others having grazed on Anstey Rhiney Moor, "Tom Crossman turned them onto the Moor..." As to his attempt to control his stock within Anstey Rhiney Moor, "Yes". As to others having rights on Anstey Rhiney Moor, "I am sure they had no rights". The application for the registration of Mr Harrison's ownership was made by his successor Mr Milner Dawe. As to the people from Venford and Twitchem turning onto the Moor, "not that I know of". The three farms to the south of the Moor are Ringcombe, Woodland and Churchtown.

Questioned by Mr Gray, Mr Nesfield said (in effect):- Mr —→ Davey, tenant from 1930 to 1945, used the part for the purpose of his stock. He (the witness) did not deal with him a lot and thought he was missing stock there. Although it was wholly open on the east side to Anstey Gate, and nothing to stop cattle, he (the witness) did not think he (Mr Davey) let them. He did know that the tenant of Lyshwell ran over —·—→ the Common. As to Ringcombe Farm (and the part of the Unit Land conveyed with it) would be surprised if it had in (?) 1905 and 1934 had been conveyed "subject to rights of common". The use of such words depended on the vendor's land agent.

Questioned by Sir Frederick Corfield, Mr Nesfield agreed that if there was the slightest chance of there being rights of common, conveyances were subject to rights of common that may be or something to that effect.

Next (26 June) oral evidence was given by Mr Frederick William Southwood (called Mr Gray) who (among other things) said (in effect):- That in 1920 when he was 14 years of age he lived at Bungland Farm (about 57 acres south of Dunsley). After he left school at the age 12 years,he worked for Mr James Milton at Partridge Farm (10/-! a week); he had 100-250 sheep, some cattle and perhaps 6 ponies. After a while he bought Guphill land to go with it. He had a grazing right on West Anstey Common; he put sheep on there and the ponies; we used to drive them up, starting in the spring. This was being done when he (the witness) first went there, about 100 ewes who were brought back for lambing and then went out again with their lambs; there would be about 200 (ewes and lambs) altogether. Mr Milton also had 4 or 5 ponies on the Common. For part of the year, usually brought down for the winter when the weather got bad. He did not put the cattle there in his (the witness') time. They used to go up from Guphill, and then by Guphill Gate onto the Common; they used to put them out on the top (Ridge Road); they did not stay where you put them, but would go where the grass was. As to any fencing, none whatever. He was not aware of anyone trying to stop Mr Milton running his stock onto the Common. As to other farms: Westcott of Woodland Farm had mostly sheep and some beef cattle and went more or less straight up from Woodland Farm; of course they used to stray; he had a fair number more than Mr Milton. Mr Crudge of Hill Farm ran stock about the same number of sheep as Mr Milton but he could not be sure about cattle. Mr Davey of Ringcombe run on the moor; about the same as Mr Milton. Mr John Kelland from Churchtown had access to the Moor and he thought they might put them

there; his land ran right up to Badlake Gate. As to any others he could remember, more or less everyone who adjoined the Common used it; no difficulties everyone always very helpful; if sheep had maggots they would attend to it and report (to the owner); sheep had their own lairs but the sheep did not stay there. His father moved from Bungland to Twitchen Farm (1929) and he (the witness) married after a year, acquired a smallholding at (?) Greenhill, and left the area in 1950; between 1930 and 1950 the roads got improved a lot and there was still stock on the Common; since 1966 he had been back 4 or 5 times; in the 1920s there was then less stock and definitely more now. As to identifying stock, he had no trouble in identifying Mr Milton's 'JM' in red, brand.

Questioned by Sir Frederick Corfield and Mr Pugsley, Mr Southwood (in effect) the ewes up on the Common in March, lambs at the end of March, tupping on the farm, generally sheep on the moor between March and September and not on the Moor in the winter. After he got married in 1930 from Twitchen he started to work at a hunting stable at Rhyll. When his father became a tenant at Twitchen in 1929 he worked for him. His father was building up and could have stocked on the Common up to 1939 but he had not enough stock to stock the Moor.

Next (26 June) oral evidence was given by Mr William George Phillips (called by Mr Gray) who (among other things) said (in effect):- His first job was in 1926 when 14 years old he worked for Mr James Milton with whom he remained for 12 years; then after about 2 years with Mr Gunn (of Brimley Farm) he came back and worked with Mr Milton for 2 or 3 years up to the Moor. In 1926 Mr Milton's stock was between 101 and 105 ewes, grazed in winter on the home farm and in summer on the Common Moor, the stock getting access to the Common by Guphill Gate; going up in the spring and coming back home for lambing and afterwards back on the Moor until shearing (the later part of June) and back then after dipping in the later part of July and then brought down when the weather got bad. They were not grazed on any particular part of the Moor and there was nothing to stop them going anywhere; some places no gates. Quite a lot of sheep from other farms were there. From Woodland Farm there were a lot more than Mr Milton's (big sheep); they went about the Moor like Mr Milton's. Mr Charles Crudge of Hill Farm had on the Common about the same number as Mr Milton. Also Mr Davey, tenant farmer at Ringcombe had sheep on the Moor. All over where they liked. From the other side Lyshwell, Mr Fred Davey had sheep and some bullocks about the same number as Mr Milton; he (the witness) had an idea that he (Mr F Davey) had some milking cows which he took home at night. He could not think of any other farmers (with stock on the Common). Since 1939 he was with Mr Gunn who had rights on Molland Common; after Mr Gunn he went down to North Molton and had been there even since. From 1926 to 1939 he identified the sheep from the local farms by their marks.

Questioned by Sir Frederick Corfield, Mr Philips said:- Mr Milton's Guphill fields contained about 28 acres and with them he had 7 or 8 acres of brake; no buildings there. He farmed Partridge Farms and Guphill fields together putting his stock partly on one and partly on the other and change about.

Questioned by Mr Pugsley, Mr Phillips agreed Woodland Farm was farmed by Mr Westcott, the biggest sheep farmer in the area, and as to Mr Hill turning sheep out onto the Common, he believed he did.

Next (25 June) oral evidence was given by Mr George Gibbs (called by Mr Gray) who (among other things) said (in effect):- He was born in 1908 at Yeo Mill, West Anstey, and left West Anstey at the age of 12. He remembered about 7 years before then during which he spent a lot of time at the Miltons; he rode on the pommel with Mr Milton senior (grandfather of Mr J W J Milton), riding ponies on the Common: he thought they were being brought in (or out) because the Miltons had their own stallion. He was "always a cowboy and was not therefore excited about sheep"; although he remembered there were sheep; they drove the ponies onto the Moor by Guphill Gate. At that time there was quite a lot of stock on the Common; mainly sheep and a few cattle and some ponies. They were not all Mr Milton's, quite a few farmers put stock out. He had since visited West Anstey many times, most enjoyable following the stag hounds; he used to hunt once a week but not always Anstey Common; perhaps 12 or 15 times on Anstey Common in the season. As long as he could remember there was stock on the Moor; less during the war (1939-45); he did not ride across the Moor last season but rode in the season of 1982-83. As to differences in stocking the Moor, he could not imagine much difference in the stock on the farms now, but the Moor would take so much stock so the farmers did run their stock on it.

Questioned by Sir Frederick Corfield, Mr Gibbs said more people put sheep on than cattle; he thought the cattle came from Lyshwell. Questioned by Mr Pugsley he said:- he knew where the stock came from by the marks and different colours; Mr Davey of Lyshwell, Davey of Ringcombe, Milton of Guphill and Yeo Mill (meaning Partridge Farm), Mr Westcott of Woodland, and Kelland of Churchtown; and sheep from Twitchen, it has changed hands and Charlie Crudge of Hill Farm. As to Twitchen, Wilfred Hill he could not remember when it changed hands; and as to Venford he did not think so much.

Next oral evidence was given by Mr Cecil Charles Crudge (called by Mr Gray) who (among other things) said (in effect):- He was born at Hill Farm (Entry No. 2) in 1920 and lived there until 1948; then he moved to Witney, Oxfordshire, and after 6 years to Tiverton, Devon, and after 15 years to South Milton, Devon, and in 1973 to Burston Farm in Dulverton; so apart from 1948 to 1954, he was relatively local. His father who died in 1946 and before him his grandfather, farmed Hill Farm; he helped his father on the farm until he died, and then continued to farm there on his own until 1948. In the 1920s his father's stock was about 100 ewes and 20-25 cattle of all sizes! They were grazed on the farm, and in the summer they always took the ewes to New Mill (the fields by Slade Bridge), and from there because the field is only about 4 acres, from then they went on to the Common from July to the end of September; they were mainly on the north side of the Common, but there were no fences, and there was nothing to prevent them going over the whole area of the Common. The cattle on the Common, not very often went onto the Common, some years only, cows in calf or heifers in calf, or if they were short of keep; sheep were the main ... As to gathering sheep, very

often, at the Barrows (on the north side of the Ridge Road) or Longstone Combe; as to this pattern of grazing continuing throughout the period, certainly. As to other people grazing on the Common, Mr Davey of Lyshwell; he grazed cattle and sheep and possibly ponies; he had so (the witness) thought more than his father; he knew Mr Davey's sheep by their marks (pitch); Lyshwell adjoins the Common and he had a gate from it onto the Common. As to any other farm, Twitchen (Entry No. 1) Mr Biss farming; as to his stock he would not know (numbers) but there was no fence against the farm, his stock had an identification mark. As to other farms, Churchtown; he remembered Kelland, but after him he remembered most Robins; they both had Exmoor Horns flock of fair size; 200 ewes or more, more than his (the witness') farm; he had a very poor Common fence so he (the witness) would think Robins' stock nearly all the year round; on the south side of the Moor and they would work up towards the Ridge Road. As to any other farms, Woodland, of Mr Westcott and then of Mr Nicholls; a flock of Exmoor Horns, Closewools; from his own gate run over the Common; always up in the summer when he (the witness) was there; he was right on the Common. As to any other farms, Ringcombe, Mr Harrison's farm, tenanted, Mr Davey, then Mr Crossman; sheep he would not like to say a number; to (their) end of the Common he (the witness) did not travel unless his flock strayed there; as to Ringcombe sheep being confined to any particular area of the Common, "not to my knowledge". As to any other farm, Mr Milton of Yeo Mill, sheep and ponies; he could not say what time but he (Mr Milton) was always up in the summer when he (the witness) was there. As to Town Farm, Mr Blackford had got Venford; his stock of sheep, numbers were something like his (the witness') own; they were mainly on Venford but they used to stray onto Anstey Common, mainly on the north side, north of the Ridge Road. As to the boundary of Molland Common (between it and the Unit Land), not too good, there were some gaps in it and there was some straying (from one to the other) but not much. As to the fencing over the whole area of Anstey Common, to his knowledge no fencing onit. As to any attempt to keep stock in any area, only at gathering time "in my day the sheep had not such long legs as they have today". As to fencing, none at all. As to the exercise of rights thus being talked about, throughout the summer; some may have been doing it for longer but "that did not concern me". Since 1954 he had seen the Unit Land quite frequently because he liked the Moor, in his Landrover drove along Ridge Road and walked about regularly through the summer. In 1984-85 he was grazing the Common; as to any change in the quantity of stock, he would not think there was more stock there than there was then (meaning in the 1930s); more stock on the farm today than there was then, a tendency to be more stock (on the Common): as to anybody trying to stop grazing, "certainly not". As to the relationship between the farmers at the period (1930-1948), very good; as to anybody trying to keep any of the other farmers off, no there was room for all. In Longstone Combe they cut rushes for thatching, for corn ricks and hay ricks, that was before the days of bailing (hay). He had heard about learing which (to him) meant gathering the sheep back to his fields so that they could be counted; the gatherings were about twice a week. Hill Farm was from him purchased by Mr Bundy and after him Mr Weaver became the owner.

Questioned by Sir Frederick Corfield, Mr Crudge said (in effect):- As to number of sheep on the Moor, it depended on how much grass there was there. As

to how many on the whole of Anstey Common, 720-750 acres, and as to stocking rate, so many beasts per acre, depends on the month of the year. As to how many sheep could be carried for May, (witness puzzled by question and with hesitation) depends entirely on the season - whether its a dry or wet season. As to the gatherings, mainly up to the Ridge Road, sometimes over. As to the concern of other farmers about water supply, not so good as on the north, but there is water there (meaning on the south). As to stock apart from sheep, Mr Davey of Lyshwell had cattle and except for him and Mr Milton of Yeo Mill mostly sheep.

Questioned by Mr Pugsley, Mr Crudge identified the "Venford ground" (the land described in the registration at Entry No. 9) and agreed that it was owned by Mr Blackford of Town Farm and that it was from there his sheep came out onto Anstey Common.

Further questioned by Mr Gray, Mr Crudge said (in effect):- He possibly remembered Mr Earl farming at Churchtown. He would not have thought Mr Earl was between 1927 and 1948 running sheep because he was an arable farmer; as to his having none at all, he (the witness) thought he had not so many sheep; Mr Robins' was mainly sheep. As to Sir Frederick Corfield's mention of stocking rate, it would vary, some farmers graze sometimes of the year and others other times of the year.

Questioned further by Sir Frederick Corfield about Mr Earl, Mr Crudge said he would not have thought that he used the Common but he may have done.

Next oral evidence was given by Mr Thomas William Crossman (called by Sir Frederick Corfield) who (among other things) said (in effect):- Between 1945 and 1969 he was the tenant of Ringcombe Farm. As to his turning out onto the moor, "yes, sheep chiefly, about 100, the lambs went out in July and some sheep from the middle of May"; they were put out from the gate near Rhiney Moor and Guphill Common. They were gathered back once a week; not a great distance as a rule. As to other stock (of other people's) they used to stray out, but about it he did nothing. As to the water (supply) not very good, they had to go down to Danes Brook to drink; there was water on Woodland Common, but not all the year round. As to Mr Davey turning out stock from Lyshwell, not that he knew it. As to Twitchen, he did not remember them (the occupiers); it changed hands so many times; sheep from there not very often. As to other sheep, only those from the adjoining farm of Mr Nicholls; apart from them they were relatively rare. Mr Nicholls had cattle on the Moor. Assuming grazing by sheep from April to September, as to the acres for each sheep, he (the witness) would say one sheep for every two acres. He thought the first two cattle grids were about 1962 organised by the County Council, their proposal dated 22 October 1962; (Mr Gray said, the farmers paid and got some back from Ministry of Agriculture). Before the cattle grids, stock went down the road and got in where they should not; cattle were not so bad as sheep; he was only there 3 years after the cattle grids were in. His neighbour was Mr Nicholls and east of him was Churchtown; he could not remember what they did after the grids (were in). As to Venford, it was (for him) too far away.

Questioned by Mr Gray, Mr Crossman agreed that from 1945 to 1969 there was no fencing, so once somebody put stock on any part of the Common, they could go anywhere. ——————→ ←—————— As to a number of farmers exercising grazing rights during the war, he was not there before the war was over. There were a number of people grazing in addition to Mr Nicholls, but they used to gather their stock back: there was nothing to stop those of Churchtown Farm grazing, and Mr Burton put sheep there once he (the witness) was there. As to Mr Davey's stock from Lyshwell, they strayed there and he did not drive them off. As to the picture which (so Mr Gray said) had been given by him, as to all farmers friendly, and as to nobody driving off each other beasts, very friendly, he (the witness) said "yes".

Questioned by Mr Pugsley and again by Sir Frederick Corfield, Mr Crossman said (in effect):- He knew Mr Nicholls well, they shared a pony or horse on the Common. He remembered Mr Wilfred Hill coming to Twitchen in 1961 and seeing his mark 'WH' not very often but sometimes. The only stock he saw frequently was that of Mr Nicholls; the stock of others not very often, 3 or 4 times a year.

Next oral evidence was given by Mr Edward Michael Harrison (called by Sir Frederick Corfield), in the course of which he produced the 1934 documents specified in Part V of the Third Schedule hereto and (among other things) said (in effect):- Ringcombe Farm (in 1934) was purchased on his behalf by his uncle; at that time he (the witness) was working in the office of solicitors (Young, Jackson, Beard and King of 46 Parliament Street, Westminster SW1). The letter of 4 June 1934 (HMJH/4) was written by himself (Mike) to his uncle (Eut). After the Farm had been purchased for him it was let to Mr Davey who was a sitting tenant. He visited the Moor twice a year. As to shooting and fishing rights, "not with my permission". He knew that his tenant turned out onto the Moor, but he understood that other people did so; it was only a few people with land adjoining the Moor who had these rights. As to how many sheep the Moor could carry from Lady Day to Michaelmas, he would say 1 sheep for 2 acres of Moor. He shot on the Moor before 1939; what Lord Clinton did before. Other than hunting (over it) did not know; he understood he (Lord Clinton) used it for shooting; going right back they had shooting parties with the Throckmortons. Molland Moor was knocked about by the tanks during the war.

Questioned by Mr Gray, Mr E M Harrison said (in effect):- He knew his tenants turned stock onto the Moor. As to it being an amicable area and nobody in the habit of driving off the stock, "yes and no"; as to grids amicably arranged, yes. As to Mr Crossman having no instructions to drive off animals, "yes". He (the witness) did not fish Danes Brook; Ringcombe had no fishing rights. (Mr Gray went through the 1934 documents). He had a farm near Ipswich until 1963 and had given up practising as a solicitor. As to his frequency at Ringcombe. from 1934 two or three times a year, after the war he went often; by that time his uncle had given them his cottage at Hawkridge and they went there for holidays.

Questioned by Mr Pugsley, Mr E M Harrison said (in effect):- As to his riding and hunting over it from the 1920's, yes. In 1907 he was still the owner of Ringcombe, and was aware of the Commons Registration Act registrations (that

for ownership signed E M Harrison on 1 Oct 1967 and that for registration of rights, apparently prepared by Mr Nesfield signed and declared 24 November 1967). As to it being in 1934 of no importance, the circumstances had altered (1967), the rights had to be recorded, although the rights were of very little interest to owners. His uncle wanted to preserve the Moor, and he (the witness) wanted to keep it open; so as to the fencing on the Moor being an anathema, "yes".

Further questioned by Sir Frederick Corfield, Mr E M Harrison said (in effect):- The Unit Land was unenclosed land over which certain people had rights. As to quantities of stock, hunting, in the winter he saw nothing on the Moor but in the summer one noticed the sheep; lightly stocked mostly with sheep (he was referring to the whole of the Unit Land not only the part of which he was the owner). As to fishing, in 1963 one bank of Danes Brook came into his possession. During the war he was away and Mr Nesfield was his agent; he reappeared in 1945. As regards his own part, Rhiney Moor and Guphill Common, it was unfenced, but as to nobody putting stock on it, "certainly not" (nobody did).

Further questioned by Mr Pugsley about when he gave the Farm in 1968 to his son,he made him aware that he wished the land (his part of the Unit Land) to remain unenclosed and unexploited, Mr E M Harrison said that his son was perfectly aware of the facts already.

Next (27 June) oral evidence was given by Mr Timothy Carleton Keigwin who explained that he did so on behalf of West Anstey Parish Meeting of which Mr J W J Milton is the Chairman (he in 1973 as such succeeded his father Mr A J Milton who died 20 January 1972), and did so because it was considered that they should be represented by someone other than Mr J W J Milton he having as a farmer and possible commoner a personal interest. In the course of his oral evidence he produced the documents specified in Part VI of the Third Schedule hereto and said in the course of his explanation of them (among other things and in effect):- In the Notes on the History (PM/1) it is said

> "the vicar has the right to cut two thousandof turf on Anstey Common. The right is believed to have arisen as an acknowledgement rendered by the owner of Hill Farm for the right granted to him by the Glebe owner to take over the water through Shapcott Meadow to the higher water course of the large meadow on Hill Farm".

The Vicarage of 1893 is now called the Old Vicarage; it was sold away from the Church in 1922. The application for the registration (the Land Section) was made by Mr A J Milton on behalf of the Parish Meeting at which there were then 17 persons present which is a high proportion of the electoral roll of 100; no contrary resolution has ever been put to a subsequent meeting and he therefore concluded that it is the wish of the Parish as a whole that the registration of <u>all</u> common land within the parish of West Anstey be confirmed; there were letters from individuals supporting this view, expressing the hope that Anstey Common will remain open without fences for the enjoyment of future generations.

Questioned by Mr Gray about the particular entries in the minute book (PM/5 to 15 inclusive) (summarised in the said Part IX), Mr Keigwin said (in effect):- He bought the Old Vicarage in the 1950s and had ever since attended not all but the majority of the Parish Meetings. He had himself been up on the Common; his neighbour was Mr Earl; he had exercised and helped to train point to point horses;

there was quite a lot of riding done on the Common although he did not ride himself; he was there almost every day certainly twice a week between 1950 and 1960. The grazing there was of sheep cattle and ponies; always more sheep. There were a lot of cattle of Mr Nicholls; the top hedge of his farm was not stockproof, so they got out a lot then". We (and others with him) used to go to North Molton along the Ridge Road, going across quite often, and from there could see the stocking on the Common. As to the decade 1950-60 stocking on both or one side of Ridge Road, he would say that there was stock everywhere; mixed stocking the majority being sheep: through the summer and into the autumn; bullocks were not brought down until later some being fed on the Common depending on the grass available. After 1960 to the present day he had often motored across the Moor being "our normal way out" perhaps twice or three times a week. He thought the stocking had not varied much but rather more during recent years; both on the north and south sides but there had been an increase since 1950-60; probably after the cattle grids. About Danes Brook, Mr Earl told him he had a right to fish and he had with him fished up stream from Slade Bridge a half a mile or so prior to 1960. He had fished lower down the stream at the invitation of Mr Weaver. Apart from grazing there were no other products of the Common all the turf rights were in the past; picking whortleberries was "quite a light industry".

Questioned by Sir Frederick Corfield about the statement (see Part X of the Third Schedule hereto) of Mr H M J Harrison recorded in the minute book as made on 24 November 1983 under the heading "any other business", Mr Keigwin said he was not concerned personally and (as to the purposes of the Court proceedings) he thought the parish as a whole did not like the enclosure made by Mr Nicholls and he was sure they did not want any more enclosure; he was only "here today (27 June 1985) because "I was asked to take the place of the Chairman ... I am here to defend the minites in the book". Questioned as to old deeds, West Anstey, Anstey Rhiney Moor, etc he (the witness) said:- "All the books I have refer to West Anstey Common ... We talk about West Anstey Common ... West Anstey Common is the name normally used". As to enclosure, his daughter (Miss A Keigwin), (letter Part I of the Third Schedule hereto) felt strongly; as to Mrs Craft (letter in said Part), she was in the parish for 13 years, and he guessed known the Common all her life. He did not think there was any discussion at the last Parish Meeting about these proceedings.

Questioned by Mr Pugsley, Mr Keigwin said:- The Anstey Parish Meeting is only concerned with the Parish of West Anstey. As to the Parish boundary, West Anstey includes Venford and the whole of the Twitchen (he referred to OS Map 1/50,000) the boundary being just east of the Twitchen Farm buildings, but exceptionally Twitchen Plantation is in East Anstey. From cattle grid to cattle grid along the Ridge Road, was what he called "West Anstey Common". "Anstey Common is an abbreviation of "West Anstey Common". As to anybody thinking it might refer to "East Anstey Common", "no, not specifically". As to Part III of the application (form CR7 registration of land as common land), no part is in the parish of East Anstey and no part is called East Anstey Common. As to whether in any of the discussions Woodland Common was in or out, "Woodland Common was as far as we knew all included in".

Next Sir Frederick Corfield pointed out that in the High Court and Court of Appeal proceedings among the parties were included "the Parish Trustees of West Anstey".

Next (27 June) oral evidence was given by Mrs Amy Slader (called by Mr Gray), in the course of which she (among other things) said (in effect):- She was born in 1901 and when she was 10 years old her parents moved to Lands Farm in West Anstey south of Yeo Mill; they took over the farm from Lady Day and her family spent about 5 years there. Always during the summer about a dozen of us went up picking whortleberries (on the Unit Land). At that time there were sheep, bullocks and ponies grazing there; they got under the fern; they were marked in various ways with black and blue. Mostly sheep, "Q. Did the sheep confine themselves to any particular part of the Moor? A. Oh no - no - no|". Not so many cattle; they had to move the cattle because of the gypsies, there were always a few on the open Moor. Not so many ponies but there would always be some ponies. Sheep were the biggest (numbers). She could not remember the marks because it was too long ago. As to whortleberries, nothing else, some picked heather; gypsies used to pick most of them; they camped by the road. She did not know about gathering rushes for thatching. As to turf for the vicar, no, but there may have been some there because there is a pit, she fell into once. Since 1914 she had visited (the Unit Land) because years ago she lived at Molland; picking whortleberries were "our happiest days". As to grazing of sheep over the years, "it is a free moor as far as I knew".

Next (27 June) oral evidence was given by Mr Felix Henry Helstone Legg (called by Mr Gray) in the course of which he (among other things) said (in effect):- In 1920 when he was 19 years of age he was living near Molland; his father was a farmer and he helped on the farm. In those days the usual stock on West Anstey were horses cattle and sheep. He knew Anstey Common well; all his life with horses; his father was a horse trainer and they had ridden across two or three times a week, winter and summer, from 1920 to 1923 when he had an accident and was in hospital for 3 years; they came back in 1939. As to the period 1920 to 1923, there were more sheep than ponies; he helped round up the ponies, there were about 50. As to them being confined to any part of the Common, "no never fenced as I remember". His father put up sheep there for Mr Milton, of Partridge Farm at Yeo Mill, to keep; "we did not deal with the farming, we dealt with the horses". As from 1939 to the present day, there is still stock there, not so many (?) ponies as there used to be. He had not noticed ponies, he had noticed sheep and a few cattle not many. No noticeable change, except there is a little bit fenced in the last couple of years (meaning I suppose that made by Messrs Nicholls). That was the only change he had seen.

Questioned by Mr Pugsley, he said that his father's farm was Beraby near West Molland Station. They had about 100 ewes.

Next (27 June) oral evidence was given by Mr Oswald Philip John Weaver (called by Mr Gray) in the course of which he (among other things) said (in effect):- On 30 March 1951 he bought Hill Farm (Entry No. 2) from Mr Boundy who bought 3 years previously; the Farm comprises 66 acres (according to the Register Map it is approximately square and is situated south of West Anstey Church and by road is about 1½ miles from Badlake Gate, being the nearest part of the Unit Land); Hill Farm as he bought it included about 4 acres ("the New Mill Part") by Slade Bridge and also about 20 acres ("the Sing Moor Part") south of Yeo Mill mile south of Hill Farm on the other side of the River Yeo); so since 1951 he had farmed a total of 90 acres. As to stock on the Farm, when he first started up, he had not a great deal, he bought some at the Hill Farm sale and bought more at Anstey auctions. "I have grazed Anstey Common; I don't think Mr Boundy exercised (rights) but I know Mr Crudge did and I understood his father and grandfather did". At the present time he turned out hogs (meaning among others); sometime early in May brought in for shearing; then turn out 35 (? meaning other than the hogs) until compulsory dipping, so they are up there from end of June to beginning of August. After dipping in early August, lambs weaned, and all ewes kept for lambing for next year go out onto the Common until about middle October, so there will be about 150 sheep in total (meaning his on the Common) for two or three months. As to access (to the Common) the hogs were taken to the 4 acres at Slade Bridge and kept there as long as any keep (for about 14 days); then open the gates and let them go (onto the Common). As to gathering, not now the grids are there; "we look at them; there were days when I did it on a horse, the modern (? shepherd) does it on a motor bike". As to the area, "you will find them all over the Common". As to at any time any physical boundary, none at all. As to anybody chasing his off, no. As to grazing by others, he had had an argument with Mr Hill, but thought he came to an understanding; he (the witness) maintained that he (Mr Hill) was grossly over stocking. As to other grazing, Mr Nicholls from Woodland and Mr Crossman from Ringcombe. Also Mr Earl of Churchtown and of Venford; he did not turn out, his stock used to come out; his boundary fences were never good. Also Mr Milton turned out from Partridge and Guphill. Also Twitchen turned out; as to who from there, Mr Eborn had an accident (with one) on Christmas Eve; he did not know the next chap who had it (witness indicated why his occupation ended); Mr Keep bought it, and Mr Sloman (meaning managed) and "he enclosed the top common"; then Mr Whitmore. As to anybody trying to stop grazing, not at all; as to a part from the one he had mentioned (Mr Hill), "we were amicable, if sheep with maggots, you told me ..."; persistent breakers, you take them to the next auction. As to grids the first one at Molland (between the Unit Land and Molland Common) put in before the others: a pony got stuck originally with round bars, in 1951 renewed with square bars; as to the other grids at Guphill Cross, Badlake Cross, across Ridge Road by Twitchen Corner, at the top of Slade Hill, and down by the bridge at the bottom of Slade Hill, and as to paying for these, he asked Mr Crossman to arrange it with the NFU and the Devon County Council for the unclassified roads in 1962 and early 1963; the original cost was £400 a grid, so on 26 April 1965 (witness referred to papers and a book) "we (7 of us) all paid £53-7s-0; Mr Crossman was one of the 7, as also Mrs Tuckett of Guphill, Mr Earl of Venford, Mr Whitmore of Twitchen and Mr Burton of Churchtown;

also Partridge Farm contributed although not in the book, Mr Milton paid separately. In October 1965 he (the witness) drew £114-17s-0 from the Ministry which he split by 7 paid out to himself and the 6 others, £16-8s-0; on 20 October £34 received from Mr Milton for payment towards the grids. As to his registration over the lettered A part of the Unit Land and as to his stock keeping to the area so lettered, no. The Common became more heavily stocked after the grids; so the grazing has improved on the Common although it will carry more stock. He remembered Mr Davey's sheep and bullocks he had seen them for the last 30 odd years he had been there. Churchtown was owned by Mr Earl who owned Venford as well; he did not use the Unit Land very much because he had Venford Common; and stocked sheep from Venford.

Questioned by Sir Frederick Corfield, Mr Weaver said (in effect):- As to Mr Davey putting stock on and not paying for the grids, that was so but on the other hand although he had the use of Molland Common, Landcombe was in Anstey. As to the parish boundary having something to do with the grazing he (the witness) thought that it was who used the Common; the Molland Common grid was put in; it is quite good now, only in the last 10 years. As Mr Keigwin said, he had been active; and as to occasional pressure from Commons Association, "yes (hesitation); it did not get off the ground apparently"; the commoners were the names he had mentioned. As to gathering, ——————————→ before the grids you had to ride, there was no other way of doing it As to his Objection to Twitchen, it was the number rather than to the right. He agreed he had never claimed any rights over Woodland Common.

Questioned by Mr Pugsley, Mr Weaver said that in 1951 he had not a great deal of stock and had built it up by buying 50 sheep at the sale and some cows (multiple sucklers) from (?) Mr Hill; he let 20 acres for the first year to Mr Arthur Milton. After 2 years he bought some stock from Mr Nicholls so they were turned out, they knew where they (? could go), about 100 ewes; he had 3 or 4 cows solely for milk; subsequently to the grids he turned out about 150; for his entitlement he relied on that of Mr Milton. He did not wish to pursue his Objection to Twitchen provided they reduce the number of stock.

Next Mr Gray said that Weaver objection No. 584 was withdrawn provided the figures 200 sheep and 20 cattle were reduced to 110 sheep and 15 cattle. To this Mr Bassett did not agree.

Next (28 June) oral evidence was given by Mr Tom Sturgis at his home at No. 1 Town Cottage, West Anstey, there being present, in addition to his friend Major Herrick Colin Butchard (1) Mr P F Pugsley (2) Mr J Maitland-Walker, solicitor of Risdon and Co for Mr J M J Harrison and (3) Mr N D Ayres, solicitor of Crosse Wyatt & Co for those at the hearing represented by Mr Gray. In the Fourth Schedule hereto, I set out my note of what Mr Sturgess said: in this respect I treat him differently from the other witnesses, because the accommodation in his Cottage

was not spacious, and for anyone other than myself taking notes was difficult, and because later in the hearing there was some difference among those present as to what Mr Sturgis had said.

Next (28 June) I inspected the Unit Land in the presence of Mr A J Tarr (who for me provided and drove a Land Rover), Mr J W J Milton, Mr E J Nicholls, Mrs E M Burton, Mr P F Pugsley solicitor, and Mr J Maitland-Walker solicitor. We started (and ended) by the Village Hall near Yeo Mill. From there we went up the lane by the fields at Guphill (on the left the lane to Overwill). Next I saw the T road junction (GP) known as Guphill Gate, where there is now a cattle grid; Mr Milton said that there was a gate and during the 1939-45 war there were Army tanks! ——→ I saw part of the new wire fence recently erected by Mr Nicholls. Next going westward by the road to the entrance of Ringcombe Farm and thence by the track into Molland Common. Next having turned round and got back to the fence we walked along some of it where there was (apart from the fence itself) no obvious boundary. Next I observed Woodland Farm from its northern road entrance. Next we stopped at the south east corner of "Woodland Common" (as now fenced in) and walked about 100 yards up to the spring where it was wet and muddy. Next returning to the road we saw the gate into Churchtown Farm (a hunting gate little to the west of Badlake Cross) and saw it was wide enough for stock. Next we looked at the west boundary of the Twitchen Common Part (containing about 6 acres and earlier in this decision defined), and saw it as a bank about 2½ feet above the level of the track on its west side and of the moorland on the east side. Next to the cattle grid across the Ridge Road near the west boundary of the Unit Land, and saw that east of the cattle grid the hedge between the road and Twitchen Farm for about 100 yards appeared to be an old beech hedge. Next northwards along the track near and within the east boundary of the Unit Land, and thence onwards across Venford Common (Register Unit CL65) to not far from Slade Bridge and near enough to see the outlying part of Hill Farm (Mr Weaver), and see its convenience for grazing on the Unit Land from the other parts of the Farm. Returning across the CL65 land onto the Unit Land and seeing that there was no distinctly visible boundary line or perhaps no boundary line at all. Stopping at the north west corner of Woodland Common as fenced in where there are banks on either side of the road, we saw a large stone about 4 feet high (marked on the Register map). Next walking not far from the boundary between Lyshwell Farm and the Unit Land saw the gates by the Landcombe buildings which could provide access from this Farm onto the Unit Land. Next along the boundary between Molland Common and the Unit Land up to Molland Gate. Next by the Froude Hancock Memorial stone, and seeing the modern stone marking the boundary of the land of the Badgworthy Land Company Limited. Next back to Guphill Gate.

Next (8 October at Dulverton after an adjournment of about 14 weeks), there was some discussion in the course of which (1) Mr Gray said:- (a) On 25 March 1983 Mr B J Burton conveyed to Mr and Mrs Tarr (JWJM/18) 158 acres of the 195 acres which then comprised Churchtown Farm (Entry No. 8), so that in the

result Mrs E M Burton as his widow (he died April 1983) is now entitled to the remaining 37 acres; under the 1983 conveyance Mr and Mrs Tarr acquired all the grazing rights (over the Unit Land attached to Churchtown Farm quantified in the registrations); they sold one third of such grazing to Somerset County Council who not actively grazing, licensed it back to Mr and Mrs Tarr; the copies I have of these 1983 Somerset County Council documents are as specified in Part VII of the Third Schedule hereto. And (b) Messrs Colin George Smith and Alan Thurston Williams named in the Court of Appeal Order of 19 December 1984 are the Executors of Mr B J Burton (as such they have no interest in this 1985 hearing, Mrs E M Burton being entitled). (2) Mr Pugsley said:- (a) Messrs Christopher John Brisley and David Hume Stuart Harrows named in the said 1984 Order are the personal representatives of Mr W S Whitmore; they are not represented at this 1985 hearing having been succeeded by Mr and Mrs Bassett; (b) Miss P J Tuckett (Entry No. 4) is not represented at this 1985 hearing, see her letter to the Commons Commissioners (specified in Part I of the Third Schedule hereto). Sir Frederick Corfield pointed out that the conveyance by Messrs Tarr to Somerset County Council is dated 6 October 1983 and was therefore made after the High Court decision dated 30 March 1983 by his Honour Judge Baker and before that of Mr Justice Whitford (11 and 12 October 1983).

Next (8 October) oral evidence was given by Mr John William James Milton who was born in May 1931 (called by Mr Gray) in the course of which he (among other things) said (in effect):- The map (JWJM/23) that he produced as showing the lands to which the Right Section registration were attached was incorrect in that Partridge Arms Farm thereon should have been numbered "5" (not "5" and "6") and the land coloured brown (a short distance to the north) which is owned by him with such Farm should have been numbered "6". The registration at Entry No. 6 made on the application of his father Arthur John Milton (he died 20 January 1972) was incorrectly made by the County Council in that it was not in accordance with the application, that is, the rights should not have been registered as over the lettered E part of the Unit Land (the Badgworthy Part), but over the part specified in the application, being a strip about 500 yards wide from east to west and extending south to north right across the Unit Land to Danes Brook; the mistake appears from the enclosures to the June 1985 County Council letter (JWJM/2). As to the overlapping of the ownership of the registrations at Entry Nos. 1 and 2, before the 1981 hearing Mr and Mrs Harrison and he had agreed to split the ownership down the middle (I was then told a plan would be provided later). The James Milton mentioned in the 1907 conveyance (JWJM/5) was his grandfather. The Arthur John Milton and Elizabeth Milton mentioned in the 1939 conveyance (JWJM/7) were his parents. His father bought Guphill (the land specified in Entry No. 6) in 1919 (the conveyance JWJM/9); the memorandum of May 28 1959 is in the handwriting of his father. He (the witness) married on 6 June 1959 and then took over Partridge Arms Farm from his father, so he was tenant before his father made the 1965 deed of gift (JWJM/8). He became tenant of Guphill (Entry No. 6) in May 1959 just before me married; at this time his father handed him a file of documents about it including the 1959 memorandum (JWJM/11). So from 1959 he was effectively tenant of the whole area of Entries Nos. 5 and 6. His grandfather farmed Partridge Arms Farm (Entry No. 5) from 1907 and his father farmed Guphill (Entry No. 6) from 1919. He could recollect that about the time he was 3 years old going onto the Common when his grandfather (he died

in 1936) was farming Partridge Arms Farm and his father was farming Guphill. Following his grandfather's death there was little change, because before then his father was farming both and the two farms were farmed as one holding. As to any change since (the together farming), none whatever. As to the sort of farming, they had sheep and cattle; his family were horse people, they had Exmoor ponies "part of the family pride". In the early days his grandfather always rode a pony and he rode in front with his grandfather. As to the Common between the late 1930s and 1985, apart from the fence (that erected by Mr Nicholls) and the cattle grids, he could not quickly recall any significant change in the Common. His earliest memories centred on ponies (his grandfather's), but there were sheep there (his grandfather's). After his grandfather's death the ponies were there (on the Common), but they gradually integrated with those of Mr Westcott; he did not remember what happened to them, they were in those days worth about "7/6d". About ponies he could not say during the war, but afterwards they still had ponies on the Common (not riding ponies). As to cattle sheep and ponies the point was that if you ran ponies you did not run cattle. As to the duration, he had had cattle for several years, not so many until there were cattle grids; the tanks during the war had damaged the hedges. As to his grandfather grazing cattle, he could not make a firm answer; his father predominantly grazed ponies and sheep, he was "not a keen cattle man". He (the witness) had actively grazed cattle since the grids, that at Molland Gate being a major protection; there were 5 other grids installed by Anstey Common, 2 in 1962 and 3 in 1965. As to his own cattle (on the Common) since the early 1960s, average 15 cattle; last year 23 cattle, now 22 (11 cows and 11 calves their followers); also today ponies. As to sheep grazing, by his grandfather is before his recollection; before the war his earliest recollection is of not large numbers, not more than 50 or 60; the difficulty of stocking, there was an old gate; he remembered being made to jump out and shut it, so the stock should not disappear; mainly closewool or Exmoor horns. As to his father grazing sheep, yes but numbers not large; he would not like to state numbers. As to his own period since 1959, sheep in a small number to begin with but after the installation of cattle grids they went up to about 80 or 90 maximum; at the moment (1985) he had 11 cows, 11 calves, 30 sheep in June and 3 Exmoor ponies all the year. As to sheep (witness reads from records) 1984 14 cows or calves, 2 heifers and ponies no sheep, 1983 23 cows and ponies, no sheep, 1982 ... 140 sheep; no sheep in 1983 and 1984 because of scab control. As to grazing by other persons, the chief grazier of the Common was Mr Nicholls of Woodland; over the years cattle (cows and calves and other cattle) and sheep; he had seen them over the whole of the Common, ever since he was a child; as to numbers could not say quantity, one does not take notice of other peoples, guess 30/40 cattle and 200 sheep or more, he did not count. Of the others, the prominent names are:- (1) Mr Crudge succeeded by Mr Weaver at Hill Farm; Mr Crudge might have put some odd cattle, he (the witness) recollected sheep mainly on "Anstey Middle Common or Money Common, whichever you like!", and they were free to go where they liked. (2) Mr Davey on the north side from Landcombe, being part of Lyshwell; mainly over Anstey Rhiney Moor, only rarely did they come across Longstone Combe; Mr Davey shepherded them pretty well and they stayed pretty.

(3) Mr Bill Davey (from Ringcombe) used to stock the Common; he (the witness) remembered his father talking to him about stock. (4) His first recollection of Churchtown Farm was a man called Mr Kelland, but could not recall him living at Churchtown, he may have lived at the cottage. He remembered Mr Robins of Churchtown grazing the Common, they were turned out and "they were everywhere on the Common; after the grids the numbers increased. (4) and (5) Mr Earl lived at Churchtown Farm and had land at Venford; he (the witness) could not say from which his stock on the common, sheep mainly, came; Venford Moor was grazed with Anstey Common; Mr Burton stocked the Common but he had problems, he was not an enthusiast on stocking the Common, but he (the witness) understood he put stock on the Common. As to others, in later times Mr Hill put out sheep and a few cattle from Twitchen. So far as he (the witness) was concerned the main access was at Guphill Moor Gate; but occasionally they went up the other road to Badlake Cross to what they called Badlake Moor Gate. Apart from Mr Nicholls' fence (that recently erected) there was no physical restriction (on the Common); there were no physical boundaries on the Common apart from stones sunk in the soil; the only distinct boundaries now are the cattle grids and the fence put up by Mr Nicholls; he (the witness) had not come across any physical boundaries to prevent cattle wandering about the Moor. They had used stone occasionally from the Common; his father had a water diviner for his land at Guphill; Mr Ball used to be a railway ganger; after Mr Ball had located water, his father sunk a well but did not proceed with this; the spot is marked with some stones, that came from Guphill; they were worked stone not quarried stone (the well at Guphill was never completed); he remembered taking the stone down with a horse and cart. A few gateways around are ditched from the Common, but he always understood the quantity of stone was limited. In 1972 stone was taken from the quarry at Blindwell (between Woodland Common and the small part of Anstey Money Common) some of it is used in buildings on Partridge Farm which were built in 1972. His father used stones on the Common to build himself a fireplace in Laburnum Cottage, on the day he first bought a new Ferguson tractor and link box. He had taken a few turfs from the common, not for burning purposes but novelty to see how they burnt; and he had taken turf to repair the lawn. There are few birds on the common, wild pheasants and those that have strayed from the adjoining land. There was rabbiting; one of his greatest joys when he was younger. As to anybody stopping the grazing, "never that I can recall"; only occasion had he ever heard was 2 years ago when he left stock late and Mrs (" Mr) Harrison said you could not stock after 1 November: not the time of year. The only other objections were those arising under the 1965 Registration Act. He had objected to Twitchen because they had enclosed part of the Common; as to it being quantity rather than rights, "yes". As to anyone saying get off, "no never said anything like that".

Questioned by Mr Pugsley, Mr Milton said (in effect):- His understanding of his own claim was of a right to graze with a right to stray; as to the agreement about straying being a custom of the area ... (EJN/1) made at the first hearing (1981) and seemingly approved by the Commissioner, he (the witness) was not a lawyer and left it to him. What it comes to is: you lair your stock on one part of the Common, you turn them out on their lairing area. As to his making no objection to Mr Nicholls erecting his fence, he was not in a position to do so; at the time he (the witness) accepted the decision which had been given through the legal procedure of the Commons Act 1965; things had got complicated since, and he did not understand.

Questioned by Sir Frederick Corfield, Mr Milton said (in effect):- He accepted there was a difference between grazing and straying; he understood that it was a possible interpretation that a straying right was not a right of common. As to his 4 ponies on the Common, he had no ponies in 1967 and 1968; the ponies they used to have on the Common went to Mr Westcott; Mr Westcott took his stock off as he had no right on the Common. In 1968 he would say he (the witness) had 80 sheep and cattle average about 15; he could not remember the day to day figures. He no longer had records of what he did in 1966; he could "only remember". His registration (totalling) 133 sheep, 23 cattle, 23 ponies was the NFU stocking. The ponies were the maximum number of his father and grandfather; they were more interested in sheep and ponies than in cattle; he based his figure on his father's evidence, being young at the time and first coming into the business. Guphill Farm was about 27 acres, Partridge Farm was 40 acres. As to Mr Davey and Mr Crossman of Ringcombe, Mr Crossman did have a few stock but did not use (the Common) a lot. As to him not being bothered if they had strayed onto his land, "yes". He had seen sheep of Mr Earl on the Common, but could not say whether they came from Churchtown or from Venford; this was just after the war; as to what Mr Earl said in his statutory declaration (not put to the witness) he was not interested. His father bought Guphill in 1919 to extend his rights on the Common; before that he had no access he liked to use. The conveyance was together with "appurtenances" which he would have thought showed there were common rights. The basis of his objection to Mr Nicholls having a right to graze 30 bullocks over the whole of the Unit Land was that he thought that if "Woodland" was not common, he could not have any rights over the rest of the Moor. Farmers were agreed when talking that the purpose of registering "strays" was to get the lairing side of the registration; because Mr Nicholls had made objection to anything over his (land) so he (the witness) objected to anything over his. As far as he (the witness) was concerned all grazing had to include the north side (of the Ridge Road) as that was where there was water. As to the wording of the conveyances (put to the witness by Sir Frederick Corfield in some detail), he (the witness) in effect expressed views he ascribed to his father. He (the witness) became chairman of West Anstey Parish Meeting in succession to his father in 1973 and became a member of North Devon District Council in 1974. As to his ownership registration of "Anstey Money Common" this was because it had always been understood by his father and grandfather that the ownership was in some way attached to the Partridge Arms and "we had administered as owners since 1907", meaning they had given permission for shooting verbally and also for a telephone way leave and (? concerned with) the ancient monument "West Anstey Barrows"; about land tax there was a mix up, so it was paid in error; his grandfather understood that he had become the owner because he had acquired Partridge Farm (? Arms). As to the 1981 hearing and the subsequent High Court proceedings, Sir Frederick Corfield asked a number of questions and the witness gave answers as to what he thought the position was from time to time and why he had done what he did or not done anything as to what had happened at the Parish Meetings at which he was present. As to the Common being overstocked if animals to the numbers specified in the Rights Section being on it and as to it being in the interests of the public that the Moor should not be overstocked, he (the witness) said: "it has never occurred that it was overgrazed and it has never happened". As to whether he was acting in these proceedings as chairman of the Parish

Meeting, he (the witness) having an interest had passed this responsibility to a substitute (Mr Keigwin), and at a meeting of the Exmoor National Park Committee of which he is the North Devon representative had declared his interest and left any meeting at which this (the Unit Land) was discussed. In the course of answering further questions about his legal position, he said that the lawn which he had repaired with turf from the Common did not exceed 500 (square) yards.

Further questioned by Mr Pugsley, Mr Milton said (in effect):- Twitchen was a party to the agreement about putting in the grids and sharing equally. He (the witness) wanted the grid at a different place (from where it now is), at the northeast corner of the piece called Twitchen Common on the map (JWJM/23); there was a discussion, but no official meeting, probably on the telephone; as far as he knew the present position was not imposed by the highway authority; he neither agreed nor disagreed. If there is a clarification of numbers (Twitchen registration at Entry No. 1), he would withdrawn his Objection; he was quite happy that the Twitchen registration should if the numbers were reduced as had been suggested, extending over the whole area (all the Unit Land) including or not including Woodland Common.

Further questioned by Mr Gray, Mr Milton said (in effect):- as to Twitchen having a right over the 6 acres (the Twitchen Common Part) and a straying right over the rest, that is how he (the witness) had assumed it to have been normally the procedure and what they (from Twitchen) were before 1981 doing, including Woodland Common; there was nothing to stop them (stock from Twitchen) going onto Woodland Common or anywhere else (on the Unit Land). As to what was said about this at the 1981 hearing, he (the witness) recalled Mr Pugsley making a submission but he could not say the answer; at the hearing he gave no evidence about straying rights. As to the meaning of straying, he (the witness) had always understood that you follow the lairing area. As to any owner of the land saying take off the cattle or they would be impounded, nobody had ever said that; Mr Nicholls had never told his father or grandfather that; the only objection was Mrs Harrison that he should not stock after 1 November; cattle were never driven off; Mr Nicholls had never asked him to remove beasts from Woodland Common.

Mr Keigwin mentioned that Mr Harrison had made an offer not to plough or fence next to Mr Milton and said that this was contained in the statement recorded in the minutes of the Parish Meeting (Keigwin/21). Questioned by myself, Mr Milton said that the sheep on the Common are there from an early age brought up on the Common, meaning that the sheep there are laired.

Next (9 October), Mr Pugsley handed in the note (EJN/1) specified in Part VIII of the Third Schedule hereto of the submission about straying made by him on 25 November 1981 to Mr Commons Commissioner Morris Smith.

Next oral evidence was given by Mrs Margaret Jeanett Sloman (called by Mr Pugsley), in the course of which she (among other things) said (in effect):- Her husband Sidney Sloman who died 12 years ago was at Twitchen Farm from about 1953 or 1954 to about 1961 employed by Mr Keep who called him 'his bailiff', but some people called him 'farm manager'. Mr Keep lived away from the Farm; sometimes he came two or three times a month, sometimes not at all; at the end of the month he did the paying; no regular arrangement for coming (witness explained why she thought Mr Keep came irregularly). She was not certain about numbers of stock; once at shearing time there were 300 sheep; shearing was a few days work; for her husband with help. Some of the stock grazed on the Farm and some on the Common; those on the Common went "out of the Farm gate, then there was an opening on the right, and they were driven onto the Common". She could not now recollect the names of the places on the Common; it size as she knew it was "just acres and acres of open land"; she and her husband had very good farm dog "we always had lovely, wonderful working dogs". The stock (witness had in front of her, plan JWJM/23) went along the road to the south side of the Unit Land and then turned off a track (witness indicated middle of the part marked "Woodland Common") it was all one area of gorse and whortleberries (witness indicated all the Unit Land). To the people who were conversant with the area, the different parts of the Common all had their names. She could not recollect the numbers of the sheep but it was "a big flock there were hundreds." Her husband sorted out the ewes from the lambs and what he was going to sell and kept those to be sold on the Farm and put the others out on the Common. Her husband was a very good stockist and his mind was on the feeding of the animals. The time of the year the stock were on the Common depended on the weather condition; they were up there a lot; in summer there was trouble with blowfly; because of the weather he would bring them back to the house and Farm; "he never lost any sheep owing to bad weather". She remembered one occasion when he had cattle as well as sheep but she was not too clear; sheep was her husband's first concern. She remembered one occasion when an animal was lost, it just strayed, her husband had days of worry until he found it again "just somewhere on the Common". Her husband on the Common "seemed to be a routine-like - sort of thing". The hedge between Twitchen Farm and the Common was more of a bank than a hedge, but she was not sure "what we were talking of, the road out to West Anstey School where you turn left was she thought a beech hedge but was not too certain, it was too many years ago. Nobody objected to the turning of sheep onto the Common; she understood it was open; but she thought some people disregarded this because Mr Keep fenced in part of it; it was part of the agricultural policy of providing more grass and more food.

Questioned by Sir Frederick Corfield he having first said asked me to note that none of the witness evidence had been put to Mr Keep, Mrs Sloman said (in effect):- Her husband's

300 sheep took 2 or 3 days shearing, it depended on the weather and other work to be done; it was a good sized flock. She agreed that when Mr Keep took over, the hedges were in a bad condition. People would go round (on the Common) and see the animals were all right "my husband never lost an animal". His stock did not tend (generally) to come back from the Common on to the Farm, only when the weather was bad. "Q. Mr Keep particularly anxious to keep the stock in? Did he give directions to that effect? A. Mr Keep's idea of fencing was that of a tidy man; he liked the farm being fenced; it was on the border of Devon and Somerset"; the whole Farm was neglected. She disagreed that Mr Keep came 2 or 3 times a week; he may have come sometimes when big jobs were on for an hour or two but not regularly; her husband was paid monthly and Mr Keep came down to the house so he could collect his wages. The Common was a very big Common "acres and acres and acres of it"; she agreed that there was a lot of stock over all the Common, the Common was open land; the sheep would go where there were good pickings.

Next oral evidence was given by Mr Willian John Mark Hill who was born 30 April 1916 and who from 1921 to 1929 went to school from Twitchen Farm where his father was living as a tenant farmer of Squire Moore who lived at Bampton and owned 5 or 6 farms. On the Farm there were about 100 ewes: sheep not so heavy those days, not so intensive as they do today; and some cattle as well. He could remember when they came to Twitchen Farm but not as much as he could remember when they left (in 1929). As to his father turning stock onto the Common, "the common was West Anstey Common; of course he (his father) had a private common; it was not fenced in my time; there were no cattle grids". As to Anstey Moor Gate, no (actual) gate in his time; there had been Molland Moor Gate. He did not remember cattle on the Common, just sheep. He had never heard of any discontent; some turned out and some did not, but they had all got rights.

Questioned by Sir Frederick Corfield, Mr W J M Hill said (in effect):- Stocking was much lighter years ago than now. His father stocked a few weeks in the summer time. Then there were no cattle grids; sheep tend to come home if they have been brought up on the Farm. Woodland sheep used to go over the whole of the Common.

Questioned by Mr Gray, Mr W J M Hill said:- By Anstey Moor Gate he meant that which adjoins Twitchen Farm as you turn to the left to go down to the village; by Molland Moor Gate he understood the gate between the two commons: Anstey Common and Molland Common.

TURN OVER

Next (9 October) oral evidence was given by Mr Fred Davey (called by Mr Gray) who (among other things) said (in effect):- He was born on 29 June 1919 at Lyshwell farmed by his father; there were three farms, Lyshwell, Landcombe and Moorhouse of which "Landcombe was the one against Anstey Common". They became one farm in the time of his grandfather. These farms were in his mother's family; she was the daughter of William Buckingham who farmed Lyshwell and who was succeeded by his son-in-law who had been at Ringcombe. He (the witness) took over Lyshwell from his father in 1961 and gave up in December 1984. During the First World War his father was working for W Buckingham. As to the start of his own memories:- "Everytime I look out of the window I can see Anstey Moor: all my life like ... a rearing farm, moors all around it; sheep (ewes for lambing) and cattle (breeding cows) ... 12 years old I had a pony; in 1931 on the farm there were between 160 and 170 ewes; run about 27 cattle on the Common ... had a few cows which we used to milk and get a little butter ... farming was altogether different from today ...". As to where his father grazed his stock in 1931, "I was on a pony; no gates; of some of the farms around the fences were terrible; so the animals go anywhere; there was Molland Moor Gate, and Molland fence (between Molland Moor and the Unit Land); there was a gate there, ... used to go (through it) to Dulverton on Fridays with butter and eggs; the gypsies always opened the gate; but the gate was not any good because the fence was down; stock from Lyshwell could go anywhere". As to where his father grazed, "... 6 or 7 heifers from a building at Landcombe; they grazed on Anstey Common; went out of a gate, still there, done so for years, as Buckingham had for a long time". As to sheep grazing, he (his father) did not put sheep on Anstey Common; from Molland Common they got onto Anstey Common. As to the particular area of Anstey Common, they could go across Anstey Common; Venford Common and Twitchen Common were open; Twitchen Farm was open; they had no business there (on such farm) but you had to go there to see whether they had got them! As to anyone objecting, "nobody said get your stock off; they had always been there from Landcombe; I took over in 1961 from my father". As to the pattern changing when they got grids, "before the grids came you had to go and collect; you had not got to - you could do it tomorrow!!" As to grids in 1961, they put in a trial grid. As to anything on Anstey Common, nothing to stop them (the stock), nobody has ever driven them off. As to people other than his father, "I have seen 40 ponies from Withypool come down onto Anstey Common! Mr Westcott of Shircombe ran ponies on the Common; nothing else; from 1931 to 1961. As to sheep apart from his father, "I cannot remember Mr Hill of Twitchen (meaning the father of Mr W J M Hill); Mr Southwood (of Twitchen) ran sheep the first people there (he could remember); they would go out all over the common. I have seen Mr Jack Southwood (of Twitchen) walking on the Common and seen his sheep in the dip on the south side (witness indicated somewhere in the area of Woodland Common as marked on JWJM/23). They used to go ... (indicated the Twitchen Common Part), it was all open: He (J Southwood) was getting older so he was not worrying! As to cattle of Mr Southwood, "I do not know". Mr Biss (Twitchen after Mr Southwood) had more sheep than Mr Southwood. Mr Sloman had some sheep for a period but he (the witness) could not give numbers. Mr Hill had had (? several) sheep on Twitchen; he had seen bullocks of Mr Hill. As to stock of others, Churchtown, Mr Kelland was crippled and did not keep enough stock... Mr Robins went out; the fence was down and his sheep came out, they went straight up all over the Common, nothing to stop them coming right up to his farm (Lyshwell).

As to 1961-1984 from Churchtown, "they ran stock on the Common; after the grids I did not ride the Common; I would see Anstey Rhiney Moor; the grids saved working time and indeed trouble keeping off other people". As to being within his knowledge Churchtown continued to run stock on the Moor, "Yes." As to Woodland, "always sheep from Woodland; I cannot remember Mr Westcott but Mr Nicholls always had sheep; I would see them anywhere!" As to Mr Davey of Ringcombe, "he was my uncle, not like my father, (did) not so much as my father he was afraid of losing (an animal)... He ran sheep". As to his succession, "there was one chap who did not run much stock on my side; he remembered Mr Crossman who ran sheep there. As to whether they went everywhere or confined to a particular part of the Common, "they could go anywhere". As to Ringcombe being in hand since Mr Crossman, he did not know about certain grids where put in. As to other farmers, Mr Crudge of West Anstey (Hill Farm), had a piece by Slade Bridge, that was not well fenced like it is now. Ponies when they had eaten on Anstey Common, would go to a better common. As to Hill Farm, 1931-1961, "sheep, yes". Zeal Farm had a pony. As to Guphill, "I do not know whether Mr Routley even ran stock on the Common; I forgot to mention Mr Blackford of Venford who lived at Towns End; he used to stock the Venford ground". As to Partridge Farm, Mr Arthur Milton used to bring up sheep onto the Common, not in big numbers like Mr Nicholls; they could go everywhere. I have seen them when you go up the Guphill Road coming from the Old Mill (witness indicated on map from Guphill Gate south of the Unit Land down to Danes Brook). It was free for all. Arthur Milton had a problem, being away from the Common he had to bring them up to at different times; we were on the Common. As to Venford, "I knew Mr Earl very well, he ran sheep on Anstey Common; I had trouble with my sheep when they were on his land; we explained his sheep came on my land; I do not know his numbers or whether he had apart from sheep he had any other stock on the Moor. As to any particular part of the Moor they (stock of Mr Earl) could go anywhere. Nobody had ever driven stock off the Moor/Common, or ever objected or ever impounded; "only (objection) through this Commons Registration, never before that!"

Questioned by Mr Pugsley, Mr Davey said (in effect):- As to Venford dates, Mr Blackford was there before Mr Earl in 1939, he was there in a car driven by the witness (thus he could fix the date); I am terrible for dates; dont know Mr Earl's dates; he had stock out from Venford. As to the 1930s being hard times, "Yes it was then they ran butter and eggs; in the 1930s the Common was looked at in a different way; turf was cut off Molland Common; in the 1930s the turf we cut did not throw away ashes! farming was poor at that time". As to no money to keep up gates, "Yes"; as to having before grids to look for stock on Molland or Venford, "Yes"; as to keeping them at home, "You had to, but the Commons were open; a farmer wanted a field so he put his sheep on the Common.

Questioned by Sir Frederick Corfield, Mr Davey said (in effect):- For the most part they (of Lyshwell) turned out stock on Molland Common but he had turned out on Anstey Common; cattle chiefly; the gate is still there; they had an employee for Yeo Mill who fed the heifers with a hurricane lamp in the morning. As to the locality of Guphill Road, referring to the map JWJM/23 the witness identified it with the road on the Unit Land southwards from Guphill Gate. The witness agreed fences were in a rotten condition but not that Woodland stock were not put out "they were put onto the Moor". As to some coming out, "Yes" (witness clearly indicated that some were put out intentionally).

Next (9 October) oral evidence was given by Mr Philip John Veysey (called by Mr Pugsley) in the course of which he produced the documents specified in Part VIII of the Third Schedule hereto and (among other things) said (in effect):- He first came to the area in 1975; on 5 April he married the daughter of Mr L J Earl the then owner of Venford; he gave this farm to his daughter under a series of deeds of gift 24 May and 1 December 1976 and 26 July 1981 (PJV/5,6 and 7); Crystal Katherine Earl named in the October 1976 deed (PJV/4) was the mother in law of the witness. On the 3 acres conveyed by the May 1976 conveyance, he built a bungalow in which he is now living; at the time he had another job so did not start working on Venford Farm until 1977. He started a reseeding programme 3 years ago; it had not been reseeded since the war. They had to fence and bring in a water supply and an electricity supply. When he started he bought 20 ewes and had built up so that he now has 255 ewes. During the last 2 years they had made more use of the Common than they did in 1980, 1981 and 1982 during which years they had turned out 82, 70 and 65 ewes, but had not since then turned out because they do not now let sheep keep any more ewes their whole farm acreage for stock. They turned out at the gate by and just above the cattle grid (marked on JWJM/23) and occasionally the little gate just south of the north west corner of Venford Moor (CL65 registered as Venford Common). The stock walked up through Anstey Money Common and Anstey Rhiney Moor generally stayed on the north side of the Ridge Road; he turned out at weaning at end ——→ of July and they remained there for a couple of months; in 1982 he turned out some hogs at the beginning of April.

Questioned by Sir Frederick Corfield, Mr Veysey said (in effect):- He did not participate in what happened at the registration but he did attend at the 1981 inquiry and agreed that he had no claim over Woodland "because there is no claim on the registration" As to the claim on the Register being on the whole, "I believe my father in law withdrew". As to the objection of his father in law (No. 603) no rights from Twitchen, he the witness withdrew because "we were all farming together". The affidavit (? declaration DFB/5) made by his father in law was by him withdrawn but he did not know why. The basis on which he (the witness) assumed he had rights was from what his father in law told him; he had from him a tenancy agreement. He believed that his father in law had the keep of the land from about 1945 onwards but could not say how or why his father in law withdrew his claim on Woodland; at the time he was very ill and he the witness believes that there were no rights over Woodland Common attached to Twichen "we are all together". A fence recently put up by Mr Nicholls was not there when he (the witness) came (to the area) but generally his stock did not stray onto the Woodland Common area and his belief was that he had no rights over it, as to him having a good reason for distinguishing Woodland Common from

the rest "I am a newcomer". (After some general discussion) he said he understood "Great Common" to be land coloured on JWJM/23 like the Unit Land but not included in it (that is CL65).

Questioned by Mr Gray Mr Veysey said (in effect):- Since he came in 1975 his father in law was still at the farm but did not stock the moor; the moor was grazed from Mr Nicholls' farm and Twitchen Farm, by Mr Weaver and by Mr Milton; he thought it was not grazed by Mr Davey but could not remember it being grazed by Mr Burton but did remember Mr Tarr's stock being there. He had heard somebody say that Mr Nicholls had driven sheep off the Common but agreed that sheep went anywhere they liked and there was no physical reason why they should not go to woodland, and that nobody tried to stop them going there.

Next (9 October) oral evidence was given by Mrs Bessie Tarr at Barnhaven Old People's Home at Bampton where she was residing (called by Mr Pugsley) and also present Mr J Maitland-Walker solicitor of Risdon & Co representing those at the hearing represented by Sir Frederick Corfield. She (among other things) said (in effect):- She was born in 1901 and lived in Venford from when she was 4 years old until 1921 with her father Mr Richard Bowden. She thought she could not remember much before she was 6 years old. He father "always put his sheep on the Moor". By the Moor she meant "Anstey Common"; they would go for miles; with a sheep dog; did not look back and I told time to go on"; she walked "half a mile sometimes onto Anstey Common. She could then see all around the hill. She never went as far as the hedge between Anstey Common and Molland Common but she did go as far as Longstone Combe because that was where she sent the dogs up. She could not remember herself crossing the Ridge Road when going after sheep. A cow got there when the hunting was on but it was turned out accidentally. Her father's sheep were Exmoor horns 50 lambing ewes and perhaps hogs as well and all went on Anstey Common and were turned out in the spring and they were brought in for sheep dipping then went out again. There were 2 open fields by the Slade Bridge Road but the hedge was not very good between them and the Common so if they were run in by the big fields they could go out or come in as they wished!!!

Questioned by Mr Gray, Mrs Tarr said (in effect):- From these fields onto the Moor there were gaps; they (the stock) did not seem to go too far they could go off anywhere towards Lyshwell or anywhere. She agreed that apart from her father's stock there was grazing from Twitchen, Woodland, and Lyshwell, but she could not say whether there was grazing from Ringcombe or for certain from Churchtown and did not know whether Mr Milton from Partridge Farm grazed. There were a lot of animals, cattle and sheep that nobody as far as she knew attempted to stop them. They did not wander too far because there is usually somebody about. There were cattle on the Moor and also ponies. They ate young heather and rough grass in the summer. As a lay up for a farmer it was very useful. Only in the very last few years have they been trying to say anything; I do not know why! It is a nice place for visitors; it makes it more interesting.

Questioned by Mr Maitland Walker, Mrs Tarr said (in effect):- Her father was a tenant living there. When she was 11 years old when she used to work on the farm; when she left school, she used to help getting logs from the hedges with a cross cut saw; the hedges between Venford Farm and the Moor were in a bad state. The stock could move in and out. She did not know if her father ever "turned" the stock out but he had a right to. She could not remember ever not letting them go out; it was like it when he came there. The 50 ewes she had mentioned was not a total; there were hogs. They could be ewes and hogs at the same time. As to rounding them up, when he (her father) was busy he would say "I want you to go shepherding"; he said this every couple of days but not always to her; she would go if he was busy in an afternoon sometimes on the field; sometimes on the Moor quite away. As to being very far away, unusual to be as far away as she was talking about.

Next (10 October) oral evidence was given by Mrs Elizabeth Mary Burton (called by Mr Gray) in the course of which she produced the 1903, 1930, 1941, 1943, 1960 and 1983 Churchtown Farm conveyances (JWJM/13, 14, 15, 16, 17 and 18) to (1903) Messrs F, R, E B and J M Kelland, to (1930) Messrs B M Bennett, J C G Pownall and H C V Jones, to (1941) Mr F C Bryant, to (1960) B J Burton, and to (1983) of 158 acres to Messrs A J and M J Tarr. She (among other things) said (in effect):- Her husband died in April 1983 (shortly after the 1983 conveyance); of the 158 acres which before 1983 comprised Churchtown Farm, he retained 37 acres; under an assent she now owned the freehold of this 37 acres. From their purchase in 1960 she and her husband had farmed Churchtown Farm together; they took over from Mr L J Earl (the husband of Mrs C K Earl who had owned the farm since 1943); he in 1960 was not physically very fit but was mentally helpful. Mr Earl had had on the farm a great many horses and also cattle and sheep. Her husband was a different farmer; they came from Bedfordshire with no knowledge of hill farms, bringing with them some Friesland cattle, and going in shares with a flock of 150-200 sheep; the flock had been owned by Mr Earl so they knew the holes in the fences! From 1960 onwards they used the Unit Land "a limited amount: we did not have a good dog"; we saw other farmers on Sundays riding around. We mainly put down 20 or 30 yearling ewes for "slimming", the breeding ewes of the following year; they did not turn out cattle as the Unit Land was not in an accredited area (free from brucellosis). "We were totally green as to the type of farming practised here". 20/30 ewes to begin with; they had Suffolk rams. Her husband was involved in the local hunt and so did not have time to ride round checking stock; she had a pony and went around quite a lot. Their stock were put onto the Unit Land through a hunt gate a little bit west of Badlake Cross (witness indicated on the map JWJM/23) and from there they went (as she so indicated) west over Woodland Common and northwest and north; referring to their sheep (the slimming ones), once they were driven out onto the Unit Land there was nothing at all to prevent them going anywhere; you could never be sure where you could find them. When they came in 1960 other farmers were grazing on the Moor; with the help of Mr Earl she could identify their colour marking; black N for Mr Nicholls, blue W for Mr Weaver; N was their nearest neighbour on the west side; John Nicholls shepherded his stock very efficiently; you would find his sheep everywhere. Mr Weaver from Hill Farm put 40 or 50 young ewes after dipping, so he was grazing 100 or more "you would find them on any part of the Common right from Anstey Gate (meaning what I have called Molland Gate) in the west to Venford Gate in the east". Mr Nicholls put out cattle. At the Anstey Gate end there was a good herd of cattle of Mr Davey's of Lyshwell. Mr Nicholls' cattle being on the

south and the water being on the north, they crossed the Moor to Danes Brook. She was not aware that there was grazing from Twitchen until the early 1960s, say 1962 or 1963 when Mr Hill had a large quantity and being our nearest neighbour his cattle and sheep were pressing against our cattle and sheep; there was a general feeling that he was being excessive in his use of the Moor at that time. As to Ringcombe, Mr Tom Crossman came in about the same time; she was conscious of his mark "C" and colour. Mr Crossman's sheep wandered over the Moor like those of everyone else. As to Guphill, Mr Butchard never used it as far as she knew, and Mrs Tuckett just bred ponies; she did not even know whether they had grazing rights. As to Mr Milton, she remembered ponies more than anything else. Before the grids there were ponies of Mr Westcott that used to come into Churchtown Farm, and they used to phone them up. Mr Milton's sheep "black M" were over another part. The grids stopped stock getting home, ie back to the farms; otherwise the grids made not much difference, a few more sheep appeared generally. As to Venford, Mr Earl when he sold Churchtown Farm (to Mr Burton) lived at Henspark, but retained the fields at Venford; by that time he was a fairly sick man; "moor grazing is an activity for a fit farmer". The farmers were helpful and friendly, on Sundays they rode the Moor and let each other know where their stock was. The only complaint she had heard of was of Mr Hill "flooding" the Moor (with stock) and complaints about cattle from the farms north of Danes Brook which should not have been there at all. Everyone being agreeable there was no suggestion that some people had one place and other people had other places (on the Unit Land). Apart from grazing, the Moor was not used for any other purpose except cutting turves and brushwood which she understood from Mr Earl was "in the deeds". Apart from the holes, being the places about which she had been told villagers had cut turf in the past, the economic necessity did not exist for any turf cutting. Mr Earl showed the area (of the Danes Brook) where they were allowed to fish; permission was asked by Mr John Hayward of Hawkridge who Mr Earl had always allowed to fish; Mr Keigwin took his son down with Mr Earl's permission; Mr Earl talked about small trout; the fishing was from Slade Bridge on the east to where the Brook turns north by Lyshwell but only from the south bank; the fishing on the north bank was owned by the Hawkridge Settled Estate and Shircombe Farm; as to how often there was fishing, summer holidays when grandchildren came to stay, John Hayward in the 1960s and the 1970s, and she with her nieces; depended on the weather. As to the November 1981 hearing before Mr Commissioner Morris Smith, it was a one day hearing and she didn't think she or her husband gave evidence it being dealt with by solicitors totally; the hearing went on until late in the evening and there was a feeling of pressure against time; she remembered an approach late in the afternoon being made to her husband and some form of hold up regarding common rights; it was not organised; you could not hear what was going on; John Nicholls wished us to agree; common grazing over the piece he owned was discussed; "he came to us, I wish you would agree"; at that time no-one was fully aware of the difference between grazing and straying; my husband as it meant so much to him, could not see it made much difference, we should still be able to stray there (Mr Nicholls' piece) and there was no question there would be fencing or it not being common land. No intention of my husband to give up; he was exchanging a grazing right for a straying right; at the time we thought there was

such a thing as a straying right. Although my husband did nothing about it, he was very incensed (after the hearing) that it could be fenced as a result of his action. Their solicitor was Mr Colin Sessions of Cross Wyatt; Mr Nicholls' solicitor was Mr Pugsley; the solicitors sat in the middle of the room; there was a box gallery to the side; Mr Sessions came up afterwards and we sent him a little piece of paper; she (the witness) wrote it; "we felt sympathy for Mr Nicholls and to speed things up we agreed"; the time was about 5.30.

Questioned by Mr Pugsley, Mrs Burton said (in effect):- She could not remember some of the things which he put to her about what happened at the 1981 hearing (they differed in some matters of detail). As to the sheep they put out in the 1960s after the cattle grids, there were hogs as well as the 20/30 ewes; they stayed where they were put until the grass ran out, and then having no chance of coming back to the good grass on the farm because the fences were good enough, they had no choice but to walk out beyond; the object was to slim them down not to starve them!; they had to browse around and that was good for them. She didn't think they ever lost any. As to the 1960 particulars of the Churchtown sale (EJN/2) indicating rights "on Anstey Common about 400 acres", she imagined that she and her husband must have understood the pasturage was over 400 acres and she thought they must have enquired of Mr Earl if it was the whole Common; when he showed them round they understood they had a grazing right over what they saw. They had no clear idea what the acreage was, it might have been an error and there might have been 800 acres, they were never given to understand that there was any limitation of acreage of any kind. As to the acreage affecting the price, she felt unable to answer the question whether the price would have been different if there had been no right on Anstey Common.

Questioned by Sir Frederick Corfield Mrs Burton said (in effect):- She did not know whether the 1903 deed was produced at the 1981 hearing, but she understood the claims attached to the Farm were based on the deeds. As to the fishing being mentioned not in the 1903 but in the 1930 and later deeds, she understood that Mr Kelland was originally a tenant of Lord Portsmouth. There was no suggestion of fishing other than for trout, any fishing by Mr Keigwin was before her time. She did not know that Lord Clinton had in 1904 advertised the fishing rights. She had assumed shooting was a right of common as Mr Earl said; she supposed in the old time there was black game, now the only things would be rabbits. As to Anstey Common being over 400 acres, she could not answer, her husband would have walked over and asked Mr Earl and he would have thought it alright; they accepted Mr Earl's statement about the rights and did not enquire into the acreage of the Moor. She agreed that the first attempt to quantify the rights was when her husband applied for the registration; his application was as recommended by the NFU. Any challenge of his registration in the High Court was during his later years. The conveyance to Mr and Mrs Tarr (JWJM/11) was negotiated for a year; privately, not advertised. Her husband would not have bothered (about the High Court application for a rehearing) because he was not well enough in 1982 until he died in 1983. The grazing right went with the 158 acres sold in 1983 to Messrs Tarr because the quality of the stock which would be on the remaining 37 acres would not have needed the rights. She had never seen before the letter

of 16 March 1960 (EMB/3) which was put to her. As to the 1985 affidavit (DFB/12) of Mr Earl, she believed it was at Exeter withdrawn by Mr Pugsley because at the time he signed it he was a very sick man, as she knew she having seen him on his 80th birthday.

Re-examined by Mr Gray, Mrs Burton said that Mr Earl was in a hospital near Taunton (as a geriatric case) not a mental hospital. When Mr Earl showed them round he gave no indication of the boundary of the common. As to Mr Earl when showing them round saying anything of the correspondence and declaration put to her (specified in Part X of the Third Schedule hereto), as indicating the east boundary of the Common and its area being 400 acres, no. As to West Anstey Common being a well defined area, yes (witness agreed Mr Gray's detailed description of the boundary of the Unit Land). As to any physical boundary anywhere in 1960, no.

Next (10 and 11 October) oral evidence was given by Mr Ernest John Nicholls in the course of which he produced the documents specified in Part XI of the Third Schedule hereto and also the probate of the abstracted 1864 will of Betsey Spencer; he (among other things) said (in effect):- He was born in 1927 and when his father in 1931 took a tenancy of Woodland Farm he moved with them and had lived there ever since. Ronald George Nicholls mentioned in the 1931 Tenancy Agreement and the 1956 conveyance (EJW/4 and 5) was his father; he died 6 April 1967; George Elston Nicholls mentioned in the 1968 deed (EJW/7) is his brother.

As to what he (Mr Nicholls) remembered of 1935 to 1939:- The stocking of the Woodland 105 acres, his father had sheep and bullocks and he might have had an odd pony or two in the early days; they had a 140 or 150 ewes plus lambs (followers); the bullocks altogether about 50 so he should imagine, a long time ago, may be 10 more. As to how many turned out, not more than half of them at any one time, could have been nearer 20. As to the sheep, of these 140 or 150, to start with when they first went there quite a few for short periods; they turned out what they were going to keep and after they had weaned the lambs; they sold so many every year. As to the sheep staying on the 105 acres, he was afraid they did not; they could go anywhere and they did. As to how far they went on all open ground there, right up (towards) Five Crossways, nearly to there (witness indicated by reference to a map, large area including all Unit Land, East Anstey Racecourse and Venford Common towards Slade Bridge); also across the Danes Brook, nothing to stop them, also 30 acres at Shircombe, also used to go to Zeal Brake (since fenced off); they would go out to Molland Common sometimes, but not very often, Molland hedge was not very good, but later on the Tanks! As to assisting his father, he supposed he was a bit; "we had a workman who used to help with the Common". As to before the war anybody else stocking the Woodland (105 acres), no, not directly anyway, there was not much stock up there at all except his father's. As to the rest of the Common, of West Anstey Common, there was a bit; they turned the sheep on by Longstone Combe, there would be a bit of stock towards there from Molland Common. As to how they got the sheep to stay, it was a job you had to shepherd them pretty tight; otherwise they came back and if sheep came back they would go anywhere down the roads; but the bullocks no trouble. As to the road if not shepherded

they did not have a lot of trouble, but they would go down Guphill Moor gate down the road and probably get into somebody's ground. As to the hedges and fences before the war, pretty bad actually; as to trouble with sheep breaking into other people's farms,we had some trouble: a bit, a bullock would not bother to go in, but sheep would go in a lot smaller gap. As to the places, he had a bit of trouble all round: quite a few places. As to Badlake Moor Gate and Guphill Moor Gate, he didnt think he could remember the gates, he remembered the posts; they were there; over Rhyl there was a big white gate. As to turning out on the open land, they turned out sheep on Longstone Combe before the war. As to cattle, they did not both[er]/they could go anywhere; they turned them out on the Common; the bullocks we turned out were in the winter fed there; hay. As to before the war, other stock belonging to anybody else, Mr Davey (father of the witness on 10 October) from Lyshwell, he saw some of his sheep, probably over the fence from Molland Common, he had a lot there, they would stay out near his fields; as to Ringcombe before the war, he thought that the other Mr Davey (brother of Mr Davey he had mentioned) put out a few of them, he could not remember him putting out bullocks; he would not think it was big numbers; he could not see any more than 30 or 40; they stayed back there at the east corner. As to Guphill, Mr Milton did turn out from Guphill, he remembered the father of (the witness) John Milton; if they came back they would go down the road by Guphill Gate. As to before the war, Churchtown Farm, Mr Robins came there when they came to Woodland in about 1931; he had done a bit of farming and his flock ran around a bit; he did not know whether they were turned out, the fences were bad, they just walked through. He couldnt remember seeing much very from outside their gates. As to before the war, Twitchen, a lot of people came to it. They could get to Woodland Common but "we did not have trouble, he did not have many". As to before the war Venford, the Blackfords had some at Venford, he was not sure how many, he guessed they grazed on a regular basis, they were on the lower part of Venford; a man called Pearse grazed while he was at East Anstey; they would have gone back to Town Farm, which was their home farm. As to Mr Crudge from Slade (? Farm) Yes, he put out, he had a bit by Slade Bridge; they would come back to Badlake Moor Gate, the trouble was getting them to stay, they came back home (meaning to Hill Farm).

As to what he (Mr Nicholls) remembered of the war years:- As to his bit (the 105 acres) being requisitioned, no; there was a requisitioning of the Venford Ground, this was closed during the war; they took over Venford; he did not think they took over Yamson Green, but they ploughed the Racecourse and the war Agricultural Committee took over about 40 acres of the CL65 on 47 acres. As to the damage done during the war, year, the Army moved in; they had a base camp on Molland Common; they just drive about (witness indicated damage). As to this affecting stock of the 105 acres, yes it did a bit, they dig[g]ed out some of the ground; there was an Army camp at Overwell. As to his father having more or less, they cut down on the sheep, motor bikes tearing there and back, but they did leave bullocks there, probably less than before the war; there was a bit of a problem, they were tearing over and back the roads so much; he didnt think there was much out during the war and was not sure if it was allowed "we chanced it". They ploughed more of their farm during the war, putting in potatoes instead of putting in so much corn; for every acre of potatoes would count as so many acres of corn, he could not remember the ratio.

As to after the war from 1946 to 1956, Mr Nicholls thought the stocking went on about the same. As to trouble other people coming out on to Woodland (meaning the 105 acres), no. As to anyone else stocking the rest of the Common, not very much; at the time there were no cattle grids, it would not stay there; Mr Davey of Lyshwell was there and some from Molland Common over the fence. As to Churchtown Farm and turning out stock, Mr Earl, no. As to Twitchen Farm and a man called Eborn, he had got milking cows, he would not be too precise, with these milking cows, there were some Friesian cows, they were fed with silage. He (the witness), if he had milking cattle would not turn them out on the Common because they would not be milking very long! As to health reasons, he could not remember when that started and did not expect that it was common when Mr Eborn was at Twitchen, he could not remember exactly when; there was a regulation called a TT test; once you became TT you were not supposed to put them out.

As to after 1956 when Mr Nicholls and his father bought the Farm, and as to everything carrying on much the same, yes. As to the grids, Mr Weaver started discussion on the grids; he came to the witness and asked if he would be agreeable to grids because he was trying to keep a few sheep out which were then coming down the road; they were trying to find out who had common grazing and who turned out whether they could come to any agreement to put the grids in. They had a fair bit of discussion; they had a meeting; how many he could not remember, they had some; Mr Burton tried to get everyone to put their deeds on the table at the meeting and they agreed to do this at a later meeting; most of them backed out; he (the witness) produced his and Mr Burton had got his; quite a few did not produce theirs. He (the witness) did not know why. After a while he decided to let the grids go in and he (the witness) agreed. There was a grid across an unclassified road by Mr Crossman's, and another across a classified road by Mr Weaver's; this couple came before the others. As to the result of the grids on his own stock, his remained up there, probably increased a bit and other people did turn out more stock. As to Mr Davey of Lyshwell, he would not think any different, no trouble with his stock coming back to Woodland. As to Mr Crossman, he wanted the grids because his stock would stray down the road; after the grids he (the witness) expected that he put more out; unable to go down Guphill Road they turned round and came back onto the 200 acres (meaning north of Ringcombe) and were no trouble there. As to Guphill Farm, they never turned out. As to Guphill field of Mr Milton, he put out a few about 50 hogs; he thought they went over to Ringcombe Farm (meaning the east part of the Unit Land. As to Milton sheep coming onto his 105 acres, "no, I was there every day, I could drive them off if they were there". As to his needing to do this, "no, he did not put them up regularly at all. As to his ponies, no trouble; job to say which ponies were his. (After a digression about Molland ponies) As to cattle of Mr Milton turned out after the grids, during the last few years they put out more than before; job to tell whose bullocks they are; as to their getting mixed up with his, no, "did not bother me, they are not bothering me now" mainly on the north, mainly on the north side. "I have got a bad back,

I cannot go out as much as I used to". As to Churchtown Farm after grids, any effect, not really, Mr Burton put out a couple of times; his farm was different from the rest, "his fat ewes just laid down outside the gates ... I saw a few ... twice just a small number". As to Twitchen after the grids, Mr W Hill turned out stock, the hedge was down; he and Mr Weaver both put on sheep by ~~them~~ the cattle grid at Badlake Moor Gate, "they did not trouble me a bit; I drove his (Mr Hill's) off back the road; mornings, I had to go up to catch the school bus, they were in the road, the dog would be back up the road up and away (meaning from the 105 acres) ... they had a bit of an argument they did put out less, they were mixed up with Mr Weavers. As to Mr Hill selling to Mr George and his turning out, not that he (the witness) knew about; Mr Bassett has turned out about 3 weeks ago. As to Venford since the grids turning out, he (the witness) would not think he did; a hedge which the lambs got through "we did a bit of fencing there", just about when the grids were put in; Mr Earl used to take in other people's sheep at Venford. As to Philip Vesey putting out stock, yes he did see a few marked V, ~~he~~ ci & trouble ~~since~~ coming to Woodland (meaning the 105 acres), no. As to any trouble with Mr Weaver's stock from Slade Bridge when the grids were in, "I suppose they came over the road, he said he knew he was overstocking and said drive them back; he always turned them out from that ground (meaning the new Mill Part of Hill Farm by Slade Bridge) As to Woodland ever having been described as a manor or anything of that sort, no. As to anybody claiming shooting rights, "depending what you mean claim; Mr Earl and his (the witness') workman were shooting rabbits, but I went up to them, I explained that Woodland was not common land and I did not approve the shooting over it, so they never tried again". As to anybody claiming turves, or any rushes or stone, no, no, no. As to his registrations under the Act, as owner of the 105 acres and ——————————→ as to his claim for grazing rights over the remainder of Anstey Common, yes.

Next (11 October) I considered privately the Tithe map (it was agreed that its size made it impracticable for me to consider it otherwise).

Next Mr E G Nicholls continued answering questions by Mr Pugsley saying (in effect)- Following the registrations made under the 1965 Act, there was a sorting out, Mr Pugsley acting on his behalf; from his Unit Land grazing was excluded the lettered A part and his CL65 grazing was changed to straying. He regarded it as a "tit for tat deal", Mr J W J Milton had limited his Unit Land rights to the lettered A part with "straying" over the rest of it. He was aware that the CL65 land was owned by Mr Earl. He attended the 1981 hearing; the owner of Twitchen Mr George and his solicitor were present; he (the witness) gave evidence; in the middle of it Mr George's solicitor withdrew his claim from "my common" (meaning the 105 acres), so that left only the claim of Churchtown He (the witness) made no approach to Mr Burton about the Churchtown registration; Mr Burton was in the room but he (the witness) was in a special place because he could not hear very well and so was near the Commissioner; late in the day somebody handed a note to the solicitor, Mr Sessions; he announced that he would not pursue it (Mr Burton's claim) any further, and he (the witness) understood that all claims were off. As to the result being it was private land to do what he liked with, "yes". As to what he set about doing, there is the management

agreement (EJN/8) and "I put up a fence around (contractors invoices EJN/10 and 11); levelling £112-70 and fencing £6,221; the fence was completed 15 December 1982. As to levelling, he had to level a bank running down from the top northeast corner; this bank was not stock proof but just like the others on the ground (witness indicates about 18 inches) in some places higher from 1 foot to 2 feet. As to these banks, inside the fence; quite a few there "I would like the Commissioner to see them". As to a boundary stone having been moved, there were boundary stones at both ends of "my ground"; the Venford end has got moved, he would not know how, and the other still there. As to other boundary stones, there is one back at Guphill Common; also a boundary stone out of Venford for the CL65 47 acres; also a stone at Longstone Combe as to the boundaries (of the 105 acres) being identifiable although there are no hedges or fences between it and the other parts of the Common, yes. As to since he put the fence up, anybody suggesting that he was not legally entitiled to put it up or was infringing the rights of anyone, no. Since its erection Churchtown and Twitchen Farms have changed hands. (After explaining the Hill Farm subsidy and who among the farmers concerned sold milk, witness continued) as to water on "your common" (meaning the 105 acres) and its adequacy to see him through the summer, "I am afraid it is not; alright this summer (1985), the year before I went dry and I had to lay a pipe and pump water up to the Common". As to the years before the fence he did not pump water because there was plenty of water at Danes Brook and his stock went there.

Questioned by Sir Frederick Corfield, Mr Nicholls (among other things) said (in effect):- His cattle went out onto Longstone Combe, they went a bit onto Shircombe Brake on the other side of the Brook. As to the boundary of Rhiney Moor, "I get muddled up what the Harrison land is". As to it being sometimescalled Ringcombe Common, and as to when they (his stock) went up to Longstone Combe being strays, "they may stray there, but they stay there". As to the witness' answer to Mr Pugsley that his stock was free to go anywhere and did, yes, they did and got over fences; (witness looked at map) including Longstone Combe, Anstey Rhiney Moor and Anstey Money Common, yes. As to the witness turning out more stock than could be contained on his 105 acres, yes; as to why, the Common was not overstocked, his father said there was a dispute about 90 acres, and two Lords of the Manor tried to get it, "so I did not feel too guilty about letting out stock". He did not know whether there were manors of Anstey Rhiney or Anstey Money. As to tracks through Woodland Common (meaning the 105 acres), there are odd tracks, and also paths. As to his claims over the land of Mr Milton and his dealings with him and Mr Earl (or Mr Vesey as his successor), these were dealt with by Mr Pugsley. As to what he (the witness) meant when he changed his claim to a grazing right to a straying right, "I always ... to have the straying right, the other could turn it back and could not impound it".

Questioned by Mr Gray, Mr Nicholls (among other things) said (in effect):- He agreed that as a result of the tit for tat agreement he now had a right "to stray" on the CL65 land. As to any difference in the quality of the Unit Land and the CL65 land, not much, it used to be different because they ploughed the CL65 land in the war. He agreed that over the whole of the Unit Land he had (before the agreement) registered and claimed a right to graze, that he had exercised that right and that his father before him back to 1931 had done so. As to their sheep and bullocks being on the CL65 land the same as on the Unit Land, so there was no difference between them, "no, if you put it that way ... the stock would graze if they went there but he (the witness) was saying that they don't go there or very little ... The registration (business) was rather difficult to understand". As to what was happening if sheep and bullocks go on any part of the Unit Land, are they grazing, "yes they graze if they go there". As to whether it is grazing or straying when in fact they are grazing, "yes if you mind to put it that way". As to the whole of the Unit Land being an area known as Anstey Common, "it is made up of a lot of commons". As to whether it is known or it is not known as West Anstey Common, "yes I suppose". As to the gates, he could not remember that but remembered the sites. As to whether the gates would have enclosed the whole of Anstey Common, "yes". As to bullocks and sheep wandering over all the Unit Land, they wandered out there more than years ago, he turned out bullocks and they wandered round the lot, he could not turn out sheep because they came home unless he put them there (witness pointed to the north side of the Unit Land as shown on the map). As to wandering on Anstey Money (marked on map), "yes". As to it being the same for other people "they did so, they did not come onto my land, I was up there every day for the school bus". As to grazing now from Twitchen, Partridge, Venford and himself, "I would not know now, my son does it now, I have a bad back". As to the number he had registered he did not go to the NFU, just put down what he had got; he told Mr Pugsley what he had got. As to after 1931 (commencement of tenancy) being a bleak period of farming, there was a depression. As to the level of stock being low, it was he supposed lower than what it is now. He did not remember much before the middle of the 1930s but his father remembered because he had a farm at Brimblecombe having been there 30 years and he was born at Langcombe Farm near Molland Moor Gate ; he would not know about the before 1930s stocking. As to war damage, the tanks did a lot but the fences were down before the war and he thought the tanks did not make much difference. As to his land adjoining the Common, it was an advantage because his stock did not have to go down the road; more of a problem was the holes in the fences. As to the result being Mr Weaver's concern with grids, he was interested in preventing stock coming off the Moor; he had got a bit of land down by the Brook ... He (the witness) did not get much advantage from the grids. As to Woodland Common, until he fenced in 1982/83 being physically indistinct, "except for the banks yes". As to the 1931 tenancy agreement, "they called it common but this does not mean to say that it was common". The Westcotts used to plough there and burn the grass. As to why his father did not fence it, "he had got enough else to get on with". As to knowing it was common, "no, he always mentioned it as his own ... We ——→ decided to fence but could not get a grant". As to any of their ——→ grazing going on over the rest of Anstey Common, yes. As to the use of Anstey Common by others we never had any cause to object. As to Mr Hill over stocking I thought he was putting up too many, it did not worry me; I had the dog, I ring

him up but I cam to know I could never get a straight answer". For the fenceing (EJN/10), he got a 50% grant, £2,777 for £5,540 (after £765 had been deducted). As to his enclosure and the Wild Life and Countryside Act 1981, from the National Park he got (under EJN/8) nearly £3,000 a year, not a fixed figure, it is down this year. As to the 1981 hearing, he agreed that at the beginning it was agreed that straying rights would be struck out so that all that was left were the registrations of Mr Burton (Churchtown Farm) and for Twitchen (Mr George) and that it was important for him to get rid of the claim of Mr Burton, that Mr Burton had given evidence, that late in the evening Mr Sessions told the Commissioner that the opposition of Mr Burton was withdrawn. But he (the witness) insisted that neither he nor any member of his family had spoken to Mr Burton, so what Mrs Burton had said (10 October) was incorrect. The payments he had received under the management agreement were: £3949, £2,659 and £3,057 for the 3 years 198-84, to 1985-86.

Further questioned by Mr Pugsley Mr Nicholls said (in effect):- The tit for tat agreement was made before the 1981 hearing (register amended 8/1/73). He understood these proceedings would not affect Woodland Common. As to Mr Gray asking about the CL65 and the CL143 lands and his (the witness') answer, not if you put it that way, and as to there being any difference on the ground where he (the witness) claimed straying rights, "the CL65 land, 47 acres, is marked with boundary stones. As to it being true that the registered grazing where he considered they (his stock) grazed, and registered straying where he considered they strayed, yes. As to the numbers in the Register, and as to some of them being ridiculous and as to his knowing the numbers, he used to dip everybody's sheep for a number of years; he did not dip for Mr Davey of Lyshwell. He dipped once or twice for Mr Crossman, he dipped for Mr Milton for years and dipped for Mr Slowman's sheep but not everybody's. As to his being persuaded to agree the grids, "I was a bit reluctant . They could not stock up there ... they would not press the issue if it came to it ...". As to his father not fencing in the Common, he having enough else to get on with, yes, it was not like it now is. As to his applying to the Ministry of Defence, yes; after the war, yes; before the grids, "I expect it was".

Next (11 October) oral evidence was given by Mrs Thomasine Rose Nicholls (called by Mr Pugsley) who said (in effect):- She was at the 1981 Barnstaple hearing in the afternoon. Mr and Mrs Burton were sitting a little behind her. She saw Mrs Burton pass a note to him (Mr Pugsley) and saw him pass it along to Mr Sessions; he after a short while opened the note and then said that Mr Burton had withdrawn the right to graze on Woodland. Her understanding was that Mr George having previously withdrawn the right, Mr Burton was likewise withdrawing. Her idea of why he was doing this was: he realised his claim was delaying the settlement; we had been good neighbours; he had stocked the Common very little himself in the years he had been at Churchtown and was helping a settlement. Before Mr Burton passed the note, he had not approached him.

Mr Gray said he would not question Mrs Nicholls, because he had put his case to Mr Nicholls, and there was no point in him putting it again to her.

Next (11 October) oral evidence was given by Mr Peter Follett Pugsley (for those he represented) in the course of which he said:- Before the 1981 hearing (25 September 1981), a week or 10 days before he had a meeting at which there were himself, Mr E J Nicholls, Mr J W J Milton, Mr C M B Sessions (solicitor for the Parish Meeting), Mrs S C Harrison, Mr Peter Miles (her solicitor of Dunn & Co, Honiton), and (for the later part of the meeting) Mr Hugh M J Harrison. The object of the meeting was to clear the ground for the November 1981 hearing about one of the principal questions: what was what everyone meant by "straying rights"; the solicitors did not know because they thought they were not matters known to the law, but Mr Milton explained in them in the terms set out in the note (EGN/1 subsequently produced at the hearing) and said it was the local custom on Exmoor. The terms of the definition were agreed and he (Mr Pugsley) was asked on behalf of the other parties present at the meeting to make a preliminary submission about those terms. As previously agreed he (the witness) on 25 November at Barnstaple made the submission as agreed between Mr Miles and Mr Sessions; the other solicitor Mr Duffy of Furse Sanders, South Molton either agreed or did not object. The submission was accepted by the Commissioner and the rest of the proceedings went on that basis. He (the witness) got to the inquiry before it started with Mr Nicholls and he with the agreement of the other solicitors sat at their table. They took Mr Nicholls to lunch and for the afternoon session Mr Nicholls sat at his left hand throughout the proceedings. At a point about 5 o'clock in the afternoon a piece of paper was passed from behind (from Mr or Mrs Burton) with the request that he the witness pass it across to Mr Sessions; Mr Sessions was at the time on his feet addressing the Commissioner. Mr Burton who was sitting more or less behind him (the witness) again asked him (the witness) to call the attention of Mr Sessions to the note. Mr Sessions took up the note, walked round to where Mr and Mrs Burton were sitting and walked back to his place and then on behalf of Mr Burton withdrew a claim that there were any rights attached to Churchtown Farm in respect of Woodland; he withdrew only in respect of Woodland not in respect of the rest of the CL 143 land. The result was to bring the proceedings to a conclusion because there had been no other outstanding claim against Woodland up to that stage. Then there was an adjournment, between about 5.15 and 5.30; at that stage Mr and Mrs Burton spoke to him (the witness) and Mr Nicholls; prior to that adjournment there was no communication between Mr Nicholls and anyone, throughout he was sitting beside him (the witness). After the adjournment they came back and dealt with CL 65; this lasted about 15 minutes. Finally, they got away at a late hour; he was not sure he stayed to the end; there were some negotiations about some things for which he (the witness) was acting in other cases.

Questioned by Sir Frederick Corfield, Mr Pugsley said (in effect):- He was not a party to the agreement specified in the first paragraph (line 1) of page 2 of the 1982 decision; the agreement about Entry No. 7 was made in the absence of the Commissioner, but certainly in the inquiry room, he was not sure when. The Commissioner left the room between 4 and 4.30; there were two adjournments.

Questioned by Mr Gray, Mr Pugsley (among other things) said (in effect):- There were two adjournments; the Commissioner did not stay in the room. During the first adjournment (4.00 – 4.30) there was discussion about rights; there was then an opportunity for Mr Burton and Mr Nicholls to have a discussion, but he (the witness) was certain it did not take place. As to the stray statement at the beginning of the hearing being in favour of Mr Nicholls, it was also in favour of Mr Milton, part of the tit for tat agreement about Entry Nos 5, 6 and 10. As to there being no similar statement at the CL 65 hearing, "we were all tired".

Next (11 October) Major Herrick Colin Butchard gave oral evidence (called by Sir Frederick Corfield) in the course of which he (among other things) said (in effect):- He bought Guphill Farm, about 50 acres, in 1958 from Mr Stokes and sold it in 1962 to Mrs Tuckett (the applicant for Rights Section Entry No. 4). As to his having any grazing rights over the Common, no; there was a (?) right but as there were no grids it was not worth pursuing; nothing to stop anything coming off the Common. On the day of the farm sale (1958) he was offered 10 acres of land on the south of the farm for £1,000 but he was not interested; it was double the going price and the bracken piece was useless and the grass not very good. He left the army in 1957 and was reemployed by the army from 1966 to 1974. After he left West Anstey in 1962 he went to Brendon Village in Devon; he did not come back to West Anstey until 1972 (? 1974). The farm sale conversation was with Mr Arthur Milton and he was aware that this field (about 27 acres) south of Guphill Farm and Partridge Farm were farmed as one unit.

Next (11 October) oral evidence was given by Mr High Michael James Harrison (called by Sir Frederick Corfield), in the course of which he (among other things) said (in effect):- He was born in Withypool in 1942 and lived in that area until about 1944, when his father due to ill health had to leave the West Country and move to East Anglia where it was dryer. He had an uncle who lived at Combe Dulverton and who owned the Hawkridge Estate; so from 1945 to 1950/51 he came down regularly to see his uncle; also his father owned Ringcombe Farm (the 1934 conveyance JWJM/20), and the visit gave his father an opportunity of looking at the property. In 1951 his uncle allowed them to use a broken down farmhouse in Hawkridge, Rowe Farm, where they went for holidays and came down for Easter and for a long period in the summer holidays whilst his father was harvesting in East Anglia. This continued when they were at the Old School House in Hawkridge from about 1953 until the early 1960s; when his uncle died and his father inherited the portion of the Estate, he moved to a property in East Devon. As to the 1945 period onwards he rode over the Common on a pony from Zeal Farm, or he used to borrow a safe horse owned by Tom Crossman. As to his impressions of the Moor, normally they went from Zeal Farm, then up over Rhiney Moor and then through Molland Moor Gate to Molland Common; he had no memory of ever seeing any stock on the north side of the Moor; the time he was riding was in the month of August. The cottage they lived in overlooked the north side of the Moor; they were always keen on seeing deer; he had no memory of seeing either sheep or cattle, field glasses when he could get them! He acquired the property from his father in April 1968 under a deed of gift and shortly afterwards moved to South Africa on business on his job. The tenant did not wish to continue the tenancy so they had a new tenant a Mr Hall; we also used the break to change our land agent, Mr Nesfield retired and Major Milner Brown who managed the rest of the Hawkridge Estate became their land agent. During this period his father was in hospital. Colonel Milner Brown died and his partner took over as land agent backed by other partners of the company. Colonel Milner Brown had said he would look after the Commons Registration; it was done by Mr Nesfield. As to when he discovered claims of rights over his land, in 1976, seeing Mr Weaver's cattle one evening; they had a brief chat: people had registered rights over it. He got onto his agents and was told that nothing could be done about it; so he approached his solicitors at Exeter, and they gave him information about the Register and told him that the whole case would be determined at Exeter when it would come up in due course. It was reached in 1981. He was present at the hearing. Mr Davey made a claim over his (the witness') land; nobody seemed to be concerned with any part of it other than the Woodland part; his (the witness') purpose was "to show that my

land did not have common rights over it". His property included the south bank of Danes Brook as essential as a breeding ground for salmon. Of this property Mr Crossman was tenant from 1945 to 1968, and following him Mr Hall until 1976.

Before Mr H M J Harrison was questioned by Mr Pugsley and Mr Gray, the documents specified in Part XIII of the Third Schedule hereto were agreed.

Questioned by Mr Pugsley, Mr H M J Harrison among other things said:- As to his father when giving evidence, wished it "to be kept undeveloped and unexploited", he did not know its specifically but it had been talked about. As to his father never having objected to it being common land, his father never considered that anyone had a right to put stock on his land; he may not have objected to the occasional straying. He thought his father was not very clear about the Commons Registration Act, but he (the witness) was clear: nobody had any right to stock the land (meaning the lettered D part) as of right; he would add, except the tenant of Ringcombe Farm.

Questioned by Mr Gray, Mr H M J Harrison said (in effect):- As to his father having no paper title to the Common and having (in 1934) to be content with a statutory declaration, yes he realised this. As to the solicitors saying the Common was subject to rights, he believed this was so in the deeds. As to his father's main interest being riding and hunting, correct. As to his purchase in 1934 and then fencing, his father would have been very anxious to keep the Moor open, he said fencing was an anathena; he would be concerned that grazing would create a legal right and incumber the land. As to the rights of others, he thought they were purely straying rights and not legal rights of common. As to fishing, his father had never fished in Danes Brook. As to his childhood holidays 1951-53 and 1953-60 he (by reference to JWJM/23) identified the places where they stayed. After 1960 he went into business not in Hawkridge, but would come there regularly but not frequently. In 1968 he went to South Africa;still for a year only. In 1976 he took Ringcombe in hand. As to there then being grids and other farmers using the Common, yes, 2 or 3 farmers, mostly cattle; they increased dramatically from 1981/82.

Further questioned by Mr Frederick Corfield, Mr H M J Harrison said (in effect):- as to the grids having led to some congestion, this was after Mr Nicholls' fence went up. As to when he went to South Africa, he left the farm in the hands of the Land Agents; he lived in Liverpool. As to his houses in Hawksridge, from them he could see part of Longstone Combe. He had no memory of seeing any number of stock on the Common either large or small. As to the statement he made at the Parish Meeting (Keigwin/21), he was still willing to keep it (meaning the lettered D part) as open ground.

Next (11 October) Mrs Stephanie Christine Harrison (wife of the previous witness) gave oral evidence (called by Sir Frederick Corfield). About the letters specified in Part XIV of the Third Schedule hereto dated 23 and 24 May 1934 she said that she heard about them 3 or 4 days after the 1981 hearing as a result of a telephone call from her husband's agent, a successor of Colonel Milne Brown. The ——————→ "Col E J Harrison" in the 24 May letter was her husband's uncle who purchased the Hawkridge Estate and "Fred Goss" was the agent of the Pixtone Estate from whom he made the purchase. She also said that she had delivered to Mr Hill an affidavit for his signature, having been asked by a local solicitor so to do, he having

prepared it and that she was concerned when it contained a statement which was different from the evidence he had given in 1981. He did not at that time know that he had made an earlier statutory declaration. She spoke to Mr Earl about it and from him understood that Churchtown Farm had no rights beyond Longstone Combe. Nobody had any rights over her husband's land. She agreed with what Mr Pugsley at the 1981 hearing had said about straying rights.

Questioned by Mr Gray, Mrs S C Harrison said that she did not know Mr Hill had given evidence in June before me (as above recorded). She thought what she was being asked to get him to sign, was different from what he had said in 1981. Anyhow he did not sign it.

Next Sir Frederick Corfield asked me to read an affidavit sworn in February 1983 by Mr Lionel John Horn Wilkins for the purposes of the 1982 High Court proceedings. Such reading Mr Gray objected on the grounds that he should have given evidence orally. Sir Frederick Corfield said that he understood Mr Wilkins was not well enough to give evidence. However Mrs Harrison said that Mr Wilkins read the lesson in church last Sunday, so I refused to read the affidavit.

Next Mr Keigwin produced the minute book of West Anstey Parish Meeting as recorded in Part XIII of the Third Schedule hereto.

TURN OVER

Next (12 October) at his house at Chittlehampton oral evidence was given by Mr John Biss (born 1909, retired 1976), called by Mr Pugsley in the presence of Mr William Pumfrey solicitor of Robins Olivey & Blake Lapthorn, Solicitors of London who represented Mr [illegible] Harrison, and of Mr N D Ayres who represented those who were at the hearing represented by Mr Gray QC. Mr Biss (among other things) said (in effect):- He had been in hospital earlier in the year. He went to Twitchen Farm in 1939 (12 months before his marriage in 1940), and took it (the tenancy again in 1946) until the next Lady Day but continued grazing (there) until Michaelmas 1947. Twitchen Farm is right beside Anstey Common at the Dulverton End of it. He took the right (over Anstey Common) when he made the agreement (1939) with Fred Cole of Stoodleigh as landlord. During the war years he had to plough the grass up for corn and put in 10 acres of potatoes. When he went to Twitchen there was no tillage at all; so the stock had to be put onto the Common most of the time. The stock went outside between Badlake Cross where it opens to the Barrows (marked as "West Anstey Barrows" on the Register Map); they would go anywhere; Farmer Nicholls had stock and they were all mixed up a bit. He (the witness) had sheep and bullocks; about 200 breeding ewes. He had (in addition to the Common) other grass he rented, a field off Mr Trickey's farm and grass at Battens Farm, Knowstone. As to Anstey Common he had (sometimes) 200 there; he brought them in leaving out the two tooths (ewe lambs from the year before); the next year they became four tooths! The sheep were on the Common during the winter months; he used to dump them out there in a lorry, and brought them in before lambing, otherwise the foxes would have had the lambs there being so much rough ground; lambing ewes, were only out there if there was no snow and they were taken in the beginning of March and the two tooths came out; the only time they came in before was if there was snow. He did not feed them on the Common although he had two ponies down at Zeal and took down a bundle of hay for them during snow (the witness described the road by Venford and explained that two years about 100 acres by it was for 2 years taken over by the War Agricultural Committee). The cattle (of the witness) comprised about 9 Devon cross and shorthorn cows and also some heifers so he had about 20 to 25 altogether; the little ones he kept inside because the grass was not good enough for them (the calves); the cows came in to suckle them in the evening and next morning went out; they used to come back on their own accord. Generally they went out (witness looked at map JWJM/23) towards Charles Westcott's between Slade Bridge and Zeal; but they got all mixed up with those of Fred Davey of Lyshwell (witness pointed to the west of the Unit Land towards Molland). He had never lost cattle on Molland Common but had lost a sheep there. He got around on his pony; there he met up with other farmers on Sunday morning; "there was 'a church' on Anstey Common!!"; we would sort out our stock, "Fred Davey would say if he had got any of mine and I would say if I had got any of his"; the other farmers there were Farmer Nicholls, Will Davey of Ringcombe, Callient of (?) Britenden; and also Mr Milton who was down under the Church (meaning his farm could be reached by going downhill by West Anstey Church); also Mr Crudge came up sometimes (the witness mentioned some of Mr Crudge's personal circumstances and his having ground on the lower side of the Hawkridge Road identifying it as his piece by Slade Bridge). At Churchtown Farm during his time Mr Robins was there first, he was a big breeder of Exmoor horned sheep and after him Mr Bryant a solicitor went there, had a baliff, called Medland who used it (the Common) "a fair bit". As soon as the war was over Mr Bryant sold to Mr Earl; his first lot of sheep were kept on the top (of the Common) by Badlake Cross, so he could plough inside Churchtown Farm when he (the witness) left Mr Earl was getting his farm into full swing.

Questioned by Mr Ayres who started by putting to him the plan JWJM/23 and asking what he meant by "the Common", Mr Biss said (in effect):- The Common is all stocked by everybody, all mixed up everywhere (indicating that the whole of the Unit Land, and perhaps also CL65). There used to be gateways but there were no gates, there were holes where the gateposts had been; years ago there had been gateways at places like where there are grids now so as to keep the stock on the Common. As to his ponies he had 2 Exmoor ponies on the Common by Zeal: one was a 3-year old foal and the other was out to see if she would get in foal; Charles Westcott had a lot of ponies including an entire; (the witness described how this affected ponies on West Anstey Common and Molland Common).

Questioned by Mr Pumfrey, Mr Biss said (in effect):- He knew the Common very well. As to the names of the different parts, all he had seen was the maps at Stoodleigh (questioned about his 1985 declaration, DFB/2, the witness gave a long answer which I was unable to record but subsequent questions by Mr Pumfrey may have rendered it unimportant). So when his stock came out from Twitchen Farm onto the Common they started between "Badlake and Top Road" (meaning Badlake Gate and the Ridge Road); he did not know the name of this part. He did not know the names of any of the parts: he called the Titchen Common part (indicating it on the map) "the six acres"; the adjoining piece Spry Park (witness indicated OS No. 476) was fenced (against the Common). As to how far his rights extended over the Common, Fred Cole told him to graze (witness described lettered A part), but Twitchen rights were all around; he put them there, but they could go anywhere (meaning on the Common), they were unlimited rights; that was in the agreement. When he took over the farm it contained about 137 acres and he gave up none. As to the names of any of the areas of the common, if he was given them, he could say, if they were right; paragraph 12 of his declaration is right (for some of the areas); he could not recall the names of the other areas; he had all the rights there were to do with the Common without any limits of the stock; he could not tell the names as it was years ago. If he had the maps he could remember; it all belongs to Anstey Common; Fred Cole told him "I had unlimited rights on Anstey Common and that is all I know about it". As to going to "church", they so called the riding on Anstey Common on Sunday. As to what was then done, Fred Davey took out pencil and paper; who had (found) dead sheep; if Fred Davey had got 10 sheep, sort them if everything alright do nothing; if some missing, ride around to find them. As to those of Fred Davey being mixed up with his, he never bothered about it "you come to see if any are missing and to count them ... the point was if anyone was missing". As to cattle "you did not get your cattle mixed up as much, because you can ride around and see them". When he went out on his pony he went from Badlake Cross and if he saw anyone else ... he would take after Farmer Nicholls and go up to the top road; or if the stock towards Hawkridge to Charles Westcott, or if around Ringcombe, to Mr Fred Davey's brother ... Stock there all spread about; you got there to see what was there and count them and write down numbers in a book; they told you; as long as you knew they were there, you let them spread around again ... you had common right on Anstey Common. As to whether they strayed on another common (Molland Common), you did not worry as long as you could get the numbers right.

Questioned by Mr Pugsley, Mr Biss said (in effect):- As to Mr Pumfrey asking him (about his declaration, DFB/2) the names of the parts of the Common he (the witness) took the names as stated (in the declaration); he did not know the names. As to straying from the Common onto Molland Common, Fred Cole said you cannot impound stock from Molland Common unless the fence is stockproof between the 2 Commons and it was not stockproof. The straying he was talking about is between Anstey Common and Molland Common, being what Fred Cole told him when he took the Farm.

Next (12 October) at his house in Nymer Rowland oral evidence was given by Mr Harold Theodore Williams (called by Mr Ayres) in the presence of Mr Pugsley and Mr Pumfrey. He was born in 1903 and in the following circumstances knew about the Unit Land in the 1920s:- When 3 years old, they went to a small holding at Yeo Mill; his father was a thatcher. In 1911 they left to go to East Hill, in Knowstone. In 1917 they went to Bickham Barton, about 5 miles from West Anstey, in the Parish of Oakford. In 1925 he married Miss Ruby Tucker of East Ringcombe, and for about 18 months, 1926-27, lived there with his mother-in-law. In 1931 he left (his father staying on at Bickham Barton until 1945) to take a farm at Sandford near Crediton. His wife went back to East Ringcombe to visit her mother until 1938 when she moved to live with them. In 1948 he was farming at Stag Cross near the Exe estuary. His opportunities for knowing West Anstey were particularly: first West Anstey School before 1911 where "he knew everybody!", particularly the Westcott brothers Roland and Sidney and the Daveys of West Ringcombe; secondly they visited Twitchen Farm which was farmed by his uncle Williams and where his cousin of the same age, Sidney Williams, lived; and thirdly he knew Anstey Common while courting from 1922 onwards, and subsequently when staying at East Ringcombe visiting his mother-in-law.

When questioned by Mr Ayres, Mr H T Williams (among other things) said (in effect):- He thought Twitchen had a right of common. He was told that when they fenced 'Twitchen Common' they only fenced in so much and not with a proper hedge so he did no knew whether they went on Anstey Common, perhaps they did perhaps they did not. Twitchen was not his only reason for visiting West Anstey, he had relations there and he knew everybody when he left there at 8 years old. Coming back to the early 1920s, it was just the same as it is now, no fences anywhere, stock could run all over the place, sometimes they go onto the road; sheep and ponies, mostly sheep but quite a lot of ponies. The sheep all had a letter on their back. Milton had more ponies than sheep. Westcott of Woodlands he was (?) the most; there were Frank and Bill Davey of West Ringcombe, and also Fred Davey who lived at Lyshwell and farmed on the back side of Anstey Common (witness looked at JWJM/23), Landcombe was the name. There was J Kelland at Churchtown Farm, he used to see him take stock along the road and putting them up there (meaning The Common) where he met him. As to sheep cattle or ponies, farmers were different. Westcott kept a lot of ponies; Milton had ponies up there, right along, people picked whortleberries. There would be 100 gypsies by Molland Gate near Ringcombe; nobody drove them off; they tethered their ponies and horses. He was friendly with Bill Davey of Ringcombe (witness explain of Frank). After the (1939-45) war he was back there only when the hunt met at Molland Moor Gate. Everybody had names for bits of the Common but he did not know about them. He remembered in 1911 a bonfire for the Coronation of HM George V.

Questioned by Mr Pugsley, Mr H T Williams said (in effect):- Sheep liked whortleberries; they were better on Molland Moor than on Anstey Common; in those days they grew about 12 inches high. Twitchen Common had all been taken in except the six acres; that was the bit they did not take in and therefore still had a right on Anstey Common. Mr Bowden of Venford turned out sheep; they were marked; they would be healthier on the Common. That was why John Milton bought the Guphill fields, because Partridge Farm is very wet; they were not wintered on the Common were being taken home in November. He remembered Jack Kelland of Churchtown because "he used to teach us at the Sunday School.

Questioned by Mr Pumfrey, Mr H T Williams said (in effect):- As to why he thought that the father of his cousin Sidney Williams who farmed Twitchen had a right of

common, it was what he was told but not all (witness explained fencing). He might have assisted Bill Davey when he (the witness) was staying with Mrs Tucker; he was a "likely chap", carrying hay but not so much (assisting with) stock. He (Bill Davey) used to come and help Mrs Tucker; he had seen them taking sheep off the Moor and would help them, the sheep would split. As to where the sheep came from, anywhere on the Common, Longstone Combe or anywhere, not much trouble to pick them out. As to him pointing out "Anstey Rhiney Moor", he could not, and never heard of it. As to him ever seeing anybody putting their sheep onto Bill Davey's end of the Common, (witness laughed). They would go there! When they came up Guphill Gate they would let them (?) go. As to why he was definite about Mr Bowden at Venford having rights of common, he had seen him put sheep on the Common, he knew he had a right there, he never asked if Mr Bowden had a right, he knew, except what he saw, nothing more. As to his knowledge of legal rights Anstey Common, all he knew was what he saw and what he was told, he was not all that interested. He saw the sheep, he saw the mark, the farmers would know in a minute if they had no right there.

Next (12 October) I inspected the Unit Land a second time in the presence of Mr H M J Harrison junior and Mr E J Nicholls and Mrs Burton. Mr Nicholls point out to me that the banks which had during the hearing asked me particularly to look at as indicating the boundary of the land belonging to him; about these banks so pointed out, Mrs Burton suggested that they had been cuased by peat digging drying banks; Mr Harrison suggested that they were field boundaries. I viewed the banks close on the east line of the fenced land and also from around Guphill; Mr Nicholls pointed out that Guphill stone which has on it "G" could be "C" for Clinton situated where there is a gully between Guphill and Ringcombe. I also viewed the stone about 50 yards south of the Ridge Road on one side marked C (?) for Clinton and on the other marked T (?) for Throckmorton. Later by myself I inspected the Lyshwell Farm entrance gate leading to it from Molland Common and from there saw the west side of the Unit Land. Next I motored to Five Cross Ways and onto Slade Bridge.

Next (16 and 17 October) Sir Frederick Corfield QC and Mr Pugsley read written submissions prepared by them (Sir FC/1 to 12 and Pugsley/1 to 3) specified in Parts XV and XVI of the Third Schedule hereto and orally commented and explained them. I said that I would (counsel and Mr Pugsley agreeing) in my decision give liberty to any person to apply within 2 months for a further hearing at which submissions for and against my making an order for costs could be made, and that if no such application was made I would make no order as to costs. Mr Gray QC said he could not by the next day prepare written submissions such as had been read by Sir Frederick Corfield and Mr Pugsley and asked if those he represented would be prejudiced if he did not ask for an adjournment and made only oral submissions on the following day. During the discussion of this question, I said that Sir Frederick Corfield had apparently referred to reports of judgments on the assumption that I was familiar with them, or would for myself read them, and also said that about many of the questions of law by him put forward I had in the course of my years as a Commons Commissioner already formed opinions. Counsel and Mr Pugsley indicated that they were agreeable to my setting out in my decision such opinions (this course would facilitate an appeal by any party to whom my opinions were not acceptable), so no detailed exposition from them as to the effect of the judgments relied on was needed, and Mr Gray could without prejudicing those he represented make all his submissions orally. This agreement shortened the hearing very considerably, thus saving those concerned much expense, but has resulted in my decision taking much longer than usual to prepare.

Next (18 October) submissions were made by Mr Gray QC orally, and the hearing except as to costs, finished.

Preliminary question

The question is: may I in my decision include anything which could result in "Woodland Common", specified in the 1982 decision, continuing to be common land, that is continuing to be registered in the Land Section and subject to at least one registered right of common.

The 1984 order of the Court of Appeal as drawn up is: "... all matters relating to the registration of Common Land and of rights of Common in the Register of Common Land ... be remitted ... (to myself) ... for rehearing and determination according to law". The word "all" is as comprehensive as can be: if on the evidence I have, I consider that Woodland Common should contrary to the 1982 decision, continue to be common land, it seems to me that the 1984 order clearly requires me so to decide.

I take the law to be as declared in the judgments of Slade LJ and Donaldson MR with whom Lloyd LJ agreed, as reported at 1985 2WLR 677 (and 1985 Ch 329). Neither judgment expressly says that on the facts by the Court found or assumed, I am by law precluded from deciding that Woodland Common should continue to be common land. Donaldson MR at page 198 (page 348) postulates that Mr Harrison might at the 1982 hearing have claimed that the position of the Harrison land and Woodland Common "was indistinguishable and that if one was common land so was the other, or alternatively neither was common land"; thus he contemplates that the Commons Commissioner at the further hearing by the Court directed to be held could accede to either claim. The words by Mr Pugsley quoted from Slade LJ are consistent with the Commons Commissioner first deciding against any claim by Mr Harrison that the Harrison land is not common land, and secondly deciding for his benefit that Woodland Common is common land, because its removal from the Register would "affect Harrison land".

As matters stood at the beginning of the hearing, against the submission of Mr Pugsley, I answered the question affirmatively. At the hearing, the claim during it primarily made on behalf of Mr Harrison was that the Harrison land is not common land, and only incidentally (eg Sir FC/11 page 6 and the last line of Sir FC/12) the alternative of his having rights over Woodland Common is claimed. Of the two possible claims postulated by Donaldson MR, this primary claim was the more favourable to Mr Harrison. I still consider that if I reject the claim so made, I can for his benefit decide that both Woodland Common and the Harrison land are common land and that by so doing I would not be acting contrary to the words quoted by Mr Pugsley from Slade LJ.

Pleading

The registrations were made between August 1967 and November 1968. The Objections were made in September 1970. The Commons Registration Act 1965 provides as its

title implies, for the registration of rights existing at the date of registration, see particularly section 10. So I must first determine what were the rights at the date of registration, or possibly (by reason of section 16) the date of the Objections. For most purposes of this decision any day between 15 August 1967 and 24 September 1970 is near enough.

Sir Frederick Corfield submitted that in making any such determination the registrations, particularly those in the Rights Section, are pleadings, to which I must adhere.

A pleading is essentially a statement in a summary form of the material facts on which the party pleading relies, see RSC Order 18 rule 7; it usually concludes with a statement of the relief claimed, and if a declaration of rights is wanted, a suggested form of declaration. Successive editions of Bullen and Leake on pleading contain a form pleading for a right of common of pasture for animals levant and couchant on the dominant tenement, see 12th edition 1975 at page 328. Other pleadings have been considered in reported cases: eg a pleading which did not allege the animals grazing were levant and couchant on any dominant tenement, in Hoskins v Robins (1671) 2 Saunders 319, and see Williams on Rights of Common (1880) at page 25 as to the unrealiability of the report of this case in Pollexfen. The pleadings in the Epping Forest case (very profix) were held to be sufficient in Commissioners v Glasse 1872 7 Ch 456; and a prolix pleading about Lammas lands was struck out in Baylis v Tyssen-Amhurst 1877 6ChD 500. And I suppose many other pleadings could be found in the law Reports of rights such as cattle gates, stinted pastures, rights of common originating under the customs of a manor, etc.

The requisites of a Rights Section registration are in part under the 1965 ACt, in that section 15 requires the number of animals to be quantified and in part under the form of Register (corresponding with the form of application) set out in the Schedule to the Commons Registration (General) Regulations 1966. A Rights Section registration contains no summary of the material facts, and this in my opinion is reason enough for rejecting this submission, unless the equating of a registration to a pleading is very considerably qualified as by me indicated below.

The claim for a declaration part of some pleadings has a superficial resemblance, but the resemblance is not exact: "attached" in heading of column 5 of the printed form is not necessarily the same as "levant and couchant on"; it might mean no more than reputed to appertain within section 62(1) of the Law of Property Act 1925, replacing section 6 of the Conveyancing Act 1881, as it would be if the right is of sole or several herbage for which levancy and couchancy is irrelevant, see Hoskins v Robins supra. Further the purpose of the registration (and of the application leading up to it) is to register a right, that is identify a right well enough for anybody concerned with the land or with some possible right of common over it to be able easily to answer the question has or has not the right been registered. The purpose of the registration is neither to answer every question which might arise as to the exercise of the right nor to substitute for the evidence which might be given as to the scope of the right or as to the words of a written grant a form of words which can be used for solving questions on the

assumption that the right came into existence under a grant in the words of the registration. A claim for a declaration of rights at the end of a pleading is usually for the purposes of determining a dispute shown antecedently to have actually arisen. Before the vast majority of applications were made for the registration of rights, the applicant had no reason to expect any dispute; the scheme of the Act and the Regulations made under it was to enable registrations within a time limit prescribed, to be made in the simplest possible way and at the least possible expense to those concerned. Many registrations were applied for without the applicant investigating (and possibly being unable to investigate) the circumstances from which the right could be defined in legal language. It would be oppressive to applicants to penalise them in any way for not using a form of words in the application such as might seem obvious to counsel settling a pleading for the determination of a known dispute.

But I suppose when beginning a hearing, a Commons Commissioner must have some idea as to what he is trying to do, and having no more than the registration and the grounds of objection must make a mental construction of the sort of facts which might be alleged in support of the registration and objection; and this mentally constructed pleading changes I suppose from time to time as the hearing progresses. Following re Sutton 1982 1WLR 648, the pleading must be constructed from what is said not only by the applicant and the objector but also by any person who offers relevant evidence about the registration. The pleadings by me constructed during my 1985 hearing at the end may have been longer and more detailed than they were at the beginning. But the evidence which I in fact heard could not in my opinion in any manner now relevant have been outside any of the evidence which would have been admissible on any pleading so constructed during the hearing, and there is therefore no reason why my decision should be otherwise than in accordance with the evidence.

But even if I go so far with the submission and for myself mentally construct a pleading, it could like all other pleadings be amended upon application. As to amending pleadings relating to common land, I have the guidance of Jessel MR in Baylis v Tyssen-Amhurst supra who after holding the pleading before him relating to Lammas lands was uncertain and unreasonable and having indicated how the matter could be pleaded, gave leave to amend. In this instant case, the evidence offered was for the most part directed to showing the legal position as it was in 1969-1972; there was no suggestion by anyone that other evidence could be obtained or that anybody could have been misled as to the scope of the inquiry or that an adjournment would have resulted in any more evidence. So I record that if any pleading which I ought for myself have mentally constructed would not have been wide enough to justify anything in this decision, I would have given leave to amend it, so my decision without any "pleading restriction" should be in accordance with the evidence without any regard to the words in the registrations (or the applications for the registrations) or in the grounds of the Objections.

As of right

Some of the witnesses giving evidence before me spoke of the "rights" to which they or others were or were not entitled; sometimes they used the word "rights" in response to a question containing such word and not spontaneously; sometimes their choice of the word was their own.

The effect of evidence given by a witness by reference to rights, particularly when the right referred to is not recognised by law, was considered in detail by the Court of Appeal in De la Warr v Miles (1881) 17ChD 535, the land there considered being formerly in the Forest of Ashdown in Sussex; claims were made by numerous persons who when giving evidence used expressions not known to the law. Of these persons Brett LJ said at page 594: "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 Cottom LJ, at page 596, having said "... and it is said here that these acts if they were 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", said (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 farm but under a general supposition that the (1693) decree gave them a right to do so and that there was some custom which justified it. In my opinion as I have already said it is not necessary ... that the acts done should at the time have been attempted to have been justified in a way in which we think they can legally be justified ...".

I think these above quoted observations although made in circumstances not exactly similar to this case, guide me to the conclusion that I must, regard not the words which any witness uses for the purpose of describing the rights which he thought he or others had, but regard what he and others were actually doing; the thoughts and the ideas of the doers and of the witnesses describing what was being done are irrelevant. However I need not altogether disregard any evidence given by reference to the word "rights", if such was the context or the manner of speaking, that the witness was using the word "rights" to describe what people were doing; if the witness was intending to state his conclusion as to the legal position, his evidence is inadmissible except to the extent that the factual basis of the conclusion might be relevant.

These observations are particularly applicable to the evidence of Mr T Sturgis who used the word "right(s)" and was asked questions which included the word about 10 times in context which might be important; and also applicable to the evidence of others; see below under heading: the ten Farms.

Further as to "as of right", see Beckett v Lyons 1967 1Ch 449 at pages 469 and 475.

Public interest

That the public has an interest in the outcome of these proceedings was said by Slade LJ in his said judgment, see 1985 2WLR 677 at page 686, and 1985 Ch 329 at page 341.

That persons other than the commoners and the owners of the land have an interest in common land has at least since the 18th century been accepted by Parliament, in that various Inclosure Acts for the benefit of the locality, provide for recreational allotments, poor persons allotments, etc; and there are similar provisions in the Inclosure Act 1805 and the Inclosure Act 1845. About the middle of the last century the idea grew up of a plaintiff claiming a right of common for himself and others having a like right, with the object of preventing the land being enclosed; about the development of this idea, see Commons Forests and Footpaths by Lord Eversley (1910 octavo 356 pages); he gives the background of the following cases reported in the Law Reports: Smith v Brownlow (Berkhamstead, Herts) 1869 9 Eq. 241, Warwick v Queens College (Plumstead Tooting) 1871 10 Eq. 105, and 1871 6 Ch 716; Glasse v Commissioners of Sewers and Commissioners of Sewers v Glasse (Epping Forest, Essex) 1871 7 Ch 456 and 1874 19 Eq. 134; Rivers v Adams (Tollard Farnham) 1878 3 Ex D61; De la Warr v Miles (Ashdown Forest) 1881 17 Ch D 534; and Robertson v Hartopp (Banstead, Surrey) 1889 43 Ch D 484. I conclude from these reports that the plaintiff's amenity motive for his claim is irrelevant; although Jessel MR at least must have realised that the Commissioners of Sewers were a thin disguise for the Lord Mayor Aldermen and Citizens of London interested in amenity, see 1874 19 Eq at page 164.

A more effective means of protecting the public interest was introduced by the Law of Property Act 1925 section 193 conferring on "members of the public ... rights of access for air and exercise", and section 194 making unlawful "the erection of any building or fence or the construction of any other work whereby access to land ... is prevented or impeded". These sections have affected public thinking in that many persons at hearings held by me as a Commons Commissioner have described as "common land" places to which the public have a de facto right of access for air and exercise or of which the owner de facto for the benefit of the public refrains from fencing; they hopefully, expect such places to have all the attributes by sections 193 and 194 conferred on lands in such sections precisely defined; and also hopefully expect, knowing nothing of the definition of "common land" in section 22 of the Commons Registration Act 1965 that such places must be registrable. There are or may be difficult questions as to the reconciliation of these two Acts; for example, is the word "exercisable" in the expression "no right of common shall be exerciseable" in sub section (2) of section 1 of the 1965 Act to be read in the same sense as have been "are extinguished" in sections 193 and 194 notwithstanding that section 193 makes a distinction between "has been extinguished" and "cannot be exercised", as to this see CEGB v Clwyd 1976 1WLR 151 and Corpus Christi v Gloucestershire 1983 QB 360 at page 368. Further, it seems possible, at least theoretically, that land may be within section 194 because it was land "which at the commencement

of this Act (1 January 1926) is subject to rights of common" and yet not within the 1965 Act definition of "common land"; so an owner of land who has successfully resisted its registration under the 1965 Act may find that it is nevertheless subject to section 194.

However these questions may be resolved, there must I think be for the purposes of section 194 a difference between land which before 1967-70 (a) was and (b) was not subject to a right of common, and therefore any decision of a Commons Commissioner (a) confirming or (b) refusing to confirm a provisional Rights Section registration affects the public in that (a) provides some evidence that the land in 1926 became and still is within section 194, and (b) may considerably help a person wishing to claim the contrary.

Even if I confirm the Rights Section registrations on the basis that they were when provisionally made properly applied for, there is nothing in the 1965 Act preventing the owners of the Unit Land and the persons entitled to all the rights of common finally registered under the Act at some future time agreeing that such rights shall cease to exist; and it may be that when such agreement has been made they can successfully apply under Section 13 for an "amendment" of the Register. But the consequences of such an amendment in relation to section 194 would be different from it would have been if no Unit Land Rights Section registration had ever been confirmed; it is at least doubtful, whether by such an amendment rights are "extinguished under any statutory provision" within the meaning of proviso (a) to sub-section (3) of section 194. It is not necessary for me in this case to consider whether a right of common of a person who never applies for its registration under the 1965 Act, consequentially because it under the 1965 Act ceases to "be exercisable" comes within the said proviso (a).

Also in my view section 10 of the 1965 Act shows that under section 6 references, a Commons Commissioner is concerned (save as provided by subsection 2 of section 16) with and only with the date of registration. In re Box 1985 1Ch 109, the Court of Appeal so assumed, see pages 115 and 116. The dicta to the contrary in CEGB v Clwyd 1976 1WLR 151 at page 156 were made without reference to section 10, and I consider about them, the observations of Denning MR in Corpus Christi v Gloucestershire supra at page 368 (although he was in a minority about the main question then being considered) indicate that I may properly disregard these dicta, and follow what to me seems the plain consequence of section 10.

I conclude therefore that it is or may be in the public interest that a right of common which existed at the commencement of the 1965 Act should be properly registered notwithstanding that the person entitled to the right either misdescribed it in his application, or neglects or refuses to support his application or has done something after the registration and before the hearing which extinguishes it.

I have not overlooked that at a hearing where all present are agreed that confirmation of a registration should be refused, a Commons Commissioner has usually no alternative but to assume that such agreement is based on evidence that the right in 1965 did not exist. But these proceedings are unusual in that much evidence has been put before me, on which it is contended that the registrations made were in some respects less than the entitlement of the applicant. I consider that I can and should in the public interest when confirming any such registration modify it so as to accord with the evidence given.

The considerations above set out under this heading provide an additional reason for not treating a registration as an unamendable pleading.

One common or five or more commons

Most of the numerous questions discussed at the hearing can be boiled down to one: is the Unit Land one common being West Anstey Common; or is it 5 or more commons, being Anstey Rhiney Moor, Guphilll Common, Woodland Common, Twitchen Common, Anstey Money Common and possibly a common known as "part of Anstey Common"; and perhaps also Venford Common (Register Unit No. CL69).

A similar question about the Epping Forest disputed area was considered by Jessel MR in Commissioners of Sewers v Glasse (1874) 19 Eq 134; this area, about 4,000 acres, all that was then left of the wastes of the Forest of Epping, was in several parishes or manors (in the judgment treated as generally coextensive); the plaintiffs submitted that the common of pasture extended over the whole area notwithstanding that the rights were attached to lands in 12 parishes or parts of parishes, see page 142; for the defendants it was said that each right was coupled with the ordinary manorial right of common of vicinage, and the circumstances that even on numerous occasions owing to the absence of fences cattle strayed where they had no right to be would not be sufficient to create the universal right contended for by the plaintiffs, see page 147.

This case, one of the most famous dealing with common land lasted 23 days in the presence of 6 QCs and 14 junior counsel. The judgment of Jessel MR fills 16 printed pages. He found the area of 4,000 acres was one common. As I read the judgment, this finding was essentially one of fact, but in the course of making this finding he decided (as matters of law) that certain incidental facts were not decisive, particularly that multiplicity of parishes, manors and owners was not decisive against the area being one common and decided (also as a matter of law) what preliminary questions for the purposes of the main question he had to answer, should be considered. The Unit Land is only about 714 acres, less than one fifth of that considered by Jessel MR, so at least I must view with caution arguments that it could not be one common; but subject to this I am I think by law (as declared by Jessel MR) bound as regards the Unit Land to apply his reasoning as best I can.

He at page 149 said: "That case of the plaintiffs is one ... of extreme simplicity ... that the owners and occupiers ... are entitled to rights of common appurtenant for certain commonable beasts levant and couchant upon their lands ... that it is the ordinary common appurtenant to their land. ..." About Churchtown Sir Frederick Corfield suggested (Sir FC/6 pages numbered 6) that the before 1930 conveyances may have been of sole or several rights such as are specified in subsection (1) of section 22 of the 1965 Act. At the hearing this suggestion was not otherwise explored. Rights of sole or several herbage or pasture mey be appurtenant, and I would think them "ordinary" although perhaps not so frequent as rights based on levancy and couchancy. Whether they come exactly within the words used by Jessel MR, I consider his reasoning as much applicable to a joint or several herbage or pasture as to any other appurtenant rights of grazing.

Jessel MR at page 151 said: "One of the great contests in this case has been where were they (the animals) turned out? My opinion ... they were turned out wherever the owners pleased in the parish or in the neighbourhood of the parish ... not confined to their particular parish ... few instances beyond the neighbouring parish but the reason is obvious ... the people turned out near their own homes ... occasionally persons did drive their cattle to a distance for a particular reason with a view of obtaining better feed for them outside the limits of the parish ..."

So I conclude that the circumstances that stock from Woodland Farm were always turned out on the part of the Unit Land nearest to the north entrance to Woodland Farm and stock from Hill Farm and Churchtown Farm were always turned out at or near Badlake does not necessarily limit the right being exercised to the parts of the Unit Land which are most conveniently reached from these Farms.

Jessel MR at page 151 continues: "With this great body of evidence and under these circumstances what I have to consider proved? First of all what is this thing called? ..." And he next asked himself what the disputed area was called and what the various parts of the disputed area were called. It seems to me that this "thing?" test so concisely stated by Jessel MR is another way of stating the general principle applicable in determining the boundaries of commons in all sorts of different circumstances: stated at great length "What is the piece of land about which we are talking?" So I consider whether there is a thing called West Anstey Common, and whether there are things called Anstey Rhiney Moor, Anstey Money Common, Guphill Common and Woodland Common and what is the relationship between these things. On these questions the evidence was conflicting.

As to the before 1965 documents:- The 1841 Tithe Award (JWJM/20) and the 1938 Tithe map treat the Unit Land as 7 distinct parts: Anstey Rhiney Moor (two parts), Guphill Common, Anstey Money Common (two parts) and Twitching Common (then 51a.2r.30p., now relevantly the Twitchen Common Part of about 6 acres, the rest although still included in the name is now enclosed with Twitchen Farm); "West Anstey Common" as a name is not mentioned in the Award although the Award deals with and only with the Parish of West Anstey. In the 1885 Partridge Arms

conveyance (JWJM/3) reference is made to "Middle Common in ... West Anstey" (identified by Mr Milton with two parts of the Unit Land lettered A on the Register map one of which parts is on the map marked as "Anstey Money Common"); this reference to "Middle Common" is repeated in the 1887, 1907 and 1939 Partridge Farm deeds. In the 1903 Churchtown conveyance (JWJM/13) appear the words "pasturage over West Anstey Common" and these words are repeated in the 1930, 1941 and 1943 Churchtown deeds (JWJM/14, 15, and 16). In the 1934 Ringcombe conveyance (JWJM/19) the part of the Unit Land lettered D on the Register map is in the First Schedule described as "part 308 Guphill Common 67.643 (acres), part 308 West Anstey Common 400.00 (acres)", and is on the plan annexed marked "Anstey Rhiney Moor and Guphill Common" with an all over mark "West Anstey Common", (part of the Unit Land west of Guphill Common between The Ridge Road and Ringcombe is not marked at all). In the 1931 Woodland Farm tenancy (EJN/4) the lettered F part is described as "636 Woodland Common, 105a.2r.37p.", and this description is repeated in the Woodland Farm 1956 assent and in the May 1956 conveyance (EJN/3 and 4) and modernised in the December 1956 conveyance (EJN/5) to "308 part Common 105.539". On the 1907 OS Map (JWJM/12) some parts of the Unit Land are named although not outlined, as "Anstey Rhiney Moor", "Guphill Common", "Woodland Common" and "Anstey Money Common"; on it Twitchen Common is marked as comprising then enclosed and unenclosed lands, possibly including the Twitchen Common Part (the 6 acres hereinbefore defined); but as I read the map there are two parts of the Unit Land not on it named being the parts between the Ridge Road and the entrance to Ringcombe Farm and the southeast part being that east of Woodland Common and south of Anstey Money Common so marked; and also as I read the map, the words (in slightly larger letters) "West Anstey Common" are intended to apply to the whole of the Unit Land thereon numbered "308", including the Twitchen Common Part and the CL65 land.

These documents are difficult or impossible to fit together as is obvious enough from the above summary. So I consider how these various parts can be delineated on the ground and how any such possible delineation is relevant to the grazing on the Unit Land and to anything else from time to time done on it.

The Tithe Map is the only document produced to me containing any delineation of the boundaries of the parts of the Unit Land specified in it; apart from the line of Longstone Combe the delineation is by straight or uniformally curved lines.

During my inspections Mr Nicholls drew my attention to the stones which are marked on the Register map (also on 1907 OS map JWJM/21): (a) the southwest corner of Guphill Common as marked on such maps; (b) near the Ridge Road at the northeast/northwest corner of Guphill Common/Woodland Common as so marked, and (c) near the Ridge Road at the northeast corner of Woodland Common as so marked. During my June inspection Mr Nicholls pointed out where stone (c) used to be (it had recently been removed). During my October inspection I saw stone (a) which had on it "C" (or possibly "G"), and stone (b) which has on it "C" on one side and "T" on the other. I infer that these stones were put there by someone intending to mark 3 points considered to be of importance; for this purpose they may be adequate but neither they are nor the reason for their importance is,

apparent on an inspection. They are in an extensive open area and do not apparently indicate any division of such area which could relate to its use; the east/west line of the Ridge Road would perhaps be a better north boundary but there is nothing to indicate the use on one side is any different from the use on the other. On the south, the line south of the road of the fences between (a) the Unit Land and (b) Ringcombe Farm, Woodland Farm and Churchtown Farm would be a better boundary. My guess is that the stones were put up to mark an ownership boundary at one time agreed between C and T and perhaps others. There is another stone (d) marked near "1137" on the Register map and not before mentioned; under this guess I would divide the ownership of the Unit Land into 3 parts by the line Longstone Combe to stone (b), thence to stone (c), and the line from stone (b) to stone (a); unfortunately my guess coincides neither with the ownership boundaries as agreed at the hearing norwith any of the deeds produced.

The fence since 1982 erected by Mr Nicholls now appears to mark a boundary, but such fence has no relevance to anything I have to decide. He both in the course of his evidence and at my October inspection suggested that the east (and west) sides of this fence were on or near the line of some pre-existing boundary. I walked up much of the east of these alleged boundaries starting from the south; for some distance there is a low bank which considered by itself might have been a boundary bank, but it becomes indistinct; further over much of the now fenced in "Woodland Common" there are similar banks so if the one pointed out by Mr Nicholls is a boundary, much of the so called Woodland Common is criss-crossed by similar boundaries. I need express no opinion as to the origin of these banks (at my inspection there was difference of opinion): I need only say that I consider this part of the evidence of Mr Nicholls to be unreliable. It was not suggested that the west boundary should be considered any differently.

Mr Sturgis was the only witness who with any spontaneity named the parts of the Unit Land: Ringcombe Common, Woodland Common, Churchtown Common and Twitchen Common. As I understood him, his naming was on the basis of his conclusion that the farms bearing these names and none other farms had grazing rights over the Unit Land, that each such right extended over part only of the Unit Land, and logically therefore the part to which the right extended should have the name of the farm to which the right was attached. In this respect Mr Sturgis was unique: he was the only witness who as Ringcombe Common and Churchtown Common named parts of the Unit Land north of Ringcombe Farm and Churchtown Farm; no such names appear in any map or any other document produced to me, or were suggested by any other witness. As explained above under the heading: As of right, the conclusions stated by Mr Sturgis about the rights existing are not admissible in evidence and as explained below under the heading: the ten Farms, some of his conclusions are not supported by the facts as I find them having considered his and the other evidence I have. He in his evidence accepted Anstey Common as "the whole Common"; as to there being other Commons part of this thing, I consider his evidence so far as admissible at all, to be unreliable.

So is there a thing called "Woodland Common"?

First is a part of the Unit Land called Woodland Common because it was in fact exclusively grazed from Woodland Farm? I accept that stock from this Farm would generally be found on the part of the Unit Land nearest to its north fence; but I reject the suggestion that from this I can deduce either that such an area is well defined or that stock from other faems did not go on to it; stock from Partridge Farm and the Guphill Fields or Mr Milton entering from Guphill Gate could easily, and almost certainly would go on to such Part; likewise the stock from Churchtown Farm and Hill Farm entering the Unit Land by Badlake Gate going northwards towards the Danes Brook would go onto the Part; and similarly stock on the Slade Bridge part of Hill Farm would when returning to the main part of the Farm go onto the Part; Mrs Sloman indicated that stock from Twitchen Farm did cross this part. Mr Nicholls never said that stock from farms other than his own never did this; all he said was that stock from other farms with the exception of those of Mr Hill had never bothered him. Because his stock would, so far as they were grouped at all, usually be on this Part and deter other stock from going near to them, he would be unlikely to be much bothered. I reject the suggestion that the grazing of Mr Nicholls on this area had given to it a precision such that the words "Woodland Common" defined an area so called.

I have not overlooked that Mr Nicholls stated that he had been troubled by sheep of Mr Hill and his dog had driven them off back along the road in the mornings when he was up there to catch the school bus; Mr Nicholls mentioned that these sheep were mixed up with Mr Weaver's. He did not say and I decline to infer that this driving off was an assertion by him of an exclusive right to graze the lettered F part of the Unit Land or that anyone else knew of it or that if they had, they would have thought he was doing more than making it easier for their owner at his next gathering. I have no other evidence that any stock had ever (otherwise than by or for their owner) ⟶ been driven off any part of the Unit Land onto some other part.

Mr Nicholls gave evidence on succeeding days altogether for about 4½ hours. To begin with he had in front of him the 1931 lease and the 1956 conveyance (EJM/4 and 5) which contained "105a.3r.37p. Woodland Common". He was questioned about this 105 acres sometimes as "your 105 acres" or as "Woodland Common". He himself never used the words "Woodland Common", although he spontaneously used the words "Longstone Combe", "Guphill" and "Molland Common". When questioned by Sir Frederick Corfield about "Rhiney Moor", Mr Nicholls said "I get muddled up where Harrison land is". He never mentioned Anstey Money Common when questioned about Mr Milton. The questions he was asked did not necessarily require him to give a name to his 105 acres; so his failure to use the words "Woodland Common" is not significantly against him, but in the context of the question put by Jessel MR, I record Mr Nicholls personally said nothing from which I could infer that the lettered F part of the Unit Land was by him or by those who helped him with his grazing of the Unit Land or by anyone else ever orally called "Woodland Common".

From the point of view of Mr Nicholls, the use of the words "Woodland Common" starts and ends with the 1931 tenancy agreement and the 1956 conveyances. From the agreement and conveyances considered by themselves, I would infer that the 105 acres although therein called "common" had somehow been enclosed and become part of the farm known as Woodland Farm; I therefore record my conclusion that at all now relevant times the 105 acres was wholly unfenced, was without any distinct boundary, looked unlike, and was generally grazed not as, the rest of the Farm but appeared to be and was used as if it was common land within the ordinary meaning of these words.

Mr Pugsley in his final submission contended that Messrs Nicholls had exclusive grazing rights over Woodland Common and sought to distinguish the observations of Buckley LJ in Tehidy v Norman 1971 2 QB 528 about Tawna Down at page 554:-

> "No distinction, we think, is to be drawn between any parts of the Down. ... Animals which had access to to one part of it had access to every part of it, and the only possible view appears to us to be that anyone who enjoyed grazing rights on any part of the Down enjoyed them over the whole Down."

Mr Pugsley drew attention (Pugsley/3 page 6) to the 1958 Report of the Royal Commission at page 232 where it is said that Brendon Common contains 3,300 acres, and submitted that the words above quoted "certainly would not apply", and it was not necessary to apply them to the Unit Land which is three times as big as Tawna Down containing only 240 acres. I reject this submission because the words above quoted are I think a concise statement of the principles established by Jessel MR in 1874 which he applied to an area five times as big as the Unit Land.

As to the evidentiary value of a tithe award and map, see Knight v David 1971 1WLR 1671. The delineation of Guphill Common, Anstey Rhiney Moor, Anstey Money Common and Woodland Common on the map may be some evidence that the delineation on the map of their boundaries were then in accordance with local repute; but such evidence is not conclusive and is inconsistent with all the other evidence I have. Considering the weight to be attached to an old map, I need not disregard everything that has happened since, see Copestake v West Sussex 1911 2Ch 331.

On the above considerations I conclude that before 1970 there was no recognised and definable area known as Woodland Common as the maker of the Tithe Award supposed, that the words "Woodland Common" as used in the OS maps denoted an area with no precise or distinct existence. So I answer the question put by Jessel MR by saying there is no thing called "Woodland Common", at least if the question is asked as he might be supposed to have asked, is there a thing called "West Anstey Common"?

Is there a thing called "Anstey Money Common"?

Anstey Money Common was used in the Tithe Award as describing the two parts of the Unit Land lettered A on the Register map: one north of the Ridge Road bounded on the west by Longstone Combe and the other south of the Ridge Road, a comparatively small triangular area by Badlake Gate. On the Register map and on the OS maps Anstey Money Common apparently relates only to the part north of the Ridge Road.

Mr Milton identified Middle Common mentioned in his 1885 to 1907 deeds (JWJM/3, 4 and 5) with Anstey Money Common, both sides of the Ridge Road. This identification is of small significance compared with his use of the words "the Common" as meaning the Unit Land.

Apart from Mr Veysey no witness spontaneously mentioned Anstey Money Common, and his mention is not significant because his knowledge is only recent and he was I think influenced by what he had seen on the maps.

My conclusion is that in relation to the question propounded by Jessel MR, Anstey Money Common is less substantial than Woodland Common.

Is there a thing called Twitchen Common?

The history of the various encroachments from Twitchen Common as specified in the Tithe Award is below summarised under the heading Destructive Ownership. The Twitchen Common Part as by me herein before defined could I suppose by some be regarded as part of Twitchen Common that was. On the questions dealt with under this heading, practically Twitchen Common had at all possibly relevant times ceased to exist.

Is there a thing called Anstey Rhiney Moor?

The part ("the Harrison Land") of the Unit Land by the 1934 conveyance (JWJM/20) expressed to be conveyed is in the parcels described as "portions of Guphill and West Anstey Common" and the Schedule is consistent with this. The 1934 conveyance map treats it as Anstey Rhiney Moor and Guphill Common and an unnamed area adjoining and north of Ringcombe Farm and possibly another unnamed area bounded by Lyshwell and Danes Brook.

The Tithe Award treats the Harrison Land as Anstey Rhiney Moor and Guphill Common.

Sir Frederick Corfield when questioning Mr Nesfield used the words "Rhiney Moor" 3 times, but Mr Nesfield except by answering the questions did not use the name his evidence did not (and was not I think by him intended to) deal with this question.

Sir Frederick Corfield asked Mr Crossman whether he "turned out on the Moor", and Mr Crossman used the word "Moor" in his answer. Although he identified part of the Unit Land by referring to Rhiney Moor and Guphill Common, he generally used the word "Moor" as meaning where he particularly and others as well grazed stock (himself "sheep chiefly"); from his oral evidence I cannot infer that he called any grazing area "Anstey Rhiney Moor". His application dated 24 November 1967 apparently prepared by Mr Nesfield, describes the land over which the right of common is exercisable as known as "Anstey Rhiney Moor, West Anstey Common, Guphill Common" marked with red lines, and such red lines extend eastwards to the footpath so as to include both sides of Longstone Combe that is further east than the delineation on the Tithe Map (JWJM/22).

Mr Fred Davey once used the words "Anstey Rhiney Moor" as referring to the part of the Unit Land by Lyshwell meaning as I understood him all that north of the Ridge Road; but he referred many times to West Anstey Common.

Upon these considerations I conclude that Anstey Rhiney Moor and Guphill Common have no more substantial existence than Woodland Common.

Is there a thing called "West Anstey Common"?

Persons who live in West Anstey have no need to distinguish this thing from East Anstey Common (marked on the OS map 1/50,000) as nearby "West Anstey Common" or to call it more simply "The Common".

When applying for the registration on behalf of the Parish Meeting Mr A J Milton included Venford Common which unknown to him had then been registered as Register Unit No. CL65; the finality of the CL65 registrations does not preclude me for the purposes of the Unit Land concluding that West Anstey Common comprises both the Unit Land and the CL65 land; accordingly in this decision as the context requires, these expressions should be so understood.

Mr Sturgis who was one of the few witnesses who had considered the names of the various parts of the Unit Land, towards the end of his oral evidence after he had explained his theory about the proper naming of the parts of the Unit Land, easily slipped into accepting the questioner using and himself using "The Common", as referring to the whole of the Unit Land.

Mr Biss who in his oral evidence at some length dealt with the naming of the Unit Land and of its parts, indicated that to him "The Common" meant the whole of the Unit Land and that he knew the names "Woodland Common, Anstey Money Common, Anstey Rhiney Common and Guphill Common" only when reminded about them as names he had seen on maps in the house of his landlord. I accept the evidence of Mr Biss on this point and generally conclude from it that between 1939 and 1945 to those grazing on the Unit Land, "The Common" meant the whole of the Unit Land and not an area made up of five or more commons.

Many of the witnesses used the words "West Anstey Common" or "Anstey Common, or "The Common" or "The Moor". Some perhaps only once or a few times. Save as above mentioned there was no question or doubt that they all meant: the Unit Land. The only map produced which did not have the words "West Anstey Common" on it was the Tithe map; the 1/50,000 OS map names the Unit Land as West Anstey Common (the CL65 land might be included in that on it named "Great Common").

The minutes of the Parish Meeting produced to me include the words "Anstey Common" which in the context could only mean the Unit Land. Mr Keigwin as vice chairman of the Meeting, so called the Unit Land, as also did Mr Milton, see below.

Except as regards the CL65 land, the boundary of the Unit Land is apparent to anyone who inspects; for a large part the Danes Brook, for another part the high bank and hedge or other fence between it and Molland Common and for the remainder the fences of the adjoining farms; during my inspections I thought the boundary was clear enough within a few feet everywhere. I have not overlooked that I had evidence that the fences had been in disrepair before, during and after the 1939-45

war: those between the Unit Land and Molland Common consequent on military training and those between it and the farms consequent on agricultural depression. Nevertheless I infer that the boundary line would always have been clear. That the Unit Land so far as now relevant has always been essentially the same as it is, as far as living memory goes back, was established by the evidence of the more elderly witnesses being Mr T Sturgis, Mrs A S Slader, Mrs B Tarr, Mr H T Williams and Mr F W Southwood (born 1894, 1901, 1901, and 1906) whose evidence about this I accept.

During my inspections, assuming that the fence recently erected by Mr Nicholls enclosing the lettered F part was not there, I doubted whether Anstey Rhiney Moor, Anstey Moor Common, Guphill Common, Twitchen Common and Woodland Common were things at all; at the best they appeared to be no more than vague descriptions usable by anyone who knew of them to describe approximately where a lost animal might be found. By contrast the Unit Land appeared to be a well defined grazing area which had in all probability existed as such from time immemorial, in every way appropriately described as a Parish Common associated with the farmlands in and near the village of West Anstey.

Upon these considerations, I find:- There was for many years before 1967-70 and is now a distinct and definite thing which is called West Anstey Common, or for short by those of the locality Anstey Common or the Common and this thing is in all now relevant respects the same as the Unit Land. By contrast Anstey Rhiney Moor, Anstey Money Common, Woodland Common and Guphill Common which were and now are vague and uncertain things, have never in the sense in which Jessel MR propounded his question had any existence now relevant.

Jessel MR having concluded such rights as were claimed by the plaintiffs were established in fact, went on at page 152: "The great point of the contest ... was that the turning out was not beyond the parish ... there is a remarkable absence of evidence the other way ... I should have expected to have found some traces of prohibition of turning out beyond ... you have not a trace of any beast having been impounded for being turned out outside the parish".

I have to translate the Epping disputed area of over 40,000 acres divided between about 13 parishes and the Unit Land of about 750 acres possibly divided into 5 or more so called Moors or Commons. I too have no trace of any prohibition on persons who normally put their animals out near Guphill Gate or Badlake Gate or from the Twitchen Common part or from Venford Farm ever been prohibited from turning out anywhere else or of any animal having been impounded for being turned on or being on Guphill Common, Woodland Common, Anstey Money Common or Anstey Rhiney Moor.

At page 159 of his judgment, Jessel MR considered the possibility of those of each of the parishes concerned having a right of vicinage over so much of the Epping disputed area as was within an adjoining parish, and concluded at page 161 that there could be "no common of vicinage .... If common there be, it must be the ordinary common appurtenant and nothing else". Under this heading I need say no more than if Jessel MR was unable to find rights of common of vicinage between parishes, I could not properly find any such right as existing between different parts of the Unit Land, being much smaller areas than those considered by him.

From the judgment of Jessel MR and my finding that the thing with which I am dealing is West Anstey Common, identical with the Unit Land for all now relevant purposes, it follows that for the purposes of determining the applicability of prescription at common law, or of the 1832 Act or of any presumption of a grant, any exercise of a right of common over the Unit land for the period requisite by law must in the absence of special circumstances be attributable to an exercise over the whole of the Unit Land. This conclusion disposes of many of the questions before me discussed as to the before 1967-1970 position, but leaves open questions (not discussed by Jessel MR): (a) whether any person claiming a right by prescription has by himself or his predecessors exercised the right for long enough for it to be so established; (b) the relevance as regards any particular right that the person entitled to it also owns part of the Unit Land; and (c) whether the right otherwise established has been lost under the legal rule stated in White v Taylor 1969 1Ch 150.

The ten Farms

Lyshwell (Entry No. 7):-

About grazing on the Unit Land from this and other farms much was said by Mr Davey; when he had finished I assumed that he or his successor as tenant or the present owner would submit that at least in respect of the part of Lyshwell known as Landcombe a right by prescription had been established. No such submission was made by him or anyone else; intentionally as Sir Frederick Corfield and Mr Gray explained.

After my October inspection I motored to the entrance from Molland Common of Lyshwell, apparently the only or main entrance to the Farm. From there I could see the Landcombe building (no longer used as a human habitation). Lyshwell is or was in the Parish of Molland and much of its boundary adjoins Molland Common. Although part of its boundary adjoins the Unit Land, its situation and surroundings are such that although from it grazing from time immemorial on Molland Common might be expected, grazing on Anstey Common would be questionable, as being only conveniently possible either through or by the side of Molland Gate or by one of the gates on the east side of the Farm, all across a boundary obviously intended to be of a grazing area (the Unit Land).

On these considerations I conclude that the grazing described by Mr Davey from Lyshwell was not as of right and in the absence of any evidence in support of the registration at Entry No. 7 my decision is that it was not properly made.

I record this conclusion in no way reflects on credibility of Mr Davey in that I am now satisfied that he never intended me to reach any other conclusion.

The accessibility of the Landcombe buildings to the Unit Land might be regarded as showing that they were, unlike the Lashwell buildings, in the parish of West Anstey, and thus supporting the view expressed by Mr Weaver that they were in the parish; about this view, which I think doubtful, I need not express any opinion.

Guphill Farm (Entry No. 4):-

Major Butchard as owner from 1958 to 1962 said that there was no grazing on the Unit Land from this Farm. No evidence or argument was offered on behalf of Mrs Tuckett the present owner, she having by letter (Part I of Third Schedule) withdrawn.

Because part of the Unit Land is known as Guphill and because Guphill Farm containing about 38 acres adjoins Guphill Road (the lane leading to Guphill Gate) and its north end is near to the Unit Land it is perhaps surprising on appearance alone that there is attached to it no right of grazing over the Unit Land. From the 1919 conveyance (JWJM/9) produced by Mr Milton in support of the registration at Entry No. 6 (part of Guphill Farm) I infer or guess that this par (3 fields containing about 26 acres) was in 1919 part of Guphill Farm. So rights from Guphill Farm that was before 1919 he considered as represented by Entry No. 6 in the absence of agreement the rights would have been apportioned according to area 38:26; so an apportionment to the whole of the 26 acres was not legally impossible.

No evidence in support of rights attached to Guphill Farm was given. The contribution of Mrs Tuckett to the cost of the cattle grids is not I think significant, because a grid at Guphill Gate would incidentally benefit her. My decision is therefore that no such right as is registered at Entry No. 4 existed in 1967-1970.

As to the other Farms:-

Except Mr Harrison and Messrs Nicholls who were content to rely on their ownership of parts of the Unit Land, all those seeking to establish rights of grazing relied on evidence of useage either wholly, or in the few cases mentioned below where their claims were allegedly supported by documents, partially.

As to the apparent use generally made of the Unit Land in the more remote past (say before 1939), I accept the evidence of Mr T Sturgis, Mrs B Tarr, Mr W G Phillips, Mr F W Southwood, and Mr G Gibbs who were born in 1894, 1901, 1904, 1906 and 1908 as establishing that except in certain immaterial matters of detail, the Unit Land has apparently been used from the earliest time within living memory much as it is now, except only the changes consequential of the fence enclosing most of the letter F part recently erected by Messrs Nicholls. So

I infer (as I might otherwise have been inclined to) that the Unit Land has from time immemorial been generally used as described in detail by those with younger memories.

So far as relevant to usage, the state of the Unit Land within living memory was as follows:- Beginning with the 1920s (as far back as any witness could remember in detail), there were then gates or at least gate posts marking gates or the reputed sites of gates around the Unit Land, indicating that at least before the 1920s the other fences around the Unit Land were stock-proof and that the Unit Land as a whole was then a grazing area. From some time in the 1920s to the beginning of the 1939-45 war, fences and gates deteriorated, so that stock on any of the nearby farms put on one of the farm fields not adequately fenced could easily go onto the Unit Land; however the grazing on the Unit Land was generally worse than on the Farms, so the problem of those seeking to graze the Unit Land was to get their stock to stay there and not come back; further there was a hazard that stock instead of coming back would go onto Molland Common or down a road in some other direction and (if not collected) be lost. Grazinng was during the 1939-45 war more difficult because the military training (tanks etc) tended to damage the grass on the Unit Land and the fences around it. Contra. the turning over many of the farm fields to cultivation for food made the grazing on the Unit Land more desirable and during the war some of it, or at least some of the land which was near to the Common and which was then considered to be part of it (particularly the Twitchen 14 cres below mentioned) was cultivated. After the 1939-45 war gradually fences were improved and the grazing on the Unit Land became less troublesome; nevertheless until 1961 and the succeeding years when the cattle grids now effectively protecting straying from the Unit Land down the roads which cross it there continued the risk of such straying. The cattle grids made it easier to stock the Unit Land and made grazing on it less troublesome and more profitable. Mr Biss and Mrs Burton both spoke of regular Sunday morning meetings on the Unit Land of those who had grazed stock there during the proceeding week, to discover whether any of their stock had suffered accident by straying or otherwise and as a pleasant social occasion. Farms which adjoined the Unit Land had an advantage over those further away in that their stock could generally be found on the part of it nearest to the farm from which they came and were for this reason easier to regulate. Nevertheless during the whole of this period there was no fence or other obstruction preventing stock from going anywhere on the Unit Land and all such stck tended to go down towards Danes Brook for a drink, and down towards the good grass near the Brook and Longstone Combe; there was however an alternative supply of water near the north boundary of Woodland Farm (I was shown it at my June inspection) which was convenient to stock not far away from it and which except during some days in the summer (their number depending on the weather) did not dry up. Throughout the grazing was chiefly of sheep, although there were at all times some cattle. Additionally there were a few ponies which might come from one of the eight farms or from elsewhere, and which were difficult to regulate in that they might leave the Unit Land for better grass elsewhere. This generalised description of the Unit Land must be taken to be subject to the qualifications consequent on the very considerable variations in its vegetation (grass, heather, whortleburys and the like).

Mr E M Harrison who had for many years known the Unit Land in a general way from having ridden over it and spent holidays near it, I think always adhered to the view he expressed to his uncle in 1934 (HMJH/3) that the common rights were not "of great importance"; his theory was as I understood him and expressing it more precisely than he did: having become the owner under his 1934 conveyance (JWJM/20) of part of the Unit Land (as defined in the conveyance map), it necessarily followed that any stock not belonging to his tenant on such part would be accepted by their owners to be straying there, and he therefore had no need to make any objection to them about it; and similarly any stock of his tenant on other parts of the Unit Land could or should be similarly accepted as strays by the owners of such parts. In my opinion merely by having this theory, he could not halt the operation of the law so as to prevent persons who for the requisite periods graze on all or any of the Unit Land acquiring rights of common given to them either at common law, or under the 1832 Act or under a presumed grant. The effect of him and his son holding this theory is one of the major questions in these proceedings and depends on the documents produced and detailed consideration of the evidence about grazing. Mr E M Harrison said nothing relevant about the documents (their meaning and effect being matters of law), and he had of the Unit Land much less knowledge than many of the other witnesses who gave evidence, so that what he said about it could not significantly affect my decision, and certainly could not be decisive.

About grazing Mr H M J Harrison and Mrs S C Harrison had less knowledge than Mr E M Harrison. Although they may have done much by tracing documents and making suggestions which by being put forward on their behalf by Sir Frederick Corfield have helped me reach a decision, their oral evidence was I think of less significance than that given by Mr E M Harrison.

Mr Sturgis for a man of his age was extrordinarily alert and interested in the doings of other people; I infer that he was always so and is now and has always been respected. I thank him for the 1½ hours he patiently answered questions, particularly because towards the end he appeared rather tired. He had somehow concluded that grazing rights over the Unit Land could only be such that they were over parts which were named after the farm from which they were exercised, so there were three commons, Ringcombe, Woodland and Churchtown Commons, each grazed from farms of that name; as to the part north of Ridge Road, nobody had it. I reject this part of his evidence not only because it was contrary to what every other witness said, and contrary to my own view of the law as elsewhere stated in this decision, but also because conclusion of a witness so expressed is not admissible in evidence for the reasons explained under the heading: as of right. This conclusion of his was I think based on his recollection of seeing stock from these 3 farms on the Unit Land, and provides some confirmation of the findings which I would make upon the evidence of other witnesses that there was in fact such grazing. Mr Sturgis was sometimes imprecise as to the years of the grazing he described, and about this I prefer the evidence of other witnesses who gave dates; perhaps

he was describing the 15 years before 1935, not known by most of the witnesses. I consider unreliable the parts of his evidence from which might be inferred that there was no grazing on the Unit Land from any of the other farms which I am concerned, not only because he was imprecise as to his dates but also because I think that any such grazing might have been at times when he was not rabbiting on or near the Unit Land, or on a part of it with which he was not concerned. I need not as regards all the claimants make any findings as to how the Unit Land was grazed by them before 1935, because grazing since 1935 in most cases is enough to satisfy the requirements of the 1832 Act or of a presumed grant, and Mr Sturgis said nothing reliable which could prevent me giving full effect to such post 1935 grazing.

Mr Nesfield said: "He was sure that none other than Mr Crossman had any rights on Anstey Rhiney Moor". This negative conclusion is inadmissible in evidence, at least in the absence of any evidence from which I can deduce ←——————→ the facts on which he based it, see above under the heading: as of right. He was not asked about any such facts; may be he meant no more than he had seen —→ no such stock when he was on the Unit Land; however this may I am unable to infer when or how often he was there.

Sir Frederick Corfield said (Sir FC/1) that Colonel Kilner-Brown who had since April 1968 been the agent of Mr H M J Harrison, had died and suggested (Sir FC/5 page 24) those claiming rights must show that the agent of an owner who employes an agent knew of the use, citing Diment v NH Foot 1974 2All ER 1785. The basic principal is that the use relied on to be "as of right" at least must not be secretly; the absence of conscious deception is not enough; "the enjoyment must have been open, of such a character that an ordinary owner of the land diligent in the protection of his interests would have or must be taken to have a reasonable opportunity of becoming aware of that enjoyment", see Union v London 1902 2Ch 557 page 571. In my opinion in the context of the Unit Land being one common, the use relied on was obvious, and Mr E M Harrison and Mr H M J Harrison and anyone employed by them had a reasonable opportunity of becoming aware of it; further I think Mr E M Harrison knew well enough what was happening to prevent the enjoyment as against him being in any sense a secret; his inactivity was due to the view he had (perhaps on advice) taken as to the effect of his 1934 conveyance; users of the Unit Land were I think under no obligation to ascertain what his view was and point out to him the possibility of his being mistaken; I decline to infer from his evidence that he ever at any now relevant time explained his interpretation of the conveyance.

As to Churchtown Farm (Entry No. 8):-

By the 1903, ——→ 1930, 1941, 1943 and 1960 conveyances (JWJM/13, 14, 15, 16 and 17) ←————→ Farm was expressed to be conveyed

> "Together with all rights and appurtenances to the said premises belonging or appertaining and particularly with all rights of shooting turbary and pasturage over Anstey Common".

The 1930 ——→ and subsequent conveyances include the right of trout fishing in the Danes Brook.

Sir Frederick Corfield contended that in these conveyances, particularly that of 1903, the words "Anstey Common" above quoted meant Anstey Money Common, that is the part lettered A Register Map; and that accordingly any grazing right attached to Churchtown Farm over the Unit Land which could be established by usage or otherwise was necessarily limited to the part of the Unit Land lettered A. He emphasised that the words in the conveyance were not "West Anstey Common" so they could be read as being applicable to the part of the Unit Land known as "Anstey Money Common".

Apart from the 1860-61 and 1934 documents next below mentioned, for the reasons set out above in support of my finding that there is a thing called "West Anstey Common" or "the Common" and upon the like evidence and considerations I am of the opinion that in each of the said conveyances the words "Anstey Common" in any of them would to any well informed local person reading them at the date when they were made, mean the Unit Land (all of it) and possibly include the CL65 land and some of the land now occupied with Twitchen Farm and not registered under the 1965 Act at all.

Neither the 1860/61 law reports nor any of the 23 pages of the two 1860 affidavits headed "In Chancery" referred to in the submissions made by Sir Frederick Corfield on 16 October after the oral evidence had been concluded (page 18 of Sir FC/6) were then read. There were two proceedings, one in Chancery (Kindersley VC) and the other in the Queens Bench (in banc presided over by Ealle CJ). In the Chancery proceedings reported 1860 8WLR 658, Lord Portsmouth sought an injunction against Mr Partridge for pursuing certain proceedings under the Inclosure Act 1845 which the Inclosure Commissioners were proposing to follow for his possible benefit, the enclosure under consideration having originally been proposed by Lord Portsmouth; Kindersley VC refused the injunction with costs payable by Lord Portsmouth. The Queens Bench proceedings reported at 1861 9WR 336 and 3LT 979 were for an order prohibiting the Inclosure Commissioners considering the claim then made by Mr Partridge as the owner of part of the manor of Anstey Money and/or 178 acres in such manor; the Court refused the application ordering Lord Portsmouth to pay costs. What ultimately happened is not deducible from the said reports; I can find no record in any of the lists of Inclosure Acts and Awards available to me referring to any such manor, and I accept the submission of Sir Frederick Corfield that no award was made. I have not read the two 1860 affidavits, apparently used in the said Chancery proceedings, because they were not read at my 1985 hearing, because throughout the hearing Mr Gray objected to affidavit evidence, and because I cannot at present imagine how such affidavits whatever they contain could be relevant to the determination of the true meaning and effect of the 1903 conveyance and on the 1934 letter (JWJM/13 and JMJH/25) written 40 years later.

As I read the 1841 Tithe Award, Churchtown Farm with Blindwell containing 200a.0r.27p was owned by W B Stawell who also owned Venford containing 21a.1r.39p; and Wood and Hill Farms containing 95a.1r.34p. and 79a.3r.24p. were owned by John Partridge. This Award and the said 1860 law reports are the only before 1903 documents I have possibly relevant to a submission made by Sir Frederick Corfield that I should infer that before the 1903 conveyance

made by Lord Portsmouth he was Lord of the Manor of Anstey Money and that lettered A part of the Unit Land was waste of such Manor and that therefore the conveyance should be construed as creating for the first time a right of pasture over the lettered A part; such inference may be correct, but I feel unable myself to make it. Even if it be correct, it does not in my opinion preclude my finding that after 1903 there was attached to Churchtown Farm a right of grazing over the whole of the Unit Land, being as to part by grant under the 1903 conveyance and as to the other part my prescription; for it is I think clear from the above quoted judgement of Jessel MR that the circumstance that land is of more than one manor is not decisive against being one common.

In his 1934 letter (JMJH/25) Mr Kelland (then one of the owners of Churchtown Farm) in answer to a question apparently made on behalf of Mr E M Harrison as prospective purchaser of Ringcombe Farm says:

> "... The common right on Church Town it is a joint right between Lord Clinton and the owners of Church Town, it was formerly known as The Disputed Right in consequence of a law suit between the late Lord Portsmouth and Mr Charles Partridge of Withiridge and it was decided in Court that they both had an equal right. It is now known as the Middle Common or Anstey Money. It consists of about 400 acres and has a Grazing and Turfage Right also Sporting ..."

The writer apparently assumed that the common right owned by Lord Clinton as owner of whatever he thought Mr Harrison was about to buy was entitled to a right equal to that to which the owners of the Churchtown Farm were entitled, so clearly he was not intending in legal language to state the consequences of a law suit, and such consequence cannot be deduced from the said printed law reports. Taking the words used in the letters as expressed, they can only mean I think that the rights attached to the land about to be purchased by Mr Harrison and the rights attached to Churchtown Farm were both over the whole of the Unit Land, that is to say that the rights were exactly as Jessel MR found to be over the Epping Area which he was considering and which it was by Mr Gray QC contended they were.

A conveyance of an interest in land therein particularly described is some evidence that the party conveying was the date of a conveyance in possession of the interest expressed to be conveyed, the conveyance itself being an act of possession, see Blandy-Jenkins v Dunraven 1899 2Ch 121 following Malcomson v O'Dea 1863 10HLC 593. Possession is prima facie evidence of ownership, and such a conveyance if coupled with present or recent actual possession of the land or the interest in it expressed to be conveyed is strong evidence of ownership → and indeed in most transactions → is regarded as practically conclusive by lawyers and others dealing daily with land

In case I am mistaken about my reading of the 1903 conveyance, I consider the observations which were made by Lord Lindley in Gardner v Hodgson 1903 AC 229 at page 240 and which were relied on by Sir Frederick Corfield on the

basis that in it instead of the words "Anstey Common" there had been words unambiguously meaning the lettered A part of the Unit Land. Such observations would not I think have any application if the conveying parties did not own the lettered A part. But if (as Sir Frederick Corfield submitted I should infer) the conveying parties in 1903 own the lettered A part then I accept that the observations would preclude any subsequent use by those of Churchtown Farm of such part which could be explained as being in exercise of a right of "pasturage" establishing as against Lord Portsmouth or his successors of in title as owner of such part any greater right. But I had no evidence, and Sir Frederick Corfield did not as I understood contend that Lord Portsmouth ever owned any part of the Unit Land other than lettered A Part and in my opinion such observations have no application to any such other parts, and in particular would not preclude those of Churchtown Farm acquiring by use or otherwise the right of "pasturage" over any parts of the Unit Land owned by Mr Harrison or Messrs Nicholls.

In addition to the said conveyances, in support of there being a right attached to Churchtown Farm over the whole of the Unit Land, I have: (a) the evidence of Mr F W Southwood who mentioned that when in 1920 he started working for Mr James Milton among the other persons who then grazed the Unit Land was Mr John Kelland whose land ran right up to Badlake Gate and more or less every-one who had joined the Moor used it; (b) Mr Gibbs was born in 1908 was mentioned among those whom he knew to have stock on the Common included John Kelland from Churchtown; (c) Mr Sturgis as above explained and (d) Mrs Burton who described grazing after 1960. That such last mentioned grazing was less than that allowed by the rules of levancy and couchancy does not exclude it from consideration; for "the law of levancy and couchancy takes... no account of actual user", see re Ilkley and Burley 1983 47 P & CR 324 at p 335.

The circumstance that the Unit Land adjoins Churchtown Farm and is easily grazable from it makes it very probable (so it seemed to me during my inspection) that there is and always had been a grazing right attached to it; the farm → adjoins the Church, an important building in the village. I consider — therefore I can properly give full effect to the above quoted words from the 1903, 1930, 1941 and 1943 conveyances expressly including a right of "pasturage over Anstey Common" and the evidence of grazing from this farm above summarised, including that of the fences being in disrepair during the occupation of Mr Earl, so his stock could and did easily get onto the Unit Land → and disregard the circumstance that no witness particularly described any grazing from the Farm between 1930 when Messrs Kelland ceased to be owner until 1960 when Mr Burton became the owner. It being clear that stock which had access to one part of the Unit Land had access to every part of it, I follow the above quoted paragraph of the judgement in Tehidy v Norman supra at page 554 and conclude that there was in 1970 a grazing right attached to Churchtown Farm over the whole of the Unit Land.

As to Hill Farm (Entry No. 2):—

This Farm comprises three pieces; the Main Part (about 67 acres) situated south of the Church and about a mile from Badlake Gate, the New Mill Part about 4 acres situated by Slade Bridge and having between it and the northeast part of the Unit Land the CL65 land and the road from Five Cross Ways down to the Bridge, and Sing Moor Part about 21 acres situated some distance south of the Main Part a little to the east of East Barton. Mr C C Crudge was born in 1920 and whose family had been at the farm for two generations before him said (in effect) they had grazed stock from the farm from his earliest recollections until he left in 1948. Mr O P J Weaver said (in effect) that he had similarly grazed in and since 1951.

Sir Frederick Corfield explained that no request was made to Mr Weaver to produce his title deeds because his registration did not extend to the Harrison land. I shall assume as is likely, that his deeds contain nothing expressly supporting the exstence of a grazing right attached to Hill Farm; it would be extraordinary if his deeds contained anything against the existence of any such right, and in the absence of any suggestion made to Mr Weaver while he was giving evidence, I assumed that the conveyance by Mr Crudge to Mr Boundy and the conveyance by him to Mr Weaver, made in 1948 and 1951 and where relevantly in common form, that is being neither for or against there being a grazing right.

Sir Frederick Corfield while not giving up his submission that registration could not be modified so as to extend to the lettered D part of the Unit Land said that the grazing was peculiar in that stock that was grazed on the Unit Land went on there from the Mill Part and not from the Main Part and contended that it followed any right of common must therefore be appurtenant to the New Mill Part and not the Main Part.

As I understood Mr Crudge and Mr Weaver their stock intended to be grazed on the Unit Land was at least as to some part of it and for some ⟶ of the year put on the New Mill Part and left there until they had eaten all the grass; so without difficulty they would when liberated onto the road go on to the Unit Land by the CL65 land looking for fresh pasture southwards and recollecting the good grass on the Main Part, and so on the way grazing the Unit Land. Bearing in mind that for much of the history of the Unit Land it was difficult to persuade stock to remain on it, and the distance of the Main Part from the Unit Land, this system of grazing was I think reasonable not only as regards the new Mill Part but also from the Main Part. Accordingly I reject this contention.

But the submission could well be made as regards the Sing Moor Part; so as regards such part my decision is no right of common appurtenant to it has been proved.

Noone suggested (rightly I think) that the absence of any evidence as to grazing by Mr Boundy during his short period of ownership could adversely affect any claim by Mr Weaver.

My decision is that an ordinary right of common appurtenant to Hill Farm (excepting Sing Moor Part) over the Unit Land has been proved; ——————————→ and therefore so far as I am concerned under this heading in the absence of any evidence which could limit such right to part only of the Unit Land, I conclude that it extends to the whole.

As to Partridge Farm (No. 5) and Guphill Fields (No. 6):-

Mr Milton during his evidence explained the specification of the lettered A part as the area over which there are grazing rights attached to Partridge Farm (No. 5), was derived from the words of the 1907 conveyance (JWJM/5) and the earlier 1887 and 1885 conveyances. From the 1939 vesting assent (JWJM/6) I deduce that Partridge Farm as it now is was by his grandfather put together under five separate titles, the said 1907 conveyance, three conveyances by Lord Clinton made in 1907, 1909, 1910 and by a → conveyance not specified in any document produced. From the areas comprised in the three 1907, 1909 and 1910 conveyances given in the said assent of about 50 acres and a consideration of the map referred to in the Rights Section, I infer that the part of Partridge Farm which was conveyed by the 1885, 1887 and 1907 conveyances was in comparison with the rest very small area probably the ——→ premises known as the Partridge Arms (public house). I conclude therefore that Mr Milton and possibly his father and grandfather before him were mistaken in thinking these three conveyances in law were evidence of the extent of the rights attached to the whole of Partridge Farm as it existed in the ownership of Mr James Milton at the end of 1910. The garden, orchard and wheelwrights' shop comprised in the said conveyance not specified must have been comparatively so small as not to be now relevant.

←—————— Mr Milton, in answer to numerous questions put to him, specified in some detail the nature of the grazing rights over the Unit Land that he and his father and grandfather before him thought they had, and also the legal position as he thought it was when the 1965 Act came into operation, as it was under the Act before the 1981 hearing commenced, as it was after 1982 decision and as it was after the orders of the High Court and of the Court of Appeal. As appears elsewhere in ——→ this decision I conclude ——→ that many of the statements he made in answer to these questions were mistaken.

The conclusions I have reached as set out in the two preceeding paragraphs show that I consider the answers made by Mr Milton to the questions therein mentioned were mistaken. As to the consequences of these conclusions, I follow the 1881 ruling of the Lords Justices mentioned under the heading: as of right; that is to say, ——→ my said conclusions as to the mistakes ——→ of Mr Milton are wholly irrelevant to any question I have to consider as to existence or specification of the grazing rights at ——→ the commencement of the 1965 Act over the Unit Land. The Lords Justices considered the answers given by witnesses as to the 1693 basis of the rights they claimed, ——————————→ ——→ and decided that such basis was wholly mistaken; nevertheless they adjudged that these witnesses were on the evidence which they and others gave as to what had in fact been done by them, established rights of common.

So for the purpose of determining the existence and extent of the rights under this heading being considered, I must first subtract from the evidence of Mr Milton all his answers which in accordance with the 1881 ruling of the Lords Justices are irrelevant; because the questions within the 1881 ruling put to Mr Milton were more numerous than those put to any other witness, the subtraction in his case is much larger. I do not criticize the questioners because they were entitled to put the questions if they had a reason outside the ruling of the Lord Justices; but in case such reason was (I cannot think of any other) to discredit Mr Milton, ——————————————→ I record that in my opinion his evidence —— after I have made the said subtraction was wholly reliable, and I accept it without any qualifications other than those which in the course of giving it he in effect invited me to make.

As to what is the thing called:- The words "The Common" were not only used by questionners from time to time but also —→ frequently used by Mr Milton spontaneously without any ———→ reference to the form of the question; I noted 17 ———→ such occasions and in all of them it was clear that Mr Milton meant and was understood as meaning the whole of the Unit Land with the possible inclusion of the CL65 land if the context so required. I have not overlooked that Mr Milton used the expressions on one, possibly two occasions Anstey Middle Common or Anstey Money Common and on one occasion Anstey Rhiney Moor, and Venford Moor; but his use on these occasions was clearly intended to indicate a part of what he had previously been describing as "The Common". From his evidence I conclude that he is a person who is and has been for many years interested in and been locally recognised as being interested in local affairs; having regard to the above quoted judgement of Jessel MR I regard the way in which Mr Milton described the Unit Land as importantly relevant. The circumstances that he intentionally left the views of the inhabitants of the Parish to be stated by Mr Keigwin because he considered he might have a conflicting interest, does not make his evidence irrelevant. ———→ In my view what he said provides important confirmation of the conclusion I have reached as set out above under the heading "one common or five or more commons".

Mr Milton said that from his earliest recollection Partridge Farm and Guphill Field (Nos. 5 and 6) had been farmed together either by himself alone or by himself and his father or by his father and grandfather. On some aspects of this case his remembrance may be before the 1939-45 war but I suppose few details of the grazing before about 1949 can be regarded as being within his personal knowledge; Mr Milton was careful to qualify his evidence accordingly. Without any such qualification, on the documents, and the present appearance of the Unit Land I would be inclined to ———→ rely on Mr Milton's statements about what his father told him, and thus go —→ as far back as 1919 when the agricultural holding was first completely constituted by the 1919 conveyance (JWJM/9); however Mr Milton qualified his evidence. To deal with this qualification evidence was given by ——————————————————→

Mr F W Southwood who worked for Mr James Milton in 1920 (? 1918) and helped with the grazing by him on the Unit Land, and by Mr W G Phillips who covered the period from 1926 to 1939. And I have the pleasing act of kindness done by Mr James Milton in 1920 and memorised by Mr G Gibbs, which if Mr Milton was not grazing the Unit Land as of right would be difficult to explain.

As recorded in this decision there were others who knew grazing by the Miltons at various times on the Unit Land and I conclude that their grazing was not in any now relevant sense secret. I reject the suggestion made on behalf of Mr Harrison that evidence was needed to show that Mr E M Harrison or Colonel O'Brien or Mr Nesfield was aware of the things which were from the Milton agricultural holding being done on the Unit Land; such things would in my opinion always have been of such a character that an ordinary owner of land diligent in the protection of his interest would have become aware.

In these circumstances there being nothing to restrict grazing of this agricultural holding to any particular part of the Unit Land, my decision under this heading is that a right attached to this agricultural holding has been established in accordance with the Prescription Act 1832 or alternatively under a grant in accordance with the law as stated in Tehidy v Norman supra.

I have not overlooked that Mr Milton spoke of sheep on the Unit Land being laired meaning as I understood him much as is what is meant by hefted or cynefin or arosfa, being words used elsewhere in England or Wales. Although Mr Milton because his holding was so far away may have found it convenient to lair his sheep, I doubt if the practice was general on the Unit Land; Mr Weaver when asked about lairing or hefting, said: "lairing is a gathering back to my field ... bringing them back to count ... 2 times a week ... hefting, I don't know about that"; the voluminous evidence I had about sheep being found anywhere on the Common is against any efficient lairing such as is practised in some places in England and Wales. Further noone suggested cattle were or could be laired in any sense which could now be relevant. So I need not consider the legal problems which sometimes arise when on a hefted common a grazier starts to or ceases to exercise a right, or for a long period is treated as exclusively entitled to his heft.

I also have not overlooked until the death of Mr James Milton in 1936 the agricultural holding was or may have been owned in severalty between him and his son Mr A J Milton, and it was or may not have been until 1939 that the whole holding came in the sole ownership and occupation of Mr A J Milton; nor overlooked that the holding severed once again in 1965. In my view these variations in the ownership of the holding did not affect the continuity of the periods of 30 years and 20 years required by the 1832 Act or by Tehidy v Norman supra; for rights on an alienation of part of a dominant tenement are apportionable, see White v Taylor (No. 2) 1969 1Ch 160 at page 190.

As to Twitchen Farm (Entry No. 1):-

The most recent possibly relevant grazing was that during the occupation of Mr W E Hill from 1961 to 1981; so the reliability or otherwise of his evidence about it requires particular consideration.

His 1981 and 1985 declarations and his 1983 affidavit (DFB/3-5) are in important respects inconsistent with each other and inconsistent (particularly paragraph 5 of his 1983 affidavit) with his oral evidence to me in June 1985.

Without minimising the gravity of his somewhat casual attitude to the making of written statements by law intended to be made only after careful consideration, I keep in mind that I am concerned not with penalising Mr Hill for carelessness but with questions consequential on the right of Mr and Mrs Bassett having or not having a grazing right, and that as to these questions, Mr Hill made his said three statements after he had ceased to be personally concerned. Neverheless I must consider how these three statements affect the credibility of Mr Hill's June 1985 oral evidence, meaning that part of it as was given without any reference to his three statements. From what I observed while he was giving evidence, Mr Hill is in my opinion among those many persons who have difficulty in understanding documents particularly those which they believe to be legal, and are prone to accept or not accept them on considerations not immediately relating to their contents. I therefore conclude that nothing in any of his said three statements affect the credibility of his June 1985 oral evidence so far as given without reference to any documents, particularly first whether his stock did graze as he said, and secondly whether such grazing was "as of right" within the legal meaning of this expression.

As to the first. Mr Hill unhesitatingly spoke as from extensive personal knowledge. There was no suggestion that the appearance of the Farm had in any relevant way changed since 1981 and on my inspection it appeared likely that any person occupying Twitchen Farm would graze the Unit Land, and that if he thought that he owned the Twitchen Common Part would put animals on that part which would necessarily and unavoidably graze on the remainder of the Unit Land. That Mr Hill did so graze his stock during his occupation was confirmed by the evidence of Mr Weaver who complained about it being excessive and by Mr Milton who thought his grazing excessive and by Mr Nicholls who said he was not bothered about it. I conclude therefore that this part (perhaps the most important part) of the oral evidence of Mr Hill is reliable.

As to whether such grazing was as of right:- I accept Mr Hill's evidence that his idea of his rights was what Mr Philips had said to him: he had the exclusive right to graze on the Twitchen Common Part and the right with others to graze on the rest of the Unit Land. For reasons given elsewhere in this decision I think Mr Hill and Mr Philips were mistaken about the exclusive right; an excuseable mistake perhaps because the Twitchen Farm lease included the Twitchen Common Part with the rest of the Farm without any distinction and was therein described as "common". However this may be, as explained under the heading: as of right, Mr Hill's views as to his rights are irrelevant. Applying the observations of the Court of Appeal in De la Warr v Miles supra and in Beckett v Lyons 1967 1Ch 449, I conclude that his grazing was as of right.

The next most recently possibly relevant grazing was that during the ownership of Mr J F C Keep 1954 to 1961.

About this there was a conflict between the evidence of Mr Keep given on 25 June and of Mrs M J Sloman given on 8 October. Sir Frederick Corfield suggested (Sir FC/7 at pages 10 et seq) that Mr Keep "was a refreshingly forthright and convincing witness" and that I should disregard the evidence of Mrs Sloman because "none of her evidence was put to Mr Keep", and gave various reasons for his not being recalled including "because Mr Keep has throughout been a reluctant (who witness) requires a good deal of persuasion and the threat of an application to you for a witness summonds to attend at all". Contra Mr Pugsley (Pugsley/1 at page 3) submitted (in effect) that I should not believe the evidence of Mr Keep.

As appears from the hereinbefore summary of his evidence, Mr Keep was confused as to which part Twitchen Farm he wished me to understand had by him been enclosed. Having inspected the part of the Ridge Road next to Twitchen Farm, I think he intended me to identify the part so enclosed with OS No. 477 containing 14.817 acres ("the Twitchen 14 acres") which is separated from the Twitchen Common Part by OS 476 containing 5.647 acres; the north fence of OS 476 appears as a well established hedge. This confusion does not affect the credibility of Mr Keep.

I find it difficult when considering the credibility of Mr Keep wholly to disregard the contrary evidence of Mrs Sloman, particularly his statement that he visited the Farm 3 or 4 times a week and her statements (not put to him) that he came 2 or 3 times a month, sometimes not at all and that he may have come 2 or 3 times a week but not regularly; when big jobs were on for an hour or two. However I think Mr Keep when giving evidence realised well enough that I was considering whether during his ownership the Unit Land had been grazed from the Farm.

Forgetting as best I can what Mrs Sloman said, I remember wondering when Mr Keep said he visited "3 or 4 times a week", whether he meant sometimes. But assuming (contrary to my doubts) that he did visit 3 or 4 times a week regularly, he during his evidence said nothing about the activities of his "130 breeding ewes and 40/50 beef cattle" such as a person much concerned with their management would when asked about their grazing say almost as of course. When asked about his turning them out, he explained his fencing activities, apparently assuming that the questioner was concerned with stock escaping from the Farm through a defective fence, and not considering at all whether they could have been put out or gone out (as before the cattle grids was possible and convenient) through the Farm main gate. He was not interested enough in neighbourhood grazing to notice what stock was on the part of the Unit Land next his Farm, and uncalled for said irrelevantly that Mr Crossman and Mr Nicholls were good neighbours. In my opinion about the grazing of stock from his Farm, the evidence of Mr Keep was unreliable, and I reject the above quoted submission of Sir Frederick Corfield about it.

My opinion should not be read as reflecting adversely on Mr Keep personally. He attended as a witness after a threat of being compelled to come. He did not say, and did not I think intend me to think that he was much concerned with the detailed management of the stock on his Farm. He might have been, but there was no reason why he as owner should be interested about the grazing activities of his bailiff. They were more than 24 years ago, never concerned him much, and were not in themselves memorable. So being unable to give reliable evidence about them was no fault of his.

Mrs Sloman impressed me as a person who knew what her husband thought and was doing about the stock on Twitchen Farm, and I accept her evidence. She may perhaps have understated the frequency with which Mr Keep came to the Farm; but about his evidence generally I prefer her evidence to his, and from it deduce that stock were grazed as she described, that is from the Farm main gate and not as Mr W E Hill did after the construction of the cattle grids.

As to such grazing being as of right, Sir Frederick Corfield, as I understood him, relied much on Mr Keep's answer "Oh yes certainly" to the question of Mr Pugsley "if your stock had got out onto the Common, would you have considered your stock were trespassers on the land of others", as ——————→establishing any stock turned out by Mr Sloman could not have been there as of right. Considered literally the answer to the question was not a statement of fact at all, and in accordance with De la Warr v Miles, the answer could not be relevant, see under the heading: As of right. I decline to infer from it that Mr Keep at any time during his ownership of the Farm ever gave any instructions to Mr Sloman as his bailiff or any indication to anyone else that his stock were never to be put on the Twitchen Common Part or were to be confined to the Twitchen Common Part or ever gave any indication to anyone else that any stock of his on the rest of the Unit Land were not there intentionally or were it to be considered in any sense as trespassers. So I find that the grazing on the Unit Land described by Mr Sloman was as of right.

The next and most recent grazing on this Farm about which I have direct oral evidence was between 1939 and 1947 described by Mr Biss as above summarised. His statements that the grazing was over all the Unit Land is not inconsistent with the statement in paragraph 12 of his June 1985 declaration (DFB/2) that he grazed over the parts therein named; although he should ————→ if he had realised the use which might be made of such paragraph have before making the declaration, ——→ insisted that the paragraph be altered to show that he grazed other parts; but his failure to do this does not affect the credibility of his oral evidence to me in October 1985. Nor is his credibility affected by his mistaken assumption that his rights were unlimited in all senses of that word; in law they must have been limited to the stock levant and couchant on the Farm or in some other way. I accept his evidence and conclude that stock from Twitchen Farm were from 1939 to 1946 grazed as of right on the Unit Land.

So the 30 years specified in the 1832 Act are covered from the beginning (1940) to the end (1970), leaving me without any direct evidence of grazing from 1948 to 1953. For this I have no note of any owner or occupier other than Mrs Archer Thompson although Sir Frederick Corfield (Sir FC/7 page 5) mentions Mr Pitt as being said by Mr Crudge to have had stock there "just went in and out". But I have no evidence that any grazing by whoever was in occupation from 1948 to 1953 was ever interrupted within the meaning of the word "interruption" used in the 1832 Act, and from the circumstances described by Mr Biss and Mrs Sloman, I infer that between 1947 and 1953 it was not. As to there having been an intermission of user such as is discussed in Harris and Ryan on Common Land (1967) at page 51, citing Hollins v Verney (1884) 13QBD 304, on the balance of probabilities I think the occupiers of Twitchen Farm between 1948 and 1953 had some enjoyment of the right which Mr Biss and Mr Sloman before and subsequently enjoyed, and therefore the 30 year statutory period in accordance with the 1884 case continued to run.

So upon the above considerations (leaving those relevant to ownership dealt with under the next 2 headings) I conclude that a grazing right appurtenant to Twitchen Farm has been proved under the 1832 Act. I qualify this by saying that the right has only been so proved as regards the Farm as it was in 1939 and 1945, that is the 137 acres mentioned by Mr Biss which I identify with 136.830 acres specified in the

Schedule to the 1932 conveyance (DFB/10) to the exclusion of the 9.737 acres or ? 9.978 acres specified in the 1961 conveyance (DFB/7) and the subsequent conveyances.

As to Venford (Entry No. 9):-

Mr Pugsley submitted (Pugsley/2) first the ownership/occupation history was:- 1902 (PJV/1) E L Hancock became owner; 1904 to 1921 let to Richard Bowden; 1921 (endorsement on PJV/1) old Venford Farmhouse sold off from the holding; 1921 to 1939 remainder farmed by T Blackford; 1939 requisitioned by War Agricultural Committee and used for corn and potatoes; 1946 L J Earl became tenant; 1960 (PJV/3) L J Earl became owner. He submitted secondly I should infer grazing on the Unit Land from 1902 onwards.

As to the first submission, the evidence was various. I have the 1902 conveyance. The 1904 to 1921 occupation of Mr R Bowden is an inference from the evidence of Mrs B Tarr and Mr H T Williams. The 1921 sale off is an inference from the said endorsement, and the identification of Nos 461 etc with old Venford Farm House is an inference from the plan attached to the 1960 conveyance (PJV/3) and the 1974 OS 1/50,000 map. The 1921 to 1939 tenancy of Mr Blackford is an inference from the evidence of Mr Davey and Mr Crudge that Mr Blackford was there long enough for them to notice and remember. Mr Nicholls mentioned war time and Mr Bass use of Venford. Mr Veysey identified Mr Earl's signature on the counterpart tenancy (PJV/2) from 1954 and Mr Sturges said that Mr Earl took Venford in 1948.

Sir Frederick Corfield submitted (Sir FC/10) that the evidence of the witnesses he named was directly or inferentially against my concluding that the Unit Land (or at least the lettered D part of it) had ever been grazed from Venford. For the reasons given earlier in this decision, I am primarily concerned whether there was grazing on any part of the Unit Land. I disagree with these submissions as to the effect of the oral evidence given to me, particularly in the respects next mentioned. To the question: "did you think people from Venford and Twitchen were turning on to the Moor?", Mr Nesfield answered: "not that I know of"; I have already explained why I think his ignorance of grazing is not significant. To the questions of Mr Pugsley "Venford, when you first remember?" and "turns stock out?", Mr Southwood said "I have forgotten" and "I can't remember"; the grazing from Partridge Farm and the Guphill fields with which he was concerned was mostly by Guphill Gate; he would be unlikely to notice stock from Venford mostly on or near the CL65 land; Mr Southwood was not asserting that he would have seen and remembered any grazing from Venford there might have been. Neither Mr Phillips nor Mr Gibbs nor Mr Crossman would upon similar considerations be likely to observe grazing from Venford more than Mr Southwood would. I reject the submission that Mr Crudge "had no knowledge of Venford"; in answer to questions by Mr Gray "Town Farm?", "used?", "stock?", and "numbers?", he said "Blackford", "he had got Venford", "sheep" and "I would say something like our own"; meaning, and I accept this meaning as true, that Mr Blackford from Venford grazed the Unit Land to numbers like those from Hill Farm; I infer that Venford Farm House having been sold off in 1921, Mr Blackford was not of (residing at) any building on Venford but was of Town Farm; I understood Mr Blackford was farming Town Farm and the Venford fields together; I do not infer from Mr Gray's use of the words "Town Farm" in his

question that the grazing of which Mr Crudge was speaking was from such farm; by answering "he had got Venford", Mr Crudge was intentionally negativing any such inference. As to Mr Weaver saying that Mr Earl did not stock the Moor much this implies that Mr Earl did at least stock the Moor to some extent; as appears ——→ elsewhere in this decision Mr Weaver said much about Venford and under this heading his evidence is if anything favourable to the claim of Mr Veysey. It may be as Mr Sturgis said that Mr Earl did not value the Moor much; but I did not understand Mr Sturgis to be saying that his stock did not graze there; as I have said elsewhere in this decision I think Mr Sturgis' evidence as to what persons were not doing is unreliable. I have no note of Mrs B Tarr saying to Mr Maitland-Walker that her father "did not deliberately turn out directly on the Moor", although I have a note that in answer to a question by him he said "I don't know if they were ever turned out but he had a right to"; and in answer to his next question said "I do not remember him ever not letting them go out, it was like it when he came there". The words "turn out" and like words were used by Sir Frederick Corfield and others at the hearing, as if these words had some statutory significance; in the Prescription Act 1832 the relevant expression is "where such right (of common) ... shall have been actually taken or enjoyed by any person claiming right thereto"; "turning out" may in ordinary speech have several meanings, such as driving sheep to their heft as is usually done on the first occasion ewes go out with their new-born lambs, or mean just opening a gate in a fence between the farm and the common; to enjoy a right of common it is not essential for the farmer to drive stock on to part of the common; if because his fences are in disrepair or for any other reason his stock go onto the common and enjoy the grazing, this for the purposes of the 1832 Act and any other prescription is enough. Mrs Tarr appeared to me puzzled at the words "turn out", but her meaning was clear; her father's sheep went, as he well knew they would, onto the Moor there to graze.

I accept the evidence of Mrs Tarr showing that there was grazing from Venford before 1921 as far back as she could remember as before appears such grazing was confirmed by Messrs Crudge, Weaver and Williams; they would not have known of it if it had been secret in any now relevant sense and accordingly I conclude that the grazing of Mr Bowden was as of right.

Until about 1960 Mr Earl was in occupation of both Venford and Churchtown, and Mr Milton had some difficulty in saying which of these two farms the stock of Mr Earl would be treated as coming from. As long as Mr Earl occupied both, any grazing by him may I think in the absence of special circumstances (none were mentioned) be attributed to both.

The registration for which Mr Earl applied was over both the CL65 land and the Unit Land. His registration over the CL65 land has become final and is now by section 10 of the 1965 Act conclusive evidence of the matter registered. For the reasons given under the heading: one common or five or more commons, I conclude that the CL65 land and the Unit Land are one common; indeed that they are in two distinct Register Units is an accident depending on the order in which various applications relating to the 2 units were made and dealt with in

the offices of the registration authority. This conclusion accords with the view expressed by Mr Milton during his evidence. I consider that this registration at Entry No. 9 is not relevantly different from the registrations at Entry Nos 1, 2, 5, 6 and 8 by me under this heading already dealt with and was therefore properly made not only as regards the CL65 Land but also as regards the whole of the Unit Land.

But in case I should not apply the conclusiveness of section 10 about the CL65 registration to any other register unit, I now alternatively consider the evidence I had at my hearing on the basis that the section has no application.

On the appearance of Venford and on its situation in relation to the CL65 land and the Unit Land it is probable that the occupier would graze stock on the CL65 land and a substantial adjoining part of the Unit Land, the stock initially going on both from Venford onto the CL65 land. On the evidence of Mr Davey, Mr Crudge and Mr Weaver having regard to such appearance I conclude that on the balance of probabilities there has been such grazing from about 1902 until 1970, but because the balance does not tip heavily this way, I consider the burden of proof in these circumstances.

I have the guidance of the passage from the judgement of Walton J quoted by Slade LJ in the judgment he gave in this instant case at page 342 of re West Anstey 1983 1Ch 329, indicating that the original statutory declaration made by Mr L J Earl on 24 June 1968 of his one right over both the CL65 land and the Unit Land, may be enough in that a Commissioner may regard such a declaration as discharging the burden of proof "unless it is borne in upon (him) ... that the registration is questionable". On behalf of Mr H M J Harrison this registration, along with all the other Unit Land registrations, was extensively questioned from a great number of points of view, so in a sense the registration is "able" to be questioned. In my opinion the word "questionable" in the context means reasonably or properly questionable, and as hereinbefore appears in my decision the questions raised on behalf of Mr Harrison as regards the registrations at Entry Nos 1, 2, 5, 6 and 8 are in my opinion misconceived, and nothing was said by Sir Frederick Corfield leading me to suppose that the registration at Entry No. 9 was any more questionable than these others.

I was told and it was not disputed that Mr L J Earl is elderly, is in hospital and unable to give evidence. It was not suggested that there is any person other than those I heard giving oral evidence could throw any light on the doings at Venford in any now relevant way. I think the observations of Walton J are authority enough for me to act on the balance of probabilities as I find them to be and conclude as I do, that there has been grazing such as I have found as of right from Venford on the CL65 land and a substantial part of the Unit Land.

On this finding, and following the said judgment of Jessel MR, my decision is that a right of grazing over the whole of the Unit Land has been established by prescription at common law.

As to Woodland Farm (No. 10):-

That it would be convenient for stock from this Farm on the Unit Land to be put and as far as practical and profitable encouraged to stay on or around the lettered F part of it, was if not expressed, implicit in the evidence of Mr Nicholls; and indeed during my inspection seemed to me obvious.

It was assumed, or at least not disputed that Messrs E J and G E Nicholls by producing the 1931 tenancy agreement to Mr R G Nicholls and the 1956 conveyance to themselves (EJN/4 and 5), had proved themselves to be the owners of the lettered F part for an estate in fee simple. The contest was whether such ownership was or was not free from rights of common appurtenant to all or any of the said other Farms.

The agreement and conveyance are some evidence that the landlord and the conveying party were in possession when they were made, and possession is some but not conclusive evidence of such ownership, see Blandy-Jenkins v Dunraven 1899 2Ch 191 and Malcomson v O'Dea 1863 10 HLC 593. And because both the agreement and conveyance are not expressed to be subject to rights of common, some but not conclusive evidence that such possession and ownership was free from rights of common. So I have to consider the other evidence particularly that given orally of Mr E J Nicholls, who of all those giving evidence had the greatest knowledge of what was happening on the lettered F part. Under this heading, being primarily concerned with what was happening, I need not consider whether Mr Nicholls correctly distinguished between straying and grazing in accordance with any legal or other meaning of these words. He did not claim any understanding of the legal aspects of his case; nevertheless Mr Nicholls appeared to me well to understand the advantage to himself of the lettered F part not being common land as was adjudged in the 1982 decision and as might so he hoped be adjudged by myself; and well to understand too that such advantage was most likely to be obtained if in some way the lettered F part had been by him grazed differently from the rest of the Unit Land, or could in some other relevant way be treated as distinct. This hope I think influenced some of what he said during his evidence, and to this extent I must consider its reliability at least so far as not corroborated by others.

The grazing on the Unit Land was so Mr Nicholls hoped I would conclude, on the basis that he and his brother, and his father before them and their predecessors, grazed the lettered F part exclusively and grazed the remainder of the Unit Land in common with the others entitled. This basis differed from that put forward by Mr Milton who considered his primary grazing rights were over the part where his stock was laired and that he had a subsidiary grazing right over the remainder; and different to from that put forward by Messrs Harrison who considered none other than themselves and their tenant could graze the lettered D part, but claimed no rights of any kind over the rest. Mr Nicholls' basis is not in law impossible; so I must consider whether it accords with what happened.

The Nicholls grazing from Woodland Farm on the Unit Land was I think always as extensive as they could practically and profitably make it; it was not limited to stock which could satisfactorily be grazed on the lettered F part and excluded from the rest. So on many occasions stock particularly cattle must have been on other parts; particularly in summer when water was short on the lettered F part; there being possible competition with stock of others put on the west from Ringcombe Farm and by Guphill Gate and with stock on the east put on by Badlake Gate, stock from Woodland Farm would go to the north across the Ridge road and onto Longstone Coombe and the Danes Brook. Save that part of the Unit Land north of the lettered F part is north of the Ridge Road and further away from Woodland Farm, there never was before 1970 any relevant difference between the Nicholls' grazing on these two parts.

When Mr Nicholls said that stock of some other grazier on the lettered F part did not "bother" him, I declined to infer (he may not have intended that I should) that such stock was never on such part. When Mr Nicholls said that while he was waiting for the school bus, his dog turned stock of others down the road, I decline to infer (although I think he hoped I would) that this was an assertion by him of an exclusive right; each grazier would benefit by his stock being kept together as much as possible and, would therefore, if he had known of this turning back have regarded it as a friendly act, unless he had good reason for thinking it otherwise; except as regards the over grazing of Mr Hill, Mr Nicholls' did not say that he ever told any of the other graziers of the activities of his dog while the arrival of the bus was expected, and I decline to infer that Mr Nicholls ever did tell them or that they ever had reason to suppose that the lettered F part was by him claimed to be his exclusive grazing area; I consider this part of his evidence unreliable.

The description by Mr Nicholls of grazing done by others which he happened to notice, was a helpful corroboration of conclusions to which I was inclined from the evidence of others. In my opinion he was not much interested in the grazing of the Unit Land by persons other than those from Woodland Farm, and his memories of any such grazing were dependent on chance; for this reason I consider any statement by him that there was no grazing from ~~any~~ particular farm or that the grazing from it was only such as he had observed, to be unreliable in comparison with any statement by any other witness from which I could infer grazing from that farm more than Mr Nicholls happened to have noticed.

On what Mr Nicholls and others said, and on what I saw during my inspections as indicating the probable appearance and use of the Unit Land in the past, I find that before 1970, stock from Woodland Farm was grazed as from time to time was practical and profitable on an area comprising the lettered F part and much of the rest of the Unit Land extending to all of Longstone Coombe and as far as the south bank of Danes Brook, such area not having any precisely definable boundary but being vaguely and imprecisely definable as the part of the Unit Land which could practically and profitably be grazed from Woodland Farm. I also find that

such grazing was by reference to the needs of Woodland Farm regarded as an agricultural unit not including any part of the Unit Land and was in no way regulated by — reference to the Nicholls tenancy or ownership of the lettered F part. I also find that such grazing as regards such Part was never exclusive; in making this finding I have not overlooked the evidentia. y value of the 1931 tenancy agreement and of the 1956 conveyance to the contrary; these documents if read without reference to the probable appearance of the Unit Land when they were made (which I find to have been in all relevant respects as it now is except for the fence recently erected by Messrs Nicholls) might be inferred that the lettered F part was an ordinary part of the agricultural holding known as Woodland Farm normally grazed not relevantly different from any of the other farm grassland. This inference has been proved to be incorrect and I therefore read the description of the lettered F part in these documents as "common" as indicating that such part was in 1931 and 1956 at least common within the popular meaning of this word, and therefore subject to rights of other graziers.

In other parts of this my decision, I have concluded that the grazing rights attached to six other farms are over the whole of the Unit Land, including the lettered F part, and that accordingly as the position was in 1967-70, this part was common land. Being against Mr Nicholls on this question about which he hoped for a different answer, is no reason why I should not decide as I do that there is attached to Woodland Farm a right to graze the whole of the Unit Land.

Such was the claim of Messrs Nicholls as the registration was originally made. The tit for tat agreement made after 1970 with Mr Milton, is not against this right to graze being applicable for the whole of the Unit Land including the lettered A part specified in the 1973 amendment to the registration.

My above recorded findings about grazing over the Unit Land from Woodland Farm is reason enough for my deciding as I have done in the case of the six other farms, and as I now decide that there was in 1967-70 a right of grazing appurtenant to Woodland Farm over the whole of the Unit Land. But this right cannot in law be considered as attached to any part of the Unit Land itself, so in this paragraph Woodland Farm must be regarded as not including the lettered F part.

As to Ringcombe Farm (No. 3):-
As to the 1967-1970 position, I am as already stated against the theory of Mr E M Harrison that his ownership under the 1934 conveyance (JWJM/20) gave him exclusive rights of grazing (as owner) over the lettered D part of the Unit Land. In support of the alternative that there was in 1967-70 attached to Ringcombe Farm a grazing right over the whole of the Unit Land, on behalf of Mr H M J Harrison little if any evidence or argument was offered; I suppose because Messrs Harrison thought that this alternative was inconsistent with their primary claim. However the alternative claim was briefly put forward by Sir Frederick Corfield.

As to the period when Mr William (Bill) Davey was tenant of Ringcombe Farm:-
His nephew Mr Fred Davey remarked on his uncle's fear of losing an animal; in the context, I think this remark was intended to emphase the greater efficiency of his father and not as suggesting that Mr William Davey was not grazing to some extent on the Unit Land, and indeed Mr Fred Davey did of his uncle say: "He ran sheep". Mr J W J Milton, Mr J Biss and Mr H T Williams all spoke of Mr William Davey having sheep on the Unit Land.

Mr Crossman said he grazed the Unit Land and that his stock would go anywhere.

Upon the same considerations as I have above set out about Entry No.10, my decision is: → a right attached to Ringcombe Farm of grazing on the whole of the Unit Land has been established as existing in 1967-70 by prescription at common law. As to the effect of such prescription when as here the person who owns the dominant tenant also owns part of the land grazed, see under the next heading.

Before 1965 quasi rights of common

Under this heading I consider in what sense Messrs Harrison, Nicholls, Milton and Bassett who are registered as, or, claim to be the owners (each of a different part) of the Unit Land can properly be regarded as having a right of common over the part owned by them.

The circumstances in which X can own a common (or part of a common) and also graze over it are various: for example:- (1) X owns the common and owns no land anywhere near, so his grazing must be as owner, and his right to graze must therefore be subject in all respects to those who have grazing rights over the common attached to farms supposedly near to it. (2) X owns a common but also owns all the farms surrounding it, which farms are either occupied by him or let to his tenants; X can graze from the land occupied by him either as owner of it or as owner of the common and the grazing he can do and the grazing his tenants can do depends on the terms of their tenancy agreements (3) X owns the common and also a number of the farms around it some occupied by himself and some let to his tenants P, Q, R and S, and there are other farms around the common owned by A, B, C and D, and the common is grazed by X, P, Q, R, S and A, B, C and D on the same basis as would be applicable if the common was owned by a person different from any of the owners of the farms. The circumstances (2) and/or (3) were considered a relation to the Inclosure Act 1845 in Musgrave v Inclosure Commissioners 1874 9QB 162; the Act and the circumstances are different from any I am considering but the Court at page 176 treated → owners as having "quasi rights of pasturage" which although not rights of common within the technical rule of law, a person cannot have a right over his own land, could nevertheless be established if, as the 1845 Act did, require some effect to be given to them. Following this judgment, in this decision I use the words "quasi right of common" as describing the position of an owner of a common within the example (3) above.

← There is nothing in the judgment in Musgrave v Inclosure Commissioners affecting the general rule that a person cannot have a right of common over his own land.

Nevertheless, in the example supposed there is a difference in substance between (1) A, B, C and D each having a grazing right over the common which has priority over any right of X or any of his tenants, so they have to graze as owner and not otherwise, and (2) A, B, C and D having a grazing right over the common which is exercisable on an equal basis with the grazing exercisable by X, P, Q, R and S as persons entitled to exercise a quasi right of grazing. Whether on any particular common persons in the situation of X, P, Q, R, S, A, B, C and D have rights as in (1) or as in (2) is a question of fact, determined where all rights depend on prescription on the way the common has been grazed by those concerned during the prescription period.

Apart from Musgrave v Inclosure Commissioners supra, I have not heard of any quasi right of common before 1965 causing any legal difficulty. In an action in which X as owner claimed against A, B, C and D for over grazing, and they in their defence claimed rights by prescription, the reply would I suppose be that the evidence in support of such prescriptive rights showed the grazing was in fact always subject to grazing by X, P, Q and R and S as owners and tenants on an equal basis with A, B, C and D. So in law a quasi right of common is a proviso or condition to which a right of common in law properly so called belonging to a person who is not an owner of any part of the common, is subject.

At my hearing it was evident that some of those who owned or claimed to own some part of the Unit Land were concerned that they might be prejudiced if I found that they had no right to graze on their part because such a finding might make others suppose that they could graze on such parts having priority in all respects over the owner. So I now say that all herein before set out about rights existing as at 1968-70 over the Unit Land are on the basis that such rights of grazing are subject to the quasi rights of the owner of any part of the Unit Land.

So the expression "quasi right of grazing" hereinafter used should be understood in the sense under this heading explained.

Destructive ownership

Consequential on section 7 of the 1965 Act (1) Messrs E J and G E Nicholls are now finally in the Ownership Section registered as owners of the lettered F part; consequential on agreements made at or before the 1981 hearing and the 1982 decision, (2) Mr J W J Milton, (3) Mr E M Harrison and (4) Badgworthy Land Co Ltd will respectively be registered as owner of the lettered A, the lettered D and the lettered E parts (A and D adjusted so as not to overlap and so as to exclude E). Of (5) the Twitchen Common Part (the 6 acres, the only part not now specified in the Ownership Section) no person is now registered as owner; although it was not before me claimed and was by none disputed that in 1967-70, Mr Whitmore was the owner and in succession to him, Mr and Mrs Bassett are now the owners, I have no jurisdiction in these proceedings under section 6 of the 1965 Act to direct their registration in the Ownership Section, I am under this heading assuming however that he was and they are owners of the Twitchen Common Part: by their non registration now, Mr and Mrs Bassett will not be prejudiced because an ownership reference under section 8 of the Act will follow this decision, and they can at the consequential hearing claim ownership. Under this heading I can disregard (4), because no right of common has been registered on the application of Badgworthy Land Co Ltd and no-one suggested they ever had any right of common over the Unit Land.

Sir Frederick Corfield submitted (as I understood him) that although the said parts of the Unit Land could be grazed by their owners as owners (without limit), the circumstances in which they became owners of these parts brought to an end any right of common which was attached to the other lands they owned, particularly to (1) Woodland Farm, (2) Partridge Farm, and (5) Twitchen Farm by reason of the rule of law ("the Rule") set out in the judgment of Buckley J in White v Taylor 1969 1Ch 150. The Rule is shortly stated in the head note: "...where the owner

of a common appurtenant purchases part of his servient tenement over which his common rights were exercisable that brought his right of common to an end in respect of the whole of the land affected ...".

So I consider: (a) whether to the Rule there are no exceptions, (b) what transaction is a "purchase" within the meaning of the Rule, and (c) does the Rule once it has operated prevent, or raise any presumption against, the future applicability of the Prescription Act 1832 or against any grant otherwise presumable from the future exercise of the right.

As to (a), there are many different ways in which a person entitled to a right of common may purchase part of the common. First, he may purchase the part under a conveyance made not only by the owner in fee simple but also made by all the persons entitled to rights of common over the part purchased, so he in effect acquires a "newtake"; that the owner of a newtake so acquired who for the conveyance pays little or nothing to the other commoners must be assumed to take it in satisfaction of all his rights over the remainder of the common seems sensible, and I can recollect as a Commons Commissioner hearing of such purchases or similar transactions being effected in circumstances in which this result was expressly or impliedly accepted by all concerned; → the Rule if applied to such a person having made such a purchase accords with widely accepted ideas. Secondly a person may purchase from the owner of the common a small part (perhaps to build a shed or effect a like encroachment) of a comparatively much larger common without obtaining the concurrence in the conveyance of any of the other persons entitled (perhaps very numerous) to the other rights of common, in the expectation that they will even if they notice never object to the encroachment; it would not be sensible that he by such a purchase would forfeit all his rights of common over the rest. There are many other ways of purchasing intermediate between my first and secondly supposed where from the circumstances some modification of the Rule could be implied; for example if the other commoners not agreeing were very numerous and did not give up any of their rights over the part purchased, so that such part was practically of little value. Further Tyrringham's case 1584 4Co.Rep.36b and Kimpton's Case 1587 Gould. 53 from which the Rule is derived, are difficult to apply to a common grazed by numerous persons in that they both seem to relate to disputes in which only one person had a right of common and he and the owner of the remainder of the common were the only persons concerned. The Rule was in White v Taylor set out in a judgment relating to a preliminary point dealt with before any evidence was given, on pleadings in circumstances not stated in the report. I conclude therefore that the substance of the Rule is that a right of common may be extinguished by a purchase notwithstanding that nothing between the parties has been said or written about the extinction; but as I see it the ordinary equitable principles established in Chancery between 1600 and 1870 are as applicable to the Rule as any other law by the Courts of Common Law established before 1600.

As to (b), the purchase must be by a person who before and independently of the purchase has a right of common attached to his land. So the 1956 Woodland Farm conveyance (EJN/5) of the 1934 Ringcombe Conveyance (JWJM/20) and the 1932 and 1961 Twitchem Conveyances (DFB/10 and 7) were not purchases within the Rule.

As to (c), in my opinion a purchase within the Rule once made does not stop the running of time either under the 1832 Act or under the Rules about presuming a grant of right of common by use, as set out in Tehidy v Norman 1971 2QB 528.

So to determine whether the ownership was destructive, I must determine when the above owners or their predecessors in title made a purchase such as the Rule makes destructive.

By section 10 of the 1965 Act a final registration of any land as common land or of a right of common over any such land shall be conclusive evidence of the matters registered. The section is not applicable to an ownership registration, and neither the Act nor any Regulation made under it contains anything as to the effect of such a registration. Although such a registration is or may be some evidence of the ownership in it stated, it cannot I think be conclusive so as to preclude a Commissioner when considering the propriety or otherwise of a Land Section or a Rights Section registration, nor can it be any evidence at all as to the time when such ownership first became joined to the ownership of any dominant tenement in respect of which the owner at any time had a right of common.

Of the documents I have about ownership the first is the 1841 Tithe Award (JWJM/2). In the column of the Schedules headed "landowners" there is a blank against the name and description of the lands and premises now identifiable with various parts of the Unit Land; I reject the suggestion made by Mr Best that the words "Rev. George Maximillian Slatter (Glebe)" in such column of the Second Schedule against the occupation of John Crudge can be ascribed to the subsequent items relating to the Unit Land. Such a suggestion is inconsistent with the layout of the First Schedule and the consequence inherently improbable. So I conclude that in 1841 the ownership of the Unit Land was locally either unknown or uncertain. The words in the column headed "remarks" against "633/634A: Anstey Rhiney Moor/ditto: 310a. 3r.24p./90a.1r.31p." gives some indication about this uncertainty: "This piece stands on Lord Clinton's Manor Map as his property, but is also claimed by others".

As I understood Sir Frederick Corfield, the Rule was for the benefit of Mr Harrison principally relied on to defeat any claim by Mr Milton to graze from either Partridge Farm or Guphill Fields any part of the Unit Land other than the lettered A part and for this purpose he suggested (Sir FC/8 page 12) that the application for ——→ the registration of his ownership at Entry No. 1 in the Ownership Section was for the purposes of the Rule a purchase. In my opinion a registration of ownership which existed when the application for it was made is not a purchase within the meaning of the Rule. No other transaction was alleged as ——→ a purchase having a destructive effect. The circumstances in ——→ which Mr Milton or his predecessors became the owner cannot be deduced from any document. All I have is his somewhat imprecise answers to the effect that ownership was always reputed to be somehow attached to the Partridge Arms. If there was any such purchase I conclude that it was at the latest before 1910. In my opinion in support of a grazing right, Mr Milton may properly rely on the use which as stated under the heading "The Ten Farms" I have found was made from Partridge Farm and the Guphill Fields since then.

Messrs Nicholls became owners of the lettered F part under documents which showed that it and Woodland Farm were in common ownership at least from 1931 and no one suggested otherwise. My decision is therefore that the Rule has no application to the right of common attached to Woodland Farm which I have held has been established by use since 1931.

I identify the "636: Twitching Common, 51a.2r.30p" specified in the 1841 Award with OS Nos. 476, 477, 478, 475, 479 and 494 and OS No. part 308 specified in the First and Second Parts respectively on the Second Schedule to the 1932 conveyance (DFB/12), of which the total area given in such Schedule is 52.397 acres; No. 477 ("the Twitchen 14 acres") and Part 308 (the Twitchen Common Part) being in the said Schedule described as "Common". In the 1932 conveyance the Twitchen Common Part is expressed to be conveyed imprecisely ("all the estate and interest of the vendor"), but the Twitchen 14 acres is expressed to be conveyed for an estate in fee simple. On the 1907 OS map (JWJN/21) the Twitchen Common Part is treated as part of the Unit Land (OS No. 308) and the Twitchen 14 acres is delineated as open to the Ridge Road, but with an OS No. different from the 'Venford Common' on the other side of the road. The first conveyance I have in which the Twitchen Common Part is expressed precisely to be conveyed for an estate in fee simple is the 1972 conveyance (DFB/6). Mr Keep said and Mrs Sloman confirmed that the Twitchen 14 acres was fenced by him shortly after he purchased the Farm in 1954.

On the above documents I infer that of the said 51a.2r.30p. all except the Twitchen Common Part and the Twitchen 14 acres were incorporated by encroachment or otherwise in Twitchen Farm before 1932 at the latest, and probably before 1907. The 1954 fencing by Mr Keep of the Twitchen 14 acres could not be a purchase within the Rule, because when the 1932 conveyance was made it was considered as part of the Farm. The paper title to the Twitchen Common Part is not satisfactory before the 1972 conveyance; however I decline to infer that it was somehow perfected between 1932 and 1972 by a purchase within the meaning of the Rule.

In my opinion the burden of proving a purchase within the Rule is, the Rule being destructive, on Mr Harrison who seeks to rely on it, and has not been discharged. Further it would be inequitable to apply the Rule so as to extinguish a right of common in 1972 attached to more than 100 acres over a common containing more than 700 acres by reason of a transaction relating to a part of the 700 acres so insignificant as the Twitchen Common Part. My decision is therefore that the Rule has no application to the right of common attached to Twitchen Farm which I have held to have been established by use since 1939.

Notwithstanding that the Rule was put forward on behalf of Mr Harrison, my decision as to the right of common attached to Ringcombe Farm is, because I have no reason to the contrary, the same.

Rights other than grazing

At the Rights Section Entry Nos. 5, 6 and 8 on the application of Mr J W J Milton, Mr A J Milton and Mr B J Burton have been registered rights of turbary.

In the 1893 book produced by Mr Keigwin (PM/1) mention is made of the right of the Vicar to cut two thousand of turf on Anstey Common. In the 1903 Churchtown Farm conveyance (JWJM/13) and in subsequent conveyances, the Farm is expressed to be conveyed with "all rights of ... turbary ... over Anstey Common". Mrs Slader mentioned she fell into a pit (many years ago as I understood her) which might have been caused by the extraction of turbary. During my inspections, I saw turfs from which heath and grass were growing which might be used for repairing a lawn or an occasional fire in a dwelling house, but no obvious deposits of peat. The general appearance of much of the Unit Land is consistent with there having at one time been peat on parts of it, and of any such peat having been long ago extracted.

I cannot ascribe any right the Vicar had to Churchtown Farm, merely because the Farm is near the Church. The mention of turbary in the Churchtown Farm conveyances is some evidence that a right of turbary, meaning taking peat such as in 1903 might have then existed, but from the appearance of the Unit Land, I conclude that any peat there was then has long ago been extracted and the right has been extinguished by exhaustion of the product, see Harris and Ryan on Common Land (1967) at paragraphs 2-94. The taking of turf as described by Mr Milton was not in the circumstances such as I can conclude the taking was "as of right" within the legal meaning of the words. On these considerations, my decision is that in 1968-1970 no rights of turbary existed and that accordingly these registrations as regards turbary were not rightly made.

At the Rights Section Entry No. 8 on the application of Mr B J Burton has been registered a right to fish trout in Danes Brook.

A right to fish in a river or brook belonging to another is in law a profit a prendre, but not every right to fish is a right of common. A right of common of piscary is one of the rights to fish recognised by law and is undoubtedly a right of common.

As to a right of common of piscary, the fishing must like other rights of common appurtenant to land be measured by the needs of the land to which it is appurtenant, see Chesterfield v Harris 1908 2Ch 397 at pages 411 and 421; at least if it is to be claimed by prescription; it cannot be without any limit; in short such a right is to fish for the needs of the persons living in the dominant tenement. The fishing in Danes Brook from Churchtown Farm was as described by Mrs Burton fishing for sport. I conclude therefore that the right claimed under the 1903 conveyance is not a right of common within the meaning of the Commons Registration Act 1965, and is therefore not property registrable.

Nothing in this decision should be regarded as either against or supporting any unregistrable right of fishing in Danes Brook claimed by Mrs Burton; any question about any such right is not within the jurisdiction of a Commons Commissioner.

At Rights Section Entry Nos. 5 and 6 on the application of Mr J W J Milton and Mr A J Milton are registered a right to quarry stone.

The circumstances described by Mr Milton in which stone was taken off the Unit Land for use either in Partridge Farm or in the Guphill fields were neither such that I could infer that the taking was as of right within the legal meaning of these words specified in Beckett v Lyons 1967 1Ch 449; nor for a long enough period to establish a right by prescription.

In the absence of any other evidence, my decision is that no such right has been proved and that these registrations were not properly made.

At Rights Section Entry No. 3 on the application of Mr T W Crossman is registered a right to cut ferns. No evidence was offered in support of any such right for Ringcombe. My decision is therefore that this part of the registration was not properly made.

The 1967-70 position

Upon the considerations before set out, my decision is that in 1967-70, the Unit Land was (possibly with the CL65 land) an ordinary parish common; that is to say, it was common land within the ordinary popular meaning of the words, in West Anstey, over which there were grazing rights appurtenant to a number (8 altogether) of farms adjoining or near to it all in the parish.

From the legal point of view, the rights appurtenant to the farms were such as described by James LJ in De la Warr v Miles 1881 17ChD 535 at page 586.

As to some of the commoners also owning parts of the Unit Land, no grazier as such was concerned with ownership; for grazing no distinction was made, and ownership made no practical difference, for each commoner regulating his grazing by reference to the Farms in his occupation.

Nobody had yet quantified the numbers of the animals grazeable by any commoner, the rights being "not limited by number" within the meaning of section 15 of the Commons Registration Act 1965, but this did not mean that any commoner could graze as many animals as he pleased, because his grazing was limited by rules of levancy and couchancy or by such other rules as might by law be applicable. Noone had thought of what the limitation was, although some considered that Mr Hill from Twitchen Farm had sometimes been over grazing.

About this simple position, all concerned with the Unit Land were by the 1965 Act required to consider what registrations under it they should make.

The 1965 Act

The applications made by the owners or tenants of the said 8 farms were dated between 5 July 1967 and 26 June 1968, and were followed by registrations in the Rights Section as set out in the First Schedule hereto. Such registrations were except that at Entry No. 6, in accordance with the applications. They showed this diversity: Nos 8, 9 and 10 were over the whole of the Unit Land, Nos 1, 2, 3, 5 and 6 were over part of the Unit Land and Nos 5 and 6 included straying rights over the remainder. They showed other diversities, for example: the lands to which the rights at Entry Nos 1 and 10 were attached included part of the Unit Land (the Twitchen respectively) Common Part and the lettered F part, although the rights registered at Entry No. 1 were not, and at Entry No. 10 were, expressed to extend to the parts so included.

Nicholls Objection No. 529 to the Land Section registration (the lettered F part) is dated 24 September 1970, and Weaver, Earl and Milton Objections Nos 584, 603 and 604 to the Rights Section registrations at Entry No. 1 are dated 28, 27 and 29 September 1970 respectively.

To these Objections letters were written to the County Council on yellow forms appropriate to an agreement or disagreement with a Land Section registration being amended or cancelled pursuant to an Objection, each filled in so as to relate to Nicholls Objection No. 529, as follows:- (i) dated 16/3/71 by Mr G E Nicholls agreeing to Entry No. 10 being amended, (ii) dated 20/3/71 by Mr D J Hall agreeing to Entry No. 3 being amended, adding "Please enter D J Hall in records in order that notices under the Commons Act may be forwarded as necessary. Respectfully suggest that although the land CL143 may be removed on paper from the register it can only have effect in practice if a temporary fence is erected when the common is grazed"; and (iii) dated Nov 15 1972 by Mr J W J Milton neither agreeing nor disagreeing to Entry No. 6 being amended but adding "... I have never intended a Registration of Rights over Woodland Common. My registration was over Anstey Money (Middle Common) only (197 acres). The adjoining Commons are unfenced and stock cannot be guaranteed not to stray over them and I agree to my Registration to be amended accordingly if necessary; this also applies to my Registration relating to Partridge Farm, West Anstey which I have mislaid form if issued to me. I agree to both Registrations to be amended to no rights over Woodland Common".

The registrations at Entry Nos 2, 3, 5 and 6 did not extend over the lettered F part. Consequently on the yellow forms, and perhaps also on the tit for tat agreement mentioned in the evidence, the registration at Entry No. 10 was on 8/11/73 amended by excepting from the grazing the lettered A "over which only straying rights were claimed" but the registration continued to be expressed to be applicable to the lettered F part.

And so the Register remained until the beginning of the 198 / hearing.

Modification

By section 6 of the 1965 Act a Commons Commissioner after inquiring into a registration

> "shall either confirm the registration with or without modification or refuse to confirm it".

The word "modifications" is used in section 17 in the context of a direction by a Commissioner incidental to an order he may make as to costs. There is nothing in the Act indicating the sense in which the word "modification" in it is used.

The submissions of Sir Frederick Corfield as to this (Sir FC/2 pages 7 et seq) may I think be summarised:- An objector is by regulation 26 of the Commons Commissioners Regulations 1971 confined to the grounds of his objection, so a registrant should be confined to his registration; Donaldson MR supports this idea, see 1985 Ch329 at page 348. A registration to which no objection has been made automatically becomes final under section 7 of the Act; it would be illogical to allow a registrant to improve his position merely because an objection has been made, particularly for the benefit of the registrants in this case all of whom (except Mr Weaver) before the High Court and the Court of Appeal opposed any rehearing — such as I have held. The burden of proof is on the registrant. For this reason the power of modification conferred on a Commons Commissioner by section 6 is not unlimited; he cannot modify in a manner which would substantially alter the nature of the registration. So in the result the only modifications envisaged by section 6 are modifications that reduce the burden on the land of the objector and cannot include any that increase it. supporting this idea is the parallel situation of an appellant authority dealing with a town planning permission in exercise of his power to grant permission "subject to such conditions as", see Wheatcroft v Secretary of State 1982 43 P&CR 233; a similar parallel situation arises on a compensation appeal before the Lands Tribunal, who cannot award a sum above that specified in the notice of claim. Souter v Souter cited by Mr Gray is not persuasive because it depends on the intention of a testatrix. Waitemata v Local Government cited by Mr Gray is also not persuasive as relating to a proposed boundary of a city, the enlargement of which would benefit a developer. Section 5 of the Act and regulations 12 and 13 of Commons Registration (General) Regulations 1966 provide that a registration authority can following an objection or deemed objection with the consents and in accordance with the time table herein set out "modify" a registration; a registrant can therefore only request a modification of his registration in response to an objection thereto; it is the intention of the Act to limit the opportunities afforded to a registrant to modify a registration once made; to extend that limit in <u>any</u> circumstances would be contrary to the clear intention of the Act; so the modification that does not in some way meet an objection ——————) in whole or in part cannot be made by a Commons ——————> Commissioner. Since registrations can only be modified in response to an objection and no land owner is likely to object to a registration of rights over his land on the ground that the registrant has <u>under</u>-stated his claim it follows that the modifications envisaged by section 6 are those in some way meeting the objection in whole or in part by <u>reducing</u> the burden on the objector's land. If the registrations

at Entry Nos 2 and 5 were modified so as to extend to the whole of the Unit Land, the burden on Mr Harrison's land would inevitably be increased; at the hearing before me as a result of the decision of the Court of Appeal, Mr Harrison appears as an objector.

The Rights Section registrations as they now stand collectively are an inapt description of the rights as I have found them under the heading: the 1967-70 position, and to a lawyer and perhaps to others too are confusing; may be they could be described less politely. But there are at least many hundred and I would guess thousands of Rights Section registrations made under the Act and now final which could be described similarly. So the submissions of Sir Frederick Corfield under this heading raise questions which are fundamental to the purpose and scope of the 1965 Act.

By section 7 of the Act in effect a registration to which no objection has been made becomes final with the consequence under section 10 that the registration is "conclusive evidence of the matter registered". By so enacting Parliament as I see it, took a calculated risk that registrations to which no objections had been made would without ever having been subjected to any judicial scrutiny be good enough, motivated I suppose by the trouble and expense which would thereby be saved to many persons by accepting this risk. The consequence of a registration being made of land as a town or village green or a common when it is not within the definition of either in section 22 of the Act was explored by the Court of Appeal in Corpus Christi v Gloucestershire 1983 QB360. I am concerned with a different situation; persons who having as I have found rights of common have when applying for their registration described them inaptly.

In construing the Act and any registration made under it, I can I think properly assume that Parliament knew how land grazed by animals owned by two or more persons is grazed. There are of course many variations at one end, some persons graze some commons by putting an animal onto the land and forgetting it until the next annual gathering; at least so it has been said or hinted to me. At the other end each owner inspects his animals frequently (sometimes daily) to see they have suffered no accident or wandered away or have otherwise become injured or lost, and in some places and at some times of the year there is continuous shepherding. The job is easier, certainly if the land is a large area if the animals can somehow be persuaded to stay in and around some particular part of the land. Taking advantage of the instinct of some animals (particularly sheep) to stay in an area where they have spent the first few months of their lives, the part of the land where they stay may be comparatively small, and in such cases the land is said to be heafed, or hefted or (in Wales) in arosfa —— or cynefin; the owners of the animals so grazed generally co-operate with each other in keeping the animals of each of them as far as possible in and around the part of the land where they usually congregate, and tolerate the unavoidable straying of animals from one part to another. Grazing on such a basis in ordinary English can intelligibly be described by each of owners as a grazing on their part of the land with straying on other parts.

Properly to understand the scope of the Act I must I think suppose that some proceedings before a judge (of the High Court, or County Court or other appropriate tribunal) for the purposes of determining whether a common has been grazed by someone with no right, or has been grazed excessively by someone who has a right or a question as to the applicability of sections of 193 or 194 of the Law of Property Act 1925 or some other question relating to the proper management of the common, and suppose in such proceedings one party has pleaded in proper legal language a right such as I have found under the heading: the 1967-70 position and that another party has pleaded that the right is no longer exercisable by reason of section 1 of the 1965 Act because it under such Act has not been registered. I assume that in my supposed proceedings the judge having heard evidence and arguments such as I have heard finds the rights in 1967-70 to have been as I have found them, so he is faced with the simple question have the rights been registered; if he finds they have been registered his trial will proceed without further reference to the 1965 Act exactly as it would have proceeded if the Act had never been enacted.

In my opinion the judge considering my supposed question would gain no assistance from any part of the law relating to town planning or to claims for compensation on a compulsory purchase. The law about such matters deals with the situation which starts with the person applying for permission to do something which has not been done before; cash bingo and a building formerly used as a cinema in the cases cited by Sir Frederick Corfield or a sum specified in a claim for compensation. Such situation is I think in no way parallel with the question I am supposing: the registration of a right proved to have existed from 1970 and which may have (as most such rights have) existed from time immemorial. In my opinion in the proceedings I am supposing the judge would determine the question having regard to the law relating to the construction of written instruments which contain words describing in non legal language inappropriately interests in land which lawyers experienced in conveyancing describe in legal terms which by law have an established and precise legal meaning. Questions such as this fall into two main classes. First whether the inapt instrument describes a right x as one party claimed or a right y as another party claimed; secondly whether the instrument describes a right x as one party claimed or is absolutely void as being incapable of describing the right x or any other right.

In my supposed proceedings, the judge would not be concerned between choosing between right x and right y because on the facts that I have found them none of the applicants for the registrations I am now considering could have had any grazing rights over the Unit Land or any part of it other than those which I have found to have existed in 1970. So the choice to be made would be whether the registration as an instrument in writing purporting to relate to an interest in land adequately identified the right in land which the applicant has attempted to register.

On the question supposedly under consideration, the 1965 Act penalises a person who in 1970 had a right of common and who fails to register it; by section 1 of the Act he looses his right to exercise it; the Court in construing written documents is against a construction which on any person imposes a penalty. Secondly when a person makes an application intending it to have some legal effect, the Court leans against the construction which makes the document ineffective. Thirdly, a person who has a right of common is not to be prejudiced because when giving evidence he ascribes to it an origin not recognised by law, see De la Warr v Miles supra. Fourthly the registrations although unlike the wording of any pleading, as regards grazing (with the exception of that at Entry No. 6) intelligibly describe a right which the applicants in 1970 were, apparently exercising. My conclusion on this part of the case is therefore that all the rights which in 1970 I have found under the heading: The 1967-70 position, have been registered.

In reaching this conclusion I am in effect assuming that if in the supposed other proceedings all the evidence given before me was adduced, the Court would declare that upon the true construction of the Rights Section having regard to the evidence, had been registered. But this conclusion still leaves the Rights Section confusing in that any person not having been present at my hearing and not having a copy of this decision might not think that the rights registered were as I have found them to be; and it is against the public interest and against the private interest every body concerned with the Unit Land that such confusion would continue. So I next consider whether I should clarify the Rights Section by making modifications to each of the registrations, so as to accord them to the 1967-70 position.

It seems to me implicit in the submissions of Sir Frederick Corfield that when a right is registered, the registration may change the right into something different: cutting it down or enlarging it or altering it in some other way; consequentially I suppose under section 10 of the Act. In my view the "matter" registered in the Rights Section is the right, and it would be enlarging the scope of the section to read it as giving a statutory conclusiveness to everything that appears in any registration. Any such conclusiveness would be extraordinary in the circumstances contemplated by section 7. Indeed of the many extraordinary registrations finalised under this Section which I have seen, I would think that most of them would not be so confusing as to cause any difficulty in identifying the rights registered. In my view once it has been determined judicially or otherwise that a right has been registered, such right is neither enlarged nor diminished nor in any way altered by the manner in which it is in the Register described. I have not overlooked that in some proceedings relating to the exercise of a right of common which depend on whether one party has grazed reasonably, and on such a question the manner in which he applied for a registration and his ideas as to what his rights were, may be relevant to the question of reasonableness and otherwise.

So on the view I take of the position the burden increase submission of Sir Frederick Corfield has no relevance, because the modification of the registration to make it accord with the 1967-70 position will not increase its burden, but will do no more than make the registration less confusing.

In case I am mistaken in thinking the law is as above stated, and the registrations as they now are, if not modified, will establish rights different from those which existed in 1967-70, I now consider the burden increase submission of Sir Frederick Corfield. One of the meanings of the word "modification" in the Oxford English Dictionary is:

> "The action of making changes in an object without altering its essential nature or character; the state of being thus changed; partial alteration".

Among the various meanings stated in the OED this seems to me that most likely to have been intended by Parliament and I adopt it. Clearly under it a change or alteration which increases the burden on the land of an objector or a deemed objector is not outside this meaning, and this is reason enough for my rejecting the increased burden submission. But I have other reasons for this rejection: an objection to a registration can be made by someone who is concerned not as an owner of land but as a person entitled to a right or by a person who has no legal interest in the land at all. If an alteration which diminishes the burden of a registration on the owner on one part of the Unit Land may increase its burden on another part, as was pointed out by Donaldson MR in his judgement in the instant case. So to me the burden increase test is uncertain and therefore unacceptable.

A question remains as to the registration at Entry No. 6. It is not in accordance with the application for it which was made by Mr A J Milton for a right over the part of the Unit Land "shaded green on Plan A" attached to his application, being (describing it approximately) an area on the Register map over written "Guphill Common" together with land north of it on the other side of Ridge Road extending right down to Danes Brook. The application was to graze the part of the Unit Land from Guphill Gate conveniently grazeable expressed sensibly and intelligibly. The registration actually made was over the lettered E part, a nonsense, presupposing grazing practically impossible.

TURN OVER

The County Council as registration authority could, at any rate if they had discovered their mistake soon enough, have corrected the registration under regulation 36 of the Commons Registration (General) Regulations 1966; may be they could still do so; perhaps they only discovered the mistake after 17 March 1978 when they made the references to a Commons Commissioner which started these proceedings, and perhaps they await their outcome. However this may be I have no jurisdiction over what they choose to do or not do under the regulation.

The High Court has general jurisdiction to rectify a written instrument containing a mistake; it may be being a public document procedure by judicial review would be appropriate. If there could be any serious contest as to whether the High Court would in the circumstances of this case in proceedings regularly brought before them order that the Register be corrected so as to make it accord with the application made by Mr A J Milton, my only course would be adjourn the proceedings so as to enable the parties concerned to litigate the matter in the High Court as they might be advised, but in this case the mistake was clearly proved (see JWJM/2), and the only possible defence in such proceedings would be based either on the need to give adequate notice to all the persons who might be adversely affected by the correction, or on the delay. As to notice, before me every possible interest in the land was represented; nobody except Mr Harrison suggested I should not treat the mistake in the Register as having been corrected. As to the delay Mr Harrison has by the judgment of the Court of Appeal in this instant case been placed in the position of an objector notwithstanding that he never in due time made an objection; he is therefore in the same position as he would have been if the County Council had corrected the mistake and he had objected on the day after; so neither Mr Harrison nor anyone else connected with this land has been prejudiced by the delay. Notwithstanding that I as a Commons Commissioner have no jurisdiction to correct the mistake, it is incidental to my jurisdiction to proceed on the basis that a mistake which I am satisfied could and should be corrected has been corrected, that is that all that ought to have been done about this mistake has been done. So I apply to this registration at Entry No 6 all that I have said under this heading about the other registrations.

I find that the registrations at Entry Nos. 1, 2, 3, 5, 6, 8, 9 and 10, because they do not clearly describe the rights as I have under the heading, the 1967-80 position found them to be, have caused confusion and are if not modified likely to cause confusion. My decision is therefore that they be modified as specified in the Fifth Schedule hereto.

Straying and Vicinage

As the Register started the word "straying" appeared only in the registrations at Entry Nos. 5 and 6 (Messrs J W J and A J Milton) to graze over the part of the Unit Land lettered A and E "with straying rights onto the remainder ..." Consequentially on Objections No. 609 made by Mr J W J Milton (not now before me because "complied with 8/1/73"), the registration at Entry No. 10 (Messrs E J and G E Nicholls) has been amended from "over the whole ..." to "over the whole ... except the part lettered A over which only straying rights are claimed ...".

As before appears, the use of the word "straying" in these three registrations had decisive consequences at the 1981 hearing and has led to some discussion before me.

The ordinary meaning of the word "stray", so far as could be relevant, see OED: is to describe an animal in a place which neither its owner nor it wants to be. The expression "a right to stray" or "a straying right" using the words "stray/ straying" with this meaning without any context or in any context reasonably to be expected, is nonsense. I consider that such a registration being potentially confusing is against the public interest, and I should therefore at a hearing as a general rule require an explanation, and if the explanation suggests a modification which would make the registration less confusing I ought (other considerations being equal) to make the requisite modification, or if there is no, or no satisfactory, explanation I ought to avoid the registration either altogether or at least so far as it includes the word "stray" or "straying".

The explanations given to me in reply to any such request have varied considerably: that given most often is that it is impossible in the absence of fences to prevent an animal going where neither its owner nor it wants to be and the owner wishes by the words in his registration to protect himself against having to pay to get it back should it be impounded. Sometimes the explanation includes the wish by the owner to protect himself against the animal being violently and to it injuriously chased off the place where it has strayed. Sometimes the owner disclaims any wish for the animal to graze on the place to which it has strayed, and any right to stray beyond the adjoining common. The usual justification for claiming such a right to stray is that it is customary, or always has been so, or the like.

Expressions such as "a right to stray" are often used by witnesses and are I think meaningful, describing a wished for legal result. One such (in a pleading) was considered in Jones v Robin 1847 10QB 581 and (on appeal to the Exchequer Chamber) 620, and it was there held that such a right could not be established by custom and suggested it could be established by prescription. The circumstances in which an animal trespassing may be impounded are now regulated by section 8 of the Animals Act 1971; as to this section and its effect on a possible liability for a straying animal, see Davies v Davies 1975 1QB 172. A common by reason of vicinage has been described as "an excuse for a trespass" but from which description I do not infer that every excuse an animal may have for trespass is a common by reason of vicinage. Essentially a right of common is a profit a prendre, the taking of some of the produce of land; an animal which is straying within the OED meaning above quoted is not doing this, and therefore a right expressed as "to stray" with this meaning is not registrable under the 1965 Act.

I have not overlooked Crow v Wood 1971 1QB 77: the Court of Appeal then considered lettings of farms which included a right "to stray a moor" and it was conceded that one of the farms later sold off had a right "to stray" although the conveyance did not in terms convey any such rights; the question was whether the plaintiff had to fence his land against the sheep of the defendant exercising the right to "stray". Denning MR treated the right as undoubtedly existing notwithstanding it was described as "stray"; but it is to be noted that the defendant pleaded a right "to graze 40 sheep", and Denning MR put the word "stray" between inverted commas implying that it was not a word of his choice, and that Edmund Davies LJ described the defendant as having a "right to pasture" and with it a right to compel maintenance of the necessary fences. So the word "stray" can given sufficient context mean a right to graze but this case does not establish that a right to stray meaning no more than an excuse for trespass is a right of common as these words are generally understood, and a registration containing such words would be potentially confusing, at any rate unless there was a local understanding that they must be interpreted in accordance with a known document such as was considered in Crow v Hill.

On the evidence in this case I am of the opinion that the use of the word "stray" in the register is potentially confusing and the registration so far should be avoided unless it can be modified so as to describe a right recognised by law as a right of common and as such registrable under the 1965 Act.

I reject the suggestion which seems if not expressly at least impliedly to have been put forward at the beginning of the 1981 hearing that the word "straying" in the Rights Section were altogether void, so that the Register should be read as if they were not and never had been contained in it. The registrations at Entry Nos. 5, 6 and 10 are expressed to be applicable to the whole of the Unit Land and their meaning is I think to be determined in accordance with the established law applicable to documents referring to interests in land; it is not until such meaning has been ascertained that any question as to modification can be resolved.

Against my modifying "straying rights" in Entry Nos. 5, 6 and 10 to "rights to graze", Sir Frederick Corfield, as I understood him, submitted that the presence of stock on the parts of the Unit Land remote from the farms of their owners should be attributed to there being attached to the farms rights of common of vicinage which are not registrable. This submission affects much of the rest of my decision and might I suppose if correct have important consequences as regards the future of the Unit Land. Further these rights are in any discussion as to straying such as happened at the beginning of the 1981 hearing, inextricably associated with rights of common by reason of vicinage, so I think I ought to state the law applicable to such rights as I understand it to be.

The authorities relating to rights by reason of vicinage are summarised in Halsbury Laws of England (4th edition 1974) volume 6 paragraphs 556 et seq and in Harris and Ryan on Common Land (1967) pages 41 et seq. The questions as to whether a person had such a right or no right at all were considered in 1847 in 3 cases in the Queens Bench and on appeal in the Exchequer Chamber; Jones v Robin 10QB 581 and 620, Prichard v Powell, 10QB 589 and Clarke v Tinker 10QB 604; in these cases the question was whether a person had such a right or no right at all, and much was said about the law applicable to such a right. However in this case the question is whether a person has such a right or an "ordinary and larger right of common

appurtenant"; this question was considered by Jessel MR in Commissioners v Glass supra at page 159, and he said:-

> "Now, the next defence was one which took a very long time in discussion, and to which a great deal of the evidence was addressed. It was said that the common right established must be presumed from the user ... to be, not an ordinary common appurtenant, but a common appurtenant, so far as regards the parish ... with a common of vicinage over the rest of the wastes ...
> The difficulties in the way of that defence are manifold, and in my opinion utterly insuperable. In order to have common of vicinage you must have two vills or Lordships, or Manors with separate commons adjoining. In the present case I cannot find that there was any parish common. The first thing to be established is that there are separate commons. There was a part of the waste in various parishes; but as there is no common belonging to a parish, there are no 2 separate commons at all. The very first beginning of common of vicinage fails you. When you have two manors with commons, that is intelligible enough.
> Next it is said: there are about twenty parishes, and it is said that you can have common of vicinage between those twenty parishes and twenty separate commons, if they adjoin each other ... in the first place, I understand common of vicinage to be confined to two. I read upon that subject a passage from a well-known work Blackstone's Commentaries (1794, 12th edition, Book II page 33) which defines common and it seems to me as far as I understand, rightly defines common. He says: common pur cause de vicinage is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another. The beasts of the one stray mutually into the other's fields without any molestation from either. That accords with Coke's statement of the doctrine, and, so far as I know, with every authority on the subject.
> ... There was great inconvenience about this common of vicinage, and I conceive that there is no reason whatever for extending it.
> Then again there is another doctrine of common of vicinage ... if you have three vills each of which has a common A, B, and C, and vill B lies between A and C ... A cannot intercommon with C ... that again is a fatal objection to it being a common pur cause de vicinage.
> But that is not all. In common pur cause de vicinage you can only turn out on your own common ...
> There is another ...
> I think when you look into all these circumstances together, notwithstanding that some of those documents say that it was common of vicinage it is a case in which there can be no common of vicinage. If common there be, it must be the ordinary common appurtenant and nothing else ..."

I take this to be the final and authoritative statement of the law. For a right of common by reason of vicinage to be established by usage must in all respects accord with it. It can only subsist between vills or lordships or manors and each must have a separate common. Only Parliament can now invent a new right of common by reason of vicinage.

I have not overlooked that Parke B in Jones v Robin supra at page 634 consider that common pur cause de vicinage may exist between two neighbouring proprietors though there be no other rights of common over the lands on either side, from which the cattle escape; but he went on to say:

> "... nor do we decide what is the proper form of claiming common per cause de vicinage in the more usual case in which it is claimed as incident to an ordinary right of common on the land from which the cattle escaped. These cases are to be governed by the principles of law and the authorities which are applicable to them".

The judgments in Newman v Bennett 1981 1QB 726 seem to me to accord with the above quoted judgment of Jessel MR, much of which was in them treated as applicable.

Sir Edward Coke in his Institutes (1659) at page 122a says:-

> "There be foure kinds of common of pasture, viz common appendant ... The second is common appurtenant ... The third is common per cause de vicinage which differeth from both the other commons, for that no man can put his beasts therein, but they must escape thither of themselves by reason of vicinity: in which case one may inclose against the other, though it has been so used time out of mind, for that it is but an excuse for Trespasse. ... The last is common in grosse, which ...".

The observations made by Sir Edward Coke on Commons being not only authoritative but of much historical interest are rightly quoted or referred to in books on law of Commons. At nearly every hearing I have had when straying or common of vicinage has been mentioned, the words "an excuse for trespasse" are quoted, and often relied on as showing that any excuse for a trespass must be a right of common of vicinage.

As part of a legal definition of a right of common of vicinage, the words "an excuse for trespasse" are not sense; for every right of common whether or not it be a common of vicinage is an excuse for a trespass, and there are many rights recognised by law which are an excuse for a trespass and which could not sensibly be regarded as a right of common within any possible meaning of these words. In the context in which Sir Edward Coke used these words, they are a pleasing conceit, adding a little colour to an otherwise somewhat bald exposition. So I am not I hope being disrespectful of his great reputation, if I say that in my opinion anyone who at a hearing before a Commons Commissioner seeks to establish a registrable right of common by evidence that cattle are by grant express, implied or presumed, by usage, custom or otherwise excusably trespassing is putting forward a nonsense. My opinion is I think confirmed by the above quoted judgement of Jessel MR, who having about common of vicinage had for "a long time" listened to discussion and heard "a great deal of evidence", and who had the above quoted 1847 cases cited to him (then the latest authorities), did not mention "excuse for trespass" anywhere in his judgment, and who did say that he considered his judgment to "accord" with Coke's statement of the doctrine.

So I adhere to my statements in other decisions that a right of common of vicinage as an excuse for a trespass is not registrable as a right, and that the Commons Commissioners have generally (I understand there is at least one exception) refused to confirm such a right. But any such statement should not be read as meaning that a right of common by reason of vicinage as defined and expounded by Jessel MR is not registrable; his judgment is I think plain authority for such a right as <u>by him</u> defined is a right of common, and must therefore be within the 1965 Act.

As to whether any such right as by him so defined has ever been so registered, all I can say is that I personally have no recollection of seeing any registration of such a right in the Register so described.

But there may have been, and I would say probably have been many registrations of a right attached to a farm applied for as extending over more than one common (each being a Register Unit with a different Number) which contain no mention of the words "of vicinage", but which some person historically minded could show were within the definition expounded by Jessel MR. I have in mind particularly the numerous areas which can be found marked on the Ordnance Survey maps of the 1/50,000 series which are thereon shown as in more than one parish or as being common to two parishes.

The substance of the matter is that the words "right of common pur cause de vicinage" and "right of common by reason of vicinage" are a bit of a mouthful and are not often used by farmers in describing their everyday activities, so a farmer filling out a form of application for registration of such a right might well complete the form without mentioning vicinage at all. The resulting registration would I think be valid for it is not necessary in a registration to specify the exact nature of the right registered; indeed it is generally impossible only by looking at a registration to know whether the right is of sole or several herbage or pasture, or of an ordinary right of common appurtenant for animals levant and couchant or whether there was before the registration a right "limited by number" (stinted or otherwise) so that the numbers quoted in the register will always be an essential part of the right or whether it is a right "not limited by number" sos that the numbers stated in the register are consequential on section 15 of the Act. These distinctions being often more important as to the manner in which the right can be exercised than any difference there may be between a right of common by reason of vicinage as defined in the words above quoted from Jessel MR and an "ordinary" right of common. It may be that it is open to any person who so wishes to claim that a right which has been registered as an "ordinary" right of grazing is in fact right of common by reason of vicinage; but I am not encouraging anyone so to do in order to justify the erection of a fence because I think he would even if successful be in difficulty under section 194 of the Law of Property Act 1925.

And nobody should think as a result of any statement of mine that I consider that there are over many commons now registered under the 1965 Act rights by reason of vicinage being rights which have not and could not have been registered but which can nevertheless be exercised as Blackstone and Jessel MR described.

In this decision under a heading before this I have found that the Unit Land is one common known as "West Anstey Common" or (locally) as "Anstey Common", or (more shortly) "The Common"; this finding by itself under the law stated by Jessel MR in the above quotation is enough by itself to negative there being a right over the Unit Land by reason of vicinage. Even if I am mistaken in this finding and the Unit Land comprises (as marked on the Register map) Anstey Rhiney Moor, Anstey Money Common, Guphill Common, and Woodland Common with or without (part) Twitchen Common, there are no vills or townships so named which any such common could be considered as belonging. It was suggested that there was a manor of Anstey Money; of its existence I have only the 1860 reports in the Law Times and Weekly Reporter of two judgments in which Lord Portsmouth as the alleged owner was unsuccessful; I have no evidence as to the extent of this manor or of the common belonging to it or how the grazing on such common was regulated or of anything else about it. As to the manor possibly at one time owned by Lord Clinton, I have only the note on the 1841 Tithe Award which suggests that the 401 a. 1 r. 15 p. therein called Anstey Rhiney Moor were marked as being in his ownership on a manorial map (there being no suggestion that the map included Guphill Common); at the hearing no one suggested what the name of such Manor could be. Nobody suggested that there

was ever any Manor claimed either Guphill, or Woodland, or Twitchen. The difficulties in the way of my concluding that there are or could be any rights of common by reason of vicinage anywhere over the Unit Land or any part of it are (if I may echo the words of Jessel MR) utterly insuperable.

So as regards the Rights Section registrations with which I am concerned, I can only echo the words of Jessel MR and say: if to any of the farms there is attached any right of common, it must be an ordinary right of common appurtenant and nothing else, and it must be over the whole of the Unit Land and not over part of it.

Registrability of quasi-rights

It is clear law that Mr Harrison, Messrs Nicholls, Mr Milton and Mr and Mrs Bassett cannot over the part of the Unit Land which they respectively own have a right of common, being a right in legal language properly so called. I have decided that the grazing right attached to 8 of the Farms specified in the Rights Section over the part of the Unit Land owned by the owner of any of these Farms, is subject to quasi-rights of common attached to his Farm to graze the part of the Unit Land owned by him on the same basis as the other graziers.

So I now consider how if at all this position can or should be recorded in the Rights Section, a question of some importance because there must be many hundreds of commons grazed on this basis.

The problem can be explained by taking the case of Messrs Nicholls (Entry No. 10) as an example. If from the registration made on their application there be excluded the lettered F part because they are of it the owners, the registration may be read incorrectly as meaning that as against all other graziers, any grazing by Messrs Nicholls as owners of Woodland Farm over the lettered F part must be subject to the exercise by all the other graziers of their grazing rights as registered, so that Messrs Nicholls may over the lettered F part only graze what such graziers leave; for them an unrealistic result because for obvious reasons the lettered F part is more conveniently grazable from Woodland Farm than it is from any other of the 8 Farms.

A quasi-right of common, as I have under a former heading said is in law essentially a condition or proviso to which an ordinary right of common is subject. So I doubt whether the absence of any mention of it anywhere in the Rights Section could in any legal proceedings about over grazing preclude a plaintiff who owned part of the Unit Land and who in respect of a Farm owned by him had a grazing right over the rest, from calling evidence to show that the defendant's grazing right was subject to such a condition or proviso. But however this may be, the absence of any such mention would make the register practically confusing.

As I read the 1965 Act, one of its purposes was to set up a Register which would be useful to as many as possible and should therefore not be avoidably confusing. I am therefore unable to deduce from anything in the Act or in any Regulation made under it, any prohibition on the Rights Section containing some mention of any relevant quasi-right of common. So the substantial question about quasi-rights of common is not whether they can, but how they may or should be specified in a Rights Section.

Considering it as a lawyer, the answer is simple: a quasi-right being essentially a proviso or condition to which some other right of common undoubtedly registrable is subject, and for which the prescribed form of Rights Section expressly provides, it should be registered against and as part of the registration of such other right. But there is about this answer, the practical difficulty of drafting the condition or proviso shortly and intelligibly, not beyond the capacity of most lawyers, but troublesome to them, and practically impossible for others. I cannot recollect ever seeing a registration or objection containing or suggesting any such condition or proviso, and I have seen many hundreds, possibly more than a thousand of registrations of quasi-rights of common made as if they were no different from an ordinary right of common appurtenant to some agricultural holding the owner of which also owned the whole or some part of the Register Unit.

As a general rule, when a Register Unit includes a Right Section registration of a right attached to land owned by X and a registration in the Ownership Section of X as the owner of the whole or some part of the Register Unit, the registrations are questionable as containing a manifest error, which should be corrected by avoiding one or other of the registrations; so confirmation of one of them in the absence of a satisfactory explanation should be refused if (as is often not the case) they have both been referred to a Commons Commissioner and it is apparent on the information before him that such dual ownership exists. However apart from such cases, there remain numerous Rights Section registrations where the explanation offered is either expressly or impliedly that the registration is of quasi-right of commons.

Because such a quasi-right has been judicially recognised in Musgrave v Inclosure Commissioners 1874 LR9QB 162, because I can find no prohibition of it being mentioned somewhere in the Rights Section, because thousands of persons consider it convenient and intelligible to mention it in the Rights Section in the same way as an ordinary right of common, and because in this case (as in many others) it will make the Register less confusing if the relevant quasi-rights of common are mentioned in the Rights Section, I conclude that quasi-rights of common can and should in appropriate cases, of which the Unit Land is one, be registered in the Rights Section as if they were ordinary rights of common.

My decision as regards Entry Nos 1, 3, 5, 6 and 10 is therefore accordingly.

TURN OVER

The 1981 hearing

That the 1982 decision has been set aside by the Court of Appeal does not preclude my giving effect to an act in the law by anyone done at the 1981 hearing which led to the decision. Sir Frederick Corfield submitted (Sir FC/5 page 13), in effect: (1) at the 1981 hearing Mr B J Burton and Mr C B George and possibly others having a right of common over the lettered F part released it; and (2) consequentially on such release, they lost any right of common they had over the remainder of the Unit Land.

As to (1), Mr Gray submitted (in effect) that any release so made was to enable the Commissioner to make a decision and accordingly became void when the decision was set aside. In law Mr Burton and Mr George could at the 1981 hearing have made a release which then took irrevocable effect independently of any decision the Commissioner subsequently might or might not give. Whether there was at the 1981 hearing any such release is a question of fact.

As to this question, there was as regards Mrs Burton some conflict of evidence. The alleged release was the statement made at the 1981 hearing at about 5 pm by Mr Sessions on behalf of Mr Burton to the effect that he no longer claimed any right of common over the lettered F part. The conflict is: Mrs Burton said the statement followed shortly after Mr Nicholls went up to and made a request to her husband, consequentially on which he passed a note and later conversed with Mr Sessions who then made the statement. Mr Pugsley and Mr Nicholls said there was no such approach or request. On this conflict, on the balance of probabilities, I prefer the evidence of Mr Pugsley.

However in my opinion this preference is of no significance in this case. For at the 1981 hearing before Mr Burton passed up his note, Mr Pugsley and others had been for some considerable time addressing the Commissioner on the basis that Mr Nicholls wished the lettered F part to be adjudged free of rights of common, an adjudication to which all except Mr Burton had agreed; I infer that Mr Burton notwithstanding that he was not sitting so near to the Commissioner as others would either have heard or would have been told by others what had been said. For the alleged release to have been independent of the Commissioner's adjudication, I would have to suppose that Mr Burton knowing nothing of what was happening around him, spontaneously decided that 5 pm on 25 November 1981 was a convenient moment for him to release any right he had over the lettered F part, and contemplated that such release would have immediate effect whatever the Commissioner might subsequently do. I reject any such supposition. I find that when Mr Sessions made his statement, Mr Burton passed up the note knew that

Mr Nicholls wanted the lettered F part to be free of common rights (a wish which had been expressed on his behalf so as to be audible to everyone present) with a view to the Commissioner adjudicating for his benefit accordingly, that Mr Burton's motive in passing up the note was that wish, that his intention was to help Mr Nicholls to obtain the adjudication he wanted, and that when Mr Sessions made the said statement it must have been plain to everyone who heard him that Mr Burton had that intention. In making this finding, I assume that Mrs Burton was mistaken in thinking that Mr Nicholls in person approached her husband and made a request to him as she said to me he had done.

On this finding, it follows that the adjudication having by the Court of Appeal been set aside, the statement made by Mr Sessions can now never have any effect.

As to (2), Sir Frederick Corfield referred me to paragraphs 2-84 of Harris and Ryan on Common Land (1967) where the legal requisites of any such release are discussed and said to be doubtful; he for me analysed the authorities cited in this paragraph. Having rejected his submission (1), no useful purpose would be served by my expressing any opinion about his analysis.

My rejection on the evidence of Mrs Burton about the said conflict, does not I think affect the reliability of her evidence about any other matter. So as to Mr Burton my decision is that nothing that was at the 1981 hearing said either by him or on his behalf deminishes or otherwise affects the rights which before that hearing were attached to Churchtown Farm.

As to Mr George it is in the 1982 decision said that evidence was given on his behalf, but I do not know what it was/why he "accepted the objection". In my opinion the burden of establishing that he made any release such as was alleged is upon Mr Harrison who seeks to take advantage of it; in the absence of any evidence I find that there was no such release by Mr George.

It may be that on his behalf some agreement was made with Mr Nicholls that the Commissioner should be requested to adjudge that the letter F part was not common land. The 1982 decision has been set aside, so there is no such adjudication. In effect Mr Pugsley on behalf of Mr and Mrs Bassett as successor of Mr George and on behalf of Messrs E J and G E Nicholls made to me the same request; as hereinbefore appears, I refuse it.

Upon the above considerations, my decision is that what happened in the 1981 hearing is in these proceedings of no significance.

Numbers

I consider the submissions that I should modify first the number of animals specified in all the Rights Sections registrations, and secondly the number of animals specified in the Twitchen Farm registration at Entry No. 1.

Mr Pugsley (Pugsley/2 and 3 at pages 4 and 2) pointed out the removal of the lettered F part from the register would reduce the area of the servient tenement from 714 to 609 acres (roughly a seventh), and suggested therefore to prevent overcrowding the Harrison land all numbers should be scaled down by one seventh. However as I am against the removal of the lettered F part from the Register, I disregard this suggestion.

Mr Gray in his final address (18 October) called attention to the possible applicability of the NFU scale and to re Ilkley and Burley 1983 47P&CR 324, and in case I decided to modify the numbers specified in the Rights Section so as to make them proportional to the area of the dominant tenements, gave me the acreages of the farms of his clients as follows: Hill Farm 66 acres, Partridge Farm, 40 acres, Guphill fields 27 acres, Churchtown Farm 195 acres (recently reduced by a split to 158 acres).

In support of any such modification I had no evidence as to the NFU scales applicable (they vary from county to county), or as to the states (arable, good pasture, rough pasture, or as may be) of the Farms. In my opinion it would be neither just nor convenient for me to add together: (a) all the number specified in the Rights Section and (b) the area of all the Farms so specified (excluding Nos 4 and 7) and then apportioning the Rights Section numbers accordingly. Except as regards Entry No. 1 to which particular objections have been made I consider that I should make no modifications such as Mr Gray contemplated I might, for the reasons set out at pages 25 et seq in my decision dated 30 June 1983 in the Forest of Dartmoor reference 209/D/287-288. For convenience I set out these reasons with some modifications below under this heading (the last nine paragraphs).

Sir Frederick Corfield asked Mr Crudge about the capacity of the Common and his answer was (in effect) that it depends on the month of the year and on the season. He also asked Mr E M Harrison as to how many sheep the moor could carry from Lady Day to Michaelmas and his answer was, one sheep for 2 acres of moor. Sir Frederick in his final submission (Sir FC/5 page 28) → submitted: it is totally absurd to imagine that this area of Moorland could have begun to carry the stock for which rights were claimed: leaving aside Miss Tuckett (Entry No. 4) it amounts to 1,047 sheep, 660 sheep and lambs, 238 cattle and 48 horses.

Leaving aside also Mr Davey (Entry No. 7) my figures are 1,343 sheep, 178 cattle and 33 ponies. Sir Frederick Corfield (Sir FC/6 page 15) in connection with rights pur cause de vicinage, referred to Sir Miles Corbet's case 1585 7 Rep.5, as showing levancy and couchancy is limited to the number of beasts the land over which they are claimed will feed.

Clearly on the basis that the occupiers of all the Farms put out stock to the full number of their registrations, the result would be absurd. As stated later under this heading, the 1965 Act does not I think authorise any grazing or attempt at grazing on such basis. Obviously the total of the levancy and couchancy numbers of those with rights over many commons do not and could not add up to the capacity of the common at all times of the year, and it seems to me that Parliament must have contemplated that such addition as a result of section 15 of the Act. So even if I thought (which I do not) the result to be absurd, I cannot modify the numbers merely because they exceed the capacity of the common.

Further I cannot think of any just or convenient algebraic formula in which X is the capacity of the Common and Y is the levancy and couchancy number. Even assuming (which is I think open to some doubt) that Y is an ascertainable number which will as regards any farm for ever be the same, X must vary as Mr Crudge said with the time of year and the weather, and I see no reason for choosing from Lady Day to Michaelmas rather than any other time of the year; some commons (eg Lammas lands) are grazed from Lammas Day to (if weather permits) late November.

I realise that in the public interest as well as in the interest of the majority of graziers common land should not be over grazed. But the application of any such algebraic formula would not produce a just result, for it often happens for long periods many of those with rights for various reasons do not choose to exercise them. Sir Miles Corbet's case supra is no authority for cutting down an ordinary levancy and couchancy right to numbers totalling Y, and each reduced under such algebraic formula. Consequently on the practical abolition of manorial courts by the 1922 and 1925 Property Acts, overgrazing may, in the absence of a commoners association effectively on a consensual basis regulating grazing, be difficult to prevent; but in my opinion it can never be lawful unless agreed by all concerned.

I therefore conclude that I have no power under the 1965 Act to modify numbers clearly to prevent over grazing, for this conclusion I find some support from section 5 of the Dartmoor Commons Act 1985 c.xxxvii which provides for the making of regulations to ensure that commons are not over stock, seemingly assuming that this result cannot be achieved under the 1965 Act.

For these reasons I shall do nothing about the total absurdity mentioned above.

The registration at Entry No. 1 is the subject of objections relating to it particularly being Weaver No. 584, Earl No. 603 and Milton No. 604. At my 1985 hearing Mr Gray was representing the objectors and was content to treat the objections as doing no more than requiring a number of stock in the registration to be reduced to 110 sheep and 15 cattle, as had been done with the agreement of Mr George in the 1982 decision. I had the evidence of Mr Weaver, Mr Milton and Mr Nicholls of possible over grazing from Twitchen Farm by Mr Hill. In these circumstances the burden of proving reasonableness of the registration rests on Mr and Mrs Bassett, see re Sutton supra. Mr Bassett at my hearing said he did not agree the reduction but no evidence was offered in support of the numbers in the registration. The circumstance that when the Tithe Award was made a large part of what is now Twitchen Farm was then common land and that this part was taken into the farm sometime before the 1905 map was made, and at least before the 1932 conveyance raises a doubt as to whether the rights attached to this Farm are as large as those attached to others. Upon these considerations notwithstanding the disagreement of Mr Bassett, my decision is that theregistration should be modified as the objectors claimed.

For convenience I set out the 9 paragraphs of my Forest of Dartmoor decision above referred to, as follows.

The Commons Registration (Objections and Maps) Regulation 1968 (SI 1968 No. 989) provides how Objections are to be made and prescribes an Objection Form (No. 26) which includes Notes intended to be detached when the Objection is sent to the registration authority. In these Notes among 5 examples of grounds of Objection are: "that the rights should comprise fewer (state how many) animals, or other (state which) animals". None of the Objections relating to the Unit Land contain any such grounds.

I have no evidence that any of the rights registered over the Unit Land were either stinted or gaited or would have been treated as limited by number apart from Section 15 of the Act. Although for many purposes the rules of levancy and couchancy which may be applicable over the Unit Land in effect enable a number to be fixed if there ever is a dispute about over grazing, I regard rights so regulated as "not limited by number". I conclude therefore that each of the rights with which I am dealing "consists of or includes" (within the meaning of the opening words of Section 15 of the 1965 Act) "a right not limited by number to graze animals ...". Notwithstanding the absence of any limit, the section requires a number to be stated in the register. The section contains no indication as to how the numbers shall be determined; however it does expressly warn all concerned that there is no finality about the number because Parliament had in 1965 an intention to alter it.

The section contains nothing expressly stating that the number shall be the levancy and couchancy number. The rules of law under which a right of ommon is reguluted by levancy and couchancy have the advantage that a right which would otherwise be without limit, is saved from becoming invalid for uncertainty. But apart from this advantage, the rules have no special merit when applied to a common; they may result in commoners collectively having a right to graze animals far in excess of what the pasture will bear so that who ever comes first does best, and disputes are unavoidable; alternatively, the common may be under grazed to the advantage of nobody. Before 1926 on a manorial common, any disputes could be resolved by the Court Baron (or homage) who would taken into account the rights of those who at any particular moment wished to graze, and the amount of grass available. When the manorial system was swept away in 1925 with it went (at any rate as a general rule) the Courts Baron, and manorial commons thereafter were (in the absence of agreement) without any regulating authority; I say as a general rule, because the 1958 Report of the Royal Commission on Common Land includes a picture of a Court Baron being sworn in for the purpose of regulating a common and I do not wish to say anything to suggest that any such proceedings may be invalid.

Another difficulty about the section, is that not every grazing right not limited by number is based on levancy and couchancy. Persons entitled to a sole or several herbage or vesture may not be subject to any numerical limitations at all.

Section 15 uses the words "treated as exercisable in relation to no more animals ... than a definite number"; this does not I think mean that when a number is inserted on the register pursuant to the section, the owner of the right thereafter has under section 10 the right in all circumstances to graze that number of animals. In my view section 15 does no more than provide an upper limit. If anybody wishes to claim that the number of animals grazed by anyone at any time is, notwithstanding that it is less than the upper limit, excessive, has right to take legal proceedings is unaffected by the 1965 Act, except to the extent that section 10 is applicable. It may be therefore that in this case and in many other cases the number put on the register pursuant to section 15 may be of little practical consequence.

Guidance as to how the section 15 number is to be fixed, can be found in the notes to form 9 schedules to the Commons Registration (General) Regulations 1966, as follows:-

> "However for registration purposes grazing rights not limited by number (sometimes called rights "sans nombre" or "without stint") must be quantified. This means the applicant must enter in part 5 of the application form, the number of animals or the number of animals of different classes which he believes himself entitled to graze .... The applicant should not insert a figure higher than that which he believes

himself entitled to. If he puts in an excessive figure provisional registration is likely to be objected to. In that case unless the registration authority permits it to be cancelled or the objection is withdrawn, the matter will in due course be referred to a Commons Commissioner for decision, and if the Commissioner orders the figure to be reduced he may also order the applicant to pay the costs of the objector."

The possibility of a Commons Commissioner ordering costs, does not, I think, affecet the substance of the note that every applicant is to register what he believes to be his entitlement. Section 15 is I think, a transitional provision towards future legislation under which all commons will become gaited or stinted commons to be regulated under section 16 et seq of the Inclsoure Act 1773 or under some similar provisions, and as a preparation towards ablishing levancy and couchancy. As a first step a right owner is required to state what he claims. Practically it is impossible for an ordinary person who having concluded that he has a right properly described as "not limited by number" to determine for himself the number by which his right is limited: at the best he can only make a guess based on existing and reasonably foreseeable future circumstances. Being a transitional provision in which Parliament has expressly stated that the number would be altered, it would be a hardship to applicants if they could without good reason be compelled to litigate the numbers they put forward relying on the note on the form.

I construe section 15 showing an future intention by Parliament to abolish levancy and couchancy; but I do not think it was the intention that any Court who should be concerned with a registered right of common should be bound under section 10 of the Act to assume that the right owner could graze at all times and in all circumstances the number of animals mentioned on the register without regard to the circumstances in which the right came into existence; the object of the Act is I think, to provide a register of rights, not to provide a register of regulations which would determine every conceivable dispute which might arise as to the exercise of rights.

I must not be understood as meaning that the number of animals stated in the registration is never the concern of the Commons Commissioners, even when the right is not limited by number. If the right registered is a stint, the number will in general be essential to identify the stint; in some circumstances the rights intended to be registered will not be sufficiently identified unless the number is stated precisely; if the pasture is gaited the numbers must inter se be proportionate to the gaits registered otherwise the registration will cause confusion; there may be circumstances making it essential that even levancy and couchancy numbers should be registered so that each person who wishes to graze say know his rights as againt others withing to exercise their rights. The test is, I think, whether the registration as a registration of a right is practically enough.

Nobody having suggested otherwise I assume that the registrations in the form they are now as regards the Unit Land are practically enough.

Final

My conclusions as hereinbefore set out, summarised are: The Unit Land being with the CL65 land, "West Anstey Common" is an ordinary parish common overwhich grazing rights are attached to a number of farms in the parish; it is not extraordinary except perhaps as having 4 (possibly 5) owners in severalty; the registrations under the 1965 Act should therefore have been simple and should now be modified accordingly. My decision → therefore, for this reason and having regard to the other conclusions hereinbefore set out, is as specified in paragraphs (A) and (B) of the Decision Table being the Fifth Schedule hereto, which table should be treated as part of this decision.

As to costs, in accordance with the agreement made on the last day of the hearing, I adjourn the consideration of them to a day and place to be fixed by a Commons Commissioner, and I give any person wanting an order for costs liberty to apply to fix such a day and place. Any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners within TWO MONTHS of the day on which this decision is sent out and should specify the person against whom an order is wanted; a copy of the letter should be sent to that person or his solicitor. If no such application is made within the said TWO MONTHS or such extended time as a Commons Commissioner may allow, it will be assumed that all concerned agree that there be no order as to costs, and accordingly no day or place for their consideration will be fixed.

I am not concerned to give a decision about the registrations in the Ownership Section which as they now stand relate only to the parts of the Unit Land lettered A, D, E and F on the Register map, becuase (as was agreed at my hearing) the 1981 decision dealt with these registrations and the Court of Appeal did not about them direct any rehearing. Nevertheless the Commons Commissioners about them are in an administrative difficulty in that the 1981 decision about the Ownership Section registrations was by reference to "the now agreed boundary" and "the new boundary"

of the part of the Unit Land to which Entry No. 1 is to relate; unfortunately among the papers in the office of the Commons Commissioners at the commencement of my 1985 hearing there was none recording what boundary had been agreed. A witness before me said the boundary was agreed as a middle line of the overlap between the parts lettered A and D, and according to my recollection I was later told that a plan of the agreed boundary would be sent to the office of the Commons Commissioners. Since the hearing I have received from Mr H M J Harrison the letter specified in Part XVIII of the Third Schedule hereto. But I have nothing from anyone else saying it is agreed. But because such plan seems to me of the possible boundaries that least favourable for Mr Harrison, in the absence of any representations to the contrary the Section 6 notice requisite under the 1965 Act give effect from the said 1981 decision as regards the Ownership Section will be as stated in paragraph (D) of the said Decision Table. Because there may be some misunderstanding about this I give any person concerned who finds this unsatisfactory liberty to apply. Any application pursuant to this liberty should in the first instance be made as soon as possible by letter to the Clerk of the Commons Commissioner.

Under Regulation 33 of the Commons Commissioners Regulations 1971 I have power to correct in this decision any clerical mistake or error arising from any accidental slip or omission. Because it is long and there may well be many such mistakes or errors I give liberty to apply about them other mistakes or errors which I can properly correct so as to avoid persons incurring unnecessarily the costs of an appeal.

Any such application should be made as soon as possible by letter to the Clerk of the Commons Commissioners.

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.

TURN OVER

FIRST SCHEDULE
(Rights Section)

Note: All registrations are in question by reason of the Nicholls Objection No. 529 dated 24 September 1970 and subsection (7) of section 5 of the 1965 Act; the grounds of it are: "The land edged red on the attached plan is part of Woodlands Farm, is the private property of the Objectors; no right of common thereover has ever been granted by deed nor have they been acquired by prescription".

No. 1

Wallis Searle Whitmore; owner; Twitchen Farm; graze 220 sheep and 40 cattle; over the whole of the Unit Land except a portion east of the track from Badlake Gate to Ridge Road (the Twitchen Common Part); and also over CL65.

Representation:- Mr D F and Mrs D C Bassett as successors of Mr W S Whitmore were represented by Mr P F Pugsley.

Objections:- Weaver No. 584: "No rights on Money Common attached to Twitchen Farm. The small part of CL143 where rights may exist stocking rate should not exceed 25 sheep 6 cattle (see plan attached)". The plan shows edged red and hatched red the land lettered A on the Register map and shows edged and hatched blue the Twitchen Common Part and shows the CL65 land uncoloured as a triangular area adjoining about one-third of, and at the north end of, the east boundary of the Unit Land. Earl No. 603: "No right of common exists from Twitchen Farm". J W J Milton No. 604: "The right does not exist at all".

January 1982 decision: confirm with modification 110 sheep and 15 cattle instead of 220 sheep and 40 cattle and exclude the lettered A part, and implied also exclude the lettered F part.

Ownership documents:- Conveyance 15 April 1932 (DFB/10) recites: death on 12 August 1885 of Thomas Webber, succession under his will of his daughter Catherine Webber (married Thomas Hoskins) who died 7 March 1905, succession under the will of testator's nephew Samuel Webber Moore who died 27 August 1928, succession under his will of his wife Sophia Elizabeth Moore who died 1 February 1931; and conveys Twitchen Farm to Beatrice Mary Cole as purchaser. ...Fred Cole said to be owner in 1939 and to continue as such until 1946 when he sold to Major Worthington. ...John Frederick Charles Keep said he was owner from February 1954. Conveyance 1 September 1961 (DFB/7) by J F C Keep to W S Whitmore (he died 23 August 1971). Conveyance 16 May 1972 (DFB/6) by his personal representatives to Wilfred Ernest Hill and Joyce Fanny Hill as purchasers. Conveyance 29 September 1981 (DFB/8) by them to Cuthbert Baker George and Enid Doris Jane George as purchasers. Conveyance 30 November 1982 (DFB/9) by them to David Francis Bassett and Diana Crystal Bassett as purchasers.

Occupiers other than owners as above:- 1921 to 1929 William Hill; 1929 to 1939 W H Southwood (DFB/10) and 1939 to 1946/47 John Biss as tenants. 1947 to 1954 Eborn, then (? Pitt), Mrs Archer Thompson. 1954 to 1961, Sidney Sloman as bailiff of J F C Keep. 1961 until he became owner Wilfred Ernest Hill as tenant (DFB/15) of W S Whitmore.

Witnesses concerned as owners or otherwise particularly with this Farm:- D F Bassett (owner after 1982), W E Hill (tenant from 1961 and then owner until 1981), J F C Keep (owner from 1954 to 1961), Mrs M J Sloman (widow of Sidney Sloman), W J M Hill (son of 1921-29 tenant), and J Biss (tenant from 1939 to 1946).

No. 2

Oswald Phillip John Weaver; owner; Hill Farm; graze 100 sheep; over part of Unit Land lettered B on the Register map overlay; and also over CL65 or part of it. (Note: lettered B is the part of the lettered A north of the Ridge Road).

Representation:- Mr O P J Weaver was represented by Mr R M K Gray QC.

Objections:- None, except No. 529.

January 1982 decision:- confirm impliedly because although not within the grounds of Objection No. 529, was in question under section 5(7) of the 1965 Act.

Ownership documents: None: Mr Weaver is and has been owner since 30 March 1951 when he bought from Mr Boundy. He in 1948 purchased from Mr Charles Cecil Crudge.

Occupiers other than owners as above:- Mr C C Crudge from the death of his father in April 1946 until 1948; before him his father until his death in 1946, and before him his grandfather.

Witnesses concerned as owners or otherwise particularly with this Farm. Mr O P J Weaver (as owner since 1951) and Mr C C Crudge (born on farm in 1920 lived there until 1948).

No. 3

Thomas William Crossman; tenant; West Ringcombe Farm; graze 200 sheep, 30 bullocks, 3 horse, to cut ferns; over part of Unit Land lettered C on Register Map. The lettered C part is, except that it includes a comparatively small piece by Daniels Brook east of Longstone Coombe, the same as the lettered D part.

Representation:- Mr H M J Harrison as the present owner in succession to Mr E M Harrison, the owner on 12 December 1967 (the date of the application for this registration) was represented by Sir Frederick Corfield QC and Miss Ann Williams of counsel.

Objections:- None, except No. 529.

January 1982 decision: confirmed impliedly although not within the ground of Objection No. 529, was in question under section 5(7) of the 1965 Act.

Ownership documents:- 1841 Tithe Award remarks (about the greater part): "... stands on Lord Clinton's Manor Map as his property, but is also claimed by others". Conveyance 24 July 1934 (JWJM/20) by Rt Hon Charles John Robert Hepburn-Stuart-Forbes Trefusis (21st) Baron Clinton as trustee for Clinton Devon Estates Company to E M Harrison (Second Schedule) specifies a resettlement dated 9 February 1910 by the Rt Hon W H Earl of Mount Edgecombe to which the said Baron Clinton was a party. Deed of gift 9 April 1968 by E M Harrison to his son H M J Harrison.

Occupiers other than owners as above:- From before 1926 as tenants William (Bill) Davey and with him his brother Fred Davey until his death, and after alone until 1945. Then as tenant T W Crossman until 1969. Then as tenant John Hall until 1976 when Mr H M J Harrison began to farm as owner.

Witnesses concerned as owners or otherwise particularly with the Farm:- Mr E R Nesfield (agent from 1934 for Mr E M Harrison); Mr T W Crossman (tenant from 1945 to 1969), Mr E M Harrison, (owner from 1934 to 1968), Mr H M J Harrison (owner since 1968), and Mrs S C Harrison (his wife).

No. 4

Patricia Joan Tuckett; owner; Guphill Farm; graze 15 ponies, 15 cattle over the whole of the Unit Land except portion lettered A over which only straying rights claimed; exceptions is by amendment dated 8/73.

Representation:- None (see her letter of 7 June 1985).

Objections:- None, except No. 529.

January 1982 decision. Confirmation on basis of objection successful, so only modification exclude lettered F part.

Ownership documents:- None. Major Herrick Colin Butchard said he was owner from 1958 as purchaser from Mr Stokes until 1962 when he sold to Mrs Tuckett.

Occupiers other than owners as above:- No evidence.

Witness concerned as owner or otherwise particularly with the Farm:- Major H C Butchard (owner 1958-1962).

No. 5

John William James Milton; owner; Partridge Farm; quarry stone, turbary, graze 83 sheep, 14 cattle, 14 ponies, part of Unit Land letterd "A" on Register Map together with straying rights onto the remainder of the Unit Land; also on part of CL65 and similar straying rights from it.

Representation:- Mr J W J Milton was represented by Mr R M K Gray QC.

Objections:- None, except No. 529.

January 1982 decision:- confirm impliedly without any modification, although not within grounds of Objection No. 529, was in question under section 5(7) of the 1965 Act.

Ownership documents:- Conveyance 24 December 1885 by persons entitled under will of John Partridge who died 4 May 1875 to John Veysey of Inn specified in Part IV of the Third Schedule hereto, followed by conveyance 24 December 1887 (JWJM/4) by him to Arnold & Co Ltd. Conveyance 8 January 1907 (JWJM/5) by Starkey Knight and Ford Limited after reciting title back to 5 January 1897, to James Milton as purchaser of said Inn. Vesting assent 1 March 1939 (JWJM/6) reciting death of James Milton on 15 February 1936 and the succession under his will of his wife Elizabeth Milton as life tenant with remainder to his son Arther John Milton, and assenting to the vesting in her of the premises in fee simple on the trusts of the will; schedule thereto shows Partridge Farm so far as not acquired by him under said 1907 conveyance as almost all acquired by him under conveyances of 1907, 1909 and 1909, see Third Schedule hereto. Conveyance 6 March 1939 (JWJM/7) Elizabeth Milton surrendered her life interest and the trustees conveyed to Arthur John Milton as remainderman under the said will. Conveyance 5 March 1965 (JWJM/8) by Arthur John Milton to John William James Milton as donee.

Occupiers other than owners as above:- J W J Milton tenant of his father from May 1959 until he became the owner.

Witnesses concerned as owners or otherwise particularly with the Farm:- Mr F W Southwood (employed by Mr A J Milton from when he left school in 1920 until 1930); Mr W G Phillips (worked for Mr Milton from 1926 to 1930 with a small break of about 2 years); Mr G Gibbs (a boy in 1920); and Mr J W J Milton (lived there all his life, born May 1931).

No. 6

Arthur John Milton; owner; part Guphill Farm; turbary, quarry stone, graze 50 sheep, 9 cattle, 9 ponies over part of Unit Land lettered E on Register Map together with straying rights on the remainder of the Unit Lane; and straying rights on CL65. (Note: this registration does not accord with the application for it in that the part delineated on the application map is not that lettered E on the Register Map but quite a different part being about one third of the lettered D part being all the east of such part except that east of Longstone Coombe.

Representation:- Mr John William James Milton as successor of his father Mr A J Milton was represented by Mr R M K Gray QC.

Objections:- None, except No. 529.

January 1982 decision:- Impliedly confirmed without modification except (?) deletion of straying rights or exclusion from them of the lettered F part.

Ownership documents:- Conveyance 23 December 1919, (JWJM/9) by Walter Oxenham to Arthur John Milton; Second Schedule (muniments acknowledged) includes conveyance 17 November 1905 between Rt Hon Charles John Robert Stuart Forbes Trefusis Baron Clinton and Atkin Robert Hayman, and conveyance dated 21 January 1907 by him to Walter Oxenham. Remarks 28 May 1959 signed by A J Milton. Probate dated 24 February 1972 of will of Arthur John Milton. Assent 27 February 1974 by J W J Milton as his executor in favour of himself.

Occupiers other than owners as above:- J W J Milton from 28 May 1959 to whom A J Milton had "passed the farm" see his 1959 Remarks supra.

Witnesses concerned as owners but otherwise particularly with this farm:- see Entry No. 5 above.

No. 7

Fred Davey; tenant; Lyshwell; graze 270 breeding ewes plus lambs, 90 hogs, 4 rams, 30 cattle, 12 ponies over the whole of the Unit Land.

Representation:- None. Note:- at the beginning of the hearing I was under the impression that he was represented by Mr R M K Gray QC because by him he was called as a witness; but later on 18 October I was satisfied that neither he, although he was present as a witness, nor his son who is the present tenant was represented at all.

Objection:- J W J Milton No. 604, "the right does not exist at all".

January 1982 decision:- Confirmed with the modification that the grazing rights are to be exercisable only over the lettered D part lying north of Ridge Road.

Ownership documents:- None, but it was said at the hearing and I had among my papers an affidavit dated 6 June 1985 to effect, that Sir Robert George Maxwell Throckmorton Baronet is the owner of the Farm which has been owned by his family for upwards of 250 years, and this was not by anyone disputed.

Occupiers other than owners as above:- 1961 Mr Fred Davey took over from his father, and in 1984 was succeeded by his son, Raymond Fred Davey.

Witnesses concerned particularly with the Farm:- Mr Fred Davey.

No. 8

Benjamin James Burton; owner; Churchtown Farm; fish trout in Daneis Brook, turbary, graze 65 cattle, 390 sheep and lambs, 10 horses; over the whole of the Unit Land; and CL65.

Representation:- Mrs Elizabeth Mary Burton, Messrs Albert John and Margaret Joyce Tarr and Somerset County Council as successors of Mr B J Burton (deceased) were represented by Mr R M K Gray QC.

Objections:- None, except No. 529.

January 1982 decision:- impliedly confirmed with the modification that the rights do not extend to the lettered F part.

Ownership documents:- Conveyance 12 November 1903 (JWJM/13) by Rt Hon Newton Earl of Portsmouth and his mortgagees to Fanny Kelland, Robert Kelland, Elizabeth Besley Kelland and John Mortimer Kelland as purchasers. Conveyance 25 March 1930 (JWJM/14) by Fanny Kelland, Elizabeth Besley Kelland and John Mortimer Kelland to John Cecil Parnell and Humphrey Charles Vaughan as purchasers and as trustees of a settlement made by Betty Milford Bennett. Particulars of auction sale 28 April 1960 (EJN/2), "Anstey Common about 400 acres ..." Conveyance 4 November 1941 (JWJM/15) by J C G Parnell and H C B Jones with the concurrence of B M Bennett to Frederick Chandos Bryant as purchaser. Conveyance 31 August 1943 (JWJM/16) by F C Bryant to Crystal Catherine Earl as purchaser. Conveyance 11 May 1960 (JWJM/17) by C K Earl to Benjamin James Burton. Conveyance 25 March 1983 (JWJM/18) by B J Burton to Albert John Tarr and Margaret Joyce Tarr (158 acres 291 acres) as purchasers. Mr B J Burton died April 1983.

Occupiers other than owners as above:- After Mr Kelland, 1930 Mr Robins. (?) 1941 Mr Bryant. 1943 Mr L J Earl (for his wife) until 1960. Then to 1983, Mr B J Burton.

witnesses concerned as owner or otherwise particularly with this Farm:- Mrs Elizabeth Mary Burton.

No. 9

Leslie James Earl; owner; Venford; graze 20 bullocks, 100 sheep over the whole of the Unit Land; and CL65.

Representation:- Mr Philip Veysey and Mrs Lesley Anne Veysey as successors of Mr L J Earl were represented by Mr P F Pugsley.

Objections:- None except No. 529.

January 1982 decision:- Impliedly confirmed with the exclusion of the lettered F part.

Ownership documents:- Conveyance 3 October 1902 (PJV/1) by Rt Hon Newton Earl of Portsmouth and his mortgagees to Ernest Legassick Hancock as purchaser.
...
Conveyance 13 December 1960 (PJV/3) by Cuthbert Rudyard Halsall with the concurrence of a company purchaser and another purchaser to Leslie James Earl as sub-purchaser. Deed of gift 24 May 1976 (PJV/6) by L J Earl of 3.019 acres to Philip Veysey and Leslie Anne Veysey. Deed of gift 22 October 1976 (PJV/5) by L J Earl of 65.840 acres to himself and his wife Crystal Catherine Earl. Deed of gift 1 December 1976 (PJV/5) by L J Earl and C K Earl of the said 65.840 acre to their daughter Leslie Anne Veysey. Deed of gift 26 July 1981 (PJV/7) by L J Earl of 143.212 acres to Philip Veysey to Leslie Anne Veysey.

Occupiers other than owners as above:- 1904 to 1921 Mr Richard Bowden. 1921 to 1939 Mr Blackford. 1939 (?) requisitioned. 1946 Mr Leslie J Earl (from March 1954 tenant PJV/2) until in 1960 he became owner. May 1973, Leslie Anne Veysey (tenancy agreement mentioned in PJB/4 and 5).

Witnesses concerned as owners or otherwise particularly with this Farm:- Mr Philip John Veysey. Mrs B Tarr, father tenant from 1904 to 1921 .

No. 10

Ernest John Nicholls and George Elston Nicholls; owners; Woodland Farm; graze 30 bullocks, 200 sheep over the whole of the Unit Land except (as amended 8/1/73) portion lettered "A" over which only straying rights are claimed; straying rights over CL65.

Representation:- Messrs E J and J E Nicholls where represented by Mr P G Pugsley.

Objections:- None, except No. 529.

January 1982 decision:- Impliedly confirmed modification excluding the lettered F part.

Ownership documents:- Will of Betsy Spencer 13 July 1864 (EJN/3) who died 8 January 1868 under Betsy Spencer Hosegood (she married Edwin Furse) was tenant for life (she died 27 July 1935). Assent 5 April 1956 (EJN/3) by her personal representative in favour of Samuel Spencer Hosegood (remainder man under said 1864 will). Conveyance 1 May 1956 (EJN/5) by Samuel Spencer Hosegood to Ronald George Nicholls and Ernest John Nicholls as purchasers. Conveyance 6 December 1956 (EJN/6) confirming EJN/5 with different acreages. Deed 2 February 1968 (EJN/7) reciting death of R G Nicholls on 6 April 1967 and the gift in his will to G E Nicholls, by which assent was given to such gift and G E Nicholls was appointed a trustee with E J Nicholls.

Occupiers other than owners as above:- From 25 March 1931 under tenancy agreement (EJN/4) Ronald George Nicholls tenant until he became owner. Before 1931, Mr Westcott.

Witness concerned as owner or otherwise particularly with this Farm:-
Mr Ernest John Nicholls.

SECOND SCHEDULE
(Ownership Section)

Note:- Nos 1, 2 and 3 are in conflict. No. 4 became final in November 1972.

No. 1

John William James Milton; part of Unit Land "known as Anstey Money Common" lettered A on the Register Map, being the northeast and approximately square area about 1/6th of the whole north of → Ridge Road and so named on the Register map and a much smaller triangular area south of Ridge Road at the southeast corner of the Unit Land.

No. 2

Edward Michael Harrison; part of the Unit Land lettered "D" on the Register map, being the west part and about two-thirds of the whole ;on the Register map some named Anstey Rhiney Moor and Guphill Common, and the rest not on it named.

No. 3

The Badgworthy Land Co. Ltd; part of the Unit Land marked "E" on the Register map, being an area north of and for about 600 yards adjoining Ridge Road and extending for about 300 yards north of it, and having on it the Froude Hancock (of Devon and Somerset Stag Hounds) memorial stone.

No. 4

Ernest John Nicholls and George Elston Nicholls; part of the Unit Land lettered F on the Register map, and being or including the area on such map called Woodland Common.

Notes

No person is registered as owner of the Twitchen Common Part of the Unit Land.

The registration at Entry No. 1 was within Objection No. 642 made by the Executor of W S Whitmore and noted in the register on 3 March 1971, and the registrations at Entry Nos. 1, 2 and 3 were in conflict. Entry No. 4 being undisputed became final on 1 August 1972. By the January 1982 decision the Commons Commissioner confirmed Entry No. 1 excluding the part to the west "of the now agreed boundary", confirmed Entry No. 2 modified by excluding the section lettered "E" on the Register map and by excluding the part to the east of the now agreed boundary, and confirmed Entry No. 3.

During my hearing I understood that I would be informed of the agreed boundary. Mr H M J Harrison in his letter of 4 February 1986 (Part XVIII of the Third Schedule hereto) in effect agreed the boundary north of the Ridge Road as the line of the west boundary of the A part (mostly being the line of Longstone Combe).

THIRD SCHEDULE
(Documents produced)

Part I: Received before hearing

7 June 1985	Letter from Miss P J Tuckett to Clerk to the Commons Commissioners (enclosed with letter of 12 June 1985 from Risdon & Co): "... owner of Guphill and as such owner I made an application to register certain rights over West Anstey Common (Entry No. 4). ... I withdraw the claim to any such rights, and in any event I have never exercised such rights, neither are they the same referred to in the title deeds of my Farm, which I purchased in 1962 and where I have resided ever since".
20 June 1985	Letter from Lady Diana Loram of Broadacre Cosmore, nr Dorchester: "... do everything possible to preserve Anstey Common ... exceptional unspoilt beauty ... Woodland Farm ... huge and unsightly fence".
22 June 1985	Letter from Mrs Katharine Craft of Millclose, Callistock, Dorchester: "... now a threat to West Anstey Common if Mr Harrison's claim to sole grazing rights is upheld. Although he may say he will not wire it in, it is a threat ... his successor might".
23 June 1985	Letter from Angela Keigwin of The Old Vicarage, West Anstey: "I have lived at West Anstey since 1950, ridden and walked over to Anstey Common and seen cattle and sheep with various markings ...".
24 June 1985	Letter from Mrs Celia Bedford of Arneswood Cottage, Waddicombe, Dulverton: "... Anstey Common in danger of losing its common rights ... spoilt by the fencing off of Woodland Common. It would be a tragedy if Anstey Common was also fenced ...".
5, 20 & 24 June 1985	Enclosed with letters from Risdon & Co, bundles: I, General documents; II, Entry No. 1 (Twitchen Farm); III, Entry No. 6 (Part Guphill Farm); IV, Entry No. 7 (Lyshwell); V, Entry No. 8 (Churchtown Farm); and VI, Entry No. 10 (Woodland Farm); VII, Entry No. 9 Venford Farm; and Supplement to bundle (background papers).

Part II: by or on behalf of Mr D F Bassett

DFB/1	Undated	Letter to Mr J Biss from North Devon Health Authority, arrangements have been made to admit you to hospital on 20 June.
DFB/2	18 June 1985	Statutory declaration by John Biss: tenancy of Twitchen Farm from Fred Cole on 25 March 1939 to 25 March 1946; farm then sold to Major Worthington, but deponent held over until 29 September 1947; "grazing rights over Anstey Common"; 150 ewes, 32 cows, 2 pony mares.
DFB/3	16 November 1981	Statutory declaration by Wilfred Earnest Hill: from 29 September 1961 to 16 May 1972, tenant of Twitchen Farm edged red, green, brown and mauve on Plan WEH1; from 16 May 1972 to 29 September 1981 joint owner with wife Joyce Fanny Hill: grazed 240 sheep and 40 cattle on "the common land" edged red on Plan WEH2.
DFB/4	8 February 1983	Affidavit (in 1982 H No. 5481) of Wilfred Earnest Hill: November 1961 farm just then bought by Mr W S Whitmore from Mr J F C Keep; as to grazing over "that part of West Anstey Common which is owned by Mr Harrison" see paragraph 4.
DFB/5	17 June 1985	Statutory declaration by Wilfred Earnest Hill: as to his grazing see paragraphs 6 et seq.
DFB/6	16 May 1972	Conveyance by John Herbert Griffiths and others as executors of Wallace Searle Whitmore (he died 23 August 1970) to Wilfred Earnest Hill and Joyce Fanny Hill of pieces of land described in Schedule: on Plan edged red house and building etc 136.830 acres including "Part 308 (OS No.); Common description, 6.569 (acreage)" edged blue, green and purple 9.78 acres, 94.972 acres and 44.157 acres.
DFB/7	1 September 1961	Conveyance by John Frederick Charles Keep to said W S Whitmore of property described in Schedule therein firstly farm known as Twitchen comprising 130.261 acres and secondly "the estate ... now vested in the vendor of ... piece ... part of Twitchen Common ... OS measurement 6.659 acres (308: Twitchen Common: Pasture"). Said 136.830 acres.

DFB/8	29 September 1981	Conveyance by Mr W E and Mrs J F Hill to Mr C B and Mrs E D J George of Twitchen Farm containing 138.606 acres including "Pt. 308: (N.G.No.) 2780: rough pasture: 6.569.
DFB/9	30 November 1982	Conveyance by the said Mr C B and Mrs E D J George to Mr D F and Mrs D C Bassett of premises in 1981 conveyance (DFB/8).
DFB/10	15 April 1932	Conveyance by the Reverend Thomas Langdon Rogers and the Reverend Walter Cocks as personal representatives of Sophia Elizabeth Moor (she died 1 February 1931) conveyed to Frederick John Cole first farm known as Twitchen containing 130.261 acres and secondly "...such estate... as is vested in the Vendors ... in ... part of Twitchen Common ... comprising ... 6.569 acres ... all now in the occupation of Mr W H Southwood as yearly tenant" with plan annexed.
DFB/11	29 June 1967	Application (CR Form 9) by W S Whitmore of registration of right of common attached to Twitchen Farm about 147.008 acres as edged in pink on Plan 2 (including Pt 308: 6.569) over "Anstey Rhiney Moor, West Anstey Common, Guphill Common, Woodland Common.
DFB/12	29 May 1985	Statutory declaration by Leslie James Earl: wife C K Earl owner of Church Town Farm on 1 August 1943 to 11 May 1963: during that time farmed the farm: never turned out stock on West Anstey Common: deeds of Church Town said common rights on Anstey common always understood this was to refer to Anstey Money Common and not to Woodlands Common, Guphill Common, Venford Common, Twitchen Common or Anstey Rhiney Moor.
DFB/13	--	Particulars of letting by tender of Twitchen Farm; by James Philips & Sons on instructions of W S Whitmore.
DFB/14	1981	Preliminary details of sale by auction on 30 July 1981 by Mr and Mrs W E Hill of Twitchen Farm with such grazing rights as are registered on Anstey Common.

DFB/15	10 August 1961	Tenancy agreement by W S Whitmore to W E Hill of Twitchen Farm containing 147 a.Or.1p (including "Pt 308, common, 6.569").

Part III: on behalf of the Badgworthy Land Co Ltd

BLC/1	25 November 1935	Conveyance by Edward Michael Harrison to the Badgworthy Land Company Limited of land (being that lettered E on the Register map) "subject to any stocking and grazing rights, rights of common and any other rights of whatsoever nature or description thereover".

Part IV: by or on behalf of Mr J W J Milton

JWJM/1	1905	OS map Second Edition, scale 1/2,500, to explain the geography.
JWJM/1bis	--	?, another copy of JWJM/23.
JWJM/2	11 June 1985	Letter from Devon County Council enclosing copy of Mr A J Milton's application for registration of a right of common.
--	27 June 1968	Copy said enclosed application, right attached to Part Guphill Farm edged red on Plan B of turbary and quarry stone and to pasture (limited to land shaded green on Plan A) right of straying of said stock over all land edged red on Plan A. Note:- Edged red on Plan A shows whole of Unit Land and shaded green shown about one third of the part lettered D on the Register map being a strip along the east side of the land so lettered including the part on the said map marked Guphill Common but excluding the land lettered A on such map.

JWJM/3	24 December 1885	Conveyance by William George Quick Pedlar and others convey to John Vesey the "Inn and premises ... The Partridge Arms" ... with the garden and orchard ... in the occupation of the said John Vesey as tenant ... together also with any existing right of common over Middle Common situated in the parish of West Anstey ...".
JWJM/4	24 December 1887	Conveyance by John Vesey to Arnold & Co Limited of the said Inn and premises called The Partridge Arms together as aforesaid.
JWJM/5	8 January 1907	Conveyance by Starkey Knight and Ford Limited and others to James Milton of the said premises together as aforesaid.
JWJM/6	1 March 1939	Vesting assent and deed of appointment by Arthur John Milton as personal representative of James Milton (he died 15 February 1936) assenting to the vesting is Elizabeth Milton (widow of James Milton) on the trusts of the Will of The property described in the Schedule.

Note. In the Schedule the property in this assent and deed dealt with is described as held under distinct titles: (1) two fields containing 17.260 acres under a conveyance dated 24 June 1909 made by C J R H-S-F-T Baron Clinton in favour of James Milton (the testator); (2) three fields containing 14.604 acres under a conveyance dated 24 March 1910 made by the said Baron Clinton in favour of the testator; (3) several fields (formerly part of Hill Farm) containing 16.448 acres under a conveyance dated 4 October 1907 and made by the said Baron Clinton in favour of the testator; (4) Garden Orchard and Wheelwrights' (formerly Smith's) shop under a conveyance dated 10 October 1885 made by E Webber in favour of G Gibbs and (5) dwellinghouse and premises called The Partridge Arms without mention of the title under

without mention of the title under which it was held.

JWJM/7 6 March 1939

Conveyance by which Elizabeth Milton surrendered her life interest to Arthur John Milton under the said will entitled the remainder in fee simple and he and Ellen Milton as Trustees declared they were discharged from the Trust; Schedule as for JWJM/6 supra.

TURN OVER

JWJM/8	5 March 1965	Conveyance by which Arthur John Milton voluntarily conveyed to his son John William James Milton the property of which be the Donee was the tenant first 36.657 acres of land, second The Partridge Arms "and together with any existing right of common over Middle Common in the said parish of West Anstey and thirdly garden orchard and Wheelwright's shop at Yeal Mill be Os No. 272.
JWJM/9	--	Epitome of title to land at Guphill including:-
--	23 December 1919	Conveyance by Walter Oxenham to Arthur John Milton of "Three Fields or Closes of land and heridatments with the appurtenancies thereto belonging situate in the parish of West Anstey" containing 26a.2r.34p. Part of farm known as Guphill and delineated and coloured on Plan annexed.
--	24 February 1972	Probate of Will of Arthur John Milton (he died 20 January 1972) granted to John William James Milton as surviving executor.
JWJM/10	27 February 1974	Assent (included with said Epitome by John William James Milton with a vesting in himself of the property set out in the Schedule thereto, being the said Three Fields together with all other rights of A J Milton expressly "including grazing rights".
JWJM/11	28 May 1959	Remarks signed by A J Milton in "reference to Anstey Common grazing rights etc".
JWJM/13 (? JWJM/16 bis)	12 November 1903	Conveyance by the Governors of the Bounty of Queen Anne etc and others as mortgagees and Rt Hon Newton Earl of Portsmouth to Fanny Kelland, Robert Kelland, Elizabeth Besley Kelland and John Mortimer Kelland of Church-town containing 195a.1r.21p., as delineated on plan and particularised in the Schedule for some time past in the occupation of John Mortimer Kelland "together with all rights and appurtenances to the said premises belonging or appurtaining and particularly with all rights of shooting turbary and pasturage over Anstey Common".

JWJM/14 (? JWJM/15 bis)	25 March 1930	Conveyance by F Kelland, E B Kelland, and J M Kelland to Betty Milford Bennett, John Cecil Glossop Pownall and Humphrey Charles Vaughan Jones of lands containing 195a.1r.21p. as delineated on plan (Churchtown) together with all rights and appurtences to the said property belonging or appertaining and particularly with all rights of shooting turbay and pasturage over Anstey Common and the right of trout fishing in the Danesbrook.
JWJM/15 (? JWJM/14 bis)	4 November 1941	Conveyance by J C G Pownall and H C V Jones (vendors) with consent of B M Bennett to Frederick Chandos Bryant of lands containing 195a.1r.21p. as delineated on plan annexed to conveyance of 25 March 1930 together with ... (as in 1930 conveyance).
JWJM/16 (? JWJM/13 bis)	31 August 1943	Conveyance by F C Bryant to Crystal Katherine Earl of lands known as Church Town containing 195a.1r.21p as now in occupation of the vendor delineated on Plan annexed to conveyance of 21 March 1930 "together with ... (as in 1930 conveyance)".
JWJM/17	11 May 1960	C K Earl to Benjamin James Burton of same premises by same description.
JWJM/18	25 March 1983	Conveyance by Benjamin James Burton to Albert John Tarr and Margaret Joyce Tarr of first lands being Church Town Farm containing about 158 acres as edged red and coloured yellow on plan and secondly of common pasture and turbary on and over Anstey Common appurtenent to Church Town Farm (including those rights appurtenant to that part of Church Town Farm retained by the Vendor edged green and mauve except shooting rights over Anstey Common and fishing rights in Danesbrook.

JWJM/19	1905	Particulars of Sale (lot 11) of West Ringcombe with portions of East Ringcombe, Guphill, Slade, Overwell and West Anstey Common containing 650.151 acres. In occupation of Mr Richard Davey and others at the apportioned annual rent (exclusive of that of West Anstey Common) ... Also the Manorial Rights appertaining to the Manor. West Anstey Common is sold subject to any stocking or grazing rights thereover but it is believed that such rights are appurtenant to one adjoining owner only. Schedule ..... Pt 308 Guphill Common 67.643: Pt 308 West Anstey Common; 400.000: in hand.
JWJM//20	24 July 1934	Conveyance by The Clinton Devon Estates Company and the Rt Hon C J R Hepburn-Stuart-Forbes-Trefusis Baron Clinton (he conveying as trustee by the direction of the Company) to Edward Michael Harrison of "East and West Ringcombe Farms with portion of Guphill and West Anstey Commons: ... plan ... Schedule ... Subject ... to any stocking or grazing rights of common or any other rights of whatsoever nature and description thereover".
JWJM/21	1887, revised 1902, 1903	OS map Second Edition 1905; scale 1/2,500 (62" x 54").
JWJM/22	5 March 1841	Extract Tithe apportionment Award for parish of West Anstey confirmed by the Tithe Commissioners. Nos. 634, 635, 637, 638, 651, 651a as stated by Mr A Best on 26 June but with (under heading "remarks" against 633 and 634a "this piece stands on Lord Clinton's Manor Map as his property, but is also claimed by others).
JWJM/23	--	Map (about 4" = 1 mile) showing Unit Land and the farms (coloured with different colours and numbered 1 to 10) to which registered rights are attached.

Part V: by Mr E M Harrison

HMJH/1	--	Map about 4" = 1 mile showing Unit Land coloured variously.
HMJH/2	1 June 1934	Letter from Frere & Co (Vendors' Solicitors) to Young Jackson & Co: "...it would appear that there has always been a doubt as to whether any rights are exerciseable by other persons over Gupp Hill Common and West Anstey Common and we are instructed that this land can only be sold subject to any rights there may be."
HMJH/3	2 June 1934	Letter from Young, Jackson Beard & King to Frere Cholmeley & Co: "...your letter of yesterday and ... the information you have given us and which we regret to say is hardly satisfactorily because your clients do not seem to be in a position to tell the Purchaser exactly what rights are exerciseable over the property in question..."
HMJH/4	4 June 1934	Letter from Mike (E M Harrison) of Young, Jackson Beard & King to "Uncle Eut"; "...we are sending you a letter from Frere Cholmeley answering our query...The common rights they don't seem very clear about but I do not think they can be of any great importance..."

Part VI: by Mr T C Keigwin

PM/1	1893	Printed book obtaining 52 pages (?) Vanker & Sons, Westminster House SW1: Notes on the history of the Parish of West Anstey of North Devon with a list of Birds and Flora by the Revd Edward Vere Freeman, Vicar of Parish: 1885 to 1894.
PM/2	10 April 1967	Minute of meeting extracted from PM/3 below: registration of common land. The Chairman wants to know if West Anstey wishes to send in a claim that Anstey Common is common land. Mr Crudge proposed & Mr Hill seconded that such a claim should be made, and this was carried unanimously with the

		Chairman kindly undertaking to register such a claim in the proper quarter.
PM/3	23 May 1951 to 29 October 1984	The Second Minute Book of West Anstey Parish Meeting (extracts from which PM/5 et seq.
PM/4	--	Note of intended evidence by Mr T C Keigwin (2) 2pp.
PM/5	29 September 1960	Mr Weaver thought that cattle grids should be placed at all entrances to Anstey Common. It was decided to ask Mr Lacey, a local NFU representative whether grants are available from the Ministry for cattle grids.
PM/6	--	Page 39 of book (copy to be supplied in October).
PM/7	--	Same as PM/5
PM/8	--	Cattle grids. There was a discussion about these. A further letter to Mr Lacey was decided upon again asking him to contact Mr Crossman. Straying ponies. Mr Weaver raised this matter of ponies straying along the roads from Anstey. This led to a long discussion about common rights and fishing rights etc. Mr Weaver suggested a meeting of all parishioners interested in their Anstey common rights. Mr Keigwin would like to know who burns the common from time to time. The Chairman thought the best way to deal with these matters was to call a special commoners meeting, not a parish meeting when Mr Crossman had received more information on the provision of grids from Mr Lacey.
PM/7	(before) 29 September 1960	Cattle grids. Mr Weaver thought that cattle grids should be placed at all entrances to Anstey Common. It was decided to ask Mr Lacey the local NFU representative whether grants are available from the Ministry for cattle grids.

--	29 September 1960	Cattle grids. Distribution of the costs of these were discussed. Mr Weaver wondered whether Ministry grants were available for open commons as opposed to private commons. There was a short discussion about common rights in general. It was decided to send a letter to Mr Lacey the local representative of the NFU asking him to contact Mr Crossman in the first instance about cattle grids.
PM/9	15 October 1961	Half yearly parish meeting ... cattle grids the Chairman called on Mr Crossman for a report. His letter from Mr Lacey was read, mentioning the rate of contribution from farmers. A long discussion followed. There was some doubt as to who actually possesses common rights. Without cattle grids grazing rights on Anstey Common seem to be of little use. Mr Crossman thought the best course was to find out who has grazing rights on Anstey Common before proceeding further. A meeting decided that advertisements to this effect should be inserted in The Western Times and West Somerset Free Press asking for written replies by 30 November 1961 with a view possibly to a special meeting.
PM/10	(before) 3 October 1962	Commoners rights cattle grids. There was a long discussion of Commoners rights - cattle grids - their cost and maintenance. Mr Crudge suggested the forming of a Commoners Association. The chairman agreed and said a special meeting of commoners would be called. Such an Association would require a representative and Mr Crossman was proposed for this by the chairman and seconded by Mr Weaver.
PM/11	3 October 1962	Half yearly parish meeting. Common rights: this will now pass to the Commoners Association.
PM/12	25 March 1965	Cattle grids. Mr Weaver said the remaining cattle grids would shortly be completed. The chairman suggested that Mr Weaver might take up with Mr Wade the possibility of dumping

		waste in the pits across the common along the proposed new route and Mr Weaver agreed to take charge of this matter as a Commoner.
PM/13	--	Cattle grids. The work on these is proceeding at the moment. The Commoners want a list of names kept of those who have paid towards the expenses of these. There was a discussion of Commoners rights in general and Mr John Milton stressed that others have rights besides those who paid for the grids.
PM/14	--	Cattle grids now complete.
PM/15	--	The same as PM/2.

Part VII: mentioned by Mr Gray at beginning of Dulverton part of hearing

--	6 October 1983	Conveyance by Albert John Tarr and Margaret Joyce Tarr to Somerset County Council of right of common of pasture for 21 cattle, 130 sheep and lambs and 3 horses upon Anstey Common to which Vendors are entitled as owners of Churchtown Farm.
--	6 October 1983	Licence by Somerset County Council to Albert John Tarr, Margaret Joyce Tarr, Gillian Margaret Tarr and Richard John Tarr of right to graze for 40 years as above.

Part VIII by Mr Pugsley

EJN/1	(undated) November 1981	Original note and typed fair copy. 2. "Straying rights" - Request ruling on interpretation. Understand as ... custom of this area that owner of unenclosed ground may not impound stock straying onto it from adjacent unenclosed land but may simply drive it back or require the owner to remove it, ie that is not a right of common as such as it is not a right to take anything from the land.

If Comm(issioner) agrees, all "straying right" applications could be deleted as not being rights of common.

If not full evidence will have to be given.

Part IX: by Mr P J Vesey

PJV/1	3 October 1902	Conveyance by the Governors of Queen Anne's Bounty and L M & J P Thorold as mortgagees and by Rt Hon Newton Earl of Portsmouth to Ernest Legassick Hancock of lands containing 262a.1r.2p (comprising the Entry No. 9, and some land between its west boundary and east boundary of the Unit Land and some buildings and surrounding lands known as Venford, off the road from Five Crossways to Slade Bridge). Endorsement: conveyance 8 February 1921 to Thomas Henry Watson of OS Nos 461, 467, 466 and part 462.
PJV/2	--	Counterpart of yearly tenancy by the Public Trustee to Leslie J Earl of 259.31 acres known as Venford land from 25 March 1954.
PJV/3	13 December 1960	Conveyance by Cuthbert Rudyard Halsall (Vendor) and Ashdale Land and Property Co Ltd and Wallis Searle Whitmore (purchasers) to Leslie James Earl (sub purchaser) of 259.31 acres of land comprising Entry No. 9 land and land (Pt 308:47.000) between it and the Unit Land.
PJV/4	22 October 1976	→ Deed of Gift by Leslie James Earl to himself and his wife Crystal Katherine Earl of 65.840. acres (part of the 1960 conveyance land).
PJV/5	1 December 1976	Deed of gift by Leslie James Earl and Crystal Katherine Earl to Lesley Anne Veysey (formerly Earl) of their equitable half share in 65.840 acres subject to a legal charge and tenancy of 17 May 1973 between L J Earl and the Donee.

PJV/6	24 May 1976	Deed of gift by Leslie James Earl with concurrence of mortgagees to Philip Veysey and Lesley Anne Veysey of OS No. 460 comprising about 3.019 acres.
PJV/7	26 July 1981	Deed of gift by Leslie James Earl to Lesley Anne Veysey and Philip Veysey of 143.212 acres (being the remainder of the 1960 conveyance land).

Part X: Put to Mrs Burton

JWJM/13 to 18	1903 to 1983	Conveyances, see Part IV above.
DFB/12	29 May 1985	Statutory declaration by L J Earl, see Part II above.
EMB/1	14 March 1960	Letter from Webber & Williams to Hole & Pugsley ... to what extent have the rights of turbary, pasturage and trout fishing being exercised ? is Anstey Common a well-defined area?
EMB/2	15 March 1960	Copy reply by Hole & Pugsley to Webber & Williams: Anstey Common is a well-defined area.
EMB/3	16 March 1960	Copy further reply ... right of pasturage has been exercised when convenient.
--	11 May 1960	? Statutory declaration by L J Earl. (? no copy made available for the Commissioner).

Part XI: by Mr E J Nicholls

EJN/2	28 April 1960	Particulars of sale by Auction of Churchtown about 195 acres: "... consists mainly og Good Pasture Arable and Meadow Lands and are now in good heart and condition". There is a right of Shooting, Turbary & Pasturage on Anstey Common about 400 acres ... there is a right of Trout Fishing (about 1 mile in the Danesbrook)."

EJN/3		Abstract of the title of Samuel Spencer Hosegood to Woodlands Farm, commencing with will dated 13 July 1864 of Betsy Spencer devising to trustees "all those messuages... and lands called higher & lower Woodland situate west of Anstey and ... all other the hereditaments... upon trust for Betsy Spencer Hosegood (she later married Edwin Furse) for life, and then for the sons of Elizabeth Hosegood successively in tail and including → an assent dated 5 April 1956 by John Follett Pugsley as her personal representative of the said B S Hosegood to Samuel Spencer Hosegood of first messuage ... farm known as Woodlands containing 303a.3r.1p. particularly described in the schedule and secondly Woodlands Cottage (formerly Higher Farm House); the said Schedule included "636: Woodland Common" 105a.3r.37p.
EJN/4	1 December 1931	Tenancy agreement by Betsy Spencer Furse to Ronald George Nicholls of Woodlands containing about 303 acres as described in Schedule. Schedule 5 (numbers from tithe award) including: 636 Woodland Common: 105a.3r.37p.
EJN/5	1 May 1956	Conveyance by Samuel Spencer Hosegood to Ronald George Nicholls and Ernest John Nicholls of farm known as Woodlands containing 303a.3r.1p. as described in the Schedule. Secondly cottage (formerly Higher Farmhouse) known as Woodland Cottage (Schedule as in the 1956 assent.
EJN/6	6 December 1956	Conveyance by Samuel Spencer Hosegood to Ronald George Nicholls and Ernest John Nicholls confirming 1956 conveyance as regards some property omitted by mistake by reference to OS Nos totalling 320.318 acres including "308 pt: common: 105.539".

EJN/7	2 February 1968	Deed between Ernest John Nicholls and George Elston Nicholls supplemental to the said 1956 conveyances, and reciting the death on 6 April 1967 of Ronald George Nicholls by which George Elston Nicholls was appointed trustee of statutory trust applicable to Woodlands Farm with Ernest John Nicholls and declaring that they held the premises in trust for themselves as tenants in common in equal shares.
EJN/8	19 October 1984	Agreement between Ernest John Nicholls and George Elston Nicholls as owners of Woodland Common comprising about 105 acres with Somerset County Council as the National Park Authority for Exmoor National Park which the owners undertook to retain the existing moor and heath vegetation and foster heather growth and not to do the other things therein specified. The Council agreed to make the payment therein mentioned with a proviso that in the event of a Commons Commissioner or other appropriate office or court determining that the land or any part thereof is common land this agreement shall automatically terminate from the date of such determination.
EJN/9	--	Extract from CL65 register, being Rights Section Sheet No. 3, Entry No. 7 amended 8/1/73 to "stray" over the whole.
EJN/10	24 June 1978	Copy application (CR form 9) of application by Messrs Nicholls for registration of right over CL65 and CL143.

TURN OVER

EJN/10 bis	15.12.82 17.1.83	Invoice of S W & Joy Dallyn, Fencing dealer to supply and erection of 3,420 m fencing re-measured after erection as 3,304 m with gates; and receipt for £6,221.
EJN/11	14.2.83 20.2.83	Sales Invoice from P W Coles to R G Nicholls & Son levelling common and cutting gorse with a receipt for £112.70.

Part XII: by Mr Keigwin

Keigwin/21	24 November 1983 (page 163, No. 7)	Extract from Parish Meeting Minute Book:- Referring to the case at present before the Courts, Mr Hugh Harrison of Ringcombe Farm wished it to be put on record: that he had offered several compromises regarding the registration of his land as Common both to the commoners and the National Park. Among these was an undertaking neither to plough nor fence. These were all thrown out; only one commoner approached him concerning these compromises. In order to safeguard his property he was now considering an appeal. He added that when his appeal was successful he wanted to be sure what it had been put on record that an amicable settlement had been attempted but not achieved. The Chairman in order to clarify Mr Harrison's statements to those members of the meeting who were not commoners, explained that Mr Harrison's appeal was for objection out of time to entertain part of Anstey Common being designated common land. It was agreed to include Mr Harrison's statement in the Minutes.

Part XIII: agreed during the evidence of Mr H M J Harrison

--	24 July 1934	Conveyance JWJM/20 above.
--	9 April 1968	Deed of gift by E M Harrison (donor) to H M J Harrison (son), after reciting marriage of son to J M Harrison on 23 March 1968 and donor's written agreement on 8 March 1968, the donor conveyed to the son "... messuage farms ... East and West Ringcombe Farms with portions of Guphill and West Anstey Common ... delineated in the plan annexed ... subject also to the existing tenancies and to any stocking and grazing rights, rights of common or any other rights of whatsoever nature ..." (plan claim as 1934 conveyance plan omitting lettered E).
--	19 March 1973	Grant by H M J Harrison to Badgworthy Land Company Limited of exclusive right of hunting with hounds and with or without horses in pursuit of wild deer, foxes and hare over lands described in Schedule (schedule specified 605.667

Part XIV: put to Mrs S C Harrison

MJH/25	23 May 1934	Letter from Mr John Kelland of Churchtown to Mr Fred Goss.
MJH/26	24 May 1934	Letter from Mr Fred Goss to Colonel E J Harrison (her husband's uncle).

Part XV : by Sir Frederick Corfield

--	Sir FC/1	Submissions: the Background.
--	Sir FC/2	Scope of Inquiry citing Tehidy v Norman 1971 2QB 528, re Sutton 1982 1WLR 647, CEGB v Clwyd 1976 1WLR 151; re Ilkley and Burley 1983 47 P&CR 324; Wheatcroft (Bernard) Ltd v Secretary of State (1982) 43 P&CR 233; Souter v Souter 1921 NZ LR 716; Wakemata County v Local Government 1964 NZ LR 689.
--	Sir FC/3	Copy of Peardon v Underhill (1850) 16 QB 120.
--	Sir FC/4	Submissions on Tehidy v Norman supra.

--	Sir FC/5	Closing address: general comments citing Baring v Abingdon (1892) 2CH 374, White v Taylor (No. 1) 1969 1Ch 150; Benson v Chester (1799) 8TR 396 and Miles v Etteridge (1692) 1Sho 349; Tyrringham's case 1584 4CoRep 405 and Kimpton's case (Wyat Wild's Case) 1609 8CoRep 78b, cited in White v Taylor supra, Johnson v Barnes (1872) LR7CP 592, Diment v N H Foot (1974) 2A11ER 785; Attorney-General v Antrobus 1905 Ch 188.
--	Sir FC/6	Closing II: individual claims - Churchtown, citing Attorney-General v Simpson 1901 2Ch 671, mentioned by Farwell J in Attorney-General v Antrobus supra; Lyell v Lord Horthfield 1914 3KB 911 and Gardner v Hodgson 1903 AC 229; Chesterfield v Harris 1908 2Ch 397 and Harris v Chesterfield 1911 SC 623; Gullett v Lopes 1811 13East 348; Heath v Elliott 1838 5B.ing.NC 388; Sir Miles Corbet's Case 1585 7CoRep 5A. Annexed:- Extract report of Earl of Portsmouth v Partridge 1860 Weekly Reporter 658 & 659; copy affidavit in said action by William Comins, solicitor for plaintiff sworn 13 July 1860 and affidavit by John Partridge 16 July 1860.
--	Sir FC/7	Twitchen.
--	Sir FC/8	Mr Milton's claims at Entry Nos. 5 and 6.
--	Sir FC/9	Hill Farm.
--	Sir/FC10	Venford.
--	Sir FC/11	Woodland.
--	Sir FC/12	Summary, citing Megarry and Wade on Real Property (5th ed 1984) page 877: improbability of grant, Gardner v Hodgson supra and Tremayne v English Clays Lovering Poching 1972 1WLR 657.

Part XVI: by Mr P F Pugsley

--	Pugsley/1	Final submission for Mr and Mrs Bassett.
--	Pugsley/2	Final submission for Mr P Veysey.
--	Pugsley/3	Final submission for Messrs E J and G E Nicholls.

Part XVII: by Mr Gray

--	Gray/1	Print of Souter v Souter 1920 Nz LR 716.
--	Gray/2	Print of Waitemata County v Local Government Commission; 1964 NZ LR 689.
--	Gray/3	Print of Peardon v Underhill 1850 16QB 120.
--	Gray/4	Print of Roberts v Webster and Others.

Part XVIII: after hearing

--	4 February 1986	Letter from H M J Harrison to Commons Commissioner headed Ownership Section Entries Nos. 1 and 2, enclosing map showing boundary between that part of his land and the adjoining land claimed by Mr J W J Milton (line of Longstone Coombe as marked on the Tithe map).

FOURTH SCHEDULE
Oral evidence of Mr T Sturgis

28 June 1985
1055

At 1 Town Cottage, West Anstey; present Mr P F Pugsley, Mr J Maitland-Walker and Mr N D Ayres solicitors; also Major H C Butchard as a friend of Mr Sturgis.

1110

TOM STURGIS SWORN

Of No. 1 Town Cottage, West Anstey, South Moulton.
Retired rabbit trapper.

Xd

Mr Maitland-Walker

Q. ?
A. 40 years a rabbit trapper until myxomatosis.
Q. Lived all your life?
A. Born and young days in Whitley Molland, a mile from Ringcombe, where they (his parents) were married (Whitley is 100 yards west of Combe, southwest of Ringcombe, marked on 1905 OS map, JWJM/21).
Q. Left?
A. I came back in 1921. When I was a boy Vesey was at Ringcombe; (then) Old man Davey, (then) he died, his 2 sons ... I stopped being a rabbit catcher in 1955. I have trapped rabbits for years. I was on a farm for a couple of years: West Barton in Molland (OS sheet No. 181, 1/50,000; map: grid 794/287).
Q. Left school?
A. I was at Molland School; left at 14; started at West Barton. Went on trapping rabbits for roughly 40 years.
Q. Where did you trap rabbits?
A. Ringcombe, Woodland, Churchtown and Twitchen: for years.
Q. Very familiar with West Anstey?
A. Yes: lived beside it all my life.
Q. Time (you were) child living at Whitley: going on at West Anstey?
A. I walked there with the Davey boys; I knew them; quite regularly. They did not go to the same school; they went to West Anstey School.
Q. Common like?
A. Very much like what it is now. Ringcombe Common as long as I can remember: I was first (?) going from Ringcombe from Guphill Moor Gate up to the Ridge: Ringcombe Common Woodland Common, Churchtown Common and Twitchen Common. I never heard it called Anstey Money. Three commons: Ringcombe, Woodland Common and Churchtown Common. Churchtown Common went up to the Ridge Road.
Q. North of Ridge Road?
A. Over the Common, nobody had it.
Q. Names?
A. Each common had the name of the farm; I always supposed that the piece of Common belonged to the farm.

Q. At the time of Whitley (? stock)?
A. I never saw any; Woodland stock went onto the north side of the Ridge, down to the Danes Brook. Shircombe Farm went down to Danes Brook; they used to have several Exmoor ponies; they used to run them on the north side of Anstey Common; 20 Exmoor mares. Davey had Ringcombe Common and after him Crossman; they use to stock it; Bill was last one; then Tom Crossman; they stocked it with cattle and sheep.
Q. Woodland stock?
A. Woodland people stocked Woodland Common; they always used to stock Woodland Common. Ringcombe cattle varied from time of year; nothing much in the winter, might be 14 or 15 young bullocks; 150 ewes, that would be summer time.
Q. Woodland? stock?
A. Woodland Common is a bigger farm than Ringcombe; more stock than Ringcombe.
Q. Stock; Davey stock from Ringcombe Common, elsewhere?
A. Well you see there are no fences: Woodland and Ringcombe cattle and sheep roamed everywhere: always on the Common.
Q. How did they sort it out?
A. I don't know how they (illegible); Tom Crossman and Nicholls; neighbours are neighbours; I see yours you see mine; they are neighbours!
Q. Ringcombe: north of the Ridge Road?
A. Yes they strayed out there of course they did; any place on the Common right up to Danes Brook sometimes.
Q. The stock other than Ringcombe and Woodland?
A. Never except the odd stray.
Q. Marking?
A. They were initial marks; you could not mistake them; marked big enough; you would have to have very bad sight if they did not belong; so you could see them at a distance.
Q. Did you see any stock from Lyshwell Farm ever?
A. I won't say never; they had Molland Common; no rights over Anstey Common; Molland Common was thousands of cattle; Throgmorton Estate quite a few farm tenancies of farms; summer time was choc with sheep. The cattle from the Molland stray; Lyshwell had no rights there (meaning the Unit Land); Lyshwell had rights to Molland Common.
Q. Twitchen Farm?
A. I don't know they had rights, trapped for several years for Mr Southwood (first); they claimed no rights on Anstey Common. Southwood there first.
Q. Eborn, Arthur and George farmed Twitchen?
A. Southwood 3 or 4 years. Eborns, they sold it; Eborn not when I was a boy.
Q. ...?
A. No; next year they: rabbits got myxie.
Q. It would be 1954?
A. Yes about. He used to live down the railway.
Q. Partridge Arms?
A. I never saw (?) put their sheep; knew (?) his John Milton; never saw (?) and grandfather; last 6 or 7 years I have not been travelling.

Q. Guphill Farm?
A. Stock ... never saw stock from Guphill; never saw stock up there.
Q. Churchtown?
A. They never valued the Common; used to walk out. I used to go to Churchtown to work; I rode by Churchtown (? ...); Mr Earl employed from Badlake: Venford Gate: Venford Farm he used to rent; he never put out on the Common. He did not want to put them on; (? ...) if they got out; they would go anywhere.
Q. Hill Farm (Mr Weaver's Farm)?
A. Not in my time; never saw except in the last 7 years.
Q. Barring Ringcombe and Woodland?
A. Never saw anybody's stock; I can't say last 6 or 7 years.
Q. Danes Brook? Did anybody fish?
A. A lot of poaching.
Q. Right to fish there?
A. Down by Slade Bridge, it belongs to Hill Farm. I don't know why; a little bit belongs to Hill Farm. I can't say why! (witness laughs).
Q. Right to fish?
A. I don't know anybody.
Q. Churchtown Farm to fish?
A. I never heard of any rights.
Q. Shooting over West Anstey Common?
A. (Pauses) I don't think I have. Several years (?) ... Robert and Jack to scrounge rabbits; never shooting.
Q. Churchtown had rights to shoot over Common?
A. Nobody from Churchtown went out shooting.
Q. Badlake Gate? Water on the Common?
A. Spring on Woodland Common; in summer time you have to use a spade; cattle tread it in; Nicholls dig it out; they would dig out in the summer; not much cattle in the winter time; they used to value that spring; not a big job every 2 or 3 days; they would go and clean it out.
Q. Would the stock congregate around the water?
A. In the summer you see they get thirsty, unless you go to Danes Brook no water on the common unless you go to that spring.
Q. Your life? How often?
A. While working at Churchtown, daily. I went out when the rabbits are about: all the winter was there up: all. Trapped rabbits from beginning of August to end of March; plenty of farmers wanted me; during the summer, sometimes ¾ and sometimes not at all. During 12 months, 50%.
Q. ?
A. Half the days there: half the days not there.

1152
XXd

Mr P F Pugsley

Q. ?
A. I am 90 years last October 11.

Q. Born 1894?
A. Yes.
Q. Left school 1908?
A. I was 14.
Q. Two or three years working away: 1908 to 1910?
A. Yes.
Q. ?
A. Rabbit trapped for 40 years.
Q. Lots of farms?
A. In the winter months: Ringcombe today, Woodland tomorrow to trap. It took 2 weeks to trap a farm: 350 traps; 2 weeks clear.
Q. Left a few rabbits?
A. Impossible job to catch all and also kill your own living!
Q. August to March: 3 weeks?
A. Yes.
Q. Two weeks for 15 different farms?
A. Some bigger some smaller, some take 3 weeks, some under one week.
Q. Keep to some farms?
A. I was Ringcombe, Churchtown, Woodland just 40 years.
Q. 15 or 20 perhaps?
A. Ringcombe every day for 2 weeks; Woodland 3 weeks; Twitchen 2 weeks; Milton's farm, Partridge Farm not a week, but it is bigger now about one week. Farms are all local in this area. I walked: everywhere. Churchtown would be the main and Ringcombe; around here (meaning the Cottage) trapped for a few. Southwood and Eborn 10 days, Eborn had a dairy herd.
Q. Sort?
A. A Scottish breed, Ayrshire.
Q. Ayrshire herd would you have kept them on the Farm?
A. Would not turn them out on Anstey! It is a sort of starvation common!
Q. Cattle?
A. There was a square, it was called Twitchen Common. I never knew Twitchen people use it. It was called Twitchen Common. The Eborns, they sold Twitchen, went to Walkley, (a long way away). Trapped for Southwood.
Q. Southwood Farming? What was?
A. (Witness laughs) Not much of his own. Took it off other (illegible). Went down to Yeo Mill; he was not adapted for farming!! He could not make a good job of anything!!
Q. Southwood: Eborn?
A. Southwood went out; Eborn went out.
Q. During the war (1939-1945)?
A. I took on more farms ... Agricultural Committee; trapped rabbits all the year; in charge of the traps.
Q. Jack Biss?
A. He had Twitchen at one time. I remember when he had it. I did not trap for Biss so when he was there I can't say what went on when Jack rented the place. I don't know anything about Jack Biss. The only Twitchen (tenants I know) Mr Southwood and Eborn. Old Mr William Hill, before Southwood, I did not go there.

Q. Wilfred Hill turn out on the Common?
A. I don't know.
Q. Mr Earl: Churchtown and Venford: Pony?
A. I rode a pony. Fence against the Common overgrown. Stock would not get through; it was a good thick fence there Venford, beautiful grass in the summer.
Q. Mr Blackford?
A. He used to rent Venford before Mr Earl. They were like Mr Earl, (?) take stock; nothing out on the ...
Q. Trapped for Venford?
A. Yes about one week; Venford I went about August Earl (meaning the one week was for Mr Earl). When Blackford was there they would not have any rabbits trapped, but during the winter they went up for a day or two sport (meaning ferrets and guns). They would not have much during the winter. During the war there were potatoes; the war was over in 1945; he rented it. Earl took it 2 or 3 years after the war in 1948 to the time when the rabbits got myxomatosis. Never trapped at Venford any body barring Mr Earl.

1219
xxd

Mr N D Ayres

Q. Anstey Common? What do you say is Anstey Common? Is the whole Common up to Danes Brook?
A. Right out to Danes Brook. What you call Anstey Common includes the whole common but when you talk about Ringcombe, you talk about Ringcombe Common. Snares would not use it if any cattle are about; not necessary. Rabbits live out on the Common, they get onto the farmland to feed; you catch them when they come into feed.
Q. Limited (?) trapping: West Anstey part: East Anstey part?
A. I also used to trap East Anstey and about a place or two in Molland.
Q. Hawkridge?
A. Never been there trapping rabbits.
Q. Would you have gone onto the north side?
A. Nothing much.
Q. Your expressions: Ringcombe Bit, Woodland Bit, Venford Bit?
A. Front side of the Common is what I know, the front side facing the Ridge Road.
Q. Fences or enclosure up there?
A. No there have been sometime; you walk over the Common, in places you see a bank
Q. Not in your time?
A. Mr Nicholls!!
Q. Ponies up there: who belong to?
A. Westcott, he is dead; they have not been there for some years.
Q. How do you know?
A. Mr Westcott asked me if I had seen the ponies
Q. Marked?
A. I think they had a private mark.

Q. Sheep marking ?
A. Tom Crossman was "TC": Nicholls was "N". Marks big stuff.
Q. Before?
A. Davey there it was "D"; old man Davey being there I can remember I was ... 2 years.
Q. Who did you work for in the summer months?
A. After the rabbits went (myxie), Churchtown. Before I worked for anybody helping shearing sheep in the summer.
Q. Did you work Nicholls or T Crossman?
A. Only the odd day: mangolds or something like that.
Q. Churchtown go up the track to Venford?
A. Yes; from Badlake Gate up the track.
Q. From Churchtown?
A. I ride up the road; come then ... (?) the Stock Road from Badlake Gate; there is a drive off the road.
Q. Worked for Mr Earl: how long?
A. After the rabbits went; I trapped his rabbits for 16 or 17 years; I retired when I was 65 years of age, 25 years ago. I worked for the Major 3 or 4 years; worked for Mr Earl until 1958.
Q. Rabbits stopped 1954-1955?
A. Yes. I was trapping the rabbits: myxomatosis. Mr Earl (illegible) ...; he said you had better come and put your line (? time) with me.
Q. How old would Mr Earl have been then?
A. 8 years younger than me!

1225
ReXd Mr J Maitland-Walker

Q. Side of the Moor?
A. ... not at the back side very often. I rode over ... (?) anything was on.
Q. Over the whole of the Common?
A. Backside of the Common very little; on the whole Common a bit of my time.
Q. Stock seen on the Common?
A. Never anything. Woodland, Ringcombe and ponies belonging to Westcott have seen some odd ones from Molland Common but no quantity; sheep from Lyshwell but not supposed to be there; they came from Molland.
Q. No disputes?
A. I have got a sheep of yours and you have got a sheep (of mine)! No bad feeling about it!

XXd Mr N D Ayres

Q. You say Mr Davey had no right?
A. He had his own stocking rights on Molland Common; I don't see how he could claim rights.

1240
XXd — Mr P F Pugsley

Q. Davey of Lyshwell?
A. Bill Davey of Ringcombe would be the uncle of Davey of Lyshwell; Bill was brother of Fred Davey senior.

1242
XXd — Mr N D Ayres

Q. Davey would not have a right because he lived in Molland parish?
A. I don't know if they had a right; I never heard of any claim of right.

Xd — The Commissioner

Q. Catch the rabbits when they come on the fields?
A. Never known them go to the (Anstey) Common for rabbits; keepers on Molland Common went for the day's sport.

1245 — The Commissioner left No. 1 Town Cottage.

FIFTH SCHEDULE
(Decision table)

(A) As to the Land Section:-

I CONFIRM the registration at Entry No. 1 without any modification.

TURN OVER

(B) As to the Rights Section:-

(1) I CONFIRM the registration at Entry No. 1 (W S Whitmore) ——————→ :——→ with the MODIFICATION in column 4 delete "except that portion east of the track from Badlake Gate to Ridge Road and over the whole of the land comprised in register unit CL65" and substitute "110 sheep and 15 cattle" for "220 sheep and 40 cattle", and in column 5 delete from the land edged red on the plan therein referred to, first the land thereon marked "Pt 308: 6.569", and secondly the part containing about 9.737 acres (or ? 9.978 acres) ——————————→ and being on the east side of an irregular north-south line not far from the main farm buildings and being OS Nos. 626, 627, 628, 630 and Pt 623 containing respectively 0.626 (? 0.426), 3.231, 2.290, 3.290, and 0.300 (? 0.741) acres.

(2) I CONFIRM the registration at Entry No. 2 (O P J Weaver) ——————→ ——→ with the MODIFICATION in column 4 substitute "the whole of the land in this register unit" for "that part of the land comprised in this register unit known as Anstey Money Common and is hatched vertically in red lines and lettered 'B' on the overlay attached to the register map and in column 5 delete "and blue", so that in the result OS Nos. 273, 276 (Sing Moor) and 277 will be excluded from the column.

(3) I CONFIRM the registration at Entry No. 3 (T W Crossman) with the MODIFICATION in column 4 substitute "the whole of the land in this register unit" for "that part of the land comprised in this register unit as is hatched in red diagonal lines and lettered 'C' on the register map", ~~omit~~ delete "To cut: - ferns".

(4) I REFUSE to confirm the registration at Entry No. 4 (P J Tuckett) in the Rights Section.

(5) I CONFIRM the registration at Entry No. 5 (J W J Milton) with the MODIFICATION in column 4 delete "to quarry stone, turbary", substitute "the whole of the land comprised in this register unit" for "that part of the land comprised in this register unit which is hatched in red horizontal lines and lettered 'A' on the register map", and delete "on the remainder of this register unit".

(6) I CONFIRM the registration at Entry No. 6 (A J Milton) in the Rights Section with the MODIFICATION in column 4 delete "Turbary, To quarry stone", and substitute "the whole of the land comprised in this register unit" for "that part of the land comprised in this register unit which is hatched in red horizontal lines and lettered 'E' on the register map", and delete "the remainder of this register unit and".

(7) I REFUSE to confirm the registration at Entry No. 7 (F Davey) in the Rights Section.

(8) I CONFIRM the registration at Entry No. 8 (B J Burton) with the MODIFICATION in column 4 delete "to fish:- trout in Danes Brook. Turbary".

(9) I CONFIRM the registration at Entry No. 9 (L J Earl) without any modification.

(10) I CONFIRM the registration at Entry No. 10 (E J and G E Nicholls) as amended 8/1/73 with the MODIFICATION in column 4 delete "except that portion lettered 'A' over which only straying rights are claimed", and in column 5 add at the end "except so much thereof as is comprised in this register unit".

(C) As herein before stated under the heading Final, I adjourn the consideration of the costs of these proceedings to such day and place as may be fixed by a Commons Commissioner.

(D) Subject to the liberty to apply herein before stated under the heading Final, the notice which a Commons Commissioner is required to give under Section 6 of the 1965 Act to the County Council as registration authority for the purpose of implementing the January 1982 decision so far as it relates to the registrations in the Ownership Section will be to the effect that the registrations at Entry No. 1 (J W J Milton) and Entry No. 3 (Badgworthy Land Co Ltd) became final without any modification and that the registration at Entry No. 2 (E M Harrison) became final with the modification: in column 4 add the end "but excluding from the part which is so hatched 'D' that which is both hatched diagonally and lettered 'D' on the register map and also hatched in horizontal red lines and lettered 'A' on the register map".

Dated this 26th day of November 1986.

A. A. Baden Fuller.

Commons Commissioner

Objections 603, 604 and 584. Agreement was also reached in regard to the disputes occasioned by these Objections. As pursuant to what was agreed, I shall confirm the registration at Entry No. 1 modified so as to reduce the grazing right to 110 sheep and 15 cattle (instead of 220 sheep and 40 cattle) and to exclude from the land over which the right is exercisable the areas lettered A (and B) on the register map. As regards Entry No. 7, this registration will be confirmed with the modification that the grazing rights are to be exercisable only over Anstey Rhiney Moor ie. the areas lettered E and D on the registered map lying north of Ridge Road.

The Ownership Section. As regards Objection No. 642 there was no appearance by or on behalf of the Objectors and in the absence of evidence to support the Objection, it does not succeed. The conflict between Entries 1 and 2 relates to a section on the eastern boundary of the area lettered D and the western boundary of the area lettered A, this section being comprised in both Entries. The parties concerned have resolved the conflict by agreeing a boundary between the two areas. As regards the conflict between the Entries 2 and 3, Entry 2 included a section now lettered E which is the subject of Entry 3, and it has been agreed that that section shall be excluded from Entry 2.

So far as the Ownership Section is concerned the result is that I confirm Entry No. 1 modified by excluding the part to the west of the now agreed boundary: I confirm Entry No. 2 modified by excluding the section lettered E on the Register map and by excluding the part to the west of the new boundary: and I confirm Entry No. 3.

It is intended that the new boundary shall have effect for the purposes of any rights registered by reference to areas A and D or to the corresponding areas lettered C and B on the overlay, and no doubt the Registration Authority will prepare a new map to show the position resulting from this Decision.

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.

Dated 29 January 1982

L J Thomas Esq

Commons Commissioner