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COMMONS REGISTRATION ACT 1965

Reference Nos. 214/D/9
214/D/10
214/D/11
214/D/12
214/D/13

In the Matter of Yateley Common in the parishes of Yateley, Eversley, Hawley and Hartley Wintney, Hart D. Hampshire

DECISION

My decision (stating its effect shortly) is :- The whole of Yateley Common (including the part now known as Blackbushe Airport) was properly registered as common land. Of the 49 registrations of rights of common, 21 were properly made, but the register should be altered so that their effect will be clearer to a person who is unacquainted with local history and in some other minor respects. Of the remaining said 49 registrations, 2 were properly made in part only and should therefore be altered in a substantial respect. The remaining 25 registrations were not supported or sufficiently supported at the hearing, or were not (or should be treated as not having been) properly made, and should therefore be cancelled. The circumstances which have given rise to these proceedings, the facts which were admitted or proved at the hearing before me, my views on the points (very few, and for the most part of minor importance) about which the oral evidence was in conflict, my views on the numerous points of law which were argued before me and my other reasons for the decision summarised as above, are as follows.

In accordance with the relevant regulations, these proceedings have been treated as arising out of five disputes. The first (D/9) relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.24 in the Register of Common Land maintained by the Hampshire County Council and is occasioned by Objection No. OB 304 and made by Air-Vice-Marshal D.C.T. Bennett and noted in the Register on 7 September 1970. The second (D/10) relates to the registration at the said Entry No. 1 and is occasioned by Objection No. OB 319 and made by Brigadier Sir Richard Anstruther-Gough-Calthorpe, Baronet and noted in the Register on 24 November 1970. The third (D/11) relates to the registrations (49 in all) at Entry Nos. 1-5, 7, 9, 11, 12, 14, 15, 17-28, 31-38, 40-42, 45, 47-50, 52-54, 56-60, 69 and 73 in the Rights Section of the said Register Unit (these registrations are summarised in the First Schedule hereto) and is occasioned by the said Objection No. OB 304. The fourth (D/12) relates to the said 49 registrations in the said Rights Section and is occasioned by the said Objection No. OB 319. The fifth (D/13) relates to the registrations (11 in all) at Entry Nos. 33, 34, 35, 36, 37, 40, 41, 42, 45, 47 and 53 and is occasioned by Objection No. OB 265 made by the Secretary of State for Defence and noted in the Register on 14 October 1970.

I held a hearing for the purpose of inquiring into these disputes at Winchester on 17, 18, 21, 22, 23 and 25 October 1974 and at London on 5, 6 7 and 8 November and 2, 3, and 4 December 1974. At the hearing (A) the persons on whose application the Entry Nos. in the Rights Section were made, and against whose names in the First Schedule hereto the letter "R" appears in the fifth column of such Schedule, were

represented by Mr. J.W. Mills Q.C. and Mr. J. Bradburn of counsel instructed by Gouldens, Solicitors of London; (B) the Secretary of State for Defence was represented by Mr. R.F.D. Barlow of counsel instructed by the Treasury Solicitor; (C) Brigadier Sir Richard Anstruther-Gough-Calthorpe was represented by Mr. M.B. Horton of counsel instructed by Walters Vandercom & Hart Solicitors of London; (D) Mr. Douglas Arnold was represented by Mr. J.A.R. Finlay Q.C. and Mr. J.M.E. Byng of counsel instructed by Jackson Kent & Hodges Solicitors of Littlehampton; (E) Yateley Parish Council were represented by Mr. B.D. Adams, their clerk; and (F) Hampshire County Council were represented by Mr. J. Weeks, solicitor, being their Senior Assistant Solicitor. Mr. R.G. Vaughan, (one of the two persons on whose application Entry No. 42 was made) attended in person, on his own behalf and as representing his wife, Mrs. M.W. Vaughan (the other applicant). The following persons being successors in title of the persons who are named in the second column of the First Schedule hereto and against whose names the letters "RS" appear in the fifth column, were also represented by Mr. Mills and Mr. Bradburn :- Colonel Brown in respect of Entry No. 5 as successor of Lieutenant-Colonel A.D. MacNamara; Mr. John Giles in respect of Entry No. 24 as personal representative of Miss D.E. Giles deceased; and Mr. Simon Walters in respect of Entry No. 54 as successor of Mr. S.V. Thynne. The persons named in the second column of the First Schedule hereto against whose names in the fifth column appears the letter "L" with a date have sent to the County Council a signed letter or form indicating that they wish to withdraw their application and/or to take no part in these proceedings; the letters "LS" in the said column indicates receipt of a similar signed letter or form from a successor in title of the persons named in the second column. The persons against whose names appear the letters "NO" in the said fifth column did not attend and were not represented and I have no information as to their views.

The land ("the Unit Land") comprised in this Register Unit is a tract of (according to the Register) about 1,218 acres. It is a little more than 3 miles long. Its west (more accurately north-west) and south boundaries are more or less straight; its north and east boundaries are irregular. It is crossed by the A 30 road which runs more or less parallel with, and some distance from, the south boundary. The east end is about ½ a mile from where the A 30 road crosses the River Blackwater; its west end is about 1½ miles from where the A 30 road crosses the River Hart (Hartford Bridge). The Unit Land is geologically ↓ plateau gravel; if viewed generally, it (particularly the west half) is strikingly flat, when compared with the adjoining land on the north and east; however there are in many places hollows and uneven parts, particularly a considerable depression which lies across the north-west boundary not far from the north-west corner.

The Unit Land is called (or is described in the Register as called) "Yateley Common" (it was suggested that part is not or should not be so called). Mention was made of two pieces which although not part of the Unit Land are included in the land so called land ("the Cemetery Piece") which contains about 11 acres, part of which is a cemetery and which is comprised in Register Unit No. CL.28; and the land ("the East Piece") whic contains about 2 acres, which is a narrow strip of land between the gardens of numerou newly built houses and which is comprised in Register Unit No. CL.48.

For thepurposes of exposition it is convenient to divide the Unit Land into four parts :- (1) The part ("the Blackbushe Part") being the part of the Unit Land which is north of the A 30 road and west of the line of the Old Vigo Lane: a lane which used to go due south from the Anchor Public House to join the A 30 road at a point at or near the centre of a building ("the Main Airport Building") which now includes the Control Tower and other accommodation used in the operation of the Airport. (2) The part ("the Calthorpe Part") being the part of the Unit Land which is south of the A 30 road and west of a straight line which runs sorth from the point on the A 30 road about 200/250 yards east of the Main Airport Building. (3) the part ("the Defence Part") being the part of the Unit Land which is south of the A 30 road and east of the last mentioned line. And (4) the part ("the County Part") north of the A 30 road and east of the line of the Old Vigo Lane.

Entry No. 1 in the Land Sectionwas made in consequence of the applications for registration of rights in the Rights Section. Apart from the said 49 Entries there are now no subsisting Entries in the Rights Section of any rights of common. The grounds of the objection stated in Objection No. OB 304 (A.V-M. Bennett) are:- "1. The Land is not Common Land at the date of registration. 2. The persons named in the various applications for registration are not entitled to any Rights of Common. 3. No Rights of Common exist at all. 4. The land is not part of manorial waste or the like". The grounds of objection stated in Objection No. OB 319 (Brigadier Sir R. A.-G.-Calthorpe) are:- "That the land edged red on the annexed plan was not common land at the date of registration and the rights registered over the land did not exist at the time of their registration"; on the said annexed plan the Calthorpe Par is edged red. The grounds of objection stated in Objection No. OB 265 (Secretary of State for Defence) are :- "That at the date of registration none of the rights claimed extended over so much of the land distinguished by Register Unit number CL.24 as is shown verged red on the plan attached hereto"; on the said attached plan, the Defence Part is verged red; in a letter dated 25 July 1973 the Department of the Environment stated that Objection No. 265 waswithdrawn in respect of all the existing rights entries except for the said 11 Entries (in the fifth column of the said Schedule marked "Defence").

On the first day of the hearing, Mr. Horton said that it had been agreed that the rights registered (or some of them) did not extend to oak, elm, beech and ash on the Calthorpe Part. Nobody present suggested otherwise. I said I would give effect to this agreement subject to it being put in writing and sent to me, and on the understanding that if at any later stage of the hearing any difficulties arose (no difficulty has arisen) I would hear Mr. Horton further. By the agreement (which is dated 29/11/74) it was agreed (in effect) among other things that the rights registere at Entry Nos. 1, 5, 7, 9, 11, 12, 15, 17, 19, 20, 21, 23, 24, 25, 31, 38, 52, 54, 56, 57, 58, 59, 60 and 69 should be modified by the inclusion in the Register of the following words :- "Excepting and reserving all manner of oak, ash, beech and elm now growing or to be growing on the land edged red on the plan annexed to Objection No. OB 319 including the exclusive right to cut, fell or interfere with the same in any manner whatsoever".

On the first day of the hearing Mr. R.G. Vaughan for himself andhis wife said that he and she did not wish to support the registration at Entry No. 42 and that they were agreeable that I should (there is I think no reason why I should not) refuse to confi this registration. Mr. Finlay on behalf of Mr. Arnold waived any claim against Mr. & Mrs. Vaughan for costs.

On the third day of the hearing, Mr. Barlow dealt with the 11 entries to which Objection No. OB 265 related. The persons who had applied for Entries Nos. 34, 36,

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37, 40, 47 and 53 had signed forms withdrawing altogether their rights as registered. Mr. Mills said on behalf of Mr. & Mrs. Salmon, on whose application Entry No. 33 had been made, that they agreed that I should refuse to confirm the registration. As above stated Mr. & Mrs. Vaughan on the first day of the hearing agreed the same as regards Entry No. 42. Mr. Barlow referred me to a form signed by Major and Mrs. Little who then occupied the lands mentioned in Entry No. 41 (made on the application of Mr. & Mrs. Clarke); he also referred me to a letter by Mr. & Mrs. Wright about Entry No. 35 and a letter from Mr. & Mrs. Meade about Entry No. 45 withdrawing these Entries at least as regards the Defence Part. Mr. Barlow said that these withdrawals had been sought on behalf of the Secretary of State for Defence because the character of the land to which the alleged rights were attached was so "suburban", as being incapable of sensibly having any right of common such as had been registered. Apart from Mr. & Mrs. Salmon, and Mr. & Mrs. Vaughan, none of those responsible for these 11 Entries attended or were represented at the hearing. Nobody at the hearing suggesting otherwise, I said I would refuse to confirm these 11 Entries at least so far as they related to the Defence Part, on the understanding that if at any later stage of the hearing any difficulties arose (no such difficulties did arise) I would hear Mr. Barlow further.

By far, the greater part of the hearing was occupied with evidence and arguments about Entries (theThird Schedule Entries) listed in the Third Schedule hereto. In such schedule some of these Entries are sub-divided (a), (b) and (c), because differing considerations were found to be applicable to different parts of the land to which the Entries related.

On 6 December 1974, I inspected the Blackbushe Part accompanied by Mr. Arnold, Mr. Byng his counsel, and by Mr. Guppy of Gouldens. Later on the same day, unaccompanied I walked round the Blackbushe Part on or near its circumference and on another day, unaccompanied, I lookedat (without entering on) the lands described in the Third Schedule hereto and also some of the other lands mentioned in theFirst Schedule.

On behalf of those concerned to support the Third Schedule Entries ("the Claimants") it was contended as follows:- (i) copyholders of the Manor of Crondal had over the waste lands of the Manor rights of common recognised in an indenture dated 10 October 1567 ("the Crondal Customary"); (ii) the waste of the Manor of Crondal included the Unit Land; (iii) the lands described in the Third Schedule Entries were all at one time copyhold of the Manor; (iv) when such copyholds were enfranchised by deed made in or before 1925 or enfranchised on 31 December 1925 by the operation of the Law of Property Act 1922, the rights of common appurtenant to the copyholdings continued as appurtenant to the freehold, and have being so appurtenant passed on every subsequen conveyance of the land or of any part thereof.

For the 1567 Crondal Customary, I was referred to the Crondal Records, Part I Historical and Manorial by Mr. F.J. Bagent, a printed book published in 1891 by the Hampshire Record Society. The book contains a translation and history of this indenture; the counterpart executed by the tenants was held by the Dean and Chapter of Winchester, and the original executed by the Dean and Chapter was held on behalf of the tenants at Aldershot. The County Archivist offered to produce at the hearing the counterpart from the County Record Office (now also the record office of the Diocese and of the Cathedral), but because it is fragile, I rely on Mr. Bagent's translation (which was agreed). This 1567 indenture in its original form occupied 2½ large skins of parchment and its schedules consisted of 30 skins; the translation in print (apart from the schedules) fills nearly 20 printed pages. The parties of the other

part (numbering about 150) are described as : "Tenauntes by copie of Courte Rowle and copye houlders of the mannor of Crondalle in the said Countie of Sowthampton parcell of the possessions of the said Deane and Chapiter in the right of the said Cathedrall churche." Rights of common are dealt with as follows:- "ITEM, IT IS CONCLUDED and agreid betweene the parties to these presentes, that all and singular tenauntes within the said mannor or hundred, their heires and assignees, shall and maye at all tymes, and from tyme to tyme, use, accupie and enjoye, and take suche proffyttes of all and singuler waste grownde and commons apperteyninge and belonginge to the lorde of the same mannor or hundred, with their beastes and cattell and in shreddinge of busshes, heathe or fearne, and in diggynge of gravell and all other proffyttes and commodytees, other then in one parcell of grownde nowe inclosed caulled The Fleate Ponde, in suche manner and fourme, and to all suche intentes purposes and respectes, as they or anie other their auncestores tenauntes, hathe used to do or occupie the same; Alwayes reservinge and savinge to the lordes of the said mannor or hundred, and to their assignees all manner of oke, elme, ashe and beache nowe growinge or to be growinge in uppon the same waste grownde or commons and also the said parcell of grownde caulled The great fleate ponde as it is now severed. ITEM..." I am not concerned with "Fleate Ponde".

Against the Claimant's contention as outlined above, the following 16 points of objection were expressly orimpliedly raised on behalf of Mr. Arnold (in listing these points I have in 13 cases adopted the distinguishing lettering used by Mr. Finlay at the hearing: for 3 others I use the letters B, D, and G.) :- (A) Rights extinguished by abandonment by non-user; (B) Crondal Customary void for uncertainty; (C) Abandonmen evidenced by change in character of Claimant's land; (D) The future use of the Blackbushe Part as an airport should not be prevented; (E) Enfranchisement of copyhold without regrant of right of common; (F) Claimants holding is freehold, and no evidence that it was formerly copyhold; (G) The Claimants by permitting the Cemetery have released their rights; (H) Claimants holding, although house and curtillage, is not an ancient house; (L) Claimants holding is land without a house, so no "house" rights of common; (O) Absence of oral evidence; (P) Post 1891 enfranchisement (i.e. after the below mentioned conveyance of 26 February 1891 to Lord Calthorpe); (S) Unit of seisin, i.e. rights extinguished by acquisition by claimant or predecessor in title of part of waste of the Manor; (T) Abandonment evidenced by lack of any attempt to transmit rights of common to a successor in title; (W) Claimants holding was formerly waste of the Manor; (X) Abandonment evidenced by ignorance of claimants of precise nature of the rights claimed; or exaggeration of claim implying such ignorance; and (Z) Abandonment evidenced by failure to assert rights when an assertion would have been expected. Additionally, two other points were raised as to the words "definite number" of grazing animals, and as to the words "waste land of a manor" in section 15 and section 22 respectively of the 1965 Act.

In support of these points of objection, reference was made to numerous deeds and othe documents. Properly to interpret these deeds and documents, I must have regard to the appearance of the land, in so far as it can be proved by those alive at the time when these deeds and documents were made or can be inferred from the evidence of such persons and the maps and other documents produced.

The history of the Unit Land, apart from the Blackbushe Part was not much dealt with in evidence. The County Part is now open land with much gorse and many trees and some scrub; there are numerous footpaths; there are places where gravel and sand is being or has been taken; there are some ponds. Obviously many of the trees are self sown,

but on appearance I infer that many have been planted. The County Part appears to be waste land resembling the lands which in many urban areas, particularly in the Thames Basin, are usually called "Commons", and over which the public walk for air and exercise.

The following maps were produced : (i) the 1871 Ordnance Survey 1/2,500; (ii) a copy of the map annexed to the Parish Tithe Apportionment Award which I assume was made between 1840 and 1850; the original is among the Diocesan Records in the County Record Office at Winchester; (iii) a map of the Hundred of Crondal in the Crondal Records by F.J. Bagent, supra; and (iv) some more recent Ordnance Survey maps.

At the present time it is obvious that the A 30 road and the traffic on it has a divisive effect, so that the County Part appears more public than either the Calthorpe Part or the Defence Part. In recent years (particularly since the 1939-45 war) many dwelling houses have been built north and east of the Unit Land, so that the surrounding population has increased enormously, with the result that people (much more than in former times) walk over the County Part for air and exercise.

Mr. Adams produced a conveyance dated 6 July 1951 by which the Church Commissioners of England conveyed to the Parish Council of Yateley all their estate and interest as Lords of the Manor of Crondal in waste lands known as Yateley Common comprising about 573 acres and Yateley Green and Frogmore Green comprising about 67 acres and more particularly shown on the plan annexed and coloured green. The land so coloured includes the Unit Land, the Cemetery Piece and the East Piece. I was told that the Parish Council subsequently conveyed the County Part to the County Counc it appeared to be generally accepted by all at the hearing that the County Council are now and have for some time been the owners of the County Piece and also that the Secretary of State for Defence and Sir Richard Calthorpe are now and have for some time been respectively the owners of the Defence Part and the Calthorpe Part as successors in title of the Dean and Chapter of Winchester.

It was not disputed that the Unit Land, apart from the Blackbushe Part is known as and is included in the land now and for many years known as "Yateley Common". Within living memory, apart from the changes in the number of footpaths, and the density of the trees and scrub, the Unit Land except the Blackbushe Part has always been as now. I conclude therefore that the Unit Land apart from the Blackbushe Part, making due allowance for the changes in the surroundings and for the recent divisive effect of the A 30 roadbns in all now relevant respects from time immemorial always appeared to be much as it is now.

The Blackbushe Part is now quite different. For the most part it is being used as an airport. The Terminal Building is at the south-east corner (this is part of a larger building astride the boundary between the Blackbushe Part and the County Part); the Control Tower is at the west end of the Terminal Building. The land used as an airport includes land to the west in Eversley and not included in the Unit Land, where there are some workshops and hangars. On the Blackbushe Part (in addition to the Terminal Building) there is a Club Building (the subject of the 1964 legal proceedings below mentioned) and fire fighting equipment shed and a fuel store; apart from these the Blackbushe Part is free of buildings. It is separated from the County Part by a

substantial wire fence which is needed to prevent pedestrians going too near the recent
rected runway and endangering themselves and those in aircraft. The Blackbushe Part is (as might be expected) mostly flat; but exceptionally the north-west corner slopes down, in places steeply to a low area called "the Bog" which when I was there appeared to me very appropriately named. In this sloping area gravel and sand had been taken, and in the same area also well outside the perimeter track, there is a Go-Kart Track (a closed circuit covering an area of about 200 yards long and 100 yards wide). The Track is regularly used for Go-Karts and attracts many visitors; they enter the Blackbushe Part by a track along the north side (starting from the south end of what is now left of Old Vigo Lane). Until recently, on another part outside the perimeter track there has been a weekend market; this was discontinued at about the time I was holding the hearing.

The past history of the Blackbushe Part may for purposes of exposition be divided into the following periods :- (a) before the memory of living witnesses, during which period by a conveyance dated 26 February 1891 the Ecclesiastical Commissioners as Lords of the Manor of Crondal conveyed the Blackbushe Part (not in the conveyance so described) to Lord Calthorpe; (b) to the beginning of the 1939-45 war, or the requisitioning effected under the Defence Regulations then in operation, said to be in or before 1942; (c) up the derequisitioning on 31 December 1960; and (d) thereafter until 5 August 1965 (the passing of the Commons Registration Act 1965) or until 16 May 1967 (the first registration of the Unit Land under the Act) or until 30 August 1970 (the Objection of Air-Vice-Marshal Bennett), or up to now.

Little was said about the requisition period, because the major events are I understand well known and are not in dispute. The Blackbushe Part, some land to the west in Eversley , much or all of the Calthorpe Part, and some of the County Part was used by the Royal AirForce as an aerodrome or airfield and was known as R.A.F. Hartford Bridge the three runways then extended to part of the County Part and over what is now the A 30 road to the Calthorpe Part. Nobody during the requisition period attempted to graze or exercise any rights of common on the Blackbushe Part; there was no evidence that anybody ever claimed any compensation for not being able to do this. On 29 April 1953 Sir Richard Calthorpe was registered at H.M.Land Registry as proprietor of the Blackbushe Part under title number HP 6277; but I had no evidence as to how his previous title was traced from the 1891 conveyance to Lord Calthorpe.

As to the events after the derequisition on 31 December 1960, the history is as follows

On 3 July 1961 Air-Vice-Marshal Bennett was registered as owner of the Blackbushe Part and about this time commenced using it as a civil airport; this airport was smaller than the airport used by the Royal AirForce in that it did not use the parts of the R.A.F. runways which were south of the A 30 road or which were in the County Part. Proceedings were taken in the County Court against Air-Vice-Marshal Bennett by the Hampshire County Council under section 194 of the Law of Property Act 1925 in respect of the Club Building which he had built since he became the owner of the Blackbushe Par the proceedings could not be taken about the other buildings as they had been put up during the requisition (see sub-section (4)). The County Court Judge in his judgment on 24 November 1964 found that the Club Building was on land within the section, i.e. it was "land which at the commencement of this Act (1 January 1926) is subject to rights of common" ; in the exercise of the discretion conferred on him by the section he declined to make any order for its removal and ordered the County Council to pay costs; the Club Building is still there.

The carrying on of an airport on the Blackbushe Part is now and I infer has always been since 1960 a serious interference with any rights of common which may exist over it. The air traffic is and was far too great for any such right to be exercised.

Mr. Dodd and Miss Kirkpatrick (on whose application Entries Nos. 1 & 31 in the Rights Section were made) in their evidence described their attempts to exercise rights of grazing which they each considered they had.

Mr. Weeks, who has been employed by the County Council since 1959 said (in effect) :- While Air-Vice-Marshal Bennett was there, there was ugly friction between him and the local people. The clerk of the County Council (Mr. Smyth) instructed him (Mr. Weeks) to take all such action "to stop friction as might lead to bloodshed". So he (Mr. Weeks) went on a number of occasions to see people to try and persuade them not to put animals on the common; this he did between 1964 and 1971/72. After his visits it would calm down and then flare up again. He thought he did this six or seven times during the seven year period.

On 27 July 1973, Mr. Arnold was registered as owner of the Blackbushe Part in succession to Air-Vice-Marshal Bennett.

As to the events before the 1939-45 war:-

Miss E.S. Harris in a statutory declaration made 22 January 1962 and accepted in the 1964 County Court proceedings (she was then 71 years old and had always resided in the Parish), having defined "the said farmland" as meaning 5 pieces which included the Entries 1a and 1b lands and much other land, said (in effect) :- Her grandfather James Harris (he died 5 April 1890; he lived at Monteagle Farm), her uncle John William Harris (he died 28 February 1925) her father Frederick Edward Harris (he died 2 April 1931) and she had successively owned and been in possession of the said farm land, and had rights of common over the Unit Land and particularly until the Blackbushe Part was requisitioned, had depastured cattle on the Unit Land every day a herd of about 12 cattle (they were driven from the said farm land in the care of a boy paid 3s 6d a week). She exhibited an admittance of her father dated 21 July 1925 and a compensation agreement with herself dated 8 April 1937 relating to 15 acres (part of the said farm land) which included the Entry 1b land but not the Entry 1a land, and also particulars of sale dated 18 October 1883 under which her grandfather purchased Lot 1 (about 2½ acres including Entry 1b land), all the lots being therein described as "with extensive common rights".

Mr. G.C. Ives who was born in Yateley 80 years ago and lived there ever since (except for service in the Royal Navy 1914-18) and who until 10 years ago was clerk of the Yateley Parish Council said (in effect) :- Before the airfield was built the vegetation of Yateley Common was heather and gorse with birch trees and fir trees here and there; there were two fish ponds near Cricket Hill (one known as Wyndham Pool, a bathing pool and the other as Boseley Pond); there were three sand pits and seven gravel pits which he identified on the map; those on the Blackbushe Part were filled in when it became an airfield. The copyholders were entitled to take gravel and sand from the pits; he himself while a copyholder from 1923 to 1935 had taken gravel and also cut heather. Other people grazed their animals, cows, sheep, ponies, horses, goats, donkeys and also geese and chickens; his father kept geese and pigs and they ran on the common;

he saw cows of old Fred Harris and 50-100 sheep of Jack Harris. Between 1908 and 1911 he was employed with a grocer and did rounds for orders in the morning with deliveries in the afternoon, so that during that period he crossed Yateley Common three times a week. Before the 1914-18 war Mr. Charles (Hoppie) Wheeler grazed 10 to 20 cows from Dungells Farm; also Mr. Girdler grazed up to 20 cows from the Darby Green end. He (Mr. Ives) like others, took gravel to make paths, cut heather for clamping potatoes and that sort of thing. In the 1920's "almost everyone" kept pigs on the common.

Mr. A.A. Stevens who has lived all his life in Yateley, from 1895 to now (except for service in the Royal Navy 1915-18) said (in effect) :- Up to 1913 he lived at Cricket Hill by the Hospital; the Unit Land was all common land, just heather, furzes and trees. His father on the common had ponies, donkeys and goats; he got turf (heather roots) for clamping potatoes; most people cut bean sticks and pea sticks and took sand and gravel; others had pigs, chickens and geese. Builders took sand and gravel but if not local they paid 6d a load; the locals did not pay, there were people who were supposed to pay and never did. His father opened up a gravel pit when he wanted to build a new house.

Mr. J.E. Cobbett (the Claimant in respect of Entry Nos. 9 and 38) who was born in 1914 said (in effect) :- His family since 1800 farmed Hill Farm (about 125 acres) in Cobbetts Lane (hence the name) until the Estate was sold in 1928. In the 1920s no part of the Unit Land was called "Blackbushe"; all the Unit Land was "Yateley Common" including the part which later became Blackbushe Airfield. In the 1920s, he minded 20-35 cows on the common if there was a bit of grazing; they put their pigs out to eat the acorns; also their horses. Mr. Girdler used to have 15 or 16 cows on the Unit Land and sell the milk. Miss E. Harris had cows on the Unit Land and also on Yateley Green. Others had goats and chickens. His father took gravel off the Unit Land; also heather (turf sod) to clamp mangolds, swedes and potatoes. He took sand in 1938 to build Six Acres and more recently took some to make an engine and saw bed. He produced a 1905 copy of the Yateley Magazine which included a notice headed "MANOR OF CRONDALL. YATELEY COMMON. REGULATIONS AS TO TAKING GRAVEL" dated June 1905 by order of Hugh de B. Porter, Deputy Steward, which was as follows:- "(1) Copyholders of the Manor of Crondall, in Yateley and Hawley Tithings, have the right to take gravel from Yateley Common for use on their Copyhold tenements. (2) Freeholders in Yateley and Hawley Tithings will in future be allowed by the Lords of the Manor (The Ecclesiastical Commissioners for England) to take gravel from the Common upon payment of 6d for each load taken. (3) No gravel is to be taken by freeholders, except after application to the Hayward or to one of the Conservators of the Common, and after permission is obtained, the gravel is only to be dug up at the place indicated by the Hayward. (4) Payments for gravel taken are to be made to the Secretary of the Conservators, through the Hayward of the Manor. (5) In no case is gravel taken by Copyholders or Freeholders to be sold, or used out of the Tithings above named. (6) Persons who are Copyholders may not use gravel taken without payment upon property which they have made Freehold." He had always remembered Yateley Common as one common without distinguishing the Blackbushe Part from the rest.

Miss E.J. Gardener (the Claimant in respect of Entry No 52) who has lived (except for the war years) for the last 44 years in Yateley (she is 71 years old) said (in effect) She had always used the Blackbushe Part particularly the area near Cricket Hill, taking bracken, sticks, stones, gravel and sand for her garden. She kept a goat on the common She had burnt peat off the Unit Land.

Mr. S.I. Loader, who is 69 years of age, has lived all his life in Darby Green, was for 20 years Verger and Parish Clerk of Yateley and who has written a history of Yateley, said (in effect) :- As a boy he often went along Old Vigo Lane; there was a grassy track where cattle used to graze and a certain amount of silver birch and scots fir, lots of heather, large heaps of gravel being dug up all over the place. In those days (before the 1939-45 war) no distinction was drawn between one part of the Unit Land and any other part such as the Blackbushe Part; it was all "the common". When he was a child his father used to cut turf for the fires, circles about 18 inches across; turf was also used for potato clamps and for roofing out houses. His father fished in the pond. He remembered grazing by Mr. George Parker, Mr. Jack Harris, Miss Esther Harris and Mr. Girdler.

Major-General R.L. Brown (his wife is Claimant in respect of Entry No. 11) who is 79 years of age and who has known Yateley since about 1906, whose wife lived at Darby Green since she was one year old and whose mother lived at Cricket Hill Cottage from about 1920, said (in effect) :- Although away for long periods on service, he frequentl; came to Yateley; he remembered when he first knew it, how they employed labourers to cut sticks; he remembered seeing tethered cows and goats and quantities of geese on the Unit Land; he knew exactly what people meant by Yateley Common when he was young, they meant the whole of the Unit Land. Although on the east part the grass was better, he remembered seeing cattle grazed on the west part; he remembered the A 30 road as a gravel road.

Miss D.K.M. Kirkpatrick (the Claimant in respect of Entry No. 31) described the use she had made of the land. Her knowledge did not extend back to before the 1939-45 war.

Mr. H.T. Dodd (the Claimant in respect of Entries Nos. 1a and 1b) who is a farmer now 65 years of age (his farm is at Newbury) said (in effect) :- Miss Esther Harris (she died in 1965) was his mother's sister; his mother lived at Church Farm in Eversley and they visited Yateley quite a lot. He remembered Miss Harris grazing cows and sheep, pigs, geese and putting chickens on the Unit Land; she farmed from her land at Moulsham Green. His understanding was that his grandfather bought the holdings in Moulsham Green so that he could graze cattle over the Unit Land.

Mrs. J.M. Crumplin (Claimant in respect of Entry No. 12) described the use she had made of the land in the 1950's.

Mr. G.B. Wilmer born in 1924, who has lived in Yateley since 1933 (he was called as a witness on behalf of Mr. Arnold) , said (in effect) :- When he was a child he frequently walked over the Unit Land and was well acquainted with it and never saw any cattle there at all. He knew Miss Esther Harris but he never saw her cows on the Unit Land although they used to roam through the village at all times. They were the only cows that roamed through the village. He had never seen horses, ponies, sheep, geese, poultry or pigs or donkeys on the Blackbushe Part.

I do not accept Mr. Wilmer's evidence as establishing that there was no grazing on the Blackbushe Part before the 1939-45 war; I think that there was some grazing, and that Mr. Wilmer has either forgotten what he saw or never noticed it at the time. I prefer the evidence given by the other witnesses above mentioned, that the Unit Land including the Blackbushe Part was throughout the period covered by their recollection, grazed as they described. On the evidence of such witnesses I find that from the commencement of the 1939-45 war as far back as living memory goes the Blackbushe Part appeared to be an was used in the same way as the remaining parts of the Unit Land and that Yateley Comm was the common description of the whole of the Unit Land including the Blackbushe Part.

As to the period before living memory :- The Tithe Map shows the Unit Land unnumbered;

I did not see the Award but it was accepted that under it the whole of the Unit Land was (with other lands) treated as non tithable. Both the 1871 Ordnance Survey map and the Bagent Map show the Unit Land with boundaries essentially the same (a little more or less) as now; all as one piece of land without any division.

I conclude therefore that apart from the operations effected on the Blackbushe Part as a result of and after it was requisitioned in or about 1940, the Unit Land from time immemorial has been one piece of open land which after making all allowances for those changes necessarily resulting from the variations in the local population and from the economic and social changes which took place generally in the County, have always been in all now relevant respects the same as it was before 1939 as described by the witnesses' evidence I have summarized above, and apart from the Blackbushe Part as now.
The 1871 Ordnance Survey Map, the Tithe map, and the Bagent map all show the Unit Land (a little more or less) as waste land. The evidence outlined above shows that at leas for the 40 years before the1939-45 war it was all waste land. I conclude that in 1575 when the Crondal Customary was made, the Unit Land was then part of the waste of the Manor of Crondal therein referred to.

I reject the point of objection (B) that the "ITEM" above quoted from the Crondal Customary was always void for uncertainty. In 1575 there would have been no difficult in discovering what the copyholders and their ancestors and tenants had before 1575 been used to do; the loss of this evidence does not, I think, avoid the "ITEM". The general nature of the rights established is described. For the reasons set out below, I see no need in this decision to define the rights more precisely. If in any future proceedings it becomes necessary in the circumstances then existing to define the righ I see no reason for supposing that the tribunal concerned will find any difficulty in doing this in accordance with established principles relating to the interpretation of ancient documents.

The Crondal Customary is to some extent in the form of a grant and for many purposes the claim made on behalf of the Claimants could perhaps be regarded as being based on a grant. However in my opinion the true effect on the 1575 Indenture is to provide evidence of the customs of the Manor of Crondal as they have been from time immemorial I conclude that the rights of common recorded in the "ITEM" are customary rights and I must deal with the Claimants case on this basis.

I reject the point of objection (C)that such rights cannot be treated as established for the benefit of such of the Claimants as have not in the course of these proceeding produced any evidence by themselves or any other person that he or any of his predecessors in title have actually exercised rights. In my view a right of common like other rights in or over land can be established in many ways; it maybe that the most cogent is by production of the deed showing that the right has been dealt with in accordance with the Claimant's claim and that he and his predecessors have been in possession of the right; on a sale of freehold under an open contract a minimum is required; but there is I think no rule that in proceedings such as this nothing less will do. The evidence given of the use which some persons made of the Unit Land was (as Mr. Mills said) offered by way of confirmation to rebut any suggestion that might be made that the Crondal Customary had become obsolete, or that there had been any general abandonment of the rights thereby recognised; by calling such evidence, Mr. Mills did not, I think, make such evidence essential to the case of each of his client

No doubt by not calling some of his clients, some of the points of objection as to abandonment are unsupported by evidence which might have been obtained in cross examination; in so far as Mr. Arnold relied on abandonment, it was, I think, for him (or his advisers) to call any evidence needed.

I incline to the view that when a group of persons all claim (as the Claimants in this case do) under rights which are substantially the same or which have been recognised by one document, any evidence of peaceful use (as also any evidence of successful opposition to the exercise) of the rights is evidence for (or against) their existence. But, however this may be, in my opinion production of the Crondal Customary and my finding that the Unit Land was then part of the waste of the Manor, establishes that the copyholders of the Manor had, at least up to the date when the copyholders were enfranchised rights such as are described in the ITEM.

As to point of objection (D) which was not expressly made, but which Mr. Mills said (rightly, I think) was implicit in the course taken at the hearing on behalf of Mr. Arnold; that I should in some way be influenced in his favour because the discontinuance of the Blackbushe Part as an airport would be against the national interest and inconvenience a large number of persons without benefitting anybody else to any comparable extent.

Mr. Arnold (who was a R.A.F. fighter pilot during the war) said (in effect) :- In 1973 he bought Blackbushe Airport (it then and still comprises the Blackbushe Part and some land on the west in Eversley). He used to own Fairoaks Airport at Chobham. Blackbushe had been an international civil airport since 1946. It is unusual in that it is fog free and has three all weather runways; further it is the only airport (apart from Heathrow and Biggin Hill) around London which can be used as a civil airport. Last year (meaning, I think, 1973), there were on the airport about 166,000 aircraft movements (any takeoff up in the air and any landing from the air counts as one movement); at weekends the movements went up to about 1500. About 150 persons are employed on or about the airport. About 40 firms and companies are concerned there including an agency of Britten Norman Islanders, the only manufacturer of light aircraft in this country; the sales from Blackbushe Airport since June 1973 have amounted to more than £2 million; the aircraft are flown from the factory to Blackbushe, kept in stock there, and sold all over the world: 95% for export. They also have the agency of Cessna (manufacturers of aircraft in America, Wichiter). The airport is suitable for light aircraft; but aircraft up to 1½ tons (10/12 seater) with short take offs can and do use it.

Mr. D.P.W. Johnson, who is and has been chief flying instructor at Blackbushe and a director of Three Counties Aeroclub Limited since 1 November 1963 and been a flying instructor since 1953, explained how the airport was used for training; not only for circuits and bumps, but also for training cross country flights for students, sometime taking them as far as Oxford or Portsmouth (never away for more than three hours).

Mr. R.E. Gregory, who has been acting as an air traffic control officer at Blackbushe since 1968 and was before that senior ground control officer from 1963, explained some of the practical difficulties which may arise in the operation of the airport.

Mr. A.G. Curtis, who is chairman of the Blackbushe Airport Users Association with a membership of something in excess of 200 individuals (they are shareholders, employees or directors of companies or private individuals who are concerned with aviation at Blackbushe) said (in effect)The activities of Blackbushe include flying trainig, taxi operation, aircraft maintenance and operation, radio and radio navigation and maintenance, the provision of light aircraft for commutation purposes and for movements by company executives, social and instructional activities such as providing facilities for the Air Training Corps and for Police Cadets, the provision of aircraft for the Police in the event of emergencies, such as flying blood plasma, provision of an air base for V.I.P.s and others visiting the Royal Military Academy at Sandhurst (which is close by), provision of an air base for those visiting the Royal Aircraft Establishment at Farnborough, particularly during their annual Air Week when it is not practicable to use Farnborough itself for this purpose. He (Mr. Curtis) is Project Manager of the Borough of Rushmoor (a district recently formed by the amalgamation of Aldershot and Farnborough) and is aware of the developments that are going on there with a view of making attractive offices for international companies (eg. German Companies) who would find the presence of an airport at Blackbushe nearby a great advantage to their business. Blackbushe compares very favourably with Fairoaks, in that Fairoaks had the disadavantage that the runways are grass and sometimes become water logged, and in that Fairoaks is in the London Control Zone so that aircraft coming and going are to some extent under the control of those at Heathrow; the runways at Blackbushe are concrete and the airport is outside the London Control Zone, so it is possible, for example, for an executive in Farnborough within 15 minutes of leaving his office to be airborn at Blackbushe. Further use by light aircraft at Blackbushe has the advantage of a multiplicity of runways one of which can be chosen according to the prevailing wind, (unlike one runway at Heathrow and Southampton which can be difficult for light aircraft if the wind is across). Blackbushe has also the advantage that not only are the runways but also the perimeter track is in good condit:

Mr. E.D.C. Cooper who is a civil servant on secondment to the Civil Aviation Authority Operations Office, Grade 1, said that the Authority sees Blackbushe as an outstandingl useful airport for general aviation, their reasons being that as an ex-major public transport airport it is much superior to other aerodromes used by general aviation in the London area. He produced a letter dated 11 January 1974 written by Lord Boyd-Carpenter as Chairman of the Civil Aviation Authority to Lord Porchester as Chairman of the County Council (or of the relevant committee) which contained the following : "I should therefore like to inform your Council ... that the Civil Aviation Authority considers it essential that nothing should be done to prejudice the future of Blackbus as a general aviation aerodrome. For it is perfectly clear already that whatever may the emphasis which we shall place on the importance of other airports, there will be urgent need for Blackbushe in any conceivable airport pattern in the South East."

On behalf of the Claimants it was contended that all the evidence summarised in the preceeding five paragraphs is irrelevant.

By section 5 of the 1965 Act where any objection (such as was made by Air-Vice-Marshal Bennett) to a registration has been made, the Registration Authority are required to refer "the matter to a Commons Commissioner"; by section 6 he "shall inquire into it and shall either confirm the registration with or without modification or refuse to confirm it". The section gives no guide to the Commons Commissioner as to the matters which he shall consider relevant. It would, I think, be very strange if Parliament had intended to entrust to a Commons Commissioner the duty of determining whether it was in the national interest that a piece of land being used as an airport should

continue to be so used. I think the purpose of the Act is as stated in its title "to provide for the registration of common land ... to amend the law as to prescriptive claims to rights of common; and for purposes connected therewith." The part of the Act with which I am dealing is concerned with registration, and as I read the Act I am in this case required to consider whether the registrations are proper, not whether if the rights registered are exercised in any particular way the result will be in the national interest. I conclude therefore that the evidence summarised in the said paragraphs should not influence me in any way in reaching my decision.

To avoid any misunderstanding, I record that in my opinion it does not follow that confirmation by me of any registration will necessarily result in Blackbushe Airport being discontinued. A compulsory purchase order may be made. The Inclosure Acts 1845 to 1882 contemplate that circumstances may arise which show that waste land (such as the Unit Land) could be more advantageously used otherwise than as a common and provide procedure by which such use can be regularised. As pointed out in the 1958 report of the Royal Commission of Common Land these Acts have proved cumbersome, because (among other reasons) those concerned to administer them have difficulty in ascertaining the exact extent of the rights which are legally exercisable over the land sought to be inclosed. The object of the 1965 Act and of the proceedings in which I am now engaged, is to remove or reduce to some extent this uncertainty.

It was evident at the hearing that there are many who do not accept the views expressed by Mr. Arnold, Mr. Curtis and Mr. Cooper that the continued use of the Blackbushe Airport is either in the national interest or advantageous to those living locally. I am not, I think, concerned to comment either for or against these views.

For the Claimants it was contended that the enfranchisement deeds and the compensation agreement summarised in the Second Schedule hereto show that the lands of the Claimants (except as hereinafter particularly mentioned) were formerly copyhold of the Manor of Crondal. For Mr. Arnold it was not suggested that such lands (except as aforesaid) were not formerly copyhold of the Manor; but it was under point of objection (E) contended that on enfranchisement any rights of common which before enfranchisement were appurten to the copyholding were extinguished or lost (except in the case of enfranchisements ma by the 1906 Goddard and 1910 Kelsey deeds or affected by the operation of the Law of Property Act 1922).

As to this point of objection, (E) it was contended :-
(i) There is a rule of law that when copyhold is enfranchised any rights of common in the waste of the manor to which the copyholder was entitled under the custom of the manor are extinguished; and (ii) although the lord may in the deed of enfranchisement grant the former copyholder (who under the deed becomes a freeholder) the same or simil rights of common, none of the deeds of enfranchisement of the land in the Third Schedul marked E contain any such grant, the general words set out in the Second Schedule being insufficient; and the following authorities were cited :- Massam v Hunter (1611) Yelv.189, Hall v Byron (1876) 4 Ch. D.667, Davidson Conveyancing Precedents (4th editio 1877) volume 2(1) pages 386 et seq. and Baring v Abingdon 1892 2 Ch. 374.

The rule of law is so stated in Massam v Hunter supra and Davidson supra at page 390. T a right of common which wasunder the custom of a manor annexed to a copyhold should whe the copyhold is enfranchised be extinguished, seems to me logical. But, as is implicit in the forms set out in Davidson, as a general rule, this is not at all what the partic

would want; why should a lord of a manor who would usually have no interest at all in extinguishing the rights of common and be merely concerned to get an adequate price for the manorial incidents which were of value to him, have any wish to benefit the other commoners.

Styant v Staker (1691) 2 Vern. 250 shows that the rule of law above mentioned was, (even as early as 1624) not followed by the Court of Chancery, and that a person who in 1690 sought to take advantage of it was by injunction perpetually restrained from doing so. As to this it was contended on behalf of Mr. Arnold that there was no evidence that as regards the now relevant deeds of enfranchisement the circumstances were such as to justify interference of the Court of Chancery.

Section 45 of the Copyhold Act 1852 (substantially reenacted in section 22 of the Copyhold Act 1894) provides : "Nothing herein contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such land (i.e. land compulsorarily enfranchised under the Act), but such right shall continue attached thereto notwithstanding the same has become freehold." This section although not applicable to enfranchisements by agreement, shows there is no legal reason why a right of common "in respect" of a copyhold should not properly be considered as being "attached" to a freehold without any elaborate verbiage such as is used in Davidson supra to achieve this simple result.

Williams in his 1877 lectures on Rights of Common (published 1880) says of Massam v Hunter supra at page 170: "But in equity it is said that the common rights remain on the grounds I presume that the intention is that the tenant by enfranchising should lose no rights he had had before and should gain the freehold in addition." Although this statement is somewhat guarded, in the context of a public lecture, I understand his meaning to be that as a general rule the rights should continue in equity. Davidso supra at page 388 says: "Even if the right of common were not regranted it would subsist in equity", apparently meaning that there is such a general rule.

Although it is conceivable that a lord of a manor who after 1852 could be compelled to enfranchise any copyholder without extinguishing his rights of common, would negotiate an enfranchisement price which allowed for the rights being extinguished, I think that equity would take the view that it was for him and those claiming under him to prove this was the intention of the parties at the time; further, having regard to the size of the waste of this Manor, the improbability on appearance alone that any copyholder would want to give up his rights of common, the circumstances of the Ecclesiastical Commissioners as successors of the Dean and Chapter of Winchester being such that thei interests on having the rights extinguished was likely to be nil, I conclude that the intention of the parties when the deeds were made was that the rights should continue, and accordingly such rights do continue in equity at least.

Massam v Hunter supra shows that a right of common is not regranted at law by the use in the deed of enfranchisement of the words "with appertenances" and in Baring v Abingdon supra at the Court of Appeal treated as well established that in the parallel case of a conveyance of a reversion to lease, as a general rule, words such as "appurtaining" are not sufficient, although the words such as "used, occupied and enjoyed" are sufficient to pass a right of common; but Lindley L.J. indicates at page 391 this general rule is not to be used to defeat by pure technicality the obvious

intention of the parties, and that the surrounding circumstances may be considered for the purpose of construing words such as "appurtaining" as being equivalent to "actually used and enjoyed". In White v Taylor (No.2)1969 1 Ch. 160, it was held that where a right of common existed under a contract of sale antecedent to the deed under consideration, the general words applicable to the deed by section 6 of the Conveyancing Act 1881 were sufficient to create a right of common at law, see page 184.

Being of the opinion for the reasons set out above that the grantees in this case had an equitable right of common (which would commence as from the agreement antecedent to the deed and therein recited) I conclude that under all the deeds of enfranchisement mentioned in the Second Schedule hereto rights of common were granted at law.

Even if they were not so granted, I would be disposed to conclude that the equitable rights which existed under the deeds of enfranchisement were converted into rights at law by the transitional provisions of the Law of Property Act 1925, First Schedule Part II. Further at present I incline also to the view that the definition in section 22 of the 1965 Act of "rights of common" is wide enough to include those which subsist in equity.

Accordingly I reject point of objection (E).

Point of objection (P) is that there could be no regrant of a right of common as regards the Blackbushe Part by the Ecclesiastical Commissioners after 1891 because by the 1891 conveyance that part of the waste had been vested in the Lord Calthorpe.

This point of objection if it be valid leads to the curious result that a copyholder who after 1891 had a right of common over the Blackbushe Part would be subject to the peculiar disability that under any deed of enfranchisement however framed he would lose such right and Lord Calthorpe and his successors in title as owners of the Blackbushe Part would obtain a wholly casual benefit; in effect the 1891 conveyance would deprive the Ecclesiastical Commissioners of their power to enfranchise the copyholders in the same ample manner as they had previously.

It is not I think any answer to this result that the enfranchisement could be effected compulsorily. In my opinion the words of the 1891 conveyance "subject to all existing commonable or other rights" must be construed in the light of the 1852 Act and therefore as effectively reserving to the Ecclesiastical Commissioners the powe enfranchise copyholders either voluntary or compulsorily. Alternatively, in my opinio notwithstanding Hassam v Hunter supra, the rights of common which after enfranchisemen the copyholders continued to have in equity in accordance with Styant v Staker supra are not new rights created for the first time when the deed takes effect but are a continuation in equity of the rights which previously existed at law; so that Lord Calthorpe and his successors in title under the 1891 conveyance are bound to give effect to any such rights, and to any legal conveyance made by the Ecclesiastical Commissioners confirming them at law.

For this reason I reject point of objection (P).

Point of objection (S), was to this effect: there is a rule of law by which a right of common appurtenant is extinguished if the land to which the right is appurtenant and any part of the land over which the right is exercisable ever come into the same ownership (unity of seisin); and it appearing from the documents mentioned in the Fourth Schedule hereto that the predecessors in title of some of the Claimants were at one time seised of part of the waste of the Manor, it follows that their rights were wrongly registered; in support White v Taylor 1969 1 Ch 150 and Halsburys Laws of England (4th edition 1974) volume 6 paragraph 626 were relied on

In my view, the rule was on behalf of Mr. Arnold too widely stated.

There is a rule of law, that where the owner of a common appurtenant purchases part of the servient tenement over which common rights are exercisable, that brings his right to common to an end in respect of the whole of the land affected, see White v Taylor supra at page 158; the reason for the rule as stated by Buckley J. in the same case is (as I read his judgement) that where the burden of a right of common cannot be apportioned between the two parts of the servient tenement, it is unjust that the person who has purchased one of the parts should as a result of his purchase increase the burden on the other part: "... the judges in the sixteenth and seventeenth centuri were saying that (he) lost his right because it was his own fault that he put himself in that position. He intermeddled with the servient tenement, he bought part of the land ... and he has only himself to blame if thereafter he is no longer in a position to exercise the right ... ".

The above mentioned rule may be applicable in other circumstances, e.g. where the owner of part of the servient tenement purchases the land to which the right of commor is appurtenant, see Tyrringham's Case (1584) 4 Co. Rep. 36b, but I see no reason for extending it beyond the reason stated by Buckley J. The essence of the rule (it is not applicable to common appendant) is that the owner of a right of common loses his right of common when he does something which as against the other commoners (if any) or as against the other owner or owners of the servient tenement, would increase the burden on him or them of the right of common.

In equity there must be some exception to this rule of law. For example, supposing the owner of the right of common became the owner of part of the servient tenement in a different capacity; or suppose such ownership devolved on him by operation of law; no such extinguishment would in equity take effect: by section 25 (4) of the Judicature Act 1873 (replaced by section 185 of the Law of Property Act 1925) no merger at law would result if there was no merger in equity. Further even where the ownership may be the same legally and beneficially, for some purposes a quasi right of common is recognised as continuing to exist, see Musgrave v Inclosure (1874) LR. 9 CP. 162 at page 165.

In my opinion where the rule of law would operate beyond the reason for it as stated by Buckley J. in White v Taylor supra, either the rule has no application or the righ of common which would by it be extinguished at law, continues in equity in accordance with Styant v Staker supra. Having regard to the enormous size of the Unit Land and the comparatively very small area of the pieces of waste land mentioned in the Fourth Schedule documents, it would be inequitable that a copyholder should lose his right of common attached to his copyhold merely because he acquired (perhaps in the interes

of agriculture) some small part of the waste; the increased burden on the other copyholde of the Manor of Crondal and on the Lord of the Manor would have been minimal.

Further in my opinion to bring the rule of law into operation, the increase of the burden of the right of common must be objectionable in law, and not an increase against which no objection can be taken. The transactions relied on in support of this point of objection are admissions recited in the Fourth Schedule documents of various pieces of land which were or were formerly part of the waste; every such admission was recited to have been made at a manorial court. A lord of a manor could before section 81 of the Copyhold Act 1894, if the custom of the manor so allowed, convey part of the waste so that it became copyhold. In my view the recited admissions indicate that such a custom existed in the Manor of Crondal, and as a necessary consequence that all the copyholders of the Manor were bound by the admissions. In accordance with the Crondal Customary, the person who acquired part of the waste would, I think, because he had become a copyholder of such part enjoy the same rights of comm as the other copyholders had over the remainder of the waste; I can I think infer fro this that there was also a custom of the Manor that a person who in such circumstances acquired part of the waste as copyholder would not lose rights of common attached to other copyholdings owned by him before the acquisition; the other commoners would be bound by the proceedings of the manorial court which regularised the admissions.
//Further it seems to me that a right of common enjoyed by a copyholder over the waste of a manor is for purposes of the rule above mentioned a common appendant.

For the above reasons I reject point of objection (S).

Point of objection (G) was to this effect: that the Claimants or their predecessors in title lost their rights by permitting the inclosure of the Cemetery Piece.

As to this inclosure, Mr. Ives made a statutory declaration on 17 August 1955 (at that time it was "a proposed burial ground") in which he said "no rights of common have bee exercised over this particular part for a period of at least 20 years prior to the dat hereon ... I verily believe that all common rights in respect of this piece of land have been abandoned". He explained that he did not make this declaration until after the proposed inclosure had been advertised and there had been a Parish Meeting about it, and that a statutory procedure was followed in which the Minister of Agriculture a Fisheries was involved. Nobody at the hearing gave me any information about the procedure.

For the rule that a right of common is altogether lost by a release of part of the servient tenement from the right, a reason substantially the same as that given by Buckley J. in the case of a purchase, was given by Willes J. in Johnson v Barnes (1872) LR. 7 CP. 592 at page 600. But no case was cited to me to suggest that a right of common would be extinguished by anything less than a deed properly described as a release. I think there is a difference between a formal release and an agreement or declaration of intention not to sue. Any such agreement or declaration could not by itself increase the burden of the right of common. It would I think be very strange if a commoner who did no more that tolerate an encroachment thereby forever precluded

himself from exercising any right of common over the remainder of the land. The observations of Jessel MR. in Commissioners of Sewers v Glasse (1870) 19 Eq. 134 at page 162 show I think that there is no general rule that encroachments are always significant in a case such as this.

For the above reasons I reject point of objection (G).

As to point of objection (W): there can be no right of common attached to lands which were formerly part of the waste of the Manor. This objection was based on recitals in some of the Fourth Schedule documents, which showed that part of the lands described in the Third Schedule had at one time been waste of the Manor.

All the recitals relied on were of admissions of persons as copyholders of land which was or was formerly part of the waste, and all such admissions had been made at a Manorial Court. For the reasons above stated in respect of point of objection (S) I conclude that they were made in accordance with the custom of the Manor and that the person who acquired part of the waste under such admission, in accordance with the Crondal Customary also acquired the right of common similar to that owned by all other copyholders over the waste. For this reason I reject point of objection (W).

Points of objection (A), (C), (T), (X) and (Z) all relate to abandonment. In Tehidy v Norman 1971 2QB.528, the Court of Appeal stated the law thus:- "Abandonment of .... a profit à prendre can only, we think, be treated as having taken place where the person entitled to it has demonstrated a fixed intention never at any time thereafter to assert the right himself or to attempt to transmit it to anyone else", per Buckley L.J. at page 553. Although it is convenient for the purposes of exposition to deal with the considerations applicable under five headings, there is I think only one question of fact: whether such an intention was ever formed and demonstrated and so far as the existence of such intention depends on circumstantial evidence, this question must be determined by balancing the conflicting circumstances according to their weight.

In considering the circumstances, I can I think attach full weight to the choice by the Court of Appeal of the word "assert" rather than "exercise". In modern times, the assertion of a right of common by somebody who has no intention whatever of exercising it may have important environmental consequences; for example Ashdown Forest, Coulsdon Common, Epping Forest, Banstead Common have all been preserved as open spaces as the result of an assertion by a person having a right of common that their inclosure would interfere with his rights, see Comm. of Sewers v Glasse (1874) L.R. 19 Eq. 134, Hall v Byron (1877) 4 Ch. D. 667, De la Warr v Miles (1881) 17 Ch. D. 535 and Robinson v Hartopp (1889) 43 Ch. D. 484. A right to take such proceedings is of value, particular if the land over which the right of common is exercisable is surrounded by recent building developments.

As to (A) non-user over a long period :-

As was stated in argument the most relevant period is before the 1939-45 war. Some persons (e.g. Miss Harris) were then exercising rights of common. Although abandonment is as regards each right a distinct issue, I can I think deal with this point by making an assumption favourable to Mr. Arnold that the right under consideration was not exercised after the 1914-18 war. The social and economic circumstances then existing are relevant. At that time, to graze untended and untethered animals would have been, or in the course of becoming, inpracticable, because the animals would, in the absence of any

fencing along the A 30 road, have strayed along the surrounding roads and with the then much increased motor traffic have been liable to injury. Cheap child labour ceased to be available soon after the 1914-18 war, so that tending cattle except in large numbers was uneconomic. While it may at the time of the Crondal Customary have been usual for copy-holders in cottages to provide themselves with milk and meat by exercising their grazing rights, after the 1914-18 war when money became more plentiful, it was more convenient to purchase these things from retailers, and much less trouble; there was no cogent reason for not allowing those who had rights of common and were able economically to exercise them in larger numbers, should not do so; a right of common may be exercised with animals not owned by the owner of the right. The Harris' grazed cows as much as they pleased, and sold milk in the locality; such an exercise of rights, which benefited all without harming any was reasonable. The owner of a right of common may have been content not to exercise his right unless there was some change in the economic or social conditions; if there was any such change, the right might then become important. Having regard to these considerations, it seems to me that the mere non exercise of rights by any person having a right of common is of little or no weight in considering whether he ever had any intention to abandon his right. Scrutton v Stone (1893) 9 TLR 478and 10 TLR 157 is, I think, distinguishable; at all relevant times the rights were being exercised by other persons.

As to (C): Change in character of the claimant's land :- The following cases were cited: Carr v Lambert (1866) L.R. 1 Ex. Cas. 168 and A-G v Reynolds (1911) 2KB 888.

In Carr v Lambert the Court declined to express an opinion as to whether rights of common would be extinguished if a town of considerable extent was built on thedominant tenement and its neighbourhood, and rejected a claim that the right is lost merely because the dominant tenement is so changed that cattle might not be fed off its produce provided that the tenement was still in such a state that might easily be turned for the purposes of feeding cattle. It cannot, I think, have escaped notice of Jessel MR when delivering judgment in Commissioners of Sewers v Glasse supra by which Epping Forest was preserved as an open space that the plaintiffs were in effect the Corporation of London, in circumstances essentially the same as those considered in Carr v Lambert as a possibility. It seems to me therefore the fact that a dwelling house has been built on any part of the dominant tenement and that it is practically certain that the owners and occupiers will always buy their milk and meat at some shop in a nearby recently built up area is a circumstance of little or no weight as showing that such owner has abandoned his rights.

As to (T) : lack of any attempt to transmit the right of common to a successor in title. The particulars of sale by a public auction on 23 June 1928 were relied on.

These particulars were of an intended sale of a Residential & Agricultural Estate known as Hilfield, Yateley comprising 275.139 acres in 27 lots, including among other of the land described in the Third Schedule hereto, Hill Farm mentioned by Mr. Cobbett in his evidence. In the particulars there was no express mention of rights of common over the Unit Land or over any other land.

I think these particulars show (as I would infer from the other evidence) that in 1928 a right of common over the Unit Land would not be a good selling point because its existence would not at that time have added significantly to the value or attraction of any of the lots; from what I saw on my inspection, I conclude that the grazing on the Unit Land was also worse than the grazing on most of the surrounding and adjoining land.

At that time it would not have occurred to anyone that a right of common might be valuab as enabling the ownerfor the amenity of himself and others to preserve the Unit Land as an open space.

Any person who in 1928 happened to consider that a right of common might be valuable would have properly concluded that there was no need to mention it either in the Particulars or in any conveyance made after the Auction, because by the operation of section 62 of the Law of Property Act 1925 such right would certainly be transmitted.

The words used by the Court of Appeal above quoted "attempt to transmit to anyone else" in the context of rights of common in gross, rights of common limited by stints or gates have content; I do not read them as meaning that the said section 62 is in relation to rights of common such as are hereunder consideration to be disregarded.

For the above reasons I consider that the absence of any attempt expressly to transmit the rights of common has little or no weight.

As to (X): abandonment evidenced by ignorance of claimant of precise nature of rights claimed; or exaggeration of claim implying ignorance. In support of this point, the evidence given orally by the Claimant: and given by Mr. A.J. Smith and Mr. P.M.E. Luard was relied on.

Mr. Cobbett said (in effect):- He understood that you could not keep animals (cattle) entirely on the Common; you put them on in the Summer months; but you could not rely entirely on the Common. The numbers specified in his application form (No. 9: 5 cows/ 5 horses/5 donkeys/50 geese/100 chickens/20 sheep/13 pigs; and No. 38: 4horses/ 2 donkey were worked out by him on his own; he was guided by a 1966 manual he had about Common Land and Town or Village Greens; the numbers were not quite arbitrary, although of cours he could have had 100 chickens one month and 5 donkeys the next; he never envisaged having all these animals at the same time. He thought the numbers appropriate for his holdings, but he did contemplate that some of the Winter feed might come from elsewhere. He has always wanted to keep the Common as an open space; his purposein registoring his common rights was to keep the Common safe; if we lose all these old things where are we going? As for himself his claim was not organised by anyone although he had been to some meetings about the rights.

General Brown said (in effect) :- He and his wife had not themselves put animals on the Common. A right of common would add to the value of their land. As to the numbers (No. 11 : 2 ponies/1 donkey) was a "pure guess made on the application of pure reason"; you have to go back to the (original) rights; the numbers were well below what they would have had under such rights.

Mrs. Kirkpatrick said (in effect) :- At the date of the hearing she had 1 stallion, 3 cows, 1 heifer and 2 calves. She had animals out on the common on tether. In 1969 and 1970 she had 3 cows and 2 ponies. As to the register numbers (20 ponies/20 cows/ 20 donkeys/100 geese/100 chickens/50 pigs/100 sheep) people had urged her to start a riding and driving school; 20 ponies is as many as she could manage. She could certain fold (meaning keep) 20 cows on her own land during the winter, she would have to get hay she did not know whether it was necessary (legally) to get the hay off her own land; t number of geese, pigs and sheep were all good round numbers; at the present moment it is not profitable to keep sheep; she did not see why she should not claim these number

Mr. Dodd said (in effect) :- As to the registered numbers (40 cattle/150 sheep/6 ponie 20 pigs/160 chickens and geese), these grazing rights were worth a lot of money. He acquired Silver Fox Farm in 1965 but was never able to graze animals from it because

Air-Vice Marshal Bennett and Mr. Arnold prevented this. As to the Blackbushe Part, he could easily graze 200 sheep or 40 cattle; he would bring in food from a corn merchant; he would be limited by economics; the more stock on the Common the better would the pasture be improved. He favoured putting more on the Common (in the deed his registered numbers were small having regard to the size of the Unit Land); he would employ an old aged pensioner to look after them. He would not put out horses (he was not keen on them and did not like riding), but he could keep a 1000 head of poultry from "10 x 8 houses."

Mrs. Crumplin said (in effect) :- Her register numbers are 40 cattle/10 ponies/10 donkey 100 sheep and followers/10 pigs/20 geese/200 chickens. She controlled a riding school; at the date of the hearing she had 38 horses, a house cow and 4 beef animals. The numbers set out in the application form were the average which you could keep on 45 acre by a sensible rotation of the use of your own pasturage and a sensible use of the common land surrounding, not necessarily all out on the Common at the same time. The numbers ar the average of what the land would support; they are the numbers which she might want t have.

Mr. A.J. Smith who retired in November 1973 and before then worked for Air-Vice Marshal Bennett and after him for Mr. Arnold said (in effect) :- He had never seen any animals grazing on the Blackbushe Part. While he was there it was always being used as an airport. He never went up to the airfield land before the war.

Mr. P.N.E. Luard chartered surveyor of Body Son and Fleury, Surveyors of 57 Tufton Stree London SW1 who is F.R.I.C.S. and a full member of C.A.A.V. and who was retained by Mr. Arnold in relation to the alleged common rights over the Unit Land and to the objection of Air-Vice Marshal Bennett, gave oral evidence of the investigations he had made in the course of which he produced a proof, a number of maps, the before mentioned description of the land as set out in the Third Schedule hereto and explained his views. As far as the point of objection now under consideration is concerned he emphasised that the number of animals to which grazing rights are claimed for some properties is in excess of the number that could be maintained on the land of that property.

On the point of objection now under consideration, I am only concerned with the evidence outlined above so far as it tends to show that any of the Claimants or their predecessor in title have shown a "fixed intention" such as mentioned in the above quotation from Tehidy v Norman.

I suppose that in certain circumstances proof that a person did not know that he owned a right of common might support a contention that some predecessor in title of his had abandoned rights because otherwise he would have told his successor in title about it; but I cannot understand how such ignorance can support a contention that such person has himself abandoned the right. There is I think, no principle of law under which a person who has an interest in land must by his ignorance be regarded as showing any intention to abandon it.

As regards the alleged ignorance of the Claimant's witnesses as outlined above, I am not clear what sort of examination question the person having a right of common should be set or what sort of marks on such examination he must obtain in order to free himself from the suggestion that he had abandoned his rights. The Law of Commons is complex, and although those who gave evidence before me may have been mistaken on a number of matters I would I think, be going outside any jurisdiction conferred on me by the 1965 Act if I were now to assess their intelligence (they were I think, all well above average) and base any conclusion on such assessment. Their evidence may perhaps be open to criticism as proceeding on the basis that what they described as having been done on the Unit Land

was being done by "everybody", and was therefore unlawful, because a right of common exercisable by everybody is not recognised by law. This sort of criticism was considered by the Court of Appeal in De la Warr v Miles (1881)17 Ch. D. 535; of it Brett L.J. said "His claiming to exercise the right, which he did in fact exercise, in respect of some alleged title, which could not be supported, is, in my opinion wholly immaterial ... "; and Cotton L.J., having said "... and it is said here, that these acts, if they are made out in fact to have been done ... were done, not under what the Court thinks would give a good defence, but as under a custom which the Court holds incapable of proof and not proved", and then 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...", at page 596; and "it is said however that nearly all the persons who cut litter did it not in respect of their own particular farms, but under general supposition that the (1693) decree gave them a right to do so or that there was some custom which justified it. In my opinion as I have already said, it is not necessary ... that the 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 the above quoted observations although made in circumstances not exactly similar to this case, guide me to the conclusion that I must pay regard not to what the witnesses thought was the legal justification of the acts they described but to the acts themselves, their thoughts as irrelevant.

The views of Mr. Dodd although some may regard them as extreme, are not unique. Much depends on the basis on which they are considered. On the basis that the owner in fee simple is the first consideration it may be absurd that in respect of the comparatively small pieces of land owned by, him Mr. Dodd should have grazing rights such as he described particularly as against an owner who wishes to use the land as an airport. But on the basis that the persons who have rights of common are the first consideration, there is nothing absurd (and indeed it may be agriculturally beneficial that the Unit Land should be grazed by one of their number with the acquiescence of the others to the greatest possible extent. The second basis accords, I think, more nearly with the reality of the situation as it was before the 1914-18 war; this was the basis on which the activities of the Harris' were tolerated; that the grass on the Unit Land could be much improved was clear from the high quality of the grass immediately next to the runways;grass of this quality can only be grown with some trouble and expense; what may be economic for aircraft may not be economic for cattle and sheep. On the point of objection now under consideration I need express no view about these differing bases. Whether or not Mr. Dodd is guilty of exaggeration, I can see no ground at all inferring from what he said that he ever intended to abandon his rights.

As to (Z): abandonment evidenced by failure to assert rights when an assertion might be expected.

As to this I need only state (as will I hope be apparent from the rest of this decision) that there was I think never any occasion when any of the claimants could be expected to assert rights more than they had done.

As already stated, in my view, I have to deal with the issue of abandonment as one question of fact, whether any of the claimants or their predecessors in title ever had as demonstrated the requisite "fixed intention" above mentioned.

So far as the intention of those who gave oral evidence before me is concerned, I find they never had any such. When they said they never intended to abandon their rights, I

believe them. Further in my opinion circumstances have never arisen which would have estopped any of the claimants or any of their predecessors in title saying that they had never had any such fixed intention.

As to whether there was any such fixed intention during the post requisition period, I have the evidence of Mr. Weeks (which I accept) as to the local feeling and the evidence of Mrs. Kirkpatrick and Mr. Dodd as to their protests. I infer that the other Claimants or their predecessors in title would have known about what they described.

As regards the requisition period I accept the evidence of Mr. Johnson and Mr. Gregory that they did all they could to prevent persons coming on to the Blackbushe Part for grazing or any other purpose in a way which would interfere with aviation. They consider they were entitled to do this; I was referred to regulation 30 of the Rules of the Air and Air Traffic Control Regulations 1974 (1974...1401) made under Article 62 of the Air Navigation Order 1974 (1974 No. 1114)made under the Civil Aviation Act 1949, 1968 and 1971; that it was important during flying hours that no unauthorised person (with or without animals) should be on or within the perimeter track is I think, self evident and I find with some/not relevant exceptions this was achieved by the vigilance of those in the Control Tower. This evidence does not I think establish that any of the clamaints or thei predecessors in title ever had the requisite "fixed intention" during the requisition period or subsequently.

I need not I think say more about the period after the 1942 requisition because on th issue of abandonment, the first contention that was/I should infer that the requisite "fixed intention" was made before the 1939-45 war. As regards this period, it is not I think necessary for me to find (as was suggested on behalf of the Claimants) that the requisite "fixed intention" was formed at any particular time. To my mind the most cogent evidence against such intention ever having been formed during this period is that at all times th Unit Land was in all relevant respects the same as it always had been: more than 1000 acres of land wholly suitable for the exercise on it of rights of common as now claimed and for the exercise of the rights of common as recorded in the Crondal Customary During this period a person who had a right of common and who did not wish to exercise or indeed had no foreseeable reason for thinking that he would ever want to exercise it would,I think never have had the smallest reason for forming a "fixed intention never at anytime thereafter to assert the right himself or to attempt to transmit it to anyone else" There was no evidence that any claimant or any of their predecessors in title ever "demonstrated" such a "fixed intention". Balancing as best I can, this fact against all the considerations advanced on behalf of Mr. Arnold in favour of abandonment it seems to me the scaletips in favour of the view that there has never been any.

For the above reasons I can find none of the Claimants or any of their predecessors in title have ever abandoned such rights of common, if any, as they may have had over the Unit Land or any part of it.

As to points of objection (L), claimants holding his land without a house, so no house rights of common; and (H) claimants holding although house and curtilage is not an ancier house :-

In support of these objections, reference was made to Mr. Luard's description of the present state of the land (see Third Schedule), to the maps above mentioned, and to the descriptions of land contained in the deeds listed in the Fourth Schedule hereto. I decline to take any action on these points of objection for the following reasons:-

The 1965 Act provides for a register of rights of common. It does not, I think, provide for a record to be made of the rules which by law or by custom or by the terms of the grant actual or implied by which the right of common was created, determine as between the commoners and the soil owner or as between the commoners among themselves how the rights of common are to be exercised or enjoyed. If the right from the registration can be identified, that is enough; it is not an objection to a registratio that a person unacquainted with the locality may in order to identify the right, have (in addition to looking at the Register) to make inquiries about local circumstances and local history.

To anyone reasonably acquainted with the Unit Land and with the easily ascertainable local history, it is, I think, clear enough that the rights (or most of them) registered are those which were formerly held by the tenants of the Manor of Crondal; but because some present at the hearing were not clear about this, and there may be some doubt about some of the registrations, I shall modify the registrations to make this clear/to all. But with this modification, the registrations, are I think clear enough, an I see no reason for including in the register words which might help to resolve disputes which have not yet arisen but which might arise.

The rights against which these points of objection are directed, are in the Register described variously by reference to various combinations of the following words :- turf, peat, and turbary; gorse, furze, bracken, saplings, trees, estovers; gravel and sand; etc. There was no evidence that there have been any differences as to how (quality, manner, purpose) these rights should be exercised; although Mr. Arnold is concerned to establish that there are no rights of common over the Blackbushe Part at al he is not interested in the amount of sand and gravel which the Claimants might use for the purposes of their holdings or in stopping them using heather roots for clamping potatoes; such roots had not been used for fuel for years.

Estovers commonly is but need not be related to a house. Turbary is, at any rate as a general rule, a right enjoyed only by a householder, see Halsbury's Laws of England (4th edition 1974) volume 6 paragraph 576: but I see no reason why there should not be a customary right to take heather roots for clamping potatoes as was stated by Mr. Stevens and Mr. Cobbett to have happened in the past; Crondal Customary expressly mentioned "shredding of heather". In Wilson v Willes (1806) 7 East 121, Court rejected a claim to a customary right to take turf for garden use; in giving judgement Ellenborou C.J. remarked "it is not stated to be in the way of agriculture or horticulture", indicating that the Courts decision might have been different if this had been so stated if he thought that turbary must be appurtenant to a house his judgement would have been differently expressed.

Under the 1965 Act and the Regulations made under it, persons claiming rights of common could apply for registration simply by filling up a form; it would be oppressive if at that stage they had to describe the rights they claimed with all the details which might be used by a lawyer desirous of covering every question which might conceivably arise; and oppressive too if applicants could be compelled by some objection to consider whet the registration should be altered to deal with questions which have never yet arisen. Mr. Arnold at any future time wishes to contend that any right of common has been exercised excessively, all the points made on his behalf at the hearing in respect of these points of objection can, I think be made by him in any legal proceedings he may take to restrain such excessive use; in any such proceedings the Court would not I thin be helped by any definition of mine of the right (such a definition would be difficult t

phrase accurately and briefly); and it is not I think, contemplated by the Act that I should make any attempt at this. Nor would any such definition, be helpful if the Unit Land becomes the subject of a compulsory purchase order in relation to rights of common; this special provision is made by the Lands Clauses Consolidation Act 1845 sections 99 et seq and by the Compulsory Purchase Act 1965 section 21 and Schedule 4; those concerned with giving effect to such provision would not, I think, be assisted by any definition of mine

Further quite apart from the above considerations, these points of objection are not, I think, within the grounds set up in the Objection No. OB 304 quoted above, and I am not inclined to allow any amendment under rule 26 of the Commons Commissioners Regulations 1971.

As to the point of objection (F): the Claimant's holding is freehold and no evidence that it was formerly copyhold.

As regards lands affected by the Entry Nos. listed in the first column of the Second Schedule hereto, I accept the Claimant's contention that the deeds, agreements and conveyance described in the said Schedule show that the said lands were formerly copyhold of the Manor of Crondal. It was not suggested for Mr. Arnold that I should not.

I am against the Claimant's contention that I should, basing myself on Coke on Littleton at page 122a find that there has always been appendant to the freehold lands of the other Claimants a right of common "as of common right". Although it may be that the boundaries of the Parish of Yateley are the same as the boundaries (so far as now relevant) of the Manor of Crondal, the boundaries of many manors do not correspond with parish boundaries, and of any such correspondence in this case there was no evidence. Nor can I, I think, merely on a consideration of the situation of any of the lands below mentioned conclude that they were formerly copyhold.

As to Entry No. 1A (Silver Fox Farm or Poor Row), the land was conveyed freehold by a conveyance dated 19 October 1871 which was preceeded by a conveyance dated 21 March 1848; the earlier conveyance was made by the Overseers of the Poor of the Tything of Yateley pursuant to an Act (6.7.4) to facilitate the conveyance of workhouses and other property of Parishers, and with the approval of the Poor Law Commissioners. From its situation (the land projects into the north-west corner of the Unit Land) and its name ("Poor Row") I guess it was part of the waste conveyed by the Lords of the Manor to the Overseers for the erection of a workhouse, but even if this guess be right, it is neither probable, nor indeed likely, that a right of common was granted by any such conveyance.

On situation and appearance alone, it would be surprising if Silver Fox Farm was not entitled to a right of common, because any person residing on it or farming it would be tempted to and could not practically be prevented from exercising rights of common. Howev it was not contended that Mr. Dodd had in respect of Silver Fox Farm acquired a right by prescription; I am not surprised that it was not so contended because having regard to th way in which Miss Harris grazed her cattle, and the absence of any reference to Silver Fox Farm in her statutory declaration, it seems likely that such contention could not be supported.

For this reason as regards the said part of the land affected by Entry No. 1, in my opinio point of objection (F) succeeds.

No evidence of the title of the Claimants was offered as to the whole of the land affected by Entry No. 23, or as to the part of the land affected by Entry No. 25 which is not comprised in the 1927 conveyance mentioned in the Second Schedule hereto; i.e. The part no within plot 212 on the O.S. map 1/2.500 1945 edition. For similar reasons as regards thi

land and this part, point of objection (F) succeeds.

// Entry No. 56, as it was applied for and made, and now stands is a right in gross, and such a right is not supported by any of the evidence or arguments made on behalf of the Claimants. However, the Applicant's land (Quarry House, and the land held with it) is part of the land comprised in the 1871 Baily mentioned in the Second Schedule hereto. Having jurisdiction to modify the Entry, so that the right is not in gross but is attached to Quarry House, I must I think, consider (a) whether I could confirm such Entry if it was so modified, and (b) whether I ought to make such a modification.

If the Entry had always been so modified, it is, I think, clear that none of the points of objection discussed in this decision in relation to all the other Entries, including the point of Objection (F) now under consideration, would have succeeded; it was never suggested that there is any relevant difference between Quarry House and the other lands which I have been considering. In my opinion, I ought to make this modification: a right of common attached to land is generally less onerous than a similar right in gross and it seems to me that I will be doing no injustice to any Objector by treating the registration as if it had always been of this less right.

For Mr. Arnold it was contended that if the Blackbushe Part was not subject to rights of common, it certainly was not in 1967 and is not now common land because (i) to be such it must be within the words of paragraph (b) of the definition in section 22(1) of the 1965 Act: "waste land of a manor not subject to rights of common"; (ii) it ceased to be "of" a manor as a result of the 1891 conveyance to Lord Calthorpe, and (iii) when it came to be used as an airfield it ceased to have the characteristics of waste land as set out in the judgment of Watson B. in Attorney-General v Hanmer (1858) 27 L.J. (Ch) 837, as follows :- "The word waste means desolate, or uncultivated ground, land unoccupied or that lies in commons ... the right to strips of land by the side of highways is not unfrequentl the subject of litigation between the adjoining land owners and the lords claiming them as wastes of the manor. The true meaning of waste, or waste lands, or waste grounds of the manor is the open, uncultivated, and unoccupied lands parcel of the manor or open lands parcel of the manor other than the demesne lands of the manor.".

Mr. Weeks at an early stage of the hearing said (in effect) that the County Council while wishing the Unit Land to remain registered as common land, did not wish to be involved in any question there might be as to any individual's rights of common. Having regard to this statement, to the possibility that I may be wrong in concluding that the Unit Land is subject to rights of common, and the general importance of the contention, I set out my views as follows:-

If the contention is right, a case for removing from the register, land which has under para
n registered as common land, can be made with the greatest of ease. Either the owner (who on this contention is assumed always to be the lord of the manor) can at any time execute a conveyance severing the registered land from the manor; or anybody can at any time fence in, cultivate or occupy the whole or some part of the land. Paragraph (a) of section 13 c the 1965 Act contemplates that registered land may cease to be common land, and in the circumstances supposed the registration authority would have no answer to an application for an amendment of the register cancelling the registration.

The contention in effect ascribes to the words quoted from the 1965 Act, their before 1926 meaning. At that time there were manors, copyholds, customary freeholds, manorial courts presided over by stewards and so forth, and such a meaning would be natural. But a

from 31 December 1925 all these things have in effect been swept away by the Law of Property Act 1922. Nevertheless there is nothing in the Law of Property Acts 1922 and 1925 expressly abolishing manors or lords of a manor, so it may be that for some purposes a manor continues to exist as an incorporeal hereditament, (see section 205 (ix) of the 1925 Act), which can be conveyed like any other piece of land and of which the owner is entitled to call himself 'lord of the manor'; but from this it does not follow that any sensible legal meaning can now be ascribed to a statement that a corporeal hereditament (which can now only be held in common socage) is "of" a manor, if the word "manor" is used with its before 1926 meaning. Before 1926 it was commonly assumed that a manor could not exist without a court baron, and that no court baron can be held without at least two freeholder as suitors, and that if there were not two suitors the manor became a reputed manor, see Wolstenholme & Cherry, Conveyancing Statutes (11th edition 1925) volume 1 page 476; on this assumption it would follow that because the customary freeholds have all been enfranchised under section 128 of the 1922 Act there can be no manors within the before 1926 meaning of the word; but contra, it is assumed in Wolstenholme & Cherry that courts baron remain see page 476 ib. possibly, I suppose as appurtenant to a reputed manor, and I understand that (although I am not concerned with this point now) bodies acting as court baron do with advantage regulate some commons. However in substance for practical purposes the 1922 Act abolished copyholds, customary freeholds and manors; so if the before 1926 meaning is used in the 1965 Act there can never be any land capable of being registered under paragraph (b) of the section 22 definition.

However whether or not a "manor" can legally still exist, the word "manor" has since 1925 continued in use. Manors have been collected (with the historical documents which go with them; see Manorial Documents Rules 1959 amended in 1963) and such collections have been offered for sale by auction. The parcels of vesting deeds and vesting assents frequently include manors and reputed manors, with the result that pieces of land which can be shown to be reputed part of a manor, will pass under such deeds and assents by the operation of section 62 of the 1925 Act. The Manorial Society of Great Britain gave evidence before th Royal Commission. People still call themselves and are called "lord of the manor" as a result of some assurance of the incorporeal hereditament, and some have generously leased o conveyed land to local authorities for public use.

//Some of the above mentioned difficulties of the section 22 definition can be avoided by reading the word "manor" in the 1965 Act as meaning or including a "reputed manor". The objection to doing this is that the Law of Property Act 1925 and other Acts before 1925 expressly defined the word "manor" as including a "reputed manor" and that the 1965 Act does not do this. Such a reading of the 1965 Act seems to me void of merit; I cannot imagine why Parliament should by the 1965 Act have set up a register and provided in some detail for its operation with the purpose of recording all the pieces of land which happe to be in the same ownership as the ownership of an incorporeal hereditament which except (for the benefit of those who are historically minded) is for all or nearly all purposes obsolete. That such was the intention is negatived by sections 1 and 3 which contemplate that the owner of common land may be unascertainable and that it will in such cases ultimat vest in somebody who will not be lord of the manor, with the result (if the contention be right) that it ceases to be common land.

The 1965 Act contemplates that land which is registered as common land under it shall have some sort of permanent status as such. "Manorial waste" within the meaning of section 193 of the Law of Property Act 1925 which is within the section, has just such a status, and i would I think, be extraordinary if the section 22 definition did not at least include such

land; it is difficult to equate the section 22 definition entirely with section 193 as it now stands because section 193 is limited (or at least is generally considered to be limite the section is not clear) to land within a borough or urban district (the Royal Commission recommended that it should not be so limited). Notwithstanding this difficulty, I consider that section 193 provides a better guide as to the intention of the section 22 definition than the before 1926 law.

Since 1925 the ownership of land formerly manorial or publicly thought of as manorial has frequently become quite disassociated from the person who is or is known as the lord of the manor. The legal ownership of such land (with or without the legal ownership of the corporeal hereditament known as a manor) is often vested in trustees for sale, or statutory owners, or for fiscal purposes is vested in or let to companies incorporated under the Companies Act, and the person locally known as the lord of the manor is the person who live in the house called the manor house or whatever house is the most important in the village and who can be relied upon to take an active part in the village activities. In law such a person may be no more than a principal beneficiary under a discretionary trust, or life tenant under a trust for sale. Many persons describe land as "manorial waste" or "waste la of a manor" without knowing the name of the manor and certainly without considering for one moment whether the owner of the land they are so describing could deduce a good title to th incorporeal hereditament known as the manor. To such persons such land is rural waste (suc as exists in great quantity all over the country) which as a consequence (presumed or actual) of the now obsolete manorial system has (because it has over the years not been wanted by anybody) been left open.

Practically it is difficult to construe the 1965 Act, because it nowhere states expressly (future legislation may be intended) what is the result of land, which is not subject to any registered right of common, being registered under it as common land; such la may also come within either or both section 193 and section 194 of the Law of Property Act 1925 but the definitions in the 1965 Act and the 1925 Act do not correspond.

In my opinion in construing the words "waste land of a manor" as used in section 22, it is permissible to take into account that the words are used in a definition of the words "common land". According to the Oxford English Dictionary, the words "common land" are use in many senses; apart from land subject to rights of common, that which fits most naturall in the context of the 1965 Act is "free to be used by everyone, public". It is, I think, obvious both from the Act itself and its legislative history, that Parliament was intending by the Act to provide a register including at least land which is in some sense "free to be used by everyone, public". The intention of the words "waste land of a manor" is I think, to give precision to the O.E.D. meaning; they are I think, used in the Act in a historica sense to distinguish waste land which has with a different history become waste land. e.g. as a result of some industrial process or because the owner for some domestic reason found it convenient not to use it. In old times it was a characteristic of waste land of a manor that it was "free to be used by everyone, public"; but not all land "free to be used by everyone, public", (e.g. land acquired under the Open Spaces Act, etc.) is now or ever was waste land of a manor. In my view the words "waste" in the section should not be read as if the words of Watson B. quoted above were set out therein with the intention of limiting its meaning to what he said; he was giving his reasons for holding that lands (sands and shingle by the River Dee) were (contrary to the plaintiff's contention) waste land of a man he was not concerned at all with saying what sort of land could not be waste land of a mano and in particular was not concerned to say the land ceased to be waste land of a manor beca somebody happened to erect a fence on it, e.g. to prevent persons with caravans camping on i

On the above considerations, in my opinion the words "waste land of a manor" in the section 22 definition should be given the meaning which these words commonly had in 1965; that is not as describing land which is known or reputed to fulfil two conditions (i) being "waste land" and (ii) being "of" (in the sense of belonging to a lord of) a manor; but as describing land within the single composite expression "waste land of a manor", meaning land which is "free to be used by everyone, public" and which is such by reason of it being waste land of a manor historically. Thus I think the section 22 definition is in accordance with current usage with the one qualification that common land does not include highway. When considering whether the section 22 definition is applicable to any particula piece of land, the manorial history of theland is relevant, but it is not I think necessary to prove such history precisely, or to show that there was in 1965 and still continues to be some estate or interest in or over the land which is or can be described as manorial. Nevertheless the above quoted observations of Watson B, are authorative and may often be relevant and decisive; his reference to "strips of land by the side of highways" establish the validity of numerous registrations which have under the 1965 Act been made of such strips of land.

With the principles outlined above in mind, I now consider whether the Unit Land generally the Blackbushe Part particularly on the assumption that by reason of one or all of the poin of objection as to the effect of the deeds above referred to, the proper conclusion is that no part of the Unit Land is subject to any rights of common.

The County Part up to the 1951 conveyance was vested in the Church Commissioners as successors of the Dean and Chapter of Winchester as lords of the Manor of Crondal; it the looked like waste land of a manor; in 1951 it was conveyed as such; it has since been looked after by the Parish Council (to which it was first conveyed) and subsequently by the County Council; in my opinion the County Part did not by the change of ownership cease to be "waste land of a manor" within the section 22 definition.

As to the Blackbushe Part for similar reasons, it did not in my opinion cease to be "waste land of a manor" after the 1871 conveyance under which the lord ceased to be the owner; from as far as living memory goes back up to 1940 its appearance remains the same as the County Part: there is nothing to show that anybody knew about the 1871 conveyance or that it affected at all the way in which the Blackbushe Part was known or its reputed status. I accept that as a general rule land which is used as an airport ceases to be waste land; bu exceptionally land which was waste of a manor when requisitioned and which is used for war time purpose under requisition, does not I think cease to be waste land of a manor within t principles outlined above because the essential nature of a requisition is that it is temporary. Before 1960 it was not fenced at all against the A 30 road or on the east, a fence along part of the A 30 road erected by Air Vice Marshal Bennett has almost entirely gone: it is fenced for a short distance around the Airport car park; the fence on the east is recent; any fence put up since derequisitioning is contrary to section 194 of the 1925 Act. On requisitioning its only change of status was that it became waste land of a manor which had been requisitioned; and all could reasonably expect that when the requisitioning finished it would revert to its previous status. For the reasons I have outlined above in relation to the issues of abandonment, the events which have happened since it was derequisitioned cannot be of any weight in these proceedings.

On the point now under discussion there is no issue about the Calthorpe Part and the Defenc Part.

On the considerations outlined above, I am satisfied that on the assumption supposed that the Unit Land including the Blackbushe Part is waste land of a manor within the meaning of the section 22 definition.

For Mr. Arnold it was contended that in many of the Entries in the Rights Section the number of animals stated was excessive; for such numbers should be substituted with the number of animals levant and couchant on the dominant tenement.

This contention was based on the evidence of Mr. Luard, part of which was set out in documents he had prepared setting out his calculations and part orally. He had made a number of calculations and estimates as to the number of animals which could supposedly be levant and couchant on land such as that which now surrounds the Unit Land, particularly the land to which the rights registered at Entries Nos. 1,5,7 and 31 are attached. For example, annually 40 head of cattle would need 60 tons of hay, 50 tons of straw and 12 tons of barley to grow which would require 40 acres, 66 acres and 8 acres. (there might be some over lap because some of the straw would come from the barley); additionally 1133 cubic yar of storage would be required for the hay. He regarded one acre for one cow as presupposing very intensive farming with first class management and first class buildings; in general terms he thought at least 1½ acres for each cow would be needed (and subject to having all the buildings). He provided corresponding figures for sheep, ponies and pigs; he regarded horses (including ponies and donkeys), cattle and sheep as grazing animals, but not geese (although they eat grass) or pigs (a pig is not a grazing animal) and he would not (I think, he said) "graze a goat". He regarded all the figures at the Entries above mentioned as excessive and those at Entry No. 1 as ludicrous.

In view of Mr. Cobbett's statement that he did not envisage all his animals being on the common at the same time and because in all the application forms on which these Entries were based had been between the numbers of animals therein stated neither the word 'and' nor th "or", it was agreed by Mr. Mills on behalf of the Claimants that I should proceed on the basis that the registered numbers, notwithstanding that the word "and" had been inserted by the registration authority, were intended disjunctively. I shall modify the register accordingly.

The contention which was only fully formulated after the hearing had proceeded for some days, seems to me outside the grounds of Objection No. CB 304, and that I have therefore discretion under rule 26 of the Commons Commissioners Regulations 1971 not to allow it to be put forward. However it would I think be unsatisfactory if I disposed of this contentior on a narrow ground based on this rule I will therefore to some extent deal with it in substa

There was no evidence at all that there was among the customs of the Manor of Crondal any limit on the number of animals which could be grazed by copyholders. I conclude therefore that all the rights with which I am dealing "consist of or include" (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 common is regulated by levancy and couchancy have the advantage that a right which would otherwise be without limit, is save 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 who would take 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 right not limited by number to graze animals is based on levancy and couchancy. The Act includes in registerable rights a sole or several herbage or vesture; the person or persons entitled to such rights are not subject to any any numerial 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, that the owner of the right thereafter has under sectio 10 the right against the whole world 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, his right to take legal proceedings about these 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 that the number put on the register pursuant to section 15 may beof little practical consequence.

Guidance as to how the section 15 number is to be fixed, can be found in the notes to for 9 scheduled 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 belives himself entitled to graze ... The applicant should not insert a figure higher than that which he belives himself entitled to. If he puts in an excessive figure provisional registration is likely to be objected to. In the 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 decisi 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, affect 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 gated or stinted commons to be regulated under sectio 16 et. seq. of the Inclosure Act 1773 or under some similar provisions, and as a preparation towards abolishing 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. As was stated by some of the witnesses in this case, any number put in the application pursuant to the note would be to some extent a guess; at the best it could only be a reasonable guess based on existing and reasonably forseeable and 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 intention by Parliament to abolish levancy and couchancy; but I do not think it was the intention that any Court who should be concerned witharegister 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.

The particular circumstances of this case illustrate the hardship which applicants would suffer if they were compelled to litigate numbers. There was no evidence that anybody had ever grazed animals on the Unit Land to such an extent that anybody had ever wanted to question the numbers; indeed it is obvious that as long as the A 30 road is unfenced there will be practical difficulties because all animals grazed would have to be tethered or tended. As long as the Blackbushe Part is used as now, a very small number of animals is en to interfere with flying.

I must not be understood as meaning that the numbers 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 right intended to be registered will not be sufficiently identified unless the number is stated precisely; if the pasture is gated the numbers must inter se be proportionate to the gates 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 may know his rights as against others wishing to exercise their rights. The test is, I think, whether the registration as a registration of a right is practically enough. In this case the registrations will indicate(when modified as above stated)the rights are such as were former exercisable by the copyholders of the Manor of Crondal; anybody who claims that hereafter a right owner is grazing excessively can (so it seems to me) ask the Court to grant appropriate relief in the exercise of its ordinary jurisdiction and in any such proceedings, the manner in which rights should be exercised as regards numbers or otherwise can be determ

For the above reasons I declined at the hearing to consider in any detail the levancy and couchancy capacity of any of the lands and I declined the suggestion that I should after I had given my written decision on all other questions continue the hearing for the purpose of doing this. Nevertheless I think the registrations should be modified to make it clear that the numbers appearing in the register are section 15 numbers. Apart from this, (except as regards Entries Nos. 1 & 25 mentioned below) I refuse to make any modification of the numbers registered. Save as aforesaid in relation to these numbers I refuse to exercise any discretion given to me by rule 26.

In case I am wrong about this, notwithstanding that I have for convenience set out in the Third Schedule the description of the dominant tenements contained in the Schedule provided by Mr. Luard, I consider that the Claimants should (if I am mistaken in my reading of sectic 15) have an opportunity of calling evidence each about his holding and of challenging if they think fit, Mr. Luard's opinion as to the number of animals which could be levant and

couchant; unless the number is to be fixed on the basis of area alone, each applicant should, I think, have an opportunity of amplifying the description and explaining any special circumstances.

If I should as contended fix the numbers, it seems to me that I should modify each registration by including all grazing animals (not merely those mentioned by the applicants) and fix (as is sometimes provided in Acts or Awards setting up stinted pastures) a table of equivalents (e.g. I horse = 2 donkeys = 2½ cattle = 5 sheep or as may be). On a division of a holding the numbers attached to each part should be proportional to the area of the parts, see White v Taylor supra at page 190. I see no reason against fractions of animals (fractional stints are common in the north of England; owners of fractions combine to make up a whole number) should not be registered.

As regards Entries No. 1 and No. 25, I must I think alter the numbers because I am altering the area of the land to which the rights are attached, and the belief of the applicants as regards the numbers appropriate to the reduced area must be less. In the absence of evidence as to how applicants would have stated their belief as to their entitlement I must reduce the number as best I can. The Entry 1B land although described in the Register as Moulsham House and in the Third Schedule hereto as apparently having been part of a garden, seemed to me when I walked over Moulsham Green to comprise a cottage (?unoccupied), and some surrounding land which could be used agriculturally. However, this may be, I shall reduce the original numbers proportionately to the area of the land removed, which proportion in the case of Entry No. 1 is 7/8th of the whole. I will determine the reduction applicable in the case of Entry No. 25 at the further hearing mentioned below because I think those concerned should have an opportunity of saying how the removal of O.S. plot 212 will affect the area of the land affected by the Entry.

I now consider the Entries made on the application of those persons who, or whose successors in title neither attended nor were represented at the hearing. In my view I am not obliged to refuse to confirm the registrations made on these applications merely because nobody attended the hearing to support them.

As regards the Entries, as to which there was no evidence that the land affected was ever copyhold: point of objection (F) succeeds for the same reason as it did against Entry No.23. Accordingly I shall refuse to confirm these Entries.

Of the remaining Entries, there was evidence that they were or may have been formerly copyhold, and it may be that if the applicants had attended the hearing, they could have (as the majority of the Claimants have) successfully resisted all the points of objection made. Indeed in the view I take as outlined above of the law, it is obvious that the Unit Land is now subject to many more rights of common than have been actually registered in the Rights Section.

The principles applicable in relation to an Entry not supported at the hearing are I think as follows:- As regards any entry in the Land Section based on the land being subject to a right of common and therefore within paragraph (a) of the Section 22 definition, the circumstance that a person entitled to a right of common having registered it, does not attend the hearing or even after the registration releases the right, should not (although it may cause practical difficulties of proof) be treated as decisive; the public may be interested in the registration under sections 193 and 194 of the Law of Property Act 1925 or otherwise; regulation 19 (1) of the Commons Commissioners Regulations 1971 provide that in such a case a local authority may be heard, meaning, I think, heard in support of the registration. But as regards any entry in the Rights Section, the position is different. If the registered right is cancelled the personsentitled, by operation of sub-section (2) of section 1 of the 1965 Act can no longer

exercise it; but the right itself is not extinguished; the public is not affected by any cancellation, and nobody but the persons entitled to the right are prejudiced.

In the particular circumstances of this case, there are many conceivable reasons why a person who registered a right of common should no longer wish the registration to stand: e.g. he may not wish to be concerned in any way in these proceedings. Accordingly I shall refuse to confirm those Entries, the applicants for which or their successors in title have, as stated in the First Schedule hereto, written saying in effect that they wish to withdraw.

There remain Entries Nos. 3 and 48 about which I have no letter. As to Entry No. 3, the land affected (in the Register called "Dungells Farm") is described by Mr. Luard as presently unus waste land, the house shown on the plan having been demolished; when I looked at it the land appeared deserted. As to Entry No. 48 , the land affected (in the Register called "Lower Monteagle Farm") cannot (as Mr. Luard said) be seen from the road. Being empowered by Regulation 27 of the 1971 Regulations so to do, I inspected this land; the bungalow on it appears uninhabited and uninhabitable; the other buildings are dilapidated. It is possible that the applicants for these registrations (they are named in the first column of the First Schedule hereto) have received no notice of these proceedings; if this be so, I think it likely that the neglect of their land has been a contributing cause. Rather than adjourn the proceedings for further inquiries I consider that I ought to deal with their applications on the basis that they do not wish to be concerned in any way in these proceedings. I shall accordingly refuse to confirm these Entries; if the applicants consider that there has against them been any irregularity in the proceedings, it would be open to them to apply to a Commons Commissioner.

For these reasons I confirm Entry No. 1 in the Land Section, I refuse to confirm Entry Nos. 2, 3, 4, 14, 18, 22, 23, 26, 27, 28, 32, 33, 34, 35, 36, 37, 40, 41, 42, 45, 47, 48, 49, 50 and 53 in the Rights Section and I confirm Entry Nos. 1, 5, 7, 9, 11, 12, 15, 17, 19, 20, 21, 24, 25, 31, 38, 52, 54, 56, 57, 58, 59, 60 and 69 in the Rights Section with the following modifications :- (i) There shall be added at the end of column 4 in each and everyone of the said Entries :- "Provided that (A) the rights in this Entry registered are the rights which t copyholders of the Manor of Crondal held or were entitled to over the waste of the said Manor in accordance with the customs of the Manor confirmed by an indenture dated 10 October 1567 s usually called the Crondal Customary; and (B) the numbers of animals specified in this Entry a because by the custom of the said Manor the right to graze on the said waste was not "limite by number" within section 15 (1) of the Commons Registration Act 1965) the number of animals which the applicant (s) believe(s) himself (themselves) entitled to graze and the said numbers where they are in the Entry lettered with all or any of the letters (a), (b), (c), (d e) and (f) are to be read disjunctively (but not so as to prevent any less burdensome conjunctive grazing of different animals); and (C) there shall (in accordance with an agreemen made in 1974) be excepted and reserved from the said rights all manner of oak, ash, beech and elm in 1974 growing and thereafter to be growing on the land edged red on the plan annexed to Objection No. 03 319 including the exclusive right to cut fell and interfere with the same in any manner whatsoever, but this proviso shall not as regards the remaining land comprised within this register unit affect any similar exception or reservation for which provision is made in the Crondal Customary or which may be otherwise applicable under the customs of the said Manor" and (ii) there shall be deleted from column 5 of Entry No. 1 the following words:- "Poor Row or Silver Fox Farm, Yateley Common, Yateley, Hampshire comprising O.S. parcel No. 243 on sheet 12-3 (1931 edition) and before the number (a) 40 (b) 150 (c) 6 (d) 20 (e) 16 paragraph 1 of column 4 there shall be substituted nos. (a) 5 (b) 18 (c) 1 (d) 3 (e) 2 .

I shall also direct a modification to the Entry Nos. 25 and 56 as indicated earlier in his decision using a form of words which I will set out in the decision given after the further hearing below mentioned. I think those concerned should have an opportunity of saying as regards Entry No. 56 how much O.S. plots number 252 (and possibly No. 242) were comprised in 1871 Baily.

As agreed at the last day of the hearing, I reserved for further hearing in London all questions as to the costs of these proceedings and for the reason explained above I give all concerned liberty to apply at such hearing as to the form of words to be used in the modifications of Entry Nos. 25 and 56 in the description of the land thereby affected and as to any other question there may be as to the implementation of this decision in accordance with the reasons before set out.

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

[FIRST SCHEDULE OVER]

FIRST SCHEDULE

Entry No.	Applicant	Land to which Right is attached	Representation, withdrawal, etc.
1.	Mr. Henry Thomas Dodd	(a) Poor Row or Silver Fox Farm (b) Moulsham House	R
2.	Mrs. Eva Isabel Stilwell	Newlands, Dungells Lane	NO
3.	Mr. Donald Anthony Richard Clark	Dungells Farm	NO
4.	Mr. William Boyd Kennedy Shaw	Nutley, Yateley	NO
5.	Lt-Col. Arthur Denis MacNamara	Windy Ridge, Vigo Lane	RS (Present owner Colonel Brown)
7.	Mr. Gordon Sherwood Dickinson	Yateley House	R
9.	Mr. John Edward Cobbett	(1) Five Acres, Cobbetts Lane (2) Heatherside, Reading Road	R
11.	Mrs. Nancy Katherine Brown	Cricket Hill Cottage	R
12.	Mrs. Joan Ann Crumplin	Cottage Farm, Cobbetts Lane	R
14.	Mrs. Edith Batt	Globe Farm, Darby Green	L. Withdrawn by lett to H.C.C. dated 16 November 1972
15.	Mrs. Joyce Maud Carr	Wicks Field Reading Road	R.
17.	Mr. Douglas Arthur Parr	Brackens, Cricket Hill	R
18.	Lt-Col Roy Leyland	Brookfield House, Firgrove Road	L. Claim withdrawn i letters to H.C.C. dated 11 Decemb 1971 and 1 November 1972
19.	Mrs. Mary Lancelyn Holmes	The Old Cricketers, Cricket Hill	R.

20.	Col. Frank Fyson Lathbury and Mrs. Hilda Betty Lathbury	Lea Cottage, Cricket Hill	R
21.	Mr. Archibald Benjamin Calton Nunn and Mrs. Vera Majorie Nunn	Grasshoppers, Cricket Hill	R
22.	Mr. Gerald Reginald Batt (as exor. of Mr. Harold Sheriff Batt)	Land adjoining Heathfield, the Flats, Blackwater	L. Claim withdrawn i letter to H.C.C. dated 16 Novembe 1972.
23.	Captain Richard Leonard Seaman and Fiona Seaman	Thriftswood, Cricket Hill	R.
24.	Miss Doris Emily Giles	Holly Cottage, Cricket Hill	RS She died shortly before the heari Executor her nephew John Giles
25.	Mrs. Eve Penelope Muttal-Smith	Carolina, Hall Lane Yateley	R
26.	Mr. Arthur Stanley Pearce	Broomedge, Cricket Hill Lane	L. Claim withdrawn by letter to H.C. dated 11 December 1972
27.	Mr. John Willcocks	Eyhaven, Cricket Hill Lane	NO
28.	Dr. Colin Dieppe Walker	Cranwill Dene, Cricket Hill Lane	L. Request cancellation in letter to H.C.C. dated 30 June 1973
31.	Mrs. Daphne Kathleen Mary Kirkpatrick	Moorside and land at Cricket Hill	R.
32.	Mr. John Harness	The Laburnums, Rounds Hill, Wokingham Road, Binfield, Bracknell	NO
33.	Mr. Pal Laszlo Salamon and Mrs. Hannelore Margarete Salamon	6 Misletoe Road, Yateley	Defence R.
34.	Lt-Col. Peter Ian Boldero Stevenson and Mrs. Angela Margaret Stevenson	8 Misletoe Road, Yateley	Defence L. Claim withdrawn by letter to H.C. dated 1 April 1974

35.	Mr. John Edgar Wright	5 Misletoe Road, Yateley	Defence L. Claim withdrawn by letters to H.C.C dated 24 April 1971 and 26 January 1973
36.	Mr. Geoffrey Lionel Smith	1 Misletoe Road, Yateley	Defence L. Claim withdrawn in letter to H.C.C. dated 22 March 1974
37.	Mr. Robert Anthony Savill and Mrs. Patricia Savill	3 Misletoe Road, Yateley	Defence L. Claim withdrawn in letter to H.C.C. received 25 March 1974
38.	Mr. John Edward Cobbett	1 & 2 Laurel Cottages 1 & 2 Bramley Cottages	R.
40.	Mr. Gerald Michael Ezard and Mrs. Louise Mary Ezard	19 Misletoe Road, Yateley	Defence L. Application withdrawn in letters to H.C.C. dated 7 May 1971 and 29 March 1974
41.	Mr. Nicholas Guy Clarke and Mrs. Fiona MacDonald Clarke	11a Michaelmas Close Yateley	Defence L.S Withdrawn by Major & Mrs. M.G. Litt in letter dated 15 July 1974 (filed 214/D/13)
42.	Mr. Robert Garrick Vaughan and Mrs. Mary Wilson Vaughan	16 Michaelmas Close Yateley	Defence Mr. Vaughan attended the hearing in person for himself and on behalf of Mrs. Vaughan.
45.	Mr. Brian Albert Mead and Mrs. Jean Lilian Mead	42 Misletoe Road Yateley	Defence L. Claim withdrawn in letter to H.C.C. dated 11 May 1971
47.	Mr. Alan Stuart Warren & Mrs. Zella Ann Warren	46 Misletoe Road Yateley	Defence L. Claim withdrawn in letters to H.C.C. dated 19 & 23 March 1974
48.	Lt-Col. Alfred Frank Douglas Colson and Mrs. Daphne Elizabeth Rhys Colson	Lower Monteagle Farm Yateley	NO
49.	Mr. John Arthur Ridgers and Mrs. Nancy Ridgers.	Hill Crest, Cricket Hill	L. Claim withdrawn in letter to H.C.C. received 12 November 1972
50.	Mr. Geoffrey William Mott	Land at Yateley	NO

52.	Miss Elizabeth Joyce Gardener	1 Jessamine Cottage Yateley	R
53.	Mr. Philip Proven and Mrs. Christine Margaret Proven	15 Tudor Drive Yateley	Defence L. Claim withdrawn by letter to H.C.C dated 25 March 1974
54.	Mr. Sheridan Ulric Thynne	Moon Rakers, Cricket Hill	RS. Successor: Mr. Simon Walters.
56.	Air Chief Marshal Sir William L.M. MacDonald	None (Gross)	R
57.	Lt. Commander John Michael Chappell	Brayfield House and 1½ acres adjoining	R
58.	Mr. John Gregory	Oaklands Vigo Lane	R
59.	Mr. Thomas Llewllyn Hughes	Heathfield, Blackwater Flats, Yateley	R.
60.	Commodore Neil Alexander MacKinnon	Tudor House Cricket Hill	R.
69.	Mr & Mrs. Johnson	Monteagle House, Yateley	R.
73.	Rev. George Melvin Williams	St. Peters Church & Vicarage	L. Claim withdrawn in letter to H.C.C dated 16 October 1972

SECOND SCHEDULE

(Enfranchisements)

Entry Nos.	Date and identifying description	Relevant words in grant
	A. DEEDS	
56 & 60	12 January 1871 (1871 Baily)	Together with all houses ... minerals commons and commonable rights liberties ... and appurtenancies whatsoever to the said hereditaments belonging.
9(a) 11(b), 12,15,22, 31(a),& 59	31 July 1873 (1873 Stillwell)	Same as 1871 Baily
31(c) & 50	30 April 1874 (1874 Kelsey)	Same as 1871 Baily

17,24 & 38(a)	14 August 1884 (1884 Ridgers)	Together with all trees woods underwoods mines minerals, common and commonable rights to the said hereditaments belonging or appertaining.
14	16 July 1891 (1891 Ratcliffe)	Same as 1884 Ridgers
14.	3 July 1902 (1902 Wyatt)	Together with all mines and minerals rights easements and appurtenancies to the said hereditaments belonging or appertaining.
38(b)	28 July 1904 (1904 Kelsey)	Same as 1902 Wyatt
52	19 September 1906 (1906 Goddard)	Separate grant:- "of all rights c common and commonable rights whic they have hitherto exercised or have been entitled to exercise as tenants of the copyhold hereditam hereinbefore described."
5,7(a) & 58	27 April 1910 (1910 Kelsey)	Same as 1906 Goddard
48 & 69	29 July 1915 (1915 Ward)	Same as 1906 Goddard
19	26 September 1924 (1924 Cooper)	Same as 1902 Wyatt

B. Compensation Agreements under Law of Property Act 1922 or Post 1925 Conveyance

25(a)	27 October 1927	Conveyance
11(a),20 31(b) 54	18 September 1928	C/A in favour of Elizabeth Grant Sewell
3,7(b) and 18	2 May 1935	C/A in favour of four Sisters Kelsey
9(b)	19 December 1935	C/A in favour of Fred Thos. Cobbett
1(b)	4 April 1937	C/A in favour of F.G. Harris deceased (Esther H. Harris)
21.	14 March 1940	C/A in favour of Vera MacMaster.

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THIRD SCHEDULE

Column (1) :- Entry No.

Column (2) :- Enfranchisement deed or Compensation agreement.

Column (3) :- (H) Horses or ponies * or donkeys**; (C) Cattle or cows; (S) Sheep or goats"; (P) Pigs or swine

Column (4) :- Description (Mr. Luard's Schedule- names from the Register)

Column (5) :- Points of objection: O = absence of oral evidence; F = claimants holding as freehold; no evidence that it was formerly copyhold; E = enfranchisement of copyhold without regrants of rights of common; P = post 1891 enfranchisement (ie. after conveyance of 26 February 1891 to Lord Calthorpe) S = Unity of seisin; rights extinguished by acquisition by claimant or predecessor in tit of part of waste of the manor; W = Claimants holding was formerly waste of the manor; A = Rights extinguished by abandonment evidenced by non-user; C = Abandonment evidenced by change of character of claimants land; T = Abandonment is evidenced by lack of any attempt to transmit rights of common to a successor in title; X = Abandonment evidenced by ignorance of claimant of precise nature of the rights claimed; or exaggeration of claim implying such ignorance; Z = Abandonment evidenced by failure to assert rights when an assertion would have been expected; H = Claimant's holding, although hou and curtilage is not an ancient house; and L = Claimant's holding is land without a house so no "house" rights of common.

		H	C	S	P							
1A	Freehold Conveyance 19 October 1871. (Mr. H.T. Dodd)	6	40	150	20	<u>Poor Row or Silver Fox</u> OS No. 3285 1.34 acres 3583 0.40 acres Situated on the North Western boundary of Blackbushe Airport the property comprises a total of 1.74 acres. The field is rough pasture which does not appear to have received any agricultural cultivations in recent years and is in very poor condition. The field is fenced by a post and wire fence which again is in poor condition. There is a wooden post and rail fence on the eastern boundary. There is a small thatched cottage on the property and an old caravan parked in the entrance way. There did not appear to be any farm buildings in which to winter cattle.	F	W T X Z	A	H			
1B	C/A 8 April 1937					<u>Moulsham House. .25 acres</u> This is a small triangular piece of land which is derilect and adjoins	S	A T X	L			

	H	C	S	P				
					Moulsham Green. It would appear to have been the garden to the White Cottage on the northern boundary. ? If a cottage in area of alleged dominant T. as not clear from plan. There are no buildings.			
5 1910 Kelsey (Mr. & Mrs. A D MacNamara	2		2*	6	Windy Ridge Vigo Lane area 1.20 acres A large brick building with tile roof and part tile hanging residence standing its own grounds and situated to the north of Blackbushe Airport. The land appears to be mainly garden.	E O P	A C T X Z	H
7A 1910 Kelsey (Mr. G S Dickenson)	80	80	250	400 20*	Yateley House Part adjoining Vigo Lane. 28.07 acres Mainly unused agricultural pasture which has been uncultivated for a number of years. There is also an area of wood land. The low area to the west of Vigo Lane is extremely wet and there are no fences on the boundaries. The area to the east of Vigo Lane appears to be used as an area to exercise dogs by the surrounding houses and is unfenced. This is rough scrub land and there are no farm buildings.	O S	A C T X Z	H
7B C/A 2 May 1935					Yateley House Area 9.60 acres Comprises two substantial brick with tiled roof modern detached houses called Yateley House and Dingley Dell. There are poultry units on the property. There is a large area of lawn on the northern boundary which is unfenced. There is no fence or gate on the main road frontage			
9A 1873 Stillwell (Mr. J E Cobbett)	5	5	20	15 5*	Five Acres (Area 3.36 acres) A brick with tiled roof detached house with paddock situated to the south, the paddock is fenced and appears to be a permanent pasture. There is a gate to the entrance drive which was open when inspected. The garden extends to 1.00 the balance being paddock.	E S	A T X Z	

	H	C	S	P		
9B C/A 19 December 1955					Heatherside Old house demolished. Three new detached houses have been erected on this property.	A C H T X Z
11A C/A 15 September 1928 (Mr. N.K. Brown)	2 2* ** 1				Cricket Hill Cottage Area 0.75 acres A large brick and tile roof detached house adjoining the green at Cricket Hill Lane. The gate entrance to this property on the western boundary adjoining the Green was open at the time of inspection. The frontages to Unit CL.24 are mainly of a holly hedge which whilst well maintained is not stockproof. The property is approached by a gravel drive over Unit CL.24.	E S A H T X Z
11B 1873 Stillwell						
12 1873 Stillwell (Mrs. Crumplin)	10* ** 10	40	100	10	Cobbetts Farm Area 46.44 acres A small farm, the fields being down to pasture. The farm house and buildings are situated in the north of the property, the whole being within a ring fence. The fencing is mainly concrete posts with 2 or 3 strands of barbed wire. The wire is slack in most places and only capable of keeping large animals in or cut. All theland appeared to be down to pasture.	E S A L C T X Z
15 1873 Stillwell (Mr. J.M. Carr)	1	10	20		Wicks Field, Reading Road Area 1.80 acres A substantial detached house standing on its own grounds and adjoining claimant No. 9. Difficult to see without trespassing.	O E S A L W C H T X Z
17 1884 Ridgers (Mr. D A Parr)	1				Brackens Cricket Hill Area 60' x 175' (0.24 acres) A detached house adjoining a gravel track which leads off Cricket Hill Road. There is a wooden white painted pale fence on the boundary against Unit CL.24. This property has a garage. This property adjoins Claimant 38. The gravel approach road is over Unit CL.24. The area to the east of the house appears to be garden	O E S A H T X Z

-9-

	H	C	S	P						
19 1924 Cooper Mrs. Holmes)	* 1				The Old Cricketers Area 90'x75' (0.15 acres) A detached house adjoining the Cricketers Public House, surrounded by a low fence of wooden posts, one strand of wire and chain link. One of the small gates to the property was open at the time of inspection. There is a single timber garage on the north boundary which is situated within the Unit CL.24 and which is served by a gravel drive also within CL.24. This garage and drive appear to belong to this property. The owner appears to have encroached onto Unit CL.24 by erecting a garage. The only approach to the cottage is by gravel roads over Unit CL.24. There are no farm buildings.	O	E P		A C T X Z	
20 C/A 18 September 1928 Ccl. Lathbury)	* 2	2		2	Lea Cottage Area 0.35 acres Large painted brick with tiled roof detached house overlooking the Green at Cricket Hill. There is a trimmed holly hedge and painted gates adjoining the Green. The land is cultivated garden. The adjoining cottage to the east was originally part of this property. I did not notice any accommodation for the pigs or animals when they are not on the alleged common. The approach to this house is over a gravel drive on Unit CL.24.	O		S	A C T X Z	H
21 C/A 14 March 1930 Mr. A B C Munn)	2 ** 1	1		2	Grasshopper Cricket Hill Area 220'x50' (0.25 acres) Detached house surrounded on three sides by Unit CL.24. From my inspection there was no accommodation for these pigs when on the property.	O	-	W	A C T X Z	H
23 No documents of title produced. Mr. R.C. Seaman)	* 2	3		2	Thriftswood Cricket Hill Area 2.00 acres A substantial house with two entrances from the approach drive; one with a gate which was open and another with no gate. The boundary adjoining Unit CL.24 is unfenced and open to an expanse of lawn. There are some stables adjoining the house. This property adjoins Unit CL.24 on the east and west boundaries and it is surprising that there is no fence because any grazing animals would undoubtedly enter the property as animals are kept at the property.	F O		S	A T X Z	H

	H	C	S	P						
1 1884 Ridgers	* 1				Holly Cottage, Cricket Hill Area .12 acres					
Miss D.E. Miles)					A detached house adjoining Unit CL.24. There is no gate or fence on the boundary adjoining CL.24, this area being mainly grassed with some heathers as a border. There is a single garage. This property is approached by a gravel drive from Cricket Hill Lane and adjoins Claimant 38.	F 0	E	S	A C T X Z	H
5A Conveyance 27 October 1927					Carolina Hall Lane, Area 1.4 acres A detached house with garden surrounded on three sides by a modern residential development. The house is well screened and difficult to inspect. To the east, Woodbourne Close is a spur road ready to connect to any residential development that might be carried out. There would appear to be no accommodation for the animals subject to the alleged claim of grazing rights.	0			A T X Z	H
Mrs. Nuttal-Smith)										
5B freehold						F 0			A T X Z	H
A 1873 Stillwell	* 20 ** 20	20	100	50	Moorside and land at Cricket Hill 12.20 acres divided into 3 areas as follows 1. An area (7.60 acres) of pasture which slopes to the east, the eastern boundary being extremely wet, mainly caused by a stream being blocked up. The fence on the eastern boundary is post and wire and poor. The main house Moorside adjoins the Cricket Hill Road and the area verged blue by the Hampshire County Council includes the House Hurcot which is empty and in a poor state of repair and the building known as the Forg. The gates to Moorside and the Forg were open at the time of inspection.		E	S	A T X Z	H
Mrs. Kirk-patrick)										
B C/A 18 September 1928 Mrs. Kirk-patrick)					2. Area (2.10 acres) north of Fish pond, a field of rough pasture divided by a stream bordered by scrub trees part of the western boundary appears to have been taken for road improvements.		E	S	A T X Z	L

	H	C	S	P					
1C 1874 Kelsey Mrs. Kirk patrick)					3. (2.50 acres) comprises a detached property called Sandy Rise small area of rough pasture.	E	S	A T X Z	H
8A 1884 Ridgers Mr. Cobbett)	4 * 2				1 and 2 Laurel Cottages 22'x60' A pair of semi-detached cottages directly facing onto Unit CL.24. The northern cottage has a metal fence and gate and a garage but the southern cottage is rough grass having no gate or fence onto Unit CL.24. This property is approached from Cricket Hill Lane and adjoins Claimants 17 and 24. No. 1 and 2 Laurel Cottages are approached by a gravel drive over Unit CL.24	E P	S W	A T X Z	
8B 1904 Kelsey Mr. Cobbett)					1 and 2 Bramley Cottages Frogmore Area 198 x 50' (0.19 acres) Pair of semi-detached cottages.	E P	S W	A T X Z	
2 1906 Goddard Miss Gardener)		* 1			1. Jessamine Cottage (.03 acres) One of a pair of semi-detached cottages of brick elevation and a slate roof. On the front wall is a brick inscribed:"Jessamine Cottages 1912". A small residential cottage situated in a residential area.	P		A C T X Z	H
4.C/A 18 September 1928 Mr. Thynne)	estovers only				Moonrakers : Area 0.43 acres 2 storey brick and tiled house. Faces Unit CL.24, single timber clad tiled roof garage. White pale fencing. The gate was open at the time of inspection and there are no doors to the garage on the Green side, and the large door at the rear of the garage was open to the garden. The approach to this drive was by a gravel drive over Unit CL.24.	O	S	A T X Z	H
5 1871 Baily Chief Marshal McDonald)	2	4			(Registered in gross: applicant of "Quarry House") At the time of inspection metal gates were open, house not visable from the road.	F O	E	S	A T X Z	H

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	H	C	S	P							
7 1910 Kelsey t.Com. J.M happell	2	4			<u>Brayfield House Area 1.1 acres</u> A substantial house with two boundaries adjoining Unit CL.24. There is a deep ditch on these boundaries. At the time of inspection the main entrance gate was open. The land attached to the house is all garden. The property is reached by a gravel drive over Unit CL.24.	O	F	W	A T X Z	H
3 1910 Kelsey Mr. J. Gregory)	* 2		2		<u>Oakland Vigo Lane Area .16 acres</u> Original house with garden now divided into two plots and new houses built on southern part of garden. Oaklands is a two storey brick house with tiled roof. There is a double garage. The property adjoins Vigo Lane and has altered character since the original claim was made as the garden is now developed with two detached houses. Vigo Lane is a gravel drive in poor condition and is about 9'0" wide on average. Very few of the properties in this small residential complex are fenced on the boundaries adjoining Unit CL.24. This property is not fenced against animals from Unit CL.24.	O	E P	S	A C T X Z	H
) 1873 Stillwell Mr. T.L. Hughes)	1 * 1				Heathfield Blackwater Flats <u>Area 0.6 acres</u> A substantial detached house which adjoins Unit CL.24 and is approached by a gravel road situated in Unit CL.24. Thereis no gate to the entrance which faces Unit CL.24. and no fence to the northern boundary which adjoins Unit CL.24. The land with the house is garden. The property is reached by a gravel drive over Unit CL.24.	O	E	S	A C T X Z	H
1871 Baily m.N.A. cKinnon)	1 * 1	1	4	10	<u>Tudor House Cricket Hill Area 1 acre</u> Large detached brick house with tiled roof in own grounds approached by a gravel road. Brick wall on road frontage. The gate to this property was open at the time of inspection. The land with the property appears to be only garden	O	F/E		A T X Z	H

H C S P -13-

9 1915 5 10 Monteagle House E S A
Ward O P T
X
Z

Mr & Mrs
ohnson)

FOURTH SCHEDULE

Documents produced as evidence of presence or absence of buildings on land at or before date of document, of the inclusion of part of The Waste in land owned by a Claimant or his predecessor in title, and of other matters.

Note: also referred to for these purposes were some or all of the documents listed in the Second Schedule and also the 1928 Auction Sale Particulars.

Exhibit No.	Date	Description	In favour of	The or one of the Relevant Entry Nos.
3	6 December 1927	Subsidiary vesting deed	J.St.J Harris-St. John	5
4	25 November 1910	Indenture on sale	W. Kyle	5
5	29 October 1948	Conveyance on sale	W.F. Dickinson	7
6	8 May 1969	Assent	G.S. Dickinson	7
7	23 July 1904	Admittance	J. Cobbett	9B
8	18 April 1910	Admittance	F.T. Cobbett	9B
9	19 December 1935	Compensation Agreement	F.T. Cobbett	9B
1	28 May 1887	Indenture on sale	J.G. Hodges	17
2	20 December 1907	Admittance	G. White	21
3	14 March 1940	Compensation Agreement	V. McMaster	21
4	4 April 1952	Conveyance on sale	E.P.M. Nuttal-Smith	25
5	8 September 1928	Compensation Agreement	E.G. Stilwell	-
6	29 September 1887	Abstract of Mortgage	Title of F.T. Cobbett	38B
7	28 April 1911	Indenture of sale	J.H.English	52

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18	8 August 1910	Abstract of Indenture of sale	B.A. Fullbrook	52
19	20 March 1911	Indenture of sale	J. Gregory	58
original handed back	4 October 1950	Conveyance on sale	Freeman	59
21	10 September 1915	Abstract of Conveyanceon sale (title of A.F.D. Colson)	A.C. Doxat	69
21	29 September1920	Abstract of Conveyance on sale (same title)	F.C. Lowis	69
21	12 January 1922	Abstract of Enfranchisement (same title)	F.C. Lowis	69
21	December1951	Abstract of Conveyance on sale (same title)	A.F.D. Colson & E.R. Colson	48
21	24 August 1964	Conveyance on sale (same title)	A.A.N. & D.M.T. Tuck	69

Dated the 26th day of March 1975

A. A. Baden Fuller

Commons Commissioner