COMMONS REGISTRATION ACT 1965

Reference Nos 231/D/35 to 39 inclusive

In the Matter of the Stiperstones,
Worthen, South Shropshire District,
Salop

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1 to 105 (except Nos. 4 and 22) in the Rights Section ("R/S") of Register Unit No. CL57 in the Register of Common Land maintained by the Salop County Council and are occasioned by Objections Nos 0.42 and 0.43 made by the Minister of Agriculture, Fisheries and Food and Objections Nos 0.23 and 0.131 made by Captain H D M Hulton-Harrop and noted in the Register on 25 February 1972.

I held a hearing for the purpose of inquiring into the disputes at Shrewsbury on 21 and 22 June and 24 and 25 October 1978. At the hearing (1) Mr Roger Henry Delacy Hulton-Harrop and Mrs Diana Margaret Delitia Whitbread (executors of Captain H D M Hulton-Harrop) were represented by Mr M Mitchell solicitor with Sprott Stokes & Turnbull, Solicitors of Shrewsbury; (2) the Minister of Agriculture, Fisheries and Food was represented by Mr R Turner solicitor of his Legal Department; (3) Mr Henry Jones (as successor of his mother Mrs Mary Smith, applicant for R/S Entry Nos 18 and 48) was represented by Mr M Crook solicitor of J C H Bowdler & Sons, Solicitors of Shrewsbury; and (4) the following were represented by Mr M W Renshaw solicitor of Wace, Morgan & Co, Solicitors of Shrewsbury:-
(a) Mr Edward Dennis Chidley (applicant for R/S Entry Nos 1 and 36),
(b) Mr Roger Ivor Chidley (applicant for R/S Entry No. 2), (c) Mr Richard Gordon Cook (applicant for R/S Entry No. 3), (d) Mr Clifford William Hampson of 6 Prospect Cottages (as successor of Mr Derick Ronald Davies, applicant for R/S Entry Nos. 4 and 22; these at R/S Entry No. 106 are said to have "been cancelled", referring to note 5),
(e) Mr George Ernest Evans (applicant for R/S Entry No. 6), (f) Mr Alan Joseph Purslow (applicant for R/S Entry No. 12), (g) Mr Wilfred Benjamin Purslow (applicant for R/S Entry Nos 13 and 42), (h) Mr Wilfred Harry Purslow (applicant for R/S Entry Nos 14 and 43), (i) Mrs Gloria Victoria Rowson (applicant for R/S Entry No. 16),
(j) Mr Lesley John Hotchkiss (applicant for R/S Entry No. 19),
(k) Mr Douglas Alan Davies (applicant for R/S Entry No. 20) and his wife Mrs Mary Catharine Davies, and (l) The Stiperstones Protection Society on the instructions of Mrs Emily Griffith (formerly Mrs Emily Williams, the applicant for R/S Entry No. 33).

The land ("the Unit Land") in this Register Unit is from north-east to south-west a little under 2 miles long and is for the most part open moor land higher than any of the surrounding land. On the Register map it appears to be two pieces connected by a strip ("the Connecting Strip") about 200 yds long and a few feet wide; one piece ("the North Piece") is north of Perkins Beach and has a width varying from about ½ mile to a little under 1 mile; the other piece ("the South Piece") is south of Perkins Beach and has a width varying from about ¼ mile to little over 1 mile. According to the Register, the Unit Land contains about 608 acres.

The R/S registrations are summarised later in this decision where I deal with each particularly. Nos. 1 to 20 inclusive are of rights ("the Grazing Rights") to graze over the whole of the Unit Land. Nos. 21 to 105 inclusive are of rights ("the Whimberry Rights") to pick whimberries. The land to which each grazing right is attached is on the Register defined by reference to a supplemental Register map; at the hearing it was agreed that a map (M of A/1) produced by Mr Turner correctly showed the effect of all these supplemental maps, so this decision is based on the map so produced with the result that the descriptions I use may (to someone not having this map) seem to be in some respect inapt. The Whimberry Rights are held in gross.

The grounds of Objection Nos. 0.42 and 0.43 (dated 15 and 24 September 1970 (M of Ag) are "(a) the land shown on the enclosed plan was not common land at the date of registration and (b) the common rights claimed over the land do not exist at all"; the enclosed plan shows part (about $\frac{1}{4}$ of the total area), being the lower slopes on the west and north sides. The grounds of Objection No. 0.23 (dated 23 June 1970; H-H) are (in effect) that the Unit Land "has never had any common rights on it and all persons trying to occupy it have been warned as far as possible. Notices have also been erected periodically but these get removed in due time". The grounds of Objection No. 0.31 (dated 15 December 1971; H-H) are that the Unit Land "was not Common Land at the date of registration".

At the hearing oral evidence was given (1) by Mrs E Griffiths (generally and in support of the Whimberry Rights), (2) and (3) by Mr H Jones and Mr T C Smith (in support of R/S No. 18), (4) by Mr R W Evans (in support of R/S, No. 8), (5) by Mr R G Cook (generally and in support of R/S No. 3), (6) by Mr R I Chidley (in support of R/S Nos. 2 and 11), (7) by Mr C W Hampson (in support of R/S No. 5), (8) Mr L J Hodgkiss (in support of R/S 19), (9) Mr D A Davies (in support of R/S No. 20), (10) by Mr R L Jones (generally), (11) Mr R H D Hulton-Harrop (he and the below-named witnesses supported the Objections), (12) Mr T C Tanner, (13) the Rt Hon R C Viscount Bridgeman, and (14) Mr W W Harries. In the course of their evidence documents were produced as specified in the Schedule hereto.

On 23 October 1978 I inspected parts of the Unit Land unattended by walking from the road (through The Stiperstones Village) up Myttonsbeach to a little beyond the last dwellinghouse, by walking from the said road up Perkins Beach to about 100 yds from the east boundary of the Unit Land (near Shepherd's Rock), and by viewing the Unit Land (distantly) from the Car Park which is about $\frac{1}{2}$ mile to the south. On 26 October 1978, I inspected other parts of the Unit Land attended by Mr R G Cook and Mr R H D Hulton-Harrop (they arranged for a Land Rover), in the course of which we walked over: (a) some of Mr Cook's land near the bottom of Crowsnest Dingle, (b) up to near the cottage at the higher end of Crowsnest Dingle, (c) around Blakemoorgate, (d) around Blakemoorflat, (e) around the top of Oak Hill (overlooking Myttonsbeach), (f) around Shepherd's Rock, (g) on some of the land of Mr Jones near Pennerley Hill, (i) on some of the land of Mr Davis at Knolls, and (j) on a small part of the land of Mr Hotchkiss; Mr Jones, Mr Davis and Mr Hotchkiss attended my inspection of their lands. Later on the same day unattended, I saw the position of the Unit Land in relation to the rest of the Hulton-Harrop Gatten Estate by motoring along the public road which crosses the Estate about one mile east of the Unit Land by Gatten Lodge.

On the questions which I have to determine, the rights claimed as regards certain aspects differ very considerably from each other. But as regards some aspects there are some matters which are relevant either to all or to all the rights of grazing. These matters I deal with in the next 17 paragraphs.

In the Register the Unit Land is described as: "The Tract known as The Stiperstones..." The expression "The Stiperstones" is used in different senses. There is the village, The Stiperstones, which is a small built-up area on the west side and much below the level of most of the Unit Land. There is the area known as The Stiperstones which includes the Village and the farms and holdings (many small) west of the Unit Land; although some regard the areas of Pennerley and The Bog as distinct. There are the extraordinary outcrops of stone known as The Stiperstones which include Shepherd's Rock Scattered Rock, Devil's Chair and Manstone Rock which are along or just outside the east boundary of the Unit Land. There is the range imprecisely marked on the OS map (6 ins = 1 mile) as Stiperstones which apparently includes much land to the west and south of the Unit Land (on this map the letters "ONES" lie along the east boundary of the South Piece and the letters "STIPERST" are away to the south. The Unit Land does not accord with any of these usages; it corresponds more or less to the area which (1) is in the Parish of [illegible], and (2) is now uncultivated and (3) is on the Tithe map (EG/1) shown as not being in 1847 part of any tithable holding.

The Unit Land is a place of outstanding natural beauty. Shepherd's Rock, Scattered Rock, Devil's Chair etc are natural features which delight the eye. The north-west, west and south-west parts of the North Piece are steep slopes, very steep around Crowsnest Dingle, Myttonsbeach and Perkins Beach (in the 1847 map "beach" is written "bach"). The north, west and south-west parts of the South Piece slope downwards, but less steeply; the slope on the south-west being comparatively gentle (the adjoining land is higher). The views from the top looking westwards are magnificent; from the bottom looking up there is much variety and much of interest, particularly from the Dingle and the Beaches. I was told that the Unit Land (and the area south of it) is much visited by tourists from other parts of the County and elsewhere; The Stiperstones are I suppose nationally famous as a place of beauty. There is a public footpath (nowhere fenced) along or near the east boundary of the Unit Land, and it is practically impossible to prevent the numerous persons who locally and from afar come there for pleasure from walking over the Unit Land wherever they please. Indeed such is the impossibility that the above-mentioned Car Park was a few years ago so set out and sited as to encourage visitors to walk a way which would not only be easiest for them, but also cause the least inconvenience to local land owners and their tenants.

The boundaries of the Unit Land are distinct enough in the sense (and possibly only everywhere in this sense) that when inspecting it I never as regards anything I saw had any real doubt whether I was in or outside the Unit Land or where the boundary was; in general the boundary is either a distinct hedge or other fence or a distinct bank which (or the site of which) was apparently of great age. But as an obstruction to humans and animals, the boundary varies. For humans and animals as an obstruction to movement, the south boundary (about $\frac{1}{4}$ of a mile) and the west boundary (2 miles or under) is practically non-existent; south and east of this land there are large areas (in other parishes) which for grazing, or for grouse shooting, or for recreational walking appear much the same as the adjoining part

of the Unit Land. For this reason the Connecting Strip which from the Register map might be thought to be of formidable division has little reality. The adjoining area east of the Unit Land between and around Shepherd's Rock and Scattered Rock (all part of the Hulton-Harrop Gatten Estate) is so easily accessible for humans and animals, that as regards common rights the surprising thing is not that all the registered rights of common are over the whole of the Unit Land but that none such rights have been registered over any area adjoining on the east or to the south. And I here record that at the hearing in response to a question by myself, nobody suggested that any grazing described in any of the evidence should be considered as being on the North Piece exclusively or on the South Piece exclusively or otherwise taken to be on anything other than the whole of the Unit Land. Some of the lands adjoining the Unit Land which from the 1847 map I infer were then smallholdings, have since, evidently, been abandoned; these holdings are in some cases as accessible for humans and animals as the rest of the Unit Land, particularly around Blakemoorflat and much of the land at the head of Perkins Beach. In general the east and north sides of the Unit Land are well enough fenced to provide an effective obstruction to animals and a practical deterrent to humans not prepared to climb over the fence (there are in places gates); but for much of these boundaries (particularly of the North Piece and the Perkins Beach part of the South Piece), the real deterrent against crossing both for humans and animals is not the boundary itself but the formidable upward gradient of the adjoining part of the Unit Land.

North of the Unit Land there are extensive remains of mine workings; also in various places near the Unit Land are numerous old shafts, levels, heaps etc indicating old mine workings particularly at the head of Myttonsbeach and Perkins Beach. I was told that these workings were of lead, barytes and/or roadstone, mostly discontinued at the end of the last century (there is now a possibility of new working for some other mineral). This discontinuance explains the great difference between the smallholdings surrounding the Unit Land as they are delineated on the 1847 map and as they now appear; but this discontinuance may not be the only reason for change, because many of the smallholdings may since the 1939-45 war have changed (becoming generally larger) as a result of changes and improvements in agriculture, fertilisers etc.

The motives of those concerned with these disputes, as I understood them, were as follows:- Those who supported the registrations either are now grazing on the Unit Land and want to continue to do so, or they wish to establish a right so to graze, or they wish to preserve the Unit Land as an amenity area for locals and others and thereby incidentally avoid aforestation (possibly unsightly) of the lower slopes. Captain Hulton-Harrop was and his executors are concerned to preserve the Unit Land (and the surrounding area) as a grouse moor, and for this purpose to exclude or at least control the grazing. The Minister is concerned on behalf of the Forestry Commission; the plans attached to his objections show the part of the Unit Land held by him under the 1966 lease (M of A/3), being for the most part the steep slopes unattractive to grazing animals and of little use for grouse shooting. No part of the Unit Land has been planted or prepared for aforestation, and Mr Turner made it clear that except as providing a motive for the Minister to object to the registrations, his interest in the Unit Land under the 1966 lease is irrelevant to any question I have to determine.

One of the main contentions was in effect that the rights claimed have existed from time immemorial. On the 1847 map (EG/1) the North Piece is named "OAK HILL" and "GREEN HILL", and under these names appear the word "COMMON", and the South Piece is

named "STIPERSTONES". Although the word "COMMON" does not appear on the South Piece, it is numbered "384" the same as the North Piece.

Apart from the changes to be expected from the rise and decline of mining and to the different social and agricultural conditions prevailing in the whole County, from the present appearance of the Unit Land I conclude that it has from time immemorial (if allowance be made for the heather clearances recently made on some parts) always appeared as it now does; that is mostly heather and whimberries (grouse moor) with numerous small areas of grass which it would be worthwhile for someone to graze (quite apart from any young heather there may be); that is that the Unit Land has always been common land in the sense (one of the popular meanings of the expression) that it is land free to be used by everyone, public. But this is not enough to establish the rights claimed, either as having existed from time immemorial or at all.

Against any grazing rights having existed from time immemorial, reliance was placed on the ownership history of three Estates known as "Joint Lordship", "Tankerville", and "Lloyd", before 1923. As to this I have plan of the Joint Lordship in 1847 (EG/1), the 1920 conveyance of part of the Lloyd Estate (RGC/1), the 1922 conveyance of part of the Tankerville Estate (RGC/4) the 1923 conveyance of the Unit Land as part of the Joint Lordship (HH/10), and the 1953 particulars of sale of the remainder of the Joint Estate (HJ/2) and plan HH/20). From these documents I conclude:- The Unit Land was in and before 1923 part of the Joint Lordship; this Estate included some nearby lands on the west. The Joint Lordship was as to one undivided moiety in the same ownership as the Tankerville Estate, and as to the other undivided moiety in the same ownership as the Lloyd Estate. By the 1923 conveyance the Unit Land was conveyed by the owners of the Tankerville Estate and of the Lloyd Estate to the Trustees of the 1862 will of Jonah Harrop and a resettlement dated 12 February 1903 made by W E M Hulton-Harrop and others.

That it would be convenient for the owners of the Tankerville Estate and of the Lloyd Estate to own the Joint Lordship as tenants in common is obvious from the nature of the Unit Land and of its surroundings; it being usable conveniently for some purposes from the west and for other purposes from the east. A person holding part of the Joint Estate as a tenant of the owners could not before 1923 have a right of common over the Unit Land in any now relevant sense because such a right is as between owners in fee simple, and such owners were then the same persons; if any such tenant before 1923 grazed the Unit Land (as is both possible and perhaps likely) he would do so as tenant either in exercise of his rights under his tenancy agreement or on the sufferance of his landlords. There is I think no legal reason why the fee simple owner of the Tankerville Estate should not have had a right of grazing over the whole or any part of the joint Lordship of which he was tenant in common with the owner of the Lloyd Estate, but having regard to the situation and nature of these Estates such a right would be unusual; it would also be purposeless because as tenants in common the two owners could easily accommodate each other over any matter. Accordingly I decline to infer that these two owners in relation to each other in respect of the Joint Lordship ever had any rights more complicated than or additional to that of being a tenant in common. Upon these considerations I conclude that the rights now being disputed have not existed from time immemorial and cannot therefore be supported by prescription at common law.

I must therefore consider whether the grazing rights can be supported by 30 years' user as of right in accordance with the Prescription Act 1832, or by 20 years' user as of right sufficient to raise a presumption of a lost modern grant in accordance with Tehidy v Norman 1971 2 QB 528. By section 16(2) of the 1965 Act, the 30 years must be taken back from the objection (in this case 1970) and in my opinion the 20 years mentioned in Tehidy v Norman should be taken back from the same time.

The user relied on must be "as of right". As to this it was contended (as I understood Mr Mitchel and Mr Turner):- (1) the notices mentioned in the grounds of objection prevented the grazing being as of right, (2) it was impracticable to prevent persons grazing on the Unit Land therefore no grazing on it could be as of right, (3) the Unit Land was under the 1923 conveyance conveyed as a grouse moor, (4) the Unit Land was throughout known to be used as such by Captain Hulton-Harrop (the Gatten Estate was declared by the 1927 deed to be vested in him for an estate in fee simple, and he died on 1 August 1973) and (5) time did not run against him before 1966 because up to the 1966 Deed of Discharge he was not an absolute owner of the Gatten Estate but only tenant for life.

As to (1):- During the evidence of Mrs Griffith it was said by Mr Mitchell that one of the notices produced (HH/4) was put up on 28 July and disappeared on 29 July. I am not satisfied that any of the notices produced or mentioned were on the Unit Land for long enough to be of any significance. Further neither the notices produced (HH/1, 2 and 3) nor the copy notices made by Captain Hulton-Harrop (HH/9) are directed against persons grazing: in my opinion they were neither understood nor capable of being understood as being so directed, and are therefore irrelevant in this case.

As to (2):- Whether any grazing was as of right depends on the circumstances. The owner is not I think prejudiced by grazing by strays or by occasional grazing: but subject to any question there may be as to the circumstances, an owner may I think be prejudiced by grazing done openly (without any concealment) which would be actionable in legal proceedings if he commences no such proceedings, notwithstanding that it would be economically impracticable to fence against such grazing and would be troublesome to discover who was responsible for the grazing.

As to (3):- The 1923 conveyance (HH/10) is on the basis that under it Captain Hulton-Harrop trustees acquired the Unit Land free from grazing rights; so that without reference to the evidence sought to be put in as to what he thought about it being practically useless to the Gatten Estate except as a grouse moor, I accept that under the conveyance the trustees of Captain Hulton-Harrop did in effect acquire a grouse moor. But in my view this result did not put the Unit Land after 1923 in some special position under the Prescription Act 1832 or in relation to the legal principles applicable to a presumed lost grant above referred to.

As to (4):- If all the grazing rights registered were valid, the number of sheep which might be grazed would amount altogether to nearly 800. Grazing to such an extent is quite inconsistent with the amount of grass (and young heather) which could ever in the past have been (or I think ever likely to be in the future) growing on the Unit Land. Also it would be quite impracticable to shoot over the Unit Land with such a number of sheep. But I am not persuaded that the grouse shooting as described by Mr Hulton-Harrop, Mr Tanner and Lord Bridgeman was

inconsistent with anyone having (or with 3 or 4 persons having) a right(s) to graze on the Unit Land. Those having or claiming grazing rights may have put the owners of the Unit Land into difficulties: owing to the state of the fences animals put onto the Unit Land would almost certainly stray off it onto much of the adjoining land where the grazing was better (eg smallholding now abandoned); the owners of the Unit Land with a view to improving grouse shooting burnt some of the mature heather that would unavoidably provide for their animals more grass (probably more attractive grass), so that any attempt to improve the Unit Land as a grouse moor would be frustrated. Notwithstanding these difficulties, I am not persuaded that I should negate the existence of any grazing rights over the Unit Land on the ground that such grazing as in the past would be impossible. Lord Bridgeman and Mr Turner both spoke of there being sheep there when they shot over it, and from their evidence I would infer (I would also from what I saw during my inspection) that there has always been in places enough grass on the Unit Land to make it worth while for grazing for anyone to whom it was convenient and against whom there was not too much competition.

As to (5):- Section 7 of Prescription Act 1832 provides that time under it did not run against the person who is "tenant for life". Mr Turner referred me to Wade and Megarry, Law of Property (3rd edition) 851.* Notwithstanding that since the 1925 Property Acts no person can have a tenancy for life which is a legal estate, section 7 can I think still have some operation; but I reject the contention that a person who shows that he is under the Settled Land Act 1925 a person who under such Act has all the powers of a tenant for life thereby establishes that he is a tenant for life within the meaning of the 1832 Act. In my view the 1832 Act must be limited to persons who would in 1832 have then been properly described as tenants for life (now therefore limited to persons who have an equitable interest as such). From the deeds produced I think it likely that Captain Hulton-Harrop was for an equitable estate absolutely entitled subject [redacted] to some jointure or other family charge; however this may be, no document was produced showing that he only had an interest for life and I decline to infer that his interest was so limited from any of the deeds produced. Further, section 5 of the 1832 Act provides that any person who in answer to a claim under such Act relies on some incapacity must plead it; I consider that any person who in proceedings under the 1965 Act relies on section 7 should comply with section 5 by mentioning the incapacity in his grounds of objection.

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So having regard to the considerations set out above the validity of the rights claimed depends in my view upon the use which those claiming them and their predecessors in title have made of the Unit Land in relation to the lands to which each such right is said on the Register to be attached; and I must therefore deal with each right claimed separately, considering particularly the period after the conveyance of 12 March 1923 (HH/9) and before the date of the objection (June and September 1970 and December 1971), and bearing in mind that in law the right claimed must be by or through the person who owns the attached land for as estate in fee simple and who is not the same as the person who at the relevant time is the owner of the Unit Land for an estate in fee simple.

R/S Entry No. 18:- Applicant Mrs M Smith (tenant). Right claimed, to graze 80 sheep or 16 cattle. Attached land, 6 Pennerley Hill and 16 Pennerley Hill.

The grazing of which evidence was given was not always from the whole of the attached land so it is necessary to consider it in two parts. One part ("the original holding")

* See also 4th edition 1975 page 857.

being lots 30 and 43 in the 1953 particulars (EJ/2) and therein described as being then let to Mrs M Smith (lot 30 containing 6.499 acres, made up of pasture, arable, pasture, cottage and garden, and rough, and lot 43 containing 2.771 acres made up of pasture, site of old cottage and garden and part of Estate Road); total area of original holding is 9.270 acres. And the other ("the additional holding") being lot 27 then "in hand" containing 11.470 acres, lot 34 then "vacant possession" containing 20.887 acres, lot 45 then "vacant possession" containing 4.899 acres, and lot 46 then let to A Pugh containing 14.940 acres; the total area of the additional holding is 52.196 acres.

The 1953 conveyance (EJ/3) to Mary Smith was of the original holding and the additional holding together therein said to contain 61.476 acres; such conveyance mentions a conveyance dated 7 March 1957 from A H Beveridge and W C Woodley to J L Burton.

The evidence of Mr Jones (the son of Mrs M Smith) and of Mr G C Smith (her husband and his father) was (in effect) - they were married in 1932, and before she was married she was living on the old holding with her parents. They (the parents) moved and went to Perkins Beach; and from September 1932 Mr and Mrs Smith took on the place. Mr Jones was brought up there (he is now 47 years of age and was born at No. 6 Pennerley Hill). In 1952 he (Mr Jones) and Mr and Mrs Smith moved from No. 6 to No. 16 and thereafter they farmed the original holding and the additional holding as one. From sometime before 1932 his grandparents and parents were successively tenants of the old holding until 1952; and afterwards his parents or one of them until the 1973 conveyance when his mother became owner, were successively tenants of both the old holding and the new holding.

I accept the evidence of Mr Jones and Mr Smith that the Unit Land has been grazed from the original holding and the additional holding during the tenancies and ownership above described. To establish a right grazing from the old holding is for long enough, but ~~the~~ grazing from the new holding is for too short a period: in my opinion the grazing from the combined holding may for the purpose of establishing a right attached to the old holding be treated as being done in respect of the old holding notwithstanding that the combined holding was farmed as one farm and notwithstanding some of the animals being grazed may have come from or primarily from the new holding.

As I understood Mr Jones in relation to the Unit Land his idea was to turn much of the combined holding to productive use as he could (much of the holding is or was rough grass which he has already improved or is in the process of improving by the addition of fertilizers and otherwise), with the consequence that he wants to put as many animals as he can onto the Unit Land. However agriculturally meritorious this may be, unless he had a grazing right in respect of the combined holding at the date of registration (28 September 1969 application 21 April 1969) the measure of the right must in my view be by reference to the original holding and not to the combined holding. I reject the suggestion that Mr and Mrs Smith by enlarging their holding in 1952 automatically enlarged the right which was attached to the original holding for the benefit of the combined holding. To effect any such enlargement in the absence of any express grant from the owner of the Unit Land they must show some before 1952 use for the additional holding; of this there was no evidence.

As to numbers of the animals owned:- Mr Jones said that his parents and grandparents kept 4 to 6 cows and 25 to 30 sheep, on the original holding; at the time of the hearing they had 25 cows and 170 sheep out; in 1975, the date of the County Court proceedings below mentioned, he had 80 or 90 head of stock out. He said (mistakenly, I think) that the original holding was approximately 12 acres and that his present holding was approximately 90 acres. Mr Smith said that when he first knew Miss Jones (his wife in 1932) they had 2 or 3 cows and some sheep, that he started (1932) with 6 ewes and 1 cow, and evidently got up to 5 cows and 20 sheep, and so they grazed between 1932 and 1944.

Mention was made of some proceedings of Shrewsbury County Court and of an order dated 30 February 1975 (HJ/1). During my inspection from the additional holding I looked at a nearby part of the Gatten Estate which had apparently been at one time enclosed and which is not part of the Unit Land; it may be that the existence of this one time enclosure explains the difference between the areas given by Mr Jones in his evidence and the areas given in the 1953 Particulars (HJ/2) and the 1973 conveyance (HJ/3); however this may be, I am not persuaded that the February 1975 Order (which may only have been interlocutory) or anything that happened in these proceedings has any relevance to anything I have to decide. I therefore disregard them altogether.

On the considerations outlined above, my conclusion is that the registration at Entry No. 18 is excessive as regards number and should be reduced. There was little if any discussion at the hearing about numbers, either in respect of this Entry No.18 or the other Entry Nos which as appears below relate to rights which I consider have been established (that is at Entry Nos. 2 and 3). I see therefore no reason to [redacted] the 80 sheep or 16 cattle mentioned in Mrs Smith's application should not be considered a reliable figure for the combined holding; so I must apportion these numbers as best I can. I ought not I think to follow the numbers mentioned by Mr T C Smith in his evidence, because during his period, grazing might be limited to the availability of capital to buy animals rather than the extent of the right. And I ought not I think to treat the total acreages of the original holding and of the additional holding as decisive, because more of the latter was (so described in the 1953 Particulars) and is (as I saw on my inspection) rough, although now to some extent reclaimed. So any apportionment I make will be arbitrary. My decision is that "80 sheep or 16 cattle" should be reduced to "40 sheep or 8 cattle" and that the attached land should be limited to 6 Pennerley Hill as tenanted by Mrs M Smith in 1953, that is to lots 30 and 43 in the 1953 Particulars, and so modified the registration was rightly made. In my notice to the County Council as registration authority I shall describe 6 Pennerley Hill by reference to the Ordnance Map Nos used in the Particulars and set out at the end of this decision.

I record that in my view the circumstance that the registered right will be attached to the original holding will not make it unlawful for animals from the combined holding to be grazed in exercise of the right, provided that the number of animals and the circumstances in which they are grazed does not impose a burden on the Unit Land which would be greater than it would have been if they were grazed from the original holding.

R/S Entry No. 8. Applicant Mr R W Evans (tenant part and owner part). Right to graze 65 sheep or 13 cattle. Attached to Green Farm (several pieces of land west of the lower part of Perkins Beach).

Mr R W Evans in the course of his evidence said that he had not grazed the Hill since 1940, but his father had grazed it with sheep. When questioned by Mr Turner he said that he still pursued his grazing right, because he understood that the Hill was common land, except the far side of the Gatten Estate, and because sheep were allowed to wander at will. Although he had never exercised the right since 1940, he considered that the right was handed down to the owner of the property originally sold, but conceded that there was no specific reference to this in his deeds.

In my opinion I cannot on the evidence summarised above, properly presume the existence of the right claimed. My decision is therefore that this registration was not properly made.

R[illegible]/S[illegible] Entry No. 3. Applicant Mr R G Cook owner. Right to graze 50 sheep or 10 cattle. Attached to two (widely separated) pieces: (a) land about 500 yards long and 200 yards wide north of Blakemoorgate, and (b) land (7 Crowsnest Dingle; L shaped) held under two different titles adjoining the road between Snailbeach and The Stiperstones Village or adjoining the lower part of the Dingle.

In relation to his ownership of the attached land, Mr Cook referred to the following:- In respect of piece (a) the 1963 conveyance (RGC/3) by which it was conveyed by Mrs F Cook (his mother) to him, it having been acquired by Mr Robert Cook under the 1922 conveyance (RGC/4) from G M Earl of Tankerville with the concurrence of his Trustees. In respect of part of piece (b), (being up the Dingle a little way from the said road and being lot 1 in the 1953 Particulars, EJ/2) the 1953 conveyance (RGC/5) to him by A H Beveridge and another, of land containing 3.770 acres (in the 1953 Particulars said to be in the tenancy of Mr R G Cook). In respect of the remaining part of piece (b), being by the said road, the 1953 conveyance (RGC/2) to him by Alfred Lewis and the 1920 conveyance (RGC/1) by A H O Lloyd with the concurrence of his Trustees to Mr Thomas Lewis, both of land containing 4.997 acres.

Mr Cook said that he first ran sheep on the Hill in 1934 and had run stock continuously on the Hill ever since including the war years. Usually he had about 100 sheep on the Hill.

Mr Cook's oral evidence was very short and he was asked no questions by Mr Mitchell or Mr Turner, so I have no details of the tenancies before 1953 or of his relationship with Mr Robert Cook. However I infer from what he said (an inference that was confirmed by the impression I got not only at the hearing but also during my inspection) that he or one or both of his parents have been tenants of both pieces for many years before he became owner, and that when Mr Cook spoke of running stock on the Hill, he spoke of this as being done from both pieces.

On this evidence I find that the grazing rights claimed are established. Because he was asked no questions about numbers, I do not know why he registered for 50 sheep when usually he had more. However I have no reason for altering the numbers he chose to register. My decision is that that the registration was rightly made.

R/S Entry No. 2. Applicant Mr R I Chidley (owner). To graze 28 sheep or 5 cattle. Attached to Birch Hill.

R/S Entry No. 11. Applicant Mr W G Morgan (owner). To graze 25 sheep or 5 cattle attached to land between Birch Hill and the higher part of Perkins Beach.

Mrs Griffith, whose maiden name was Corfield, said (in effect):- Her parents and grandparents lived at Birch Hill. They kept stock and they put cattle and sheep on the Hill. Her grandmother owned it as she bought it from the Tankerville Estate.

By the 1962 Conveyance (RIC/2), J Corfield as surviving executor of Mrs Hannah Gwilliam (she died 6 September 1932) conveyed Birch Hill containing 12A. 3R. 23P. to Mr Ivor Ernest Chidley; by the 1976 Conveyance (RIC/1) he gave it to his son Mr R I Chidley. The 1962 Conveyance mentions a conveyance dated 25 May 1922 by the Rt Hon G M Earl of Tankerville to Mrs Hannah Gwilliam.

As to Birch Hill (R/S Entry No. 2), Mr R I Chidley said (in effect):- His holding was that referred to by Mrs Griffith as occupied by her grandmother. Since he had lived at Birch Hill (1962) he had run stock on the Hill; at that time he had about 20 sheep and no cattle; at present he had 199 sheep (including this years lambs; so he had about 80 breeding ewes). Since 1962 he had built up his stock from 20 to about 80 (as funds had become available by not selling ewe lambs).

Mr R I Chidley also produced the 1978 Conveyance (RIC/3) but he left me no copy and I have no note or recollection of its contents save that by it land was conveyed to him by Mr A J Evans. About this land he said (in effect):- Mr A J Evans was tenant and subsequently purchased; his son Mr Lawrence Evans and the witness helped Mr A J Evans with his sheep; fetching his two calves sometimes; they were on the common grazing. When he (the witness) started school 31 years ago, he remembered Mr A J Evans. He put his cows on the Hill; they roamed on the Hill and were collected each day to suckle the calves. He knew that he had stock for a period of about 10 years, but he could not speak too clearly.

Mr Chidley also mentioned Pennerley Farm of about 20 acres, which he bought in 1972.

As to the registration of Entry No. 2, on the evidence of Mr Chidley and Mrs Griffith I conclude that there has been grazing from Birch Hill on the Unit Land during the period of ownership of Mrs Gwilliam, her executors, and Messrs Chidley and that such grazing is enough for me to find as I do that the right claimed exists. I have no reason on the evidence of Mr Chidley either to raise or lower the numbers of animals mentioned in the registration. My decision is therefore that the registration was rightly made.

As to the registration at Entry No. 11, Mr Chidley had some difficulty with the map (M of A/1), first identifying Pennerley Hill Farm as being uncoloured land between the two parts of No. 18. then identified as being No. 19 (which on other evidence I find was in the tenancy of Mr Hotchkiss); however he ultimately agreed that the land of which he is the owner is that numbered 2 and 11a on the map.

I have no evidence as to how Mr Chidley claims under Mr W G Morgan and feel uncertain whether the 1978 Conveyance land comprised that referred to in Entry No. 11, some or

all of which seems to be part of lots 20 and 21 in the 1953 Particulars (HJ/2). However, treating Mr Chidley's claim apart from Birch Hill as being to a grazing right attached to whatever land was conveyed to him by the 1978 Conveyance, my conclusion is that the information he gave me about the grazing from such land is too vague and too uncertain to enable me to find that there has been grazing from it for a long enough period and with sufficient regularity on which to base a right of common.

If I am mistaken in thinking that any part of the land referred to in Entry No. 11 was comprised in the 1978 Conveyance then the position as regards this Entry No is that I have no evidence about it at all and accordingly the observations I make later in this decision about Entry Nos 1, 6, 7, 9, 16 and 17 are applicable. On either view my decision is therefore that this registration (at Entry No. 11) was not rightly made.

R/S Entry No. 5:- Applicant Mr Edwin Davies (tenant). Right to graze 14 sheep. Attached to No. 2 Blakemoorgate.

Mr Hampson in his evidence in support of this registration mentioned his concern at various times with three properties. (1) 6 Prospect Cottages:- This was the address of Mr Edwin Davies in 1968 (the date of registration); he was then (? when he died) 88 years of age. Mr Hampson who was born in 1936 and is the grandson of Mr Edwin Davies, lived there until his marriage. (2) White Banks:- This is the present address of Mr Hampson. He bought it in 1970 and it was then about 10 acres: in July 1975 he added to it by buying about 20 acres from Mr Derrick Evans. (3) No. 2 Blakemoorgate:- Mr Edwin Davies holds this under a tenancy agreement dated 7 November 1936 (M of A/3) and granted by Captain D M Hulton-Harrop; in this agreement it is described as 8 plots containing altogether 6.830 acres, one of which was "cottage and garden". There is an old dwellinghouse there now (remains of) 4.

Mr Hampson said (in effect):- Mr Edwin Davies lived at No. 2 Blakemoorgate at one time but left more than 20 years ago: he died 25 November 1971. He (Mr Hampson) succeeded to the tenancy and since 1972 has paid rent for it to the Forestry Commission. As to grazing, at present he has 100 ewes on his holding, which he grazes on the Common. This did not start when he went to White Banks; they have had sheep on the Stiperstones ever since he was a small child with his grandfather; they were then at 6 Prospect Cottages.

Mr Hampson made no attempt to correlate the grazing he described to any one or other of the three properties with which he was concerned, making it clear that in his view no such correlation was necessary because the Unit Land was "common", that he could therefore always claim a right for whatever land he owned (or I suppose held under a tenancy). "It was for the people of the Parish. I have done it ever since I have grown up. I have two children, they do it. It is a thing you live with. It has always been done. ...It was accepted by the Community. If you wished to put sheep up you could do so."

Mr Hampson described no grazing in relation to 2 Blakemoorgate particularly, being the only land with which I am concerned. As a boy he saw grazing from 6 Prospect Cottages, which I am told is by St Lukes Church, and he himself grazed from White Banks; in respect of neither of these properties has any registration been made. It may be that the 20 acres purchased by Mr Hampson in 1975 was part of the

Tankerville Farm in respect of which R/S Entry No. 4 was made on the application of Mr Derrick Evans; but he cannot rely on grazing from this farm because the Entry has been cancelled.

In my opinion, Mr Hampson's views as to the legal position are mistaken. The law does not recognise a right of common for any person or group of persons who happen to own or be a tenant of land in a parish to graze as many animals as "you could look after" on a common land. The circumstances of Mr Hampson may be mistaken as the legal basis of the grazing he described, would not prevent him claiming rights appurtenant to some particular piece of land if in fact grazing took place from it, see De la Warr v Miles (1881) 17 Ch. D. 535.

In the situation of 2 Blakemoorgate in relation to the Unit Land, it is perhaps likely that Mr Edwin Davies while he lived there grazed from it. But I have no evidence of this; Mr Hampson's statement that the grazing was done on "a family basis" is I think too vague.

2 Blakemoorgate is included in the land which was in 1923 part of the Gatten Estate and has since then been owned by the same persons as the Unit Land, see the 1923 conveyance and the 1927 and 1952 vesting deeds (HH/10, HH/11, and HH/12). So any grazing there may have been from 2 Blakemoorgate must either have been in exercise of a right already granted by the tenancy agreement or with the tolerance of the landlord under that agreement. Such grazing cannot amount to an exercise of a right of grazing attached to the freehold of the land so let over the Unit Land because both are now and as far as the evidence goes back always have been owned by the same person.

Mr Hampson did not give sufficient details of his method of grazing, for me to conclude that there had ever been grazing for the requisite period either from 6 Prospect Cottages or from White Banks which could in any way be regarded as independent of any grazing from 2 Blakemoorgate. I see therefore no reason for modifying the registration by substituting any other property for No. 2 Blakemoorgate.

At present I am inclined to the view that there never was any relevant grazing from 2 Blakemoorgate, even to establish that Mr Hampson has under the 1936 tenancy agreement a right as tenant as against his landlord to graze on the land surrounding the land let; but however this may be I have no jurisdiction to determine Mr Hampson's rights under the tenancy agreement (if he and the Executors of Captain Hulton-Harrop cannot agree this must be determined in other proceedings); and whatever such rights may be they are in my opinion not registrable under the 1965 Act, the expression "rights of common" used therein being in my view limited to rights held for an estate in fee simple.

Upon the considerations outlined above my decision is that the registration at Entry No. 5 was not rightly made.

R/S Entry No. 20. Applicant, Mr D A Davies (part tenant part owner). Right to graze 15 cows and their calves, 125 ewes and their lambs and 3 ponies. Attached to Knolls Farm.

Mr Davies after producing the 1953 Conveyance (DAD/1) under which Mrs Davies became the owner of about 63 acres of land (being the greater part of Knolls Farm) said

(in effect):- The north boundary is not fenced from the adjoining land. So it has been for about 45 years (he had known the Hill for about 27 years). He carried 38 cattle and 139 ewes (and followers, lambs with them). Of the farm there are 27½ acres open to the Hill. He had exercised the right since he bought it in 1953. He had 2 ponies there now (in addition to the cattle and sheep).

Mr Davies was questioned about (among other things) the boundary and his grazing. Along the boundary there is a ridge. He put up a wire fence about 14 years ago and reseeded the farm south of it. He had never known any other fence there. He had the farm off Mr Ditheridge who (he understood) had grazed the Hill for 15 years: his sheep were on the Hill when he (Mr Davies) took the farm (in 1953).

I need not record in detail his evidence about the boundary, because having walked along it with him, I have a clear idea of it. The 1953 Conveyance [redacted] land north of the road from the Bog to Ratlinghope; (a) an area of 11.406 acres between the road and the north boundary; (b) a triangular area of 10.922 acres which projects north-west from the north boundary, so that the east boundary of this triangular area is at right angles to the north boundary of 11.406 acres area; and (c) an area of 0.256 acres between the two. On the conveyance plan, both the said boundaries are marked with heavy black dots indicating a boundary line of some importance. Along this line there is now a substantial ridge such as is commonly made to mark a parish boundary or the like. From the north boundary, the nearest point of the Unit Land is little more than half a mile; some parts of the 10.922 triangular area may be a little closer. Between area (a) and (c) above, there is a gated track (? a public footpath) leading northward from the road in the direction of the Unit Land; along this track it would be possible to drive animals from Knolls Farm by way of the road. I understood from Mr Davies that he did not do this except occasionally, because (as was obvious during my inspection) the below mentioned wide gap is more convenient. There is no obvious access for the 10.922 acres triangular area to the Unit Land; so I am concerned only with what happened on and from the 11.406 acres area across the north boundary.

Along this boundary is the said ridge, which for the most part has on it or near it a substantial gorse hedge, for the most part impenetrable by animals. At one place there is a very wide gap, through which animals can pass easily; across this gap there is no gate (it would be too wide for a gate) and no sign of there being any fence such as Mr Davies said he put up in 1974. There are other gaps in the gorse hedge all much smaller, through one or possibly more which animals might pass, so far as not prevented by wire (the remains I suppose of the said fence); I need not I think deal with these smaller gaps, because the wide gap is (as I understood Mr Davies and as seemed obvious during my inspection) the place through which the animals passed to do the grazing relied on by Mr Davies to support the rights he claims.

I have to consider whether the grazing described by Mr Davies was in exercise of a right actually taken and enjoyed by persons claiming a right thereto (see section 1 of the 1832 Act), that is whether grazing he described was "as of right" within the legal meaning of these words.

By reason of the said wide gap, any animals put on the nearby part of Knolls Farm (Mr Davies said 27½ acres, but I think he must have meant 11.406 acres area) can leave the farm as and when they please. Mr Davies said in his evidence: 'They go all

over the Hill, I can't stop them; they go all over the place". By the Hill clearly he meant not only the Unit Land (or the south part of it) but also the large area being part of the Gatten Estate between the Unit Land and Knolls Farm.

In my opinion grazing by animals which escape or stray from a farm cannot be used to support a right; and it makes no difference that the animals are encouraged to escape or stray in a manner described by Mr Davies through a gap which he may have found to be there when he purchased and which he has since done nothing to close because it is through it that he "exercised" his rights. Any such grazing is necessarily uncontrolled and uncontrollable. In effect Mr Davies has enlarged Knolls Farm so as to include land on the other side of the north boundary; so that any animal from it can take possession of so much of the Gatten Estate as is between Knolls Farm and the nearest fence of the nearest enclosures. By such activities he is not in my opinion exercising any right, or doing anything which can properly be described "as of right": he has been merely doing something which on any view of the legal position must be wrong.

Mr Davies seemed to be unaware that the land over which he had registered a right (the Unit Land) was ½ a mile away from Knolls Farm and not coextensive with "the Hill" as he used these words. There was no evidence of any registration under the 1965 Act of "the Hill" as Mr Davies used these words, and I understood (and I now assume) that there has been none. It may be that Mr Davies made a mistake by not including in his application for registration the part of the Hill between Knolls Farm and the Unit Land, but I must take the registration as it now stands. So, if contrary to my opinion the grazing described by Mr Davies could be as of right, it could only be as grazing over the part of the Gatten Estate which adjoined Knolls Farm, near the said wide gap. Perhaps this part could be said to be large enough to include the Unit Land; but however this may be the grazing cannot in my view be ascribed to the Unit Land by itself, because the animals were never put there; they might at some time go onto the Unit Land but they would not necessarily do so and would at any rate in the first instance be more likely to graze on the land near to Knolls Farm which was not part of the Unit Land.

Further the grazing by Mr Davies since 1953 is for too short a period by itself to establish a right by use only. I find I am not persuaded by his statement of what Mr Ditheridge told him to extend the period ~~back~~ before 1953 because I have no idea as to how the Unit Land could have been grazed from Knolls Farm by Mr Ditheridge.

Upon the considerations set out above, my conclusion is that there is not and never has been over the Unit Land any right attached to Knolls Farm. My decisios is therefore that the registration was not rightly made.

R/S Entry No. 19. Applicant, Mr L J Hotchkiss (tenant). Right to graze 40 cattle and 200 sheep. Attached to Bog Hill Farm (part) and Rigmore Oak.

Mr Hotchkiss who is 51 years of age said (in effect):- He is and has been since 1950 the tenant of Bog Hill Farm (69 acres) and of Rigmore Oak (23 acres nearer the Hill); he succeeded his father. He agreed the 1923 tenancy agreement (M of A/4) by which Rigmore Oak Holding of 32A. 1R. 0P. were let to Mr Alfred Hotchkiss (the agreement has on it an endorsement dated 9.10.61 showing a surrender of part). At the time of the hearing he had 160 ewes and 20 cattle (up on sheep and down on cattle),

but none were then on the Hill. Prior to registration "we just turned out what we had got (on the Hill)... in my position I put them out when we need to; when the meadows are put up for hay (June, July, August)." Sheep have been grazed for as long as he could remember.

Rigmore Oak (23 acres) is and has been since 1923 part of the Gatten Estate, and so (as explained above in relation to Entry No. 5) there can be no registered right of common attached to Rigmore Oak over the Unit Land, they having been at all material times in the same ownership.

The part of Bog Hill Farm being the remainder of the attached land, is a field west of and adjoining the Gatten Estate boundary; this field (as I estimate from the map M of A/1) is about 10 acres. There is a gate from it across the boundary; this gate is about 600 yds from the nearest point of the Unit Land; Rigmore Oak is between the gate and the Unit Land. There is no legal reason why a right of common attached to this part of Bog Hill Farm should not exist over the Unit Land. But if I am to consider the validity of the registered right as regards this field without Rigmore Oak I must make some apportionment between them of the numbers registered. Bearing in mind that Rigmore Oak is much nearer to the Unit Land and has about twice the area, any apportionment could not be more favourable to Mr Hotchkiss than 10 cattle or 50 sheep for this field.

Even with these reduced numbers, on my inspection, it seemed to me that in no sensible way could animals be said to be grazed on the Unit Land in exercise of a right attached to the field. No explanation was given as to why the right was claimed as attached to this field rather than the whole of what is now Bog Hill Farm (it may be that Mr A Hotchkiss' interest was less than that of Mr L J Hotchkiss). To put animals onto the Unit Land from the field without putting them onto the land between the field and the Unit Land would be impracticable; in the course of the evidence Mr Hotchkiss made it clear that one of the practical difficulties of grazing the Hill was the absence of any fence over such a large area. My conclusion is that I ought to treat the grazing described by Mr Hotchkiss as being, so far as it relates to the Unit Land attributable to Rigmore Oak.

So in the result I have no evidence of any right of common attached to the field or to Bog Hill Farm and I need not therefore consider whether the registration ought to be modified by amending the description of the attached land. It may be that the grazing described by Mr Hotchkiss might form a basis for some claim by him that the 1923 tenancy should be treated as including a right to graze over the adjoining part of the Gatten Estate, possibly including the Unit Land. This is a matter over which I have no jurisdiction and which must in my view in the absence of agreement be determined in other proceedings; (see my observations in relation to a similar question arising in relation to Entry No. 5). On the above considerations I conclude that the right claimed either does not exist at all or is not a right of common within the meaning of the 1965 Act. My decision is therefore that the registration was not rightly made.

R/S Entry No. 12. Applicant Mr A J Parslow (owner part tenant part). Right to graze 5 sheep or one cow. Attached to (?) No. 2 Perkins Beach.

R/S Entry No. 13. Applicant Mr W B Parslow (owner). Right to graze 5 sheep or one cow. Attached to (?) 7 Perkins Beach.

R/S Entry No. 14. Applicant Mr W H Parslow (owner part tenant part). Right to graze 5 sheep or one cow. Attached to (?) 9 Perkins Beach.

R/S Entry No. 15. Applicant Mr H Roberts (owner). Right to graze 25 sheep or 5 cattle. Attached to (?) 19 Perkins Beach.

No person who applied for the above 4 registrations or who claimed under any such person gave evidence. However Mr R L Jones in the course of his evidence referred to some of them, saying (in effect):- From 1934-1946 he (Mr R L Jones) lived at No 18 Perkins Beach; he then moved to the Gate House, The Bogg, where he now lives; Mr H Jones who gave evidence as above summarised, is his nephew. While he (the witness) was at No. 18 Perkins Beach he exercised grazing rights (none had been registered from this property). Mr Wilfred Benjamin Purslow exercised rights from No. 7 Perkins Beach; so did his brother Mr Alan Joseph Purslow; they used to run sheep together on the Hill. There were not in 1946 the stock on the Hill that there are today; and fewer then than in 1930 (people were poorer in those days).

From the situation of the attached land mentioned in these 4 Entry Nos, it is likely that from time to time animals may from them have been put onto the Unit Land but in the absence of evidence in some way connected with these properties I am uncertain as to how this grazing was effected and by whom. I am not persuaded by the evidence of Mr R J Jones that the persons concerned with these lands grazed with such regularity or to such an extent or that they grazed at all after 1946 to the extent that I could properly conclude that the rights they claim exist. In the absence of other evidence about these lands, my decision is that these registrations were not rightly made.

R/S Entry No. 1. Applicant Mr E D D Chidley (owner part tenant part). Right to graze 20 sheep or 4 cattle. Attached to land at Myttonsbeach and (?) 5 Perkins Beach.

R/S Entry No. 6. Applicant Mr G E Evans (owner). Right to graze 18 sheep or 3 cattle. Attached to Black Hole.

R/S Entry No. 7. Applicant Mrs G M Evans (owner). Right to graze 55 sheep or 14 cattle. Attached to land just south of Hogstow.

R/S Entry No. 9. Applicant Mr E A Humphreys (owner). Right to graze 12 sheep or 2 cattle. Attached to land at the bottom of Myttonsbeach being (?) No. 1 Perkins Beach.

R/S Entry No. 10. Applicant Mr F G Lewis (owner). Right to graze 12 sheep or 2 cattle. Attached to land at Gorsty Bank.

R/S Entry No. 16. Applicant Mrs G V Rawson (owner). To graze 14 sheep or 3 cattle. Attached to land near the lower end of Myttonsbeach.

R/S Entry No. 17. Applicant Mr G V Stokes (owner). To graze 48 sheep or 9 cattle. Attached to land between The Stiperstones Village and Hogstow (? Stiperstones Farm).

About the above 6 registrations, I have no evidence at all. So it may be the descriptions I have given of the land to which the rights are attached are apt. However on my inspection, I saw something of their general nature and in relation to the Unit Land their situation. As explained above, I cannot on the general evidence given before me conclude that there is a right of common attached to land merely because it is in the Stiperstones Village. Accordingly in the absence of evidence I conclude that none of these rights exist and my decision is therefore that none of these registrations was rightly made.

R/S Entry Nos. 21 and 23 to 105. Applicants, various persons (owners). Right to pick whimberries. Right of common in gross.

Mrs Griffith who has lived in the area for 61 years said (in effect):- She could could remember being carried on the Hill when she was 3 years old. Every season there were some picking fruit: bilberries, blackberries, cowberries (sometimes called cranberries but not true cranberries) or wild raspberries. Everybody went; whole families went up before it was light in the mornings. For her the main purpose was not necessarily the fruit: "for walking and picnicking we went frequently". It (the Unit Land) is a wonderful place; visited by hundreds of people; it is a teaching area for schools and colleges. Other people (besides the applicants for the registrations) picked bilberries; crowds from all over Shropshire; the bilberries of Stiperstones are famous. "You could not keep them off". Whimberries is the local name for bilberries.

During my inspection, it was apparent that by far the greater part of the Unit Land is covered with bilberries or heather or a mixture of them; so much so that from a casual glance, it would be difficult to say whether there was at any place more bilberries than heather. I infer that persons living around the Unit Land would from time immemorial always have found enough fruit of bilberries for consumption by themselves or their families, and that they would always have been able to take whatever they wanted without objection by anyone. I also infer, as was I think mentioned at the hearing that some fruit have probably been taken by some people other than for personal consumption (for sale either as picked or after processing); but there was no evidence as to how much if at all this was done.

As I understood Mrs Griffith her evidence was for the purpose of establishing not that she had a unique right to pick whimberries but that the right was exercisable by everybody; meaning either any person who happened to be there on the Unit Land or any person living nearby or any person who applied for a registration. However as there are 84 separate and distinct rights registered, I must first consider whether on her evidence (there was none other relevant to her claim) the right she registered (at Entry No. 33; the same as the others), considered as being properly described by the words actually used on the Register, can exist and if so has been proved.

A right in gross cannot be supported by prescription at common law or under the 1832 Act, so that in the absence of an express grant by the owner of the land to the claimant or his or her predecessors in title, such right must be supported if at all by evidence, circumstances upon which such a grant can be presumed. Of such circumstances there was no evidence at all; no conveyance or other document dealing with a right in any way which would be likely if it existed was produced, and I infer there are none; indeed the use made of the land as described by Mrs Griffith is

inconsistent with either she or any group of persons including herself having any right such as in law could be described as a right of common in gross.

And the same considerations are equally applicable to all the other registrations, regarded as of rights of common in gross.

But I should not I think avoid the registrations merely because the applicants may have used the wrong words when they made applications. So I consider whether the registrations could be modified so as to include rights such as Mrs Griffith apparently supposed to exist exercisable by custom or by the inhabitants of the locality or in some similar way.

In general a right for a fluctuating and unascertainable body of persons (such as the inhabitants of a locality) to take a profit (eg fruit) from the land of another is not recognised by law, see Gatewards Case (1607) 6 Co. Rep. 59b. Exceptionally a fluctuating body of persons may take a profit under a charitable trust or if they can be presumed to have been incorporated, see Goodman v Saltash (1882) 7 App Cas. 633. But a claim to do things of this character cannot be supported by defacto practice even if it has existed from earliest memory if those doing the things relied on thought no-one would find them objectionable and the owner of the land tolerated them as being unobjectionable, see Beckett v Lyons 1967 1 Ch 449 at pages 468 and 475.

Having regard to the legal principles set out in the cases above cited, I conclude that the evidence given does not establish that there was over the Unit Land any rights such as might be supported on the evidence of Mrs Griffith and such as could by any modification which could lawfully be made to the registrations at these Entry Nos be properly registered under the 1965 Act as rights of common. My decision is that none of the registrations were rightly made.

As to the Land Section, I confirm the registration at Entry No 1 without any modification and as to the Pasture

Having regard to my decisions as above recorded, I confirm the registrations at Entries Nos. 2 and 3 without any modifications; I confirm the registrations at Entry No. 18 with the modification that for the words in column 4 "graze 80 sheep or 16 cattle" there be substituted graze "40 sheep or 8 cattle", and that for the supplemental map referred to in column 5 there be substituted a new supplemental map which removes from the land now edged blue thereon all land except that within the following description being by reference to the Ordnance map current in 1953 (the description is taken from lots 30 and 43 in the 1953 Particulars mentioned in this decision) that is to say:-

No 3797	Pasture	1.147	acres
3800	Arable	1.517	
3799	Pasture	1.063	
3801	Cottage and garden	.237	
Pt 3818	Rough	Est 2.535	
		6.499	acres
No 3872	Pasture	.759	acres
3863	do	1.718	
3864	Site of Old Cottage and garden	.119	
Pt 3855	Part of Estate Road	.175	
		2.771	acres
	Total	9.270	acres

And I refuse to confirm the registrations at Entry Nos. 1, 5 to 17 inclusive, 19 to 21 inclusive and 23 to 105 inclusive.

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.

SCHEDULE

(Documents produced)

Produced by:	Date	Description
Mrs Griffith		
EG/1	1847	Plan No. 3 (referred to in Tithe Award) of Joint Lordship in Upper and Nether Heath.
Minister of Agriculture, Fisheries & Food		
M of A/1		OS map (6 ins = 1 m), showing Unit Land, land leased to Minister 26 January 1966, dominant tenements and area of Hulton-Harrop Estate.
M of A/2		OS map (6 ins = 1 m), showing (as described in Tithe Award) yellow land owned by Earl of Tankerville, and brown land owned jointly by Earl of Tankerville and John Arthur Lloyd.
Mr Hulton-Harrop (referred to during evidence in support of registrations)		
HH/1		Notice (12 ins by 10 ins):- Game preserve. Persons using this track must not deviate from it ... prosecuted ... Gatten Estate.
HH/2		Notice (12 ins by 10 ins):- Game preserve. Private track, no public access ... prosecuted ... Gatten Estate.

HE/3		Notice (12 ins by 10 ins):- Game preserve. No admittance ... prosecuted ... public footpaths 300 yds (right): to Rigmore Oak (left).
Mr Jones		
HJ/1	13 February 1975	Copy order Shrewsbury County Court R H de L Hulton-Harrop and Another (Exors of Captain C H M Hulton-Harrop) and Minister of Agriculture Fisheries and Food v Mary Smith.
HJ/2	12 August 1953	Particulars of sale by auction of Joint Lordship and Tankerville Estates (64 lots).
HJ/3	8 June 1973	Conveyance by Realty and General Holdings to Mary Smith of land at Pennerley Hill containing about 61.476 acres.
HJ/4	18 July 1973	Deed of Gift by Mary Smith to herself and Henry Jones as joint tenants legally and beneficially.
Mr R G Cook		
RGC/1	1 November 1920	Conveyance by A H O Lloyd with a concurrence of trustees to Thomas Lewis ... and Secondly land part of Oakhill comprising about 5 acres "Rough Pasture".
RGC/2	10 February 1953	Conveyance by Alfred Lewis to Richard Gordon Cook of land part of Oakhill containing about 5 acres.
RGC/3	28 March 1963	Conveyance (voluntary) by Fanny Cook to Richard Gordon Cook of 21.722 acres (coloured pink on below-mentioned conveyance of 20 May 1922).
RGC/4	20 May 1922	Conveyance by G M Earl of Tankerville with the concurrence of Trustees to Robert Cook of land at Blakemoorgate containing 21.722 acres.

RGC/5	15 September 1953	Conveyance by A H Beveridge and W C Woodley to Richard Gordon Cook of Hill Pasture, Cottage Garden etc containing 3.770 acres (OS Nos. 624, 384, 385 and 386).
Mr R I Chidley		
RIC/1	17 November 1976	Deed of Gift by Ivor Ernest Chidley to R I Chidley of Birch Hill containing 12 a. 3 r. and 23 p.
RIC/2	6 September 1962	Conveyance by John Corfield to Ivor Ernest Chidley of Birch Hill containing 12 a. 3 r. and 23 p.
RIC/3	31 March 1978	Conveyance by Albert John Evans to Robert Ivor Chidley.
Minister of Agriculture, Fisheries and Food		
M of A/3	26 January 1966	Copy lease by Captain H G M Hulton-Harrop the concurrence of Trustee to the Minister of Land and Natural Resources of 398.274 acres in Worthen and 307.346 acres in Ratlinghope for 199 years at a yearly rent of £1.
M of A/4	31 March 1973	Copy of tenancy agreement by Trustees of late W E F Hulton-Harrop to Alfred Hodgkiss of the Rigmore Oak Holding containing 32 a. 1 r. 0 p.
Mr D A Davies		
DAD/1	2 December 1955	Conveyance by M W L Corry to Mrs M C Davies of about 63,072 acres of land at The Bog.
Mr R H D Hulton-Harrop		
HH/4		Extract from OS map (1/2,500) showing The Knolls.
HH/5	11 January 197	Letter from Sprott Stokes and Turnbull solicitors to A F Daborn with manuscript comment dated 15 January 1971 by D Hulton-Harrop (deceased).

HH/6	18 October 1972	Letter by D Hulton-Harrop to Mr Newell.
HH/7		Manuscript by D Hulton-Harrop headed Bilberry Picking.
HH/8	9 June 1971	Manuscript by D Hulton-Harrop.
HH/9	28 July 1964	Manuscript copy notices.
HH/10	12 March 1923	Conveyance by G M Earl of Tankerville and A H O Lloyd with the concurrence of their Trustees to H A Hulton-Harrop and others of 697.298 acres in Worthen as shown on the plan.
HH/11	1 July 1927	Vesting deed declaring that the Gatten Estate was vested in H D M Hulton-Harrop.
HH/12	18 November 1952	Vesting Deed declaring that lands wer held by H D M Hulton-Harrop on trusts of a trust instrument of 14 April 1932.
HH/13	26 November 1966	Deed of Discharge of Trustees.
HH/14	19 September 1973	Probate of Will of H D M Hulton-Harrop (he died 1 August 1973).
HH/20	1953	Agreed plan of joint Lordship Estate (lots as then offered for sale).
M of F/5	7 November	Tenancy agreement by H D M Hulton-Harrop to E Edwin Davies of 2 Blakemoorgate.
	11 September 1920	Extract from particulars of sale of 450 acres of land showing description (lot 4) of Hogstow Hall.

Dated this 27th day of February 1979

a. a. Baden Fuller.

Commons Commissioner

Corrected by inserting after the word "recorded" in line 1 of the last paragraph on page 19 the following words:- "as to the Land Section, I confirm the registration at Entry No1 called any modification, and as to the Rights Section:-"

a a Baden Fuller

9 March 1979