COMMONS REGISTRATION ACT 1965

Reference Nos. 233/D/1
233/D/2
233/D/3
233/D/4

In the Matter of Penn Common
Wombourne, South Staffordshire D.,
Staffordshire.

DECISION.

My decision (stating its effect shortly) is:- Of the 14 registrations of rights of common, 5 should be confirmed with some modifications, so that the rights registered will be exercisable for no more than (in respect of all 5 rights) 110 cattle or cows or (as regards 4 of the rights) the same number of horses or 5 times as many sheep. Of the 9 other registrations, 4 should be confirmed with some modifications, so that in the result the rights registered will (compared with the said 5 rights) be comparatively small and the remaining 5 registrations should not be confirmed. Penn Golf Club Limited are the owners of the land. They and the County Council should receive costs in respect of days 2 and 3 of the hearing taken up with a preliminary point on which they succeeded; but the Club should pay nearly all the costs of those who applied for or supported the registered rights which will be confirmed. The circumstances which give rise to these proceedings, my views on the questions which were argued and my other reasons for this decision are as follows.

These four disputes relate to the following registrations applicable to Register Unit No. CL.47 in the Register of Common Land maintained by the Staffordshire County Council, and are occasioned by the following Objections:- (D/1) at Entry No.1 in the Land Section by Objection No. 32 made by Mr. R.C. Chatham and noted in the Register on 27 October 1970; (D/2) at Entry Nos.1-14 in the Rights Section by Objection No.64 made by Penn Golf Club Limited and noted in the Register on 27 April 1972; (D/3) at Entry Nos. 1-14 in the Rights Section by the said Objection No. 32; and (D/4) at Entry No.1 in the Ownership Section by Objection No.66 made by Mrs. Phyllis May Pritchard and noted in the Register on 7 July 1972.

The land ("the Unit Land") comprised in this Register Unit is an area of grass land (with some trees and scrub) about ¾ of a mile long (from southwest to northeast) and contains (according to the below mentioned 1955 conveyance) about 131 acres. It is crossed by a tarmacadamed motor road (Sedgeley Road) which runs from Gospel End (a village on the south about a mile west of Sedgley) to Upper Penn (a larger village just outside Wolverhampton); this road where it crosses the Unit Land, a distance of about 1/3 of a mile, is unfenced. The Unit Land slopes from high ground on the north and northwest (to the north there are numerous dwelling houses on both sides of Sedgley Road) down to the low ground near Penn Brook on the south (the Brook except at the southeast and south west corners of the Unit Land is nearly everywhere between 60 and 100 yards south of it). The Unit Land is now over the most part, laid out as a golf course.

The 14 Entries in the Rights Section are summarised in Schedules 1 to 14 hereto. Penn Golf Club Limited is in the Ownership Section registered as owner. The grounds stated in Objection No. 32 (Mr. Chatham) are: "Object the land coloured green on enclosed map being included as Common Land. The area of coloured green is part of field to S.E. of area and has never been in public ownership or subject to common rights at the time of registration. The areacoloured green (including the portion shown black) forms part of PORCH COTTAGE owned by Mr. R.C. Chatham;" the land coloured green (as I scale the map) contains about 250 square yards. The grounds stated in Objection No.64 (Penn Golf Club Limited) are:- "In respect of each application objection is made as follows:- The applicant is not entitled to any common rights whatsover and in the alternative not entitled to the quantity or type of animals claimed". The grounds stated in Objection No. 66 (Mrs. Pritchard) are: "That Penn Golf Club Ltd was not at the date of Registration the Owner of Penn Common and therefore not entitled to claim ownership of Penn Common"; Mrs. Pritchard signs the form of objection "for and on behalf of Penn Commoners Committee".

I held a hearing for the purpose of inquiring into these disputes at Stafford on 13,14 and 15 November 1974 and 4,5,6 and 7 February 1975 and at London on 26 and 27 February 1975. At the hearing:- (1) Penn Golf Club Limited ("the Club") was represented by Mr. I. McCulloch of counsel instructed by Hall Wordley & Co. Solicitors of Wolverhampton; (2) South Staffordshire District Council (successors of Seisdon Rural District Council pursuant to whoseapplication the Entry in the Land Section was made) were represented by Mr. D. McEvoy of counsel instructed by Underhill Willcock & Taylor, Solicitors of Wolverhampton; (4) Mr. Alfred Thompson for the first part of the hearing attended in person (he claimed to be the owner, with his wife, of Porch Cottage and therefore concerned with Objection No. 32 as successor in title of Mr. R.C. Chatham); (5) the persons on whose application the 14 Entries in the Rights Section were made and certain persons claiming (in respect of Entry Nos.8 and 10) as successors in title of two of these applicants were either (a) represented or (b) attended in persons or (c) were not present or represented at all as set out at the beginning of each of the said 14 Schedules, Mr. D. McEvoy of counsel in respect of those he represented being instructed by Higgs & Son, solicitors of Brierley Hill, West Midlan (6)Wombourne Parish Council were represented by Mr. J. Beardmore and Mr. A.E. Heath; and (7) Staffordshire County Council were represented by Mr. C.T. Gray, solicitor of the County Clerk and Chief Executive's Department (Mr. B. Orgill and Mr. Pool acting for him some of the time).

As to the disputes (D/1 and D/3) occasioned by Objection No. 32 (Mr. Chatham), Mr. Thompson said that he now owns Porch Cottage as successor in title of Mr. Chatham; and all present or represented at the hearing agreed that I should give effect to the Objection. The land mentioned in it is now and has (so I understand) for sometime been fenced in as part of the land held with Porch Cottage; its area (when compared with that of the Unit Land) is very small; it may be that it was included in the registration because it is in some of the maps produced to me, shown as part of Penn Common. However this may be, I can I think properly regard the agreeing persons as representing all possible points of view and accordingly conclude that the land mentioned should be excluded from the Land Section of the Register.

Mr. McCulloch at the beginning of the hearing explained that the Club had not objected to the Entry in the Land Section because even if the entries in the Rights Section were invalid, the Unit Land is within paragraph (b) of the definition of common land in section 22(1) of the 1965 Act. Apart from

Objection No. 32 the Entry in the Land Section is not disputed. Accordingly I am concerned only to determine:the numerous questions as to the 14 Entries in the Rights Section arising out of the great quantity of evidence (some conflicting) and of arguments about these Entries (the number of these questions was considerably reduced by the agreements or concessions made in the course of the hearing as below mentioned);and the one question as to the Entry in the Ownership Section arising out of the evidence(comparatively little and not conflicting) of the ownership of the Club about which (although their ownership was never conceded) there was little if any argument.

As a preliminary point it was contended on behalf of Mrs. Pritchard and Mrs. Baker (Entries Nos 9 and 12) that the Club's Objection No. 64 dated 6 July 1972 was void (as least as regards these Entries) for the following reasons:- It was out of time having been made after the time limit for the making of objection to any first period registration; I was referred to Commons Commissioner's Regulations 1971 (S.I. No. 1971 No. 1727) and Commons Registration (Second Period References) Regulations 1973 (S.I. 1973 No. 815). Each of these two Entries was applied for during the first period and should therefore be deemed to be made during such period notwithstanding that the Entry may have in fact been written in the Register afterwards. Alternatively these Entries (or at least Entry No. 9; perhaps also Entries Nos.1-8) were registered during the first period, but there was in fact a subsequent unauthorised alteration of or interference with these original registrations.

As the Register now appears, the dates of entries (column 1) for Nos. 9 and 12 are "22nd October 1968" and"18th November 1969" and the dates of application (column 2) for the same numbers are "27th June 1968" and "28th June 19

Mrs. Pritchard in the course of her evidence on the preliminary point said (in effect):- Having been advised that the first period ended on 30 June 1968, she personally delivered her application to the County Council Offices on 28 June 1968. Some time in July 1968 she again visited the County Council Offices and was then shown something which she understood to be the Register; in it against CL.47 there were 9 entries, one of which related to herself and six of the others at least related to persons she named (being persons named in the Entries as they now appear); on an envelope (PMP.1; produced to me) she made a memorandum "Our registrations are in the book CL.47 they were put in on July 14". In 1970 an action was brought by the Club at Wolverhampton County Court against her , Mr. J. Pritchard and Mr. R.C. Chatham; the claim was for having wrongly entered on the common with sheep, cattle,motor vehicles, having interfered with persons playing golf and having damaged the golf course (The defence and counter claim alleged the defendants had rights of common). On 30 September 1970 (understanding that this was the last day for any objection) she then went to the offices of the County Council and again saw the register; the dates of the Entries were then as they had been when she saw them in the previous July. On 7 November 1970, the day fixed for the hearing of the action in the County Court, she discovered during a discussion with her counsel, that the Entries were not (as she had thought) final. She next saw the Register on 7 July 1972 (when she left at the offices of the County Council her Objection No.66) and was surprised to see that the Entries had been entered as made on 22 October 1968.

Mrs. Baker in the course of her oral evidence on the preliminary point said (in effect):- She posted her application form to the County Council on 26 June 1968; she understood that no fee was payable if they received it before 1 July 1968 (a £5 fee was payable if they received if afterwards). She received letters dated between 5 August 1968 and 17 June 1968 (copies of which were produced to me by the County Council) requesting her (among other things relating to her application) to provide a map.

Mr. A.D. Lowick, Secretary of the Litchfield and Rugby Branch of the National Farmers Union in the course of his oral evidence, explained how he had in 1968 (he was then secretary of the Staffordshire Branch) helped those who wanted to register rights over the Unit Land. He was amazed at the delay between the hearing of the application at the Council Offices and its entry in the Register. For a time he had acted as Honorary Secretary of the Penn Commoners Association. As an employee of the Union he had taken up their case and tried to reach some sort of solution to the differences between them and the Club.

Mr. J. Mackay who is a director of the Club said (in effect):- Sometime before June 1968 he inspected the Register and noticed the Entry (dated 15 February 1968) made in the Land Section; at that time the Rights Section was blank. Knowing that the first period ended on 30 June 1968, and because there was to be a board meeting of the Club on 3 July 1968 he on 1 or 2 July 1968 went to the County Offices to inspect the Register. It was then as he last saw it. Later in October or early November 1968 (before the annual general meeting of the Club held early in November), he again went to the County Offices to inspect the Register and noticed that the Rights Section had in it 9 or 10 Entries.

Mr. F. Gibbons, Mr. J.R. Stones and Mr. B. Orgill who are Principal Administrative Officers employed by the County Council in the County Clerk and Chief Executive's Department, gave oral evidence which was to the following effect:- The procedure for dealingwith registration under the 1965 Act was; first, every application made for a registration was recorded in a book ("the Application Book", this was produced to me); next the Office considered whether the application met the requirements of the Act; if it did not, they corresponded with the applicant as might be appropriate; if and when it did, it was included in the list transmitted to the Cannock Chase Sub-Committee of the Council for their approval; next if such approval was given it was included in a list(usually the same list) put before the Town and Country Planning Committee of the Council; the approval of this Committee was treated as an authority by the Council for an appropriate Entry to be made in the Register, and such an Entry was accordingly made as soon as possible after such approval had been given. The meetings of this (a) Sub-committee and (b) Committee next before and next after 1 July 1968 were on (a) 24 May and 3 October, and (b) 24 June and 21 October respectively. In the case of Register Unit No. CL.47 the applications leading to Entries Nos 1 - 9 were included in the list submitted to the meetings on 3 and 21 October, and were then approved. All the Entries Nos 1 to 9 as they now are (as are also some of the other Entries) in the handwriting of Mr. Stones. He was personally responsible for the making of all Entries in the Register at all relevant times before 12 January 1970; after that time Mr. Orgill was similarly responsible. Neither of them had ever made any unauthorised alteration or falsification of the Register at any time; as far as they knew, there had never been any Entry in the Register other than those made by Mr. Stones on 22 October 1968, in respect of the applications referred to in Entries Nos. 1 - 9.

All the witnesses dealing with this preliminary point were cross examined, some at length. Neither Mrs. Baker nor Mr. Lowick said anything in any way supporting the allegation that the Register had been altered or interfered with at all. I accept the evidence of Mr. Gibbons, Mr. Stones and Mr. Orgill; where there is a conflict I prefer their evidence to that of Mrs. Pritchard; in my opinion her record"...put in on July 14" was based on no reasonable grounds (perhaps it was based on something she heard and did not fully understand). I find that Entry Nos 1 - 9 inclusive in the Rights Section of this Register Unit were made by Mr. Stones on 22 October 1968 as described by him and that there was, in respect of the applications mentioned in these Entry Nos., never any Entry in the Register other than those made by him, on 22 October 1968. I also find that there was never any unauthorised alteration or interference with the Register in respect of this Register Unit (as far as I know) at all.

In my opinion the Commons Registration (General)Regulations 1966 (S.I. 1966 No.147) contemplate that there will be an interval between the date when the application is received by a registeration authority and the date when the appropriate entry is made in the Register. Under paragraph 9 of these regulations a registration authority may reject an application and must obviously have time to consider whether they will do so. The form prescribed for the Rights Section (Form 3 in Schedule 1 to the Regulations) provides for "date of entry" and "date of application" indicating that such dates might be different. The Commons Registration (General) (Amendment) Regulations 1968 (S.I. 1968 No. 658) provides for two objection periods (the first of which ends 30 September 1970 and provides that where a registration is made before 1 July 1968 objection to it shall not be entertained unless it is made during the first objection period; see paragraph 4 .
The 1968 regulations also prescribes an Objection Form with Notes attached (Form 26 in Schedule 1); in paragraph 4 of the Notes, under the hearing "Time limits for objections", it is expressly stated; "A registration is "made" on the date when it is entered in the Register, i.e. the date appearing in the left hand column on the register sheet". On these considerations I conclude that there is no foundation for the submission that a registration can or should be deemed to be made on the day when application to make it is received by a registration authority.

For the above reasons I reject the preliminary point.

On behalf of those who had registered rights, oral evidence was given by (1) Mr. J.A. Dowton, (2) Mrs. P.M. Pritchard (above mentioned), (3) Mrs I.U. Hazeldine, (4)Mrs. S.M. Lawton, (5) Mr.G.T. Cooper, (6) Mrs. J.M. Baker, (7) Mr. J.A. Russon, (8) Mr. R.C. Turner, (9) Mr. R. Sharwin. Also on their behalf written evidence was put in by (10) Mr. F.H. Reade, (an affidavit sworn on 12 November 1974), (11) Mrs. S.E. Russon (an affidavit sworn on 11 November 1974), (12) Mr. L.R. Leek (written proof of evidence; he was present at part of the hearing and to suit his convenience it was agreed that his proof would be treated as evidence by him), and (13) Mrs. F.M. Smith (written proof of evidence about which a similar agreement was made).

On behalf of the Club, oral evidence was given by Mr. J. Mackay (above mentioned) (2) Mrs. M. Walton and (3) Mr. T. Greenhouse. Also on their behalf written evidence was put in by (4) Mrs. M.L. Richards (an affidavit sworn on 18 May 1969) and (5) by Mr. W. Perry (an affidavit sworn on 7 February 1975).

I have in the first 14 schedules hereto summarised or noted such of the said evidence as appears to me to show use (or non use) of the Unit Land in accordance with corresponding Entry in the Rights Section. Before considering the ownership and Rights Entries separately, I will deal with the evidence which was of general character.

Mr. Downton who is 50 years of age, whose parents came to live at Brook Cottage in 1926 and continued living there until about 1957, in the course of his evidence said (in effect):- there were always a certain number of cattle and horses on the Unit Land. As he first remembered it, the race track used to be used for exercising horses. The Common was managed by a Commoners Committee; to be on it, as he first remembered it, you had to have a property; at a later date there were allowed to be on the Committee people who had interests in the common. He served on the Committee from 1950 to 1957, taking the place of his father who was for quite a few years a member of the Committee until his death in 1950. It was the job of the Committee to see to the ditches being kept open, to the gates being repaired and to the general maintenance of the Common. The Committee received £25 per year from the Club; this was used for the gates and ditches. The Committee tried to work the minding of the cattle between themselves so that there was always somebody in charge; some cattle used to stray, but usually they were not away long before they were got back. On bank holidays a lot of people came onto the Common, for picnics, games and general holidaying. The race course as far as he could remember was used by the riding school horses.

Mrs. Pritchard who has lived at Pear Tree Farm since 1963 did some researches into the history of the Unit Land at the Dudley Public Library, particularly among the papers relating to Lord Dudley. The documents which she asked me to look at are listed in the first part of Schedule 15 hereto. The most significant are the Tithe map of 1843 and the O.S. map of 1880 which show the general outline of the Unit Land to have been then much as now and the 1893 Press Cutting which show that a golf club was then intended to be established.

Mr. Turner who is 52 years of age and has all his life been farming or in some way concerned with Grange Farm (as to which see Schedule 6), said (in effect):- He was elected to the Commoners Association (meaning the Committee above mentioned) in 1952; they used to have meetings at the Club House. When the Club bought the Lord of the Manor's title he attended a meeting of the Commoners and Golfers at which it was asked whether purchase would make any difference to any grazing rights; the Club representatives said it would not make any difference. He was Chairman of the Commoners Association for 15 years and attended meetings helping (so he thought) to iron difficulties out. In his time nobody had ever received a summons for unlawful grazing so he believed the Unit Land to be Common Land. Before the Club purchased, the Duke of Sutherland was accepted as the Lord of the Manor and as the owner of the Unit Land; his Agent was aware that he (Mr. Turner) among others was exercising rights of common. At nearly every meeting with the Club, the effect of the fairways having been mown or enlarged, on the grazing, was the matter mainly discussed. The attitude of the Club was that anybody that had grazing rights could exercise them.

Mr. Reade who has lived on the common for 30 years since 1901 said (in effect):- There has never been any limitation of the number of animals which Commoners grazed on the Common. There were always at least 60 or 70 cattle, 12 horses, 12 goats and a lot of poultry kept on the Common at any time. No one had ever disputed the rights of the Commoners to keep their livestock on the Common. The only limitation of the Commoner's use of the Common was that the turf must never be cut.

Mrs. Russon who first lived at Sedgley with her family when she was a young child nearly 70 years ago; said "As long as I can remember Penn Common has been used as a Common and Penn Commoners have grazed their livestock on the Common".

Mr. Leek who was born on the Common 52 years ago and has lived there all his life said: "At one time there used to be at least 100 cattle and 40 goats grazing on the Common... The Common management was organised by a Commons Committee who would arrange for the ditches and pools to be cleared etc.. The common used to be very popular with weekend visitors... it was when the Golf Club greesman's kept turning people off the greens, that people stopped coming to Common.

Mr. Mackay said (in effect):- From 1966 when the Club was subjected to much interference, so he resolved to make it his task to find out as much as possible about the origin of the Common and the rights existing thereon and the position of the Club as regards the general public, the commoners and other interested parties. He had access to original documents deposited at the Staffordshire County Record Office, the Birmingham City Record Office, the Earl of Dudley's Archives, the Parish Chest, the Parish Registers and at the General Reference Libraries of Wolverhampton, Dudley, Bilston and Wednesbury. He had also had a search made of the British Museum Library for matters relating to Penn. He had studied various writings which he listed and many volumes of local history. The documents he had looked at are and of which he gave me copies or extracts or asked me to note or mentioned in a memorandum setting out his researched are(for the most part) listed in the Second Part of Schedule 15 hereto.

Mrs. Richards was born on 14 October 1878 and lived by the Common since that time said:"I can remember the various residents on the common over the years when I was a young girl and the rights of common exercised by the occupiers of the cottages on the common.

Mr. Perry who was born in 1911 and lived by the Common continuously ever since except for 6 years war service, described what he could remember about the common.

On 3 February 1975 I inspected the Unit Land, it having been agreed at the conclusion of the hearing on 15 November 1974, that I might do so unattended.

As to the Club's ownership of the Unit Land:-

They claim under the 1955 conveyance as successors in title of George Granvill, Duke of Sutherland. His title is supported by the 1955 declaration of Mr. Allum: mention is made of a deed dated 14 January 1927 under which the Duke's Lilleshall Estate was vested in him on certain trusts and a deed dated 10 August 1954 under which he became beneficially entitled. Before 1955 the Duke was reputed owner; his ownership is supported by the 1893 and 1913 Press Cuttings produced by Mrs. Pritchard. Since 1955 the Club as owner has used the Unit Land as a golf course.

There was no evidence contrary to that summarised above.

I conclude that the Club's ownership is established in accordance with the Entry made on their application in the Ownership Section of the Register subject only to the removal from the Land Section of the land mentioned in Objection No.32 made by Mr. Chatham.

As to the 14 Entries in the Rights Section:-

I first consider the evidence of a general character, which although not decisive, is in the respects below mentioned relevant on some aspects.

Of the general evidence given, Mr. Mackay's memorandum (he) was the most comprehensive. He appeared to have prepared it with much thought and case, and it will I think be of value to all interested in the history of the locality. However it is not open to me in this case to accept the historical conclusions he draws from the numerous documents to which he refers, unless I am satisfied that such conclusions are correct; that is, although the documents he produced or referred to are or may be evidence in their own right, the weight which I ought to give to them, is a matter which I must determine for myself.

Fortunately for me, I have little to do under this heading, because neither he nor anyone else on behalf of the Club suggested how any of his conclusions could help me directly to resolve the questions in issue. The documents were so I understood relied on as showing the historical background. As such I must give them some consideration.

Having since the hearing looked again at his memornadum and the copies or extracts which he gave me, of the documents he relies on, I adhere to the view which I formed at the hearing that from the documents made before 1700, I can deduce no more than that none of them show that rights of common over the Unit Land could not have existed from time immemorial. It may be that because some of the occupiers of the nearby land were only copyholders, customary freeholders, or possibly only merely leasehold tenants, that anygrazing rights they had were not annexed to freehold land owned by one person over the freehold land of another; nevertheless I can find nothing to show that grazing rights of a kind recognised by law could not have existed at all. Mrs. Pritchard and Mrs. Baker suggested that their rights could be traced back to the Earl of Dudley Grant of 1487; it maybe that an expert historian could do this; all I can say is that I have not on the information given to me, been able to do this, and as the case proceeded it became clear that there was no reason why I should try.

The Court Baron and Court of Survey 1717 for "Manerium de Penn Superior" recording the presentment of the homage, after stating the boundaries of the Manor, and recording certain amercements and other matters, continues:-

"And that the said Jurors do further present and say that there is a common called Penn Wood which they conceive may by One hundred and twenty acres or thereabouts for which certain tenanats or owners of lands and tenements lying and being within Over Penn aforesaid have time out of minde pay'd Quitt Rents or Rents of Assize called the Wood Rent or Dobbins Rent. The names of the persons so paying the same areas are as follows:- ..."

And here follows a list of eleven persons or tenements paying rents amounting altogether to £0-19-11. And after recording the extinguishment of a rent continues:-

"And the Tenants aforesaid have time out of minde gotten and carried away Ollars, Gorse, turves or any underwood out of the said Common called Penn Wood for their needful and necessary uses to be used on their said lands or tenements at all times and have (finally? time out of mind put onto the said Penn Wood all manner of commonable cattle at their wills and pleasures to common and depasture there and have used the same as common appendant to their said lands and tenements".

From the description of the bounds of the Manor, in the 1717 Survey I deduce that the south boundary (so far as now relevant) was Penn Brook, and that therefore all the lands, with which I am concerned were in 1717 within the Manor. There are a number of indications in the documents produced by Mr. Mackay that the Unit Land was formerly known as Penn Wood (e.g. the 1797 plan). I conclude accordingly that the 1717 Survey shows that the tenants therein mentioned then had rights of common appendant over the Unit Land. I incline to the view that it also shows the so called tenants were not copyholders but holding under grants made before the Statute of Quia Emptores, customary freeholders.

No attempt was made by Mr. McEvoy to trace the rights he supported back to the 1717 Survey. Even assuming that nobody can now do such tracing, I am not I think precluded by this Survey or indeed by any of the earlier or later documents produced or referred to by Mr. Mackay from presuming in accordance with the law the grazing below mentioned as having been exercised and the below mentioned documents of title of those who claim such rights, have been exercised from time immemorial or have been granted by a grant made long ago and since lost; or from or presuming that such rights have been confirmed by such a grant so far as might be necessary to get rid of any defect which may in 1717 have existed because the persons then entitled to graze did not then hold their lands in common socage or because their lands were then the same freehold ownership as the Unit Land.

So in the result I shall in this decision make little use of Mr. Mackay's researches. However, they may not have been wasted, because he at least established for the benefit of the Club what could not be learnt from the old documents about rights of common on the Unit Land. And for this the Club should I think, be grateful (as I am) forthe time and trouble he has taken.

I am concerned to determine whether the grazing of the Unit Land as described by the other witnesses was as of right, an expression which may be paraphased (with some loss of accuracy) as meaning use which was neither violent, nor secret nor by permission.

I am satisfied that the Duke of Sutherland was the owner of the Unit Land for sometime before 1917 up to 1955; this ownership will be relevant when I come to consider particularly the Entries No.11 and 12. Apart from this and the points made particularly by Mr, McCulloch in relation to Entry No.6 (alleged permission) and Entry No.9 (alleged violence) I can deal with the evidence about "as of right" as regards all Entries together.

Up to the 1955 conveyance the Club was never more than a licensee of the Duke. From the 1893 Press cuttings and 1896-1939 Minute Book I infer that between 1896 and 1908 at least the Club was paying an acknowledgement rent to the Commoners, so that up to 1908 at least, the golfers as against the commoners were not playing golf as of right. The Club continued to pay money to the Commoners at least up to 1955; although I need not determine whether up to then the Club ever as against the Commoners played golf as of right, the evidence about the Commoners Committee establishes I think that up to 1955 at least those represented by such Committee were as against the Club always grazing as of right.

Before 1955 the Duke had as Agents not only Colonel Stanier and Mr. Jones mentioned later in this decision but also a bailiff who lived locally, a Mr Roden (I think two of that name in succession, see the 1908 draft appointment). The Duke's representatives knew that the Unit Land was being grazed and did not in any now relevant way do anything about it. The cases cited below show I think in law mere knowledge unnaccompanied by words or action of some kind is not permission in any way now relevant sense.

The only direct evidence I have as to the persons reputed to be represented before 1955 by the Commoners Committee is the memorandum of the meeting on 20 July 1954 in which appeared a list of persons having "existing commonat rights by virtue of living on the edge of the Common". On the aspect with which I am now dealing it matters not whether the rights which any persons believes they were exercising are recognised by law, see de la Warr v Miles (1881) 17 Ch.D.535. Taking into consideration the 1717 Survey, the appearance of the Unit Land as it now is and as I can infer it used to be and the improbability of so many persons for so many years grazing as described when they or anyone else thought it unlawful, I conclude that all grazing on the Unit Land described by any witness as having been done before 1955 from any land which edges on the Unit Land and was within the Manor of Upper Penn as described in the 1717 Survey was as of right.

Mr. Turner said that the Club at the meeting in 1954 said that their acquisition of the Unit Land would make no difference, on this aspect of the matter there is no reason why it should; there being no contrary evidence, I conclude that up to the 1965 Act all the grazing continued as of right.

Under the 1965 Act I am for the purpose of the Prescription Act 1832 concerned only with the exercise as of right before 17 April 1972 (the date of the Club's Objection), see section 16. Because the 1832 Act was not (or not much)

relied on, this date may not have much significance; however clearly what happened afterwards is irrelevant.

Mr. Mackay said (in effect):- After the 1965 Act or after 1966 when he was appointed by the Club to deal with it, his discussions were mainly with Mr. Turner and Mrs. Lawton. Mr. Turner said in effect: "The Commons business will be coming up and we will be claiming our rights", and as regards himself he said (in effect):- "the Duke's Agent had said he could graze; and when they (the Chidlows) bought the farm there had been grazing and the Duke's Agent had then said: you can carry on grazing as you have been doing. " Mrs. Lawton said (in effec "you know we have common rights". His (Mr. Mackay's) relations with them were very amicable; his reaction to them was that they would have to prove their claims. He had similar discussions with (after the Clubs objection) Mr. Timmins, (before or after Mrs. Baker and (in 1972 by telephone) Mr. Russon; he had no such discussion with either Mr. or Mrs. Pritchard. His (Mr. Mackay's) attitude was always: "the Club objects to all claimants as a matter of principle; if you have rights you must prove them when the time comes. " As to identifying the animals grazing, his difficulty was that you could never tell who owned the animals unless you saw somebody tending them or saw them put out or taken in: some animals were left out all night, so he did not know who owned them. He learned at the hearing for the first time that Mr. Timmins sometimes tended animals which he did not own.

In my view any grazing being done by Mr. Turner, Mrs Lawton or Mrs. Baker or anyone else which was of right before Mr. Mackay had the discussions as outlined above, continued afterwards to be as of right. But the correctness of my view is I think of no importance beeause the periods fixed by the Prescription Act 1832 were not relied on, and in relation to the evidence by law required to support a presumption of a right ~~may~~ been exercised from time immemorial or under a lost grant, the discussion could not I think be of any weight when balanced against long use before the 1965 Act was enacted. as of right

In my view the grazing described by the witness was never subject to any interruption within any now relevant meaning of the word. When I inspected the land, there were some pieces of fence here and there, but none to prevent an animal going anywhere. Mr. Mackay said that although there may have been some fences erected during the constructions of some tees and greens his attitude had been at all times that any fence was illegal. Some of the grass (particularly on or near the greens) had evidently been much improved by the way the greens had bee laid out and kept; but the mowing of the green would diminish any resulting grazing advantage; whether on balance the grazing would have been better if the greens had never been made was a question not pursued at the hearing, rightly I think because there was no evidence that their construction or maintenance was ever intended by the Club to interfere with the grazing.

In my opinion I cannot properly conclude on any general evidence that all persons who have land on the edge of the Unit Land have a right of grazing. Even if (which I doubt) a right as so defined is recognised by law, there was no evidence to support it. Walking round the Unit Land, I was struck by the variety of dwelling houses fronting on or having access to the Unit Land. Although it seemed to me highly probable that some had grazing rights, it also seems to be highly probable that some had none. So to determine whether any rights are attached to any of the lands mentioned in the 14 Entries I must consider the circumstances of each piece of land separately.

My consideration of the Entries has been made easier by the concessions made by Mr. McCullock on day 5 of the hearing that I should confirm Entry No.3 (Mr. Turner) without modification, and the agreement made between him and Mr. McEvoy on the same day that I should confirm Entry Nos. 5 and 14 (Mr. Cooper and Mr. Richardson) with the modifications below mentioned and the further agreement ("the Number Agreement") that if I should find that grazing rights supported by the persons represented by Mr. McEvoy existed at all I should as regards the number of animals modify the registration of such rights so that for each acre of land to which the right is attached there is grazing for 8 cows or an equivalent number of immature cattle or an equivalent number of sheep and horses in accordance with the scale 1 cow = 1 horse = 5 sheep On day 7 of the hearing, Mr. Sharwin on behalf of himself and Mrs. Sharwin concurred in the (Agreement ~~about this~~ (Number) ~~of animals~~ as regards Entry No.1. On day 8 of the hearing Mr. McCulloch conceded that Entry No.11 (Mr. Russon) would not be objectionable if limited to grazing 4 goats.

As to Entry No.3 (Mr. Turner. 10 goats and 20 geese from 11 Turf Cottages):- The concessions above mentioned was accepted by Mr. Turner. There is no reason why I should not act on it. Accordingly I decide that this registration was properly made and requires no modification.

As to Entry No.6 (Mrs & Miss Chidlow, 30 cattle from Grange Farm):- Mr. McCulloch contended that the grazing of the Unit Land from Grange Farm was pursuant to an oral permission granted by the Duke's Agent operating certainly until 1955 (the Duke then sold the Unit Land by the Club) and that this prevented any grazing right ever being acquired by prescription or (as I understood the contention) at all. The only evidence of any such permission was given by Mr. Turner.

Mr. Turner in the course of his cross-examination by Mr. McCullock agreed with him that I (The Commissioner) might assume that prior to 1918 there was grazing over the Unit Land "with the permission of the Duke's Agent by the Chidlows (among others) and that after that the Duke's Agent never stopped them" and also agreed that before he took over Grange Farm in 1949, the cattle had been turned out from Grange Farm "because Colonel Stainer (the Duke's Agent) had said it was alright to do so."

Permission is a word which in ordinary speech has many shades of meaning; the only "permission" with which I am concerned is a permission which would prevent any grazing from Grange Farm being "as of right" within the meaning of that expression as used in the Prescription Act 1832 and in the judgements of the Court when considering whether a grant of a right of grazing may be presumed from the owner and occupier having over a period actually grazed the alleged common land.

In Tickle v Brown (1836) 4 Ad & El.369, Denham C.J. said "Enjoyment as of right must mean enjoyment had not...by permission asked for from time to time on each occasions or even on many occasions of using it". In De la Warr v Miles (1881) 17 ChD.533, Cotton L.J. said "...in my opinion if there is permission from time to time given and accepted during the period relied upon,

that does prevent...the acts being done as of right...". In Gardner v Hodgson (1903) A.C. 229, Lord Lindley said "A temporary permission although often renewed would prevent an enjoyment from being as of right, but a permanent irrevocable permission attributable to a lost grant would not have the same effect". From these observations I conclude that not everything which can be described as a "permission", within any of the possible meanings of this word, is enough to prevent the act permitted from being done "as of right". If this was so the Judges, above quoted would not have qualified the word "permission" as they did.

An owner of land who knows that his land is being grazed and does nothing to indicate to the grazier that his grazing is objectionable, cannot I think thereafter say that the grazing was with his permission in any now relevant sense. Whether an owner who tells a grazier that his grazing is "alright", is giving a permission effectual to prevent the grazing as of right depends on the context in which the word "alright" is used.

Mr. Turner said that he himself only had two conversations with the Duke's Agent as to the right of himself or anyone else to graze. Shortly after he became tenant (in 1949) he asked Mr. Jones (the Duke's Agent) if it was alright about his grazing on the Common, and Mr. Joned said "yes". The other conversation he had with the Duke's Agent was not on his own behalf and related to a pony which someone living in the Village wished to graze; on that occasion the Duke's Agent said "If you have grazed on the Common, nobody can stop you". In the course of his evidence Mr. Turner said "When they (his grandparents) took the Farm(they purchased it in 1917) the Duke of Sutherland's Agent (Colonel Stanier) said that they had grazing rights. Mr. Turner was born after 1917, so he must have got this information directly or indirectly from his grandparents,

Bearing in mind that Mr. Turner also said that the Duke's Agent knew that he had been grazing between 1949 and 1959 and that he never again asked the Duke's Agent ~~again~~ whether such grazing was alright and the Duke's Agent never said to him that it was not alright and having regard to the context in which Mr. Turner during his evidence described his conversation with Mr. Jones, I conclude that each conversation was much longer than described by Mr. Turner, that on the first occasion Mr. Jones knew Mr. Turner's relationship to the Chidlows and knew ~~about~~ what Mr. Turner thought Colonel Stanier said and that Mr. Jones used the word "alright" in the sense that he considered grazing by Mr. Turner as tenant of Grange Farm was alright because those occupying the land now comprising Grange Farm had from it always grazed the Unit Land, and did not use the word "alright" in the sense that Mr. Jones was then as Duke's Agent giving Mr. Turner permission to do something which apart from such permission he would have had no right to do. I attach no significance to Mr. Turners agreement that the grazing before 1949 was "because" the Duke's Agent (Colonel Stanier) said it was "alright"; in the context in which he agreed this form of words put to him in cross examination it was clear that he meant that he thought the grazing by his grandparents was lawful because the Duke's Agent had told his grandparents when they purchased in 1917 that it would be.

Mr. Turner on behalf of Mrs & Miss Chidlow argued the law not at all; nevertheless what he said impliedly raised the question whether the 1918 conveyance by the Duke conveyed to his uncles and grandmother not only Manor Farm but also a grazing right over the Unit Land.

The conveyance contains the words "TOGETHER with all...rights privileges, and advantages appertaining or reputed to appertain to the hereditaments hereby granted ...or enjoyed therewith...or which the owners or occupiers thereof would have been entitled to enjoy as against the owners or occupiers of the adjoining or adjacent premisesin case the said hereditaments hereby granted had at all times previously been occupied and owned in fee simple by persons other than the occupiers and owners in fee simple of the said adjoining or adjacent premises and all other matters or things mentioned in Section 6 of the Conveyancing and Law of Property Act 1881".

It is settled law that the words above quoted are not by themselves evidence that any right privilege or advantage capable of being passed or granted under them in fact existed. However the judgements of the Court of Appeal Baring v Abingdon 1892 2 Ch.374 show that such words may be read as an effective grant by the Duke of a grazing right if the privilege or advantage of grazing was actually being enjoyed at the time when the conveyance was made.

I cannot I think treat Mr. Turner's statement that Colonel Stanier told his grandparents that they had grazing rights by itself as evidence that they in 1918 enjoyed this advantage, because Mr. Turner was not then born and could not therefore have personal knowledge of this. However the fact that Mr. Turner visited his grandparents as a boy, and has always been a farmer, and has always understood that Colonel Stanier did tell his grandparents that they had these rights is a matter which I can properly take into in account in evaluaing the effect of Mr. Turner's dealings with the other persons, because no doubt such other persons would in the course of their discussions with **him** have learnt what he had always believed. Mr. Turner's conversation with Mr. Jones in 1949 above recorded is I think significant; Mr. Jones said that it was "alright because as I have found (see above) he believed that those from Grange Farm had always grazed on the Unit Land. Mr. Turner himself grazed from Grange Farm on the Unit Land from 1949-1959. Mr. Turner was a representative commoner and for sometime their chairman; he would not I think have held this position by reason only of his right to graze at least 10 goats and 30 geese from 11 Turf Cottages. Mr. Turner was accepted by the Club as a representative of the Commoners when he attended the meeting in 1954. Before 1918 Grange Farm (it was then part of Manor Farm) had (as it has now) easy access to the Unit Land, so grazing from it on the Unit Land would be convenient and advantageous. There was evidence that the others before 1918 not tenants of the Duke, grazed on the Unit Land, so it would in 1918 and before have been practically impossible to prevent those at Manor Farm from grazing on the Unit Land as they pleased; further there was never any reason why the Duke or those acting for him should wish to stop any such grazing; for why should not his tenants enjoy over his land the same rights as those who were not his tenants were enjoying.

The only evidence I have against the Chidlows grazing from Grange Farm was the written evidence summarised in Schedule 6. From the evidence of Mr. Downton (mentioned in schedule 3) I infer that although it was known that Mr. Turner and the Chidlows were related, there was some confusion as to the graz effected from 11 Turf Cottages and from Grange Farm; further Entry No.6 is itself

as confusing, because although Mrs & Miss Chidlow are Mr. Turner's landlords, it was no part of their case that they themselves had ever exercised a right of grazing (otherwise than by Mr. Turner as their tenant). I am not therefore persuaded by this written evidence to reach any conclusion contrary to that which I would reach from the oral evidence of Mr. Turner and Mr. Downton both of whom I regard as being reliable.

The 1917 Particulars show that "S. and S. Chidlow" were the tenants of Manor Farm when it was offered for sale by auction; Mr. Turner identified these tenants as his grandparents. I find on the considerations summarised above that they at the time of the sale and of the subsequent conveyance [illegible] they as occupiers of Manor Farm were enjoying the advantage or privilege of grazing over the Unit Land. This conclusion is consistent with the assumption which Mr. McCulloch in the course of his cross examination of Mr. Turner asked him to make, that "prior to 1918 the Chidlows were grazing the Common with the permission of the Duke's Agent and after that the Duke's Agent did not stop them".

As regards the general words above quoted from the 1918 conveyance, that the advantage or privilege was with the permission of the Duke's Agent is irrelevant because such words do not require the advantage or privilege to be as of right. Nevertheless such permission is I think for rather than against the parties having an intention that the conveyance should operate as a grant of the right now claimed.

On the considerations outlined above I conclude that a right of grazing over the Unit Land attached to Manor Farm in 1918 came into existence by the operation of an actual grant contained in the 1918 conveyance and made by the Duke (he then being a person entitled to make it).
Mr. Turner explained that the parts of Manor Farm more remote from the Unit Land and including the old farm house, have been sold by the Chidlows (much of them for building purposes). There was no evidence that these sales were effected in ~~such a way as~~ such a way as to diminish the right of grazing which could properly be apportioned to the land retained, and I conclude that such right has since 1918 been and was in 1968 (the date of registration) attached to the land now known as Grange Farm.
This land contains about 38 acres. In respect of it a right to graze 30 cattle had been registered. Mr. Turner said that he at one time grazed as many as 37 cattle. Because they have made the Number Agreement I had no legal argument from Mr. McCulloch and Mr. McEvoy about how I should determine the numbers which ought to be set out in the Register. On any basis which I can think of, a claim to graze 30 cattle in respect 38 acres of land is modest; if I applied the scale agreed between Mr. McCulloch and Mr. Mc.Evoy as regard the Entries supported by Mr. McEvoy, Mrs and Miss Chidlow could have registered a right to graze more than 200 cattle. In my opinion the figure 30 is unobjectionable.

I decide therefore that the registration at Entry No.6 was rightly made and ought not to be modified in any way.

As to Entry No.11 (Mr. Russon from 54 Sedgley Road):-

From the 1968 conveyance and the present appearance of the land, I deduce that Mr. Russon's present holding is a combination of land with a house (54 Sedgley Road, the most southerly of a row) acquired by his father in 1943 and a field containing about 0.6 acres acquired by his father in two pieces from Mr. Ferderick Chidlow in 1948 and 1953. He dated the house (obviously not old) at about 1930.or . It was not suggested (rightl I think, because it is unlikely that there would ever have been any such intention in 1948 and 1953) that a right of grazing, or any part of the right of grazing which Mr. F. Chidlow had under the 1918 conveyance made by the Duke of Sutherland passed to Mr. Russon's father in 1948 and 1953.

Mr. Russon's explanation of his application to graze 20 cattle was that he thought that this covered "sheep, goats and pigs". There was no evidence that cattle or sheep had ever been grazed from his field on the Unit Land.

Although Mr. Russon's horses may have been grazed for a short time while his father was the owner, I am not persuaded by any evidence given by Mr. Russon that the grazing of horses was for a sufficiently long period or for a sufficient amount for me to presume that a right so to graze was ever made.

Mr. Russon described how he and his father before him had grazed goats from his holding on the Unit Land. I need not consider whether I would on such evidence have found that Mr. Russon had established a right under the Prescription Act 1832 or otherwise, because Mr. McCulloch had established a right under the Prescription Act 1832 or otherwise, because Mr. McCulloch on day 9 of the hearing said that he would not object to 4 goats. I am not persuaded by anything in the evidence of Mr. Russon that he had under the 1832 Act or otherwise the right to graze any larger number of goats or any other animal.

While Mr. Russon was being examined by Mr. McEvoy, Mr. McCulloch said he accepted ducks, goats and geese. For this reason I ought not I think to modify the Entry as to birds.

Accordingly my decision is that this Entry was rightly made but should be modified so as to limit the grazing animals to 4 goats, but unmodified as to geese and ducks.

As to Entry No.12 (Mrs. Baker from Brook Cottage):-

Mrs. Baker after April 1962 grazed as stated by her (see Schedule 12). She explained that her land had been certified by the Caravan Club as an overnight stop for 5 caravans, that she had (as I understood in recent years) given up cattle and put out horses instead; they are "our horses", but she does also stable and graze (not full time livery) other horses, in varying numbers up to 7 or 8, but 5 or 6 would be more usual, all of which graze on the Unit Land. Notwithstanding that she varied the grazing, she grazed the Unit Land according to her inclination and business opportunities.

Her evidence is confirmed by the written evidence of Mr. Leek, and Mrs. Richards, I am satisfied that she grazed the Unit Land at all relevant times after April 1962.

As to grazing between 1926 and 1957, I have the evidence of Mr. Downton as set out in Schedule 12 hereto. The written evidence of Mrs. Richards is contrary to what he told me orally. When she made her affidavit she was 89 years of age, and she must have been helped in its preparation, unfortunately it gives no idea as to how she would have expressed herself if she had given her evidence orally; she died 2 years ago. Without intending to reflect on her truthfulness or the good faith of those who prepared her affidavit, I consider her statements as of little weight where they conflict with reliable evidence given to me by a witness who attended the hearing and submitted to cross examination.

Mr. Perry in his written evidence does not distinctly say that the Mr. Downton he mentions did not graze his cows on the Unit Land and I can give his evidence on this point no more weight than that of Mrs. Richards.

I think the evidence of Mr. Downton reliable, and I prefer it to that of Mrs. Richards and Mr. Perry. He is confirmed by the evidence of Mr. Reade and Mr. Leek. I am satisfied that Mr. Downton and his predecessors who occupied Brook Cottage did graze the Unit Land between 1927 and 1957.

As to grazing between 1957 to 1962 I have Mrs. Richard's evidence abou Mr. & Mrs. Burke as set out in Schedule 12, and Mrs. Baker's evidence as to how matters stood when she purchased. The situation and appearance of the Brook Cottage land in relation to the Unit Land is such that it is likely that the Unit Land would always be grazed from such land. I am satisfied that the Burkes grazed the Unit Land between 1957 and 1962.

Grazing from 1927 to 1972 raises a prima facie case for presuming that an effective grant of a right of grazing was made at some time before 1927. However the 1917 Particulars show that the part of Brook Cottage land north of Penn Brook was then in the ownership of the Duke of Sutherland, so no such grant could have been made before 1917.

By the 1918 conveyance mentioned in Schedule 12, this part was conveyed by the Duke to Mrs. E. Downton; this conveyance (according to the abstract handed to me) included general words substantially the same as those above quoted from the 1918 conveyance to Messrs. Chidlow. I have Mr. Turner's evidence as outlined above of the attitude of the Duke's Agents since 1918. From this evidence and from the proved grazing between 1927 and 1972, I infer that when the 1918 conveyance was made, the representatives of Mrs. Smith (the tenants mentioned in the 1917 Particulars) were enjoying the privilege or advantage of grazing on the Unit Land, and accordingly a right of grazing attached to the land comprised in the 1918 conveyance then came into existence by the actual grant therein contained, in the same way as I have stated above in relation to

Entry No.6.

The 1962 conveyance shows that the part south of Penn Brook was held under a separate title traced through Mr. L.L. Downton under a conveyance dated 1929 and made by the Earl of Dudley. In my opinion I should ascribe the proved grazing between 1927 and 1972 solely to the actual grant made by the 1918 conveyance rather than to both such actual grant and to a presumed grant made to the Earl of Dudley or his predecessors. The situation of the south part (it is in Gospel End) and its inacessability to the Unit Land except over the north part is such that it would I think be inappropriate to do otherwise.

I am not I think concerned with any division of the north part which may have been effected by the 1936 conveyance (a note of which is endorsed in the 1918 conveyance): this may have been a family arrangement between the Downtons: however this may be, the parts had become united when the 1962 conveyance was made.

Mrs. Baker described her holding as containing 6½-7 acres. I think she is mistaken about this, because the 1962 conveyance (she did not suggest she had any other) describes the land conveyed as 3 acres 7 perches plus 2 acres 33 perches (a total of 5¼ acres). Lot 1 in the 1917 Particulars and the land comprised in the 1918 conveyance (following the Ordnance Survey map) give the area of the Brook Cottage land north of Penn Brook as 3 acres 7 perches, and I shall accordingly apply the Number Agreement to this area.

There was no evidence upon which I could properly find that any right of pannage (as distinct from herbage) was attached to the Brook Cottage land.

On the considerations outlined above, my decision is that Entry No.12 was rightly made but should be modified by deleting pannage, and altering the number of animals so as to accord with the Number Agreement and by deleting from the attached land all land south of Penn Brook.

As to Entry No.13 (Mr. Pugh from Nash Coppice Farm):-

I had very little evidence about this Entry (see Schedule 13) and what there is inclines against there ever having been a grazing right attached to this Farm over the Unit Land. My decision is that this Entry should not have been made.

As to Entry No.9 (Mrs. Pritchard from Pear Tree Farm):-

The land by the 1963 conveyance conveyed to Mrs. Pritchard fronts on the Unit Land: on it there is a semi-detached dwelling house (the other half is Porch Cottage) used as the farm house, and (a short distance away) a large building suitable for animals; the area of the holding (according to the 1963 conveyance) is 2½ acres. Its appearance suggests that animals must from it for many years have grazed on the Unit Land: the temptation and opportunity of doing this are obvious.

Mr. Downton (speaking of the period between 1927 and 1957) said that Mr. A.C. (Bert) Parker did graze cattle on the Unit Land. He died in 1960.

Mr. Parker's grazing was confirmed by the evidence of Mr. Reade, Mr. Leek and Mr. Perry. Mrs. Richards (as I read her affidavit) said Mr. Parker purchased in 1910 and so carries his grazing back to then. I have no reason for not giving full effect to this evidence, and I find accordingly that cattle were grazed from Pear Tree Farm on the Unit Land from 1910 by Mr. Parker until his death in 1960 except for the last few years of his life when he owing to its age and lack of inclination, chose not to do so and during part of which years he permitted Mr. Turner to graze as his tenant.

Mr. Turner's grazing (which started in 1957) contined until 1963. After Mrs. Pritchard's purchase in 1963, she grazed at first cattle and sheep but afterwards sheep and has done so ever since. Mr. McKay said that in 1966 he counted 11 cattle and 46 sheep of hers. She was questioned about her change from cattle to sheep, but Mr. McKay said as a golfer he preferred sheep to cattle, and in view of the Number Agreement I need not I think pursue the question of whether the change could be of any significance.

As a general rule the law presumes from grazing as of right for so long a period as 50 years that such right must (in the absence of special circumstances) have been exercised either from time immemorial (which is possible in this case) or that long ago the right has been granted by a deed now lost. However on behalf of the Club, it was contended that this general rule is not applicable because Mrs. Pritchard's grazing of animals was done by her violently.

It is I think established that no use of the land of another by violence can be "as of right" within the meaning of this expression as used in the cases dealing with grants which may be presumed from use, see Eaton v Swansea (1851) 17 QB 267; further contentious use is not sufficient see Lyall v Hothfield 1914 3 KB.911.

In 1967, for several weeks Mrs. Pritchard tethered a ram on one of the golf course greens. Mr. Mackay described how on one occasion he and the other directors of the Club came to look at the ram, they found Mrs. Pritchard seated on a bucket inverted over the stake; she stayed there laughing; they did nothing except take her photograph (print produced); dated 22/4/67) and later telephone the police. I find that they on behalf of the Club made it clear to her that they did not like the ram being so tethered and that she made it clear to them that she did not mind what they wanted.

Mrs. Walton, a playing member of the Club "round about 1965" while playing a ladies threesome, saw ahead another ladies threesome being chased by a ram; when her threesome came up, the ram butted her and "knocked me out". She managed to get back to the Club House; of the other ladies one had her hand injured and two others had slight injuries: however although the episode was alarming, no one was seriously injured and Mrs. Walton was able to go home.

Mr. Greenhouse who has been employed by the Club since 1963 as a greenkeeper, while working on the Unit Land has on a number of occasions been approached by Mrs. Pritchard; she objected to his cutting of the fairways and to his digging of the ditches. I am satisfied that these objections were

made in terms which made it quite clear to Mr. Greenhouse that his work was not approved by Mrs. Pritchard, but I need not I think for the purpose of this case make any findings as to whether she ever wrestled with him or offered him personal violence as he alleged when giving evidence.

Further Mrs. Pritchard put cattle cake on the Greens, as a provision so I ose for her ram when tethered there.

Ultimately about all these things, proceedings were in 1970 taken in the Wolverhampton County Court: because these proceedings were disposed of by agreement, I cannot (so Mr. McCulloch said, (rightly I think) rely on them as establishing anything either for or against the contention nowunder consideration.

Mrs. Pritchard's explanation of her conduct was that the cutting of the grass affected the grazing to which she and others were entitled and the digging of the ditches was dangerous to animals being grazed. I find that Mr. Greenhouse knew that she was protesting about this.

Mr. Greenhouse has no farming background (he was a moulder of cast iron before he was a greenkeeper). His employers had told him that if the ram was tethered on the greens or tees to take the stake out; he never did this because Mrs. Pritchard sat on a bucket inverted over it. (I understood that this was the same incident as that described by Mr. Mackay). I infer that Mr. Greenhouse knew that cattle and sheep were being extensively grazed on the Unit Land by those claiming to have rights of common, and from his manner of giving evidence, I find that he either did not understand why, or did not care whether, the works done by him or under his supervision on behalf of the golfers (they being hisemployers) relaying and tending the tees and greens, the digging of ditches and the cutting the fairways affected the grazing of or was dangerous to animals owned by others (not employed by him). Mr. Mackay's attitude towards grazing by those whoe claimed rights pending the outcome of these proceedings is indicated earlier in this decision.

On these references I am not concerned to say whether the Members of the Club (400 men, 89 ladies and 98 juniors) can have the sort of golf course they want without interfering with the rights of grazing lawfully exercisable over the Unit Land, or whether the works done by or under the supervision of Mr. Greenhouse are such as would interfere with such rights. Nor should anything in this decision be regarded as indicating my approval of the way in which Mrs. Pritchard asserted her point of view. All I am concerned with is whether the violence as described above prevents a grant being presumed from the use she and her predecessors made of the Unit Land and in particular prevented her use being as of right.

All this time Mrs. Pritchard was grazing [redacted] sheep on the Unit Land. Neither Mr. Mackay nor Mr. Greenhouse nor anyone else acting for the Club ever indicated in any way that her turning out of these animals on the Unit Land was objectionable except so far as this might be inferred from Mr. Mackay's attitude (as above described) after the 1965 Act was first discussed (those who claimed rights would have to prove their case).

A ram tethered on a green or tee would put most players off their stroke and no doubt Mrs. Pritchard intended to do just this. But neither Mr. Mackay or Mr. Greenhouse said that they ever told Mrs. Pritchard that the Club would object to the ram grazing untethered on the Unit Land with her other sheep or indeed that they or anyone else at the Club ever thought that such grazing would be significantly different from the grazing of the other animals which pending the outcome of these proceedings under the 1965 Act they have decided to tolerate. Mr. Greenhouse said his

employers told him to take the stake out (he never did this because Mrs. Pritchard sat on a bucker inverted over it).

Mrs. Pritchard's extraordinary way of grazing and with cattle cake feeding her ram may not be lawful because it was likely to lead to a breach of the peace or for some other reason. However this may be, her conduct, even although it may be a deplorable way of claiming that the actions of the Club prevented her exercising her rights advantageously, does not show that but for her violence the Club would have prevented her from exercising the rights she now claims in respect of her other animals, or from grazing her ram in a normal way with the rest of the flock. In my opinion as regards any question I have to determine between the Club and Mrs. Pritchard (she claims no right to tether the ram), her violence as above described is irrelevant.

But even if I am wrong about this and Mrs. Pritchard's grazing should after April 1967 be considered as not as of right, I see no reason why her conduct should preclude me from now making the same presumptions from the actual grazing from Pear Tree Farm as to there having been a right from time immemorial or there having been a lost grant, as I would have made if the hearing had been in March 1967.

The incident described by Mrs Watson must have been very unpleasant and disturbing. She said it happened "round about 1965". I have no evidence that Mrs. Pritchard ever tethered her ram, except during April 1967; the claim in the 1970 County Court proceedings date the tethering as between 15 and 29 April 1967. I cannot presume that a person grazing sheep as of right ceases to do so if the flock he grazes includes a ram or if a ram he grazes happens to charge someone who simply happens to come too near.

Considering the evidence of the use of the Unit Land from Pear Tree Farm for the 57 years prior to 1967 as summarised in Schedule 9 hereto and the general evidence summarised earlier in this decision I have no hesitation in presuming that from such farm a right of grazing has either been exercised from time immemorial or has been granted by a grant made long ago and now lost.

I shall apply the Number Agreement to Entry No.9 on the basis that her land contains 2½ acres. There was no evidence to support her claim to turbary estovers, piscary, pannage, or (save as above mentioned) pasture.

So my decision is that this Entry was rightly made, but should be modified by deleting the rights of which there was no evidence and by giving effect to the Number Agreement.

As to the Entry No.8 (Mr. Chatham from Porch Cottage):-

I had very little evidence about this Entry (see Schedule 8). Although Mrs. Pritchard spoke of her son being at Porch Cottage and they having agreed to divide their grazing units in the proportion of 4 to 20, she gave no other evidence of grazing from Porch Cottage. Its appearance inclines me against concluding that there ever has been any significant grazing from it.

My decision is that this Entry should not have been made.

As to Entry No.1 (Mr. & Mrs. Sharwin from Spring Cottage):-

The documents of title mentioned in Schedule 1 show that this property (Spring Cottage containing 1 acre 2 rood 0 perches) has since 1938 been conveyed with all "common rights"; these documents are some evidence that some common rights are thereto belonging or appertaining.

Mr. Sharwin said when they moved into his property there was stables, pig stys etc from which it was obvious that animals had been using the property and that there had been grazing from the property on the Unit Land. They had not exercised the rights.

The use of the Unit Land from this property (see Schedule 1) had been discontinuous. So that if the claim depended on use alone I could not perhaps properly presume a lost grant of a right to graze. But such use is evidence of the identity of the common right referred to in the documents of title. There is no land other than the Unit Land over which a common right attached to the property could sensibly have been granted.

On the evidence outlined above and the appearance of the property I conclude that the common rights mentioned in the documents of title at least included a right of grazing over the Unit Land. From the documents of title the evidence of use and the other evidence relating to the Unit Land generally I presume that a right of grazing attached to this property either has existed from time immemorial or was granted by a grant made long ago and now lost.

Mr. & Mrs Sharwin concurred in the Number Agreement, and I shall give effect to it on the basis that the property contains 1½ acres.

So my decision is that this Entry was rightly made, but should be modified by giving effect to the Number Agreement.

As to Entry No. 5 (Mr. Cooper from Baggeridge View)

The 1851 Conveyance is evidence that there was then attached to this land a right of common such as therein mentioned. I need not consider the evidence in detail because it was agreed on Day 5 of the hearing (slightly modifying what was agreed in outline on Day 1) that I should modify this registration so that column 4 reads "Right of turbary, a right of estovers and a right of pasture for one animal".

My decision is therefore (by consent) that this Entry was rightly made, but should be modified as so agreed.

As to Entry No.2 (Mr. C. Lawton from Brook House):-

The dwelling house Brook House is west of the dwelling house Holly Cottage (Entry No.4) and both front on the Unit Land. Behind both these houses and the land immediately surrounding them there is some land (the Back Land) betwe the houses and Penn Brook. When the registrations were made (22 October 1968) Brook House and the Back Land (together containing 3 acres 2 perches) were owned by Mr. Lawton; by the 1973 transfer the Back Land was conveyed to Mrs. Hazeldine who then owned Holly Cottage. On this reference, I must determine the position as it was when the registrations were made; the fact that any right of common

then attached to Brook House and the Back Lane have (or a proportionate part of them has) now passed under the 1973 transfer to Mrs. Hazeldine, confers no jurisdiction on me to say whether any Entries or Notes should now be made on the Register to record such passing.

On the evidence summarised in Schedule 4, I am satisfied that cattle and horses have grazed from this land on the Unit Land from 1908 (when Mr. Morgan became tenant) until 1956 ("less than 20 years ago"). The words quoted in the Schedule from the 1938 appointment and the 1957 conveyance are evidence that there was then attached to the land a right of common or pasture: from the said evidence and the situation and appearance of the land, I consider that the words could not refer to any rights over lar other than the Unit Land, and that the rights referred to include a right of grazing.

Considering such evidence by itself, I can from it properly conclude that a right of grazing has existed from time immemorial, or was granted by a grant made long ago and now lost.

I reject the argument that I should not reach this conclusion because Mrs. Richards said "Mr. Morgan...started to graze cattle".. The 1938 appointment mentioned the occupation of"Mrs Hayes (Baker)", who according to Mrs. Richards had no cattle; but I do not infer from Mrs. Richard's statement that the right of grazing then started; the circumstances in which the 1938 appointment was made (as therein recited or referred to in the 1957 conveyance) make it likely that the rights of common mentioned in it were considered to have been in existence in 1870 being the date of the indenture to which Mr. J. Hickman was a party.

The 1843 Tithe map shows this land as Nos.530,532 and 533; and although the building on the land was not where Brook House now is, the boundaries are much the same as they were in 1968. It is I think more likely that the non grazing by Mr. Hayes was due to lack of inclination ratherr than the absence of any right, because I cannot imagine how the Back Land could have been left for any long period ungrazed or how any person who did graze it could resist the temptation of grazing also on the Unit Land.

I reject also the argument that I should attach significance to there having been no grazing since 1956. Mr. Lawton (now retired) was a constructional machine driller and it was not suggested that any non grazing of the Unit Land was for any other reason that lack of inclination.

Accordingly I conclude that a right of grazing has been established. I shall apply the Number Agreement on the basis that the relevant land contains 3 acres.

My decision is therefore that this registration was rightly made but should be modified in accordance with the Number Agreement as above stated.

As to Entry No.4 (Mrs. Hazeldine from Holly Cottage):-

As stated above with reference to Entry No.2 I am only concerned to determine the position as it was in October 1968.

I can attach no weight to the statement (put in by Mrs. Hazeldine) of Mr. E.W. Morgan about his grandfather and his father Edward Morgan (also the father of Mrs Lawton) "who lived there first in about 1907 before moving to Brook House". Mrs. Lawton told me that he moved there in 1909. The statement givesme no clear idea of what his grandfather did or how he knew about it. The other evidence of the use of the Unit Land summarised in Schedule 4 is I think against rather than for there ever having been any right of grazing attached to this land; the situation and appearance of this holding (as I infer it was before 1973) inclines me against the existence of any such right. I conclude that I cannot on the evidence and information put before me properly presume that a right of grazing attached to this land was granted by a grant made long ago and since lost or that such a right exists on any other ground.

My decision as to this Entry is therefore that it should not have been mad

As to Entry No.10 (Mr. Timmins from Ivy Cottage):-

Mrs Timmins did not attend the hearing; Mrs. Pritchard said she was ill. I was told that Mr. Willis was his successor but I have no evidence about his succession. It is significant that I had no evidence (such as ~~this~~ in the other case) about the history of the land: I was given no reason why the documents of title were not produced.

On my inspection I was inclined to guess that some of these living in the dwelling houses now known as Ivy Cottage would for many years have grazed the Unit Land, but the manner in which these holdings/these houses would have been divided was not obvious.

So the only evidence I have of the use made from this land of the Unit Lan is that the short evidence ~~as set out~~ in Schedule 10. The general words quoted in the Schedule from the 1843 conveyance cannot be regarded as evidence that a right of common such as might be included within them was then attached to the land

On the evidence put before me, I am not persuaded that there was any continuous grazing on the Unit Land sufficient to form a basis on which I could properly conclude that a right of grazing was granted by a grant made long ago and since lost.

Although I am uneasy that the failure to prove this right may be due to so difficulty arising out of the illness of Mrs. Timmins, my decision is that this Entry should not have been made.

Entry No.7 (Mr. Harper from the Twentieth)

As appears from Schedule 7 there was no evidence to support this Entry and some evidence against it. When I looked over the gate at this land, it seemed to me unlikely that there ever would have been any grazing from it on the Unit Land.

My decision is that this Entry should not have been made.

As to Entry No.14 (Mr. Richardson from Grassholme):-

As appears from Schedule 14, the evidence in support of this Entry was slight. However on day 6 of the hearing, Mr. McCulloch and Mr. McEvoy said they were agreed that I should confirm this entry with the modification that in colum 4 read "A right to graze 5 goats and 5 geese". There is I think no reason why I should not give effect to this agreement.

My decision is therefore that the Entry was rightly made but should be modified as above stated.

I have in this decision referred to "grazing rights" and to such rights being "attached" to land. I record that by doing this, I am not determining whether the rights with which I have been dealing are rights such as before the 1965 Act were usually called "rights of common" and whose extent is measured by levancy and couchancy or otherwise by reference to the area, state or needs of the dominant tenement to which they were attached (i.e. appurtenant) or are rights of herbage such as are by the 1965 Act included in the expression "rights of common" as therein used, and whose extent many not be measured by the land to which they are attached (i.e. reputed to belong, so as to pass under section 62 of the Law of Property Act 1925). The Number Agreement makes it unnecessary for me to consider this question and it maybe that the 1965 Act makes the answer of no practical consequence.

Upon the considerations set out above in this decision, I confirm the registration in the Land Section with the modification that the land mentioned in Objection No. 32 made by Mr. R.C. Chatham and notedin the Register on 27 October 1970 be removed from the Register, I confirm the registration in the Ownership section without any modification, I refuse to confirm Entries No.4,No.7 No.8 No.10 and No.13 in the Rights Section, I confirm Entry No.3 and No. 6 in the Rights Section without any modification, I confirm Entry No.1 in the Rights Section with the modification that for the words in column 4 "A right to graze 10 cows and 2 horses" shall be substituted "A right to graze animals to the number of $1\frac{1}{2}$ grazing units, each unit being for 8 cows or an equivalent number of immature cattle or an equivalent number of sheep and horses in accordance with the scale; 1 cow equals 1 horse equals 5 sheep". I confirm Entry No.2 in the Rights Section with the modification that for the words in column 4 "A right of pasture for 17 sheep or 17 cattle and three horses" shall be substituted "A right to graze animals to the number of 3 grazing units, each unit being for 8 cows or an equivalent number of immature cattle or an equivalent number of sheep and horses in accordance with the scale: "1 cow equals 1 horse equals 5 sheep", I confirm Entry No.5 with the modification for all the words in column 4 before the words "over the whole of the land comprised in this Register Unit" shall be substituted "A right of turbary, a right of estovers, and a right of pasture for one aninal ", I confirm Entry No.9 in the Rights Section with the modification that for all the words in column 4 before the words "over the whole of the land comprised in this Register Unit" shall be substituted "A right to graze animals to the number of $2\frac{1}{2}$ grazing units, each unit being for 8 cows or an equivalent number of immature cattle or an equivalent number of sheep and horses in accordance with the scale "1 cow equals 1 horse equals 5 sheep", I confirm Entry No.11 in the Rights Section with the modification that in column 4 for the figures and words "20 cattle, 4 horses" shall be substituted "4 goats", I confirm Entry No.12 with the modification that in column 4 for the words "A right of common of herbage and pannage for 25 cows or 150 sheep or 50 pigs or the equivalent in other animals there shall be substituted "A right to graze animals

to the number of 3 grazing units each unit being for 8 cows or an equivalent number of immature cattle or an equivalent number of sheep and horses in accordance with the scale; " 1 cow equals 1 horse equals 5 sheep" and in column 5 at the end of the present entry adding the words "except land south of Penn Brook", and I confirm Entry No.14 with the modification that for the words in column 4 there shall be substituted "A right to graze 5 goats and 5 geese".

I must when considering how I exercise my discretion as to costs first consider separately each of the 4 proceedings with which I am concerned.

As regards the proceedings (D/1 and D/3) occasioned by Objection No.32 and made by Mr. Chatham:- These proceedings were at the start of the 9 day combined hearing stated to be (as they proved to be) non controversial, so the time spent was very small. In my opinion in respect of these proceedings each person concerned should bear his or their own costs. In these proceedings the District Council and the Parish Council were under paragraph 19 of the 1971 Regulations entitled to be heard, but they have had no such entitlement in respect of the other proceedings below mentioned: accordingly I shall make no order in respect of their costs in respect of any of the 4 proceedings.

By far the greater part of the combined 9 day hearing was spent on the proceedings (D/2) occasioned by Objection No.64 and made by the Club: as to these proceedings:-

In my opinion Mrs. Pritchard and Mrs. Baker should pay the costs of the County Council and of the Club occasioned by the preliminary point which I have decided against them. Because I have ordered them and no one else to pay these costs, it should not be thought that they are in respect of the preliminary point necessarily very different from some of the other persons represented by Mr. Mc.Evoy; or indeed from some of the other persons not professionally represented; all those who supported Entry Nos 1 - 9 inclusive might have benefited had the preliminary point been successful. However I need not pursue the question whether a similar order should be made against all or any such other persons, because Mr. McCulloch indicated that the Club would be satisfied with an order against Mrs. Pritchard and Mrs. Baker (they being the only ~~persons~~ applicants who gave evidence in support of the preliminary point).

As regards the remainder of the 9 day hearing and these proceedings generally, Mr. McCulloch contended that the Club should not be ordered to pay any costs; the Club has produced all the evidence which they had; the Club had succeeded at least to the extent of getting the numbers quantified.

I do not accept the view impliedly (if not expressly) put forward by Mr. McKay that the Club could without any risk of being liable for costs properly require each of the applicants to prove his, her or their case, and need not before any reference to a Commons Commissioner consider whether any of the applicants were likely to be able to do this successfully. The Club as

owners are not concerned merely in getting the grazing rights over the Unit Land settled and quantified; they are concerned that such rights should be as small as possible, as seemed to me obvious when I inspected the land, and saw the high quality of the greens and tees as laid out by the Club for the use and enjoyment of the golfers. From this, from the words of the Objection made by the Club and from the way the proceedings were conducted at the 9 day hearing I conclude that the real issue before me as against each of the applicants who have been successful was whether the applicant was "entitled to any common rights whatsoever", Compared with this issue, the time spent at the combined 9 day hearing on other matters such as the quantification of the numbers was insignificant. I see no good reason for making any distincti between the applicants who have been successful. Most of them have given up little if anything by accepting the Number Agreement. Entry No.11 is much modified, but Mr. Russon by claiming too much did not prolong the hearing or increase the costs. The substance of the matter is that all the successful applicants in their conduct of the case supported and helped each other, and the lack of the success of any of them was not significantly prolonged at the hearing or increased by the costs. Except as regards Mr. Richards (Entry No.14) the concessions and agreement made by the Club in the course of the hearing were made after a considerable amount of oral evidence had been given, and I do not know enough about the circumstances of Entry No.14 to treat Mr. Richards as separately from the others merely because he agrees to halve his numbers.

Considering all the information I have, I conclude that the Club have in these proceedings been generally unsuccessful and that they ought (save as herein otherwise mentioned) pay the costs in full of all those mentioned who have succeeded to any extent.

Mrs. Hazeldine under the 1973 transfer succeeded to a part of the interest of Mr. Lawton the applicant for Entry No.2, and accordingly was under paragraph 19 (2) (f) of the 1971 Regulations entitled to be heard in respect of this Entry. Accordingly notwithstanding her lack of success as regards Entry No.4, I include her among the successful applicants. However the Club should not I think be liable for more than one set of costs in respect of Entry No. 2 by reasons of Mrs. Hazeldine and Mr. Lawton being separately represented.

An applicant for the registration of a right of common is not at risk as to costs merely because he had made the application. The Scheme of the 1965 Act and the regulations made under it so as to allow a period befor any reference can be made to a Commons Commissioner for discussion. I know nothing of any such discussion between the Club and those who applied for the registrations which I am not confirming. Neither the length of the hearing nor the costs incurred by the Club were I think significantly increased by my having to consider these registrations; on these considerations I do not think fit to make any costs order against them for the benefit of the Club.

As regards to proceedings (D/4) occasioned by Objection No.66 made by Mrs. Pritchard:-

The Club's objection to her rights registration is dated 29 Septembe 1970. Mrs. Pritchard's objection to the Club's ownership's registration is dated 6 July 1972. If Mrs. Pritchard's entitlement to rights of common had bee

the subject of an action in the High Court, it would have been reasonable for her in such action in her pleading to put the Club to proof of its ownership, and she would not if she was unsuccessful on this issue and succeeded in establishing her rights have been deprived of any of her general costs of such action. Further the time spent at the 9 day hearing on the issue of ownership was very small and the costs of the Club were not I think significantly increased with regard to it; they would in any event have had to produce evidence of their ownership in support of the case they made about Entries nos 6 and 12 so far as it depended on the Duke of Sutherland being before 1918 the owner both of the Unit Land and of Manor Farm and Brook Cottage. Further evidence by the Club as to their ownership was an essential part of the background to proceedings relating to the rights of common.

Upon these considerations I do not think fit to make any order as to the costs of the Ownership Proceedings.

In my view I ought in my order for costs indicate for the guidance of the Registrar how in my opinion the time spent at the 9 day hearing should be apportioned in respect of each of the four proceedings and in respect of the preliminary point. In my opinion days 2 and 3 of the hearing should be treated wholly, and no part of any of the other day should be treated as spent on the preliminary point. I think that the disentitlement of Mrs. Pritchard and Mrs Baker to any costs in respect of these two days extend to all the persons represented by Mr. McEvoy because by being represented by the same counsel they must be taken to have accepted that the time spent was proper. I consider that a small part of the costs of the 9 day hearing should for the benefit of the Club be apportioned to the 3 proceedings (D/1, D/3 and D/4) as to which I am making no order as to costs. In my opinion this part is 2 per centum of the remaining 7 days of the hearing.

My order for costs will therefore be as set out in Schedule 16 hereto.

Because I may have misunderstood the agreements made at the hearing I give liberty to apply as to my not having in this decision given effect to any agreement made either as to any registration matter or as to costs. Because I am not sure whether I correctly recorded that neither Mr. Chatham nor Mrs. Timmins were represented (I have a note indicating that Mr. McEvoy may have represented them or one of them), I give liberty to apply this too, and also as to any question there may be as to the implementation of this decision in accordance with the reasoning before set out. Any such application should be made within 42 days from the date on which the decision is sent to the applicant, and should be made in the first instance to the Clerk of the Commons Commissioners by letter. In view of this liberty to apply, I shall not sign any order for costs until the 42 days have expired.

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 1.

Entry No.1 made on application of Mr. Roy Sharwin and Mrs Marion Sharwin of Spring Cottage. Mr. Sharwin attended the hearing in person and as representing his wife. The registered right is attached to Spring Cottage

(south of the Unit Land, west of Penn Road, east of Porch Cottage) to graze 10 cows and 2 horses.

Documents produced:-

(1) Abstract dated 1957 of title of John and Joseph Hickman commencing with appointment dated 10 June 1938 of new trustees of land held in undivided shares under will of J. Hickman (he died 26 May 1883) scheduling various lands described as "TOGETHER with all Common Rights thereto belonging or appertaining" and continuing with an appointment dated 18 November 1952 of additional trustees.

(2) Conveyance on sale dated 4 March 1957 of Spring Cottage and land containing 1a 2r 0p "TOGETHER WITH ALL Common Rights thereto belonging or appertaining"

(3) Conveyance on sale dated 8 August 1967 to Mr. & Mrs Sharwin by reference to the 1957 conveyance including words above quoted.

Oral evidence:-

Mr. Downton said in effect:- Mr. R.T. Cross lived there in his day (1926-57). He did not have very much land, two acres; he used to rent a little bit. He kept 15-18 cattle and 1 horse and poultry; he turned them out o the Common. When questioned about the additional land he put the number basically referable to Spring Cottage as 7-8 milk cattle and 4-6 followers from time to time.

Mr. Turner said (in effect):- They have always grazed cows from Spring Cottage, Mr. Cross grazed from there.

Written evidence:-

Mr. Reade: -Reg Cross who lived there before kept 6 cows and a horse and poultry;

Mrs. Richards:- "Beestons lived at Spring Cottage until 1908 during this time they sold teas and did not keep cattle. ThenMr. Davies used to have one or two cows from the time he took over and he used to graze them on the common until 1915 when Mr. Richards moved in although he did not graze any cattle. In 1917 Mr. Cross started to keep a few cattle and I have seen as many as 6 grazing on the common but none since 1946 at the end of the War.

Mr. Perry:- Mrs. Cross lived in Spring Cottage until her recent death. A man called Davies who was retired lived there before that and kept 2 or 3 dairy cattle. Cross moved in in about 1917 and kept about 10 dairy cows and had a milk round for some years.

Schedule 2.

Entry 2 made on application of Mr. Charles Lawton of Brook House; at the hearing he was represented by Mrs. S.M. Lawton. The Entry was supported by Mr. McEvoy on behalf of Mrs. Hazeldine because under the 1973 transfer she became entitled to the right (or part of it) . The registered

right is attached to Brook House (next to and on the west side of Holly Cottage) of pasturage of 17 sheep or 17 cattle and 3 horses.

Documents produced:-

(1) Conveyance on sale dated 1 April 1957 by Mrs. M.S. Hickman and others to Mr. C. Lawton of Brook House and other land containing 3 acres and 2 perches double described in the schedule by a mordern description including the words "AND TOGETHER with all rights of common and pasturage thereto belonging" and a second by reference to the description (set out at length) in a deed of appointment of new trustees dated 10 June 1938 and containing the words "TOGETHER with all Common Rights thereto belonging or appertaining". (see Schedule 1).

Oral evidence:-

Mr. Downton said (in effect):- In my day it was Mr. Morgan (Mrs. Lawton is his daughter). He could remember at least 5 horses and about 30 cattle; the area of Brook House should be about 7 or 8 acres. They (Mr. Morgan he died about 1932 and his daughter she died about 1950) turned out cattle every day; 17-18 milking cows and 1-2 calves; they had a milk round; on the death of the daughter they stopped this grazing. Mrs. Lawton carried on but grazing only 2-3 cattle which were let out on the Common from time to time.

Mrs. S.M. Lawton who was born in Brook House in 1915 and lived there all her life said (in effect):- Her father lived there in 1909 (he started in Holly Cottage in 1907). He had a retail milk business for which he kept 16-17 milking cows which he turned out on the Common: also horses. They had them up to not less than 20 years ago, but as they got older they put out less. The Morgans have always been at Brook House as long as anybody can remember; her father Edward Morgan died in 1932; he never had more than 18 milking cows and 1 or 2 calves. Her sister died in 1950. Her husband bought the land in 1957 (conveyance supra), he retired a few years ago. After the death of her father they sold milk wholesale. They have never given up grazing on the Common although they did not put out so many animals as formerly.

Mr. Turner said:- "Lawton family had cattle, I don't remember horses."

Written evidence:-

Mr. Reade said:- "Mr. Morgan who used to live here kept 25 or 30 cattle, 6 or 7 horses and poultry".

Mr. Leek:- "This (Brook House) used to belong to Mr. Morgan who from 45 years ago used to keep 20 cattle and also poultry."

Mrs. Smith:- "Mr. Lawton used to have a farm and sold milk. He kept about 40 cattle pigs and horses and quite a lot of poultry."

Mrs. Richards:- "Brook House was originally the bakery and remained so while Mr. Hayes was there, there were no cattle. In 1900 Mr. Morgan followed Mr. Hayes and he started to graze cattle on the common and I have seen as many as 16 on the common at times. The Lawtons now live there and Mrs. Lawton was Miss Morgan but here again I have not seen any grazing of late the last time being in about 1937".

Mr. Perry :-"The Morgan family have always lived at Brook House. Mr. Morgan used to have about 14 milking cows and 1 or 2 calves. Morgan died in 1932 or 1933 and the family ceased to graze cattle, about 3 or 4 years later. Stella Lawton (Morgan) put 2 or 3 cattle in the Orchard but never on the Common".

Schedule 3

Entry No.3 made on the application of Mr. Reginald Chidlow Turner of 11 Turf Cottages. He attended the hearing in person. The registered right is attached to 11 Turf Cottages to graze 10 goats and 20 geese.

Oral evidence:-

Mr. Downton said (in effect):- Mr. Turner (cousin of Mr. Downton) had been there since 1952; he keeps 18 to 20 cattle, a horse, geese and ducks; on map it is only a cottage, but at the back he has 45 acres and buildings as well. This 45 acres was part of Manor Farm (see Schedule 6). Before my cousin Mr. Hudson farmed Manor Farm he had 45 acres but he did not have them out.

Written evidence:-

Mr. Reade:- He (R.C. Turner) kept cattle on the Common.

Mr. Leek:- Mr. Turner is a farmer and has 40 cattle and poultry. He also has a few riding ponies and used to have more.

Mrs. Smith:- He is a farmer and kept 30 cattle as well as 2 horses and poultry.

Mrs. Richards:- Turf Cottages were occupied by Collins until 1920 and although sometimes he grazed cattle on the common, he generally kept them in a field behind his house.

Mr. Perry:- There has been a few geese on the Common for 11 Turf Cottages.

Schedule 4.

Entry No.4 made on the application of Mrs. Iris Una Hazeldine of Holly Cottage. At the hearing she was represented by Mr. McEvoy of counsel. The right registered is attached to O.S. No. 493 (Holly Cottage) to graze 6 horses and 6 cows.

Documents produced:-

(1) Conveyance dated 4 October 1962 on sale by John Whittingham to Mrs. Hazeldine of Holly Cottage and the garden and outbuildings and appurtenances thereto.

(2) Conveyance on sale dated 1 April 1957 by Miss M.S. Hickman and others to Mr. C. Lawton of Brook House with 3a. Or.2p "AND TOGETHER" with all rights of common and pasturage thereto belonging or appertaining as described in an appointment of new trustees dated 10 June 1938: (as to this see Schedule 2).

(3) Transfer dated 28 September 1973 from Mr. C. Lawton of Brook House to Mrs. Hazeldine of land at the rear of Brook House part of premises comprised in the conveyance dated 1 April 1957, meaning (2) above.

Oral evidence:-

Mr. Downton said (in effect):- In my time Holly Cottage was occupied by Mr. Cutts; "Geese and ducks were left there; that is all I can remember". Mr. Wilkes (he had a horse and 2-3 calves) and Mr. Doody (he never had any grazing animals) followed Mr. Cutts: afterr. then came Mr. Timmins (he at Ivy Cottage had 2 cows 4-6 calves and some horses, but [illegible] while he was at Holly Cottage he had none); and Mr. Whittingham he had no cattle at Holly Cottage.

Mrs. Hazeldine said:- "We have only had horses (at present 2 horses). She first came to Holly Cottage 12 years ago. She was under the impression she had a right to graze being on the common.

Written evidence:-

Mr. Reade:- (Query referring to Holly Cottage) Mr. Wilkes kept 2 cattle, a few pigs and poultry.

Mr. Leek:- She (Mrs. Hazeldine) has a horse and used to have 2.

Mrs. Richards:- Holly Cottage is another where the occupiers have never exercised any rights of common. While the cottage was occupied by Mr. Roberts until 1905 it was used as a Club, I remember he used to be a Publican. After Mr. Roberts came Mr. Wilkes until 1930 then Mr. Davies for 6 years but Mr. Doody was only there 1 year and Mr. Whittingham then took over and lived there until 1960 when the present occupier Mr. Hazeldine moved in".

Mr. Perry said:- "I remember Wilkes at Holly Cottages over 50 years ago. He kept a horse and 2 or 3 calves which he had in a little brick place at the back and never put them on the Common. Doody moved in about 1937 but never grazed anything on the Common. The same applies to Timmins and Whittingham who followed. Hazeldine who now lives at Holly Cottage has never grazed anything,

Schedule 5.

Entry No.5 made on the application of Mr. Geoffrey Thomas Cooper of Baggeridge View. He attended the hearing in person. The registered rights are attached to Baggeridge View (note not the same as Baggeridge Cottage), of turbary, estovers, piscary, pasture for 12 cattle and the equivalent in sheep and pigs.

Documents produced:-

(1) conveyance dated 22 October 1851 on sale (after reciting ownership of "the cottage croft and garden of land and commonable rights on the premises hereinafter mentioned" to W. Harper of dwelling house or croft etc."...(situate by the side of Penn Common).. Together with all and singular the commonable rights of turbary pasture estovers and piscary and wether appendant, appurtenant or in gross in any manner belonging to the said cottage..." (plan shows garden and croft 0a.3r.12p).

(2) conveyance dated 30 November 1951 on sale by H.C. Webb to C.R. Braddock of cottage and croft by reference to the conveyance of 22 October 1851.

(3) Conveyance dated 26 May 1952 on sale by C.R. Braddock to G.T. Cooper of cottage croft by reference to conveyance of 22 October 1851.

Oral evidence:-

Mr. G.T. Cooper said(in effect):- He claimed the land rights (from time immemorial rights were attached to the cottage). He had not himself exercised rights other than poultry geese and the like. The house is 200 years old, underneath the accretions it consists of two one time labourers' cottages converted with extensions added. He had taken turf off the common during the coal shortage.

Written evidence:-

Mr. Reade:- (Query referring to Baggeridge View) Mrs Webb kept 2 or 3 cattle, 2 horses and poultry.

Mr. Leek: -"Mr. G.T. Cooper did not keep livestock but Mr. Smith who used to live there had about 3horses."

Mrs. Richards:- "Baggeridge View was another cottage which I remember used to graze a few cattle, the most I can ever remember would be 5 or 6 cows and this was only when Mr. Webb lived there. In 1915 Mr. Smithtook over, he

was there 20 years and during his time he never had any cattle, nor the next Mr. Webb who followed him until 1937, when the present owners Mr. & Mrs Cooper took over they never exercised any rights of common.

Mr. Perry:- Mr. & Mrs Cooper live at Baggeridge View. I cannot remember any animals being put out to graze from this address.

Schedule 6.

Entry No.6 on application of Mrs. Florrie Chidlow of 70A Mount Road and Miss Sarah Ann Lucy Chidlow of 70 Mount Road. They were represented at the hearing by Mr. R.C. Turner (see schedule 3). The right registered is attached to Ordnance survey Nos. 476,477, 424, 423, and 422 (Grange Farm) of grazing 30 cattle. (478)

Documents produced:-

(1) Sale Particulars of Agricultural Properties containing 45la 2 r 29p by aution to be held on 1 August 1917 by order of the Duke of Sutherland. Lot 4 is "The Manor Farm.. Tenants Mr.S. & Mrs. S. Chidlow.. 106a.lr.15p.

(2) Conveyance dated 8 March 1918 by the Duke of Sutherland (with the concurrence of his Settled Land Act trustees) to Mr. Ernest Henry Chidlow, Mr. Frederick Chidlow and Mrs. Sarah Ann Chidlow (wife of Samuel Chidlow) of Manor Farm 106a.lr.15p.

Oral evidence:-

Mr. R.C. Turner said (in effect):- Grange Farm used to be part of Manor Farm (the farmhouses was north of the Church). His grandfather was tenant in 1912; the tenants mentioned in the 1917 particulars "S and S Chidlow" were his grandfather Mr. Samuel Chidlow and his grandmother Mrs Sarah Ann Chidlow; they purchased the farm in 1917; the Duke of Sutherland's Agent Colonel Stanier told them that they had grazing rights. His grandfather died on 12 April 1924 he was tenant of all. His grandmother Mrs. Sarah Chidlow died in 1929. Thereafter the farm was carried on by his uncle for a good many years. The Whitley's took over the tenancy. Since 1949, he had been tenant of Grange Farm; his landlords are now Mrs. & Miss Chidlow (the applicants) who are his aunt and cousin. On the commencement of his tenancy he turned out cattle on to the common employing Mr. Timmins to look after them for him. After a few years (say 1959) when the tuberculosis came in he had to stop grazing cattle; his cattle were T.B. tested.

Written evidence:-

Mr. Reade said:- They (Mrs. F & Miss S.A. Chidlow) did not turn anything out.

Mr. Leek said:- "They (Mrs. F. and Mrs. S.A.L. Chidlow) were relations of Mr. R.C. Turner and used to help on his farm rather than having livestock of their own".

Mrs. Smith:- (She left a blank space).

Mrs. Richards said:- "Turner's field had been occupied by Powell then by Chidlows and Turners who are related to Chidlows, but they have never used the common for grazing".

Mr. Perry said:- I cannot remember any animals being grazed on Chidlow's fields.

Mr, Hudson was the previous occupier and he never grazed any animalson the Common.

Schedule 7

Entry No.7 on application of Mrs. Margaret Nora Harper of the Twentieth. There was not attendeance or representation on her behalf. The rights registered are attached to the Twentieth of grazing 1 horse, 2 pigs, 2 goats and 3 geese and of estovers.

Oral evidence:-

Mrs. Walton:- she used to lived at the Twentieth, her husband built the house in 1950. There had never been one there before. They left about 1964 when Mr. Harper bought it. They had never grazed any cattle on the property or sheep.

Written evidence:-

Mr. Leek said:- "I do not think she (Mrs. Harper) kept anything."

Schedule 8.

Entry No.8 on application of Mr. Robert Cecil Chatham of Porch Cottage. Mr. Chatham was not present or represented at the hearing. Mr. Alfred Thompson who said he (query and his wife) is the successor in title of Mr. Chatham attended the hearing in person in respect of Objection No.32 and during the rest of the hearing was represented by Mr. McEvoy of counsel. The registered rights are attached to Porch Cottage of grazing 4 cows or 5 cattle of 2 to 3 years, or 8 steers or heifers of 1 or 2 years, or 16 calves of under 1 year or 5 ponies or 24 sheep of over 1 year or 48 sheep of under 1 year or 15 pigs or 36 poultry, and of turbary, estovers, piscary pasture and pannage.

Oral evidence:-

Mr. Downton said (in effect):- Mr. Painter (brother in law of Mr. Timmins) used to live there in his day; he doubted if he had any stock. Mr. Timmins also lived there; he kept one or two ponies, never as far as he could remember any cattle.

Mrs. Pritchard said:- (among other things) My son was at Porch Cottage.

Mr. Turner:- The occupier was not a commoner at any time I can remember.

Written evidence:-

Mr. Reade:- "Mr. Painter who used to live here had about 20 chickens"

Mrs. Smith:- "Mr. Painter who used to live here, kept poultry".

Mrs. Richards:- Porch Cottage and Pear Tree Farm now occupied by the Pritchards was one the Malt Shovel but was discontinued as a public house in 1893. Porch Cottage has never exercised any grazing rights whoever has lived there Bradley's were there until 1900, between 1900 and 1958 Painters, between 1958 and 1965, Chathams and since then Pritchard. Pear Tree Farm... (see Schedule 9).

Mr. Perry:- "Painter used to live at Porch Cottage and then in recent years Mr. Chatham who has lived and whilst he is related to Mrs. Pritchard I do not remember having seen any animals grazing from this property."

Schedule 9

Entry No.9 made on the application of Mrs. Phyllis Mary Pritchard of Peartree Farm. At the hearing she was represented by Mr. McEvoy of counsel. The registered rights are attached to Pear Tree Farm of grazing for 120 sheep over 1 year or 240 sheep under 1 year or 20 cows or 25 cattle of 2-3 years or 40 steers or heifers of 1-2 years or 80 calves under 1 year or 40 pigs or 20 horses or 25 ponies or 120 hens or 30 geese or 60 turkeys or 30 ducks or variety of animalsbeing the equivalent of 20 cows and of turbary estovers piscary pasture and pannage.

Documents produced:-

(1) Particulars of sale by Auction on 1 May 1963 by order of S.D. Parker; Lot 6: Pear Tree Farm "The property is very close to the Penn Golf Club and has the benefit of Grazing Rights on the Common".

(2) Answers dated 23 May 1963 to requisitions on title (Vendor S.D. Parker):-"22. The Vendors father Albert Cornelius Parker occupied Pear Tree Farm continuously from 1910 up to his retirement in 1957. He was a farmer farming other lands as well as Pear Tree Farm. During the whole of the period he exercised common rights of pasturage and cattle and horses on Penn Common. In former years he grazed up to 50 head of cattle and 10 horses on the common. At the time of his retirement he was grazing 12 head of cattle but not horses. He reduced his stock in later years owing to his age. He died at Peartree Farm in 1961 at the age of 79 years,

(3) A conveyance dated 29th July 1963 on sale by Mr. S.D. Parker to Mrs. Pritchard of land known as Pear Tree Farm together with a dwelling house and outbuildings and together with all rights of common and pasturage enjoyed therewith...containing about 2.5 acres".

(4) 1970 Particulars of Claim Wolverhampton County Court, the Club against Mrs Pritchard and others. 2 July 1970 Defence and Counterclaim to above. 5 November 1970 terms on which action stayed (cross undertakings).

Oral evidence:-

Mr. Downton said (in effect):- His great uncle Mr. Bert Parker used to live at Pear Tree Farm. He kept 20 cattle and 2 or 3 horses. His cattle were his mainstay of living. He had other land in addition to Pear Tree Farm. He had a milk round. He died about 1960, but for about 4 or 5 years before he died he did not have any cattle.

Mrs. Pritchard said (in effect):- Since she bought in 1963 she had grazed the animals on the Common. She had grazed sheep on the common since 1965.

Mr. Turner said:- " I had Mrs. Pritchard's farm from about 1957 to 1963; I came out when she came in. I grazed young store cattle (6 to 12 months) (Mr. Parker he is a relation of mine) used to open the gate, and turn them out on the Unit Land. My tenancy was when he retired".

Written evidence:-

Mr. Reade:- Mr. Parker who lived there before Mrs Pritchard kept 25 cattle, 2 horses poultry and geese.

Mr. Leek:- Mrs. Pritchard keeps a lot of sheep and about 25 cattle. Mr. Parker who lived here before also had about 25 cattle.

Mrs. Smith:- She (Mrs. Pritchard) keeps sheep and cattle.

Mrs. Richards:- "Porch Cottage and Pear Tree Farm now occupied by the Pritchards was once the MaltShovel but was discontinued as a public house in 1893...Pear Tree Farm is somewhat different in that Bowyer who was there until 1900 although he rented a field in Red Lane did graze up to 6 cattle on the common. Mr. Downton did likewise until 1910 and Mr. Parker purchased the property and from then until 1960 kept 12 to 18 cattle although he rented a field, in Wakeley Hill he averaged 6 cattle most of the time, although here again he stopped grazing his cattle on the common about 1949. The property was vacant for a few years until Pritchard moved in and since then they have kept about 12 cattle and 46 sheep".

Mr. Perry said:- "Bert Parker used to live at Pear Tree Farm. He had 20 or so cattle and a large barn to taken them. He had a milk round. He died in 1960 but I do not think he had kept cattle for at least 6 years before his death.

Schedule 10.

Entry No.10 was made on application of Mrs. Gladys May Timmins of Ivy Cottage. Mrs. Timmins was not present or represented at the hearing; however Mr. Willis, who claimed as her successor, was represented by Mr. McEvoy of counsel. The registered right is attached to Ivy Cottage (being one of the group south east of Unit Land; not to be confused with Ivy Cottage west of Lloyd Roberts Buildings, and west of Penn Road) of grazing 15 calves, 3 sows, 1 horse, 3 geese and 1 gander.

Documents produced:-

(1) (by Mrs. Pritchard) a conveyance dated 26 January 1843, of"all that cottage the barn, shop...together with all houses, outhouses, buildings, yards, gardens, commonable rights, mines..appurtenances whatsoever".

Oral evidence:-

Mr. Downton said (in effect):- Mr. Timmins used to keep 2 or 3 cows and maybe 6 small calves also 2 horses. He moved in in about 1939 during the war and did not start grazing until after the war. Mr. Roberts lived there before; he kept some animals; (1 cow and 1 or 2 calves); he always had 1 or 2 goats; he moved in a little later than 1930; he was a dealer in ponies.

Mr. Turner said (in effect):- Mr. Timmins used to graze; he looked after my cattle and his cattle together; He had one or two cows and a few store cattle.

Mrs. Pritchard:- Mrs. Timmins Cottage is either No.1 or No.2. She has 1½ acres which she farms from her cottage. Since 1954 Mrs. Timmins has had cattle there.

Written evidence:-

Mr. Reade (Mr. Timmins) kept 5 or 6 cattle.

Mr. Leek:- "He always has about 20 cattle and quite a few horses, as well as poultry.".

Mrs. Smith:- "She (Query meaning Mrs. Timmins) kept a riding school and several horses as well as about 40 cattle.

Mrs. Richards:- "Mr Timmins who lived at Ivy Cottage which used to be known as "Bugs Hole" had not grazed any cattle for the last few years, but since 1943 from time to time during the summer he has grazed between 3 and 6 cattle. Mr. Addis lived there until 1900 and then Mr. Duffield in 1920. Mr. Jones moved in the same year for a while before Mr. Roberts, it is only Mr. Timmins who has had any grazing.

Mr. Perry:- "The first family I remember at Ivy Cottage were called Compston, who I did not remember grazing any animals. This would be about 1923. Ernie Jones who was the next occupant did not graze any either. Roberts then moved in in about 1930. I cannot remember his keeping cattle but kept one or two horses. He had a good stable in a field attached to the property and used to be a

miner. He used to buy and sell horses. Timmins moved in during the war and did not start grazing until just after the war. He grazed 6 months cattle during the summer months, selling them off in the winter. The most he had was 9 or 10.

Schedule 11.

Entry No.11 made on application of Mr. John Augustus Russon of 54 Sedgley Road. At the hearing he was represented by Mr. McEvoy of counsel. The registered right is attached to land described in his application (being land held with 54 Sedgley Road) of pasture for 20 cattle 4 horses 25 geese and 40 ducks.

Documents produced:-

(1) The 1917 Sale Particulars mentioned in Schedule 6; in these the said land held with 54 Sedgley Road is included in Lot 4.

(2) The 1918 Conveyance mentioned in Schedule 6: (O.S. 478 arable 7.044 acres) includes the said land.

(3) Conveyance (voluntary) dated 11 September 1962 by Mr. James Russon of (i) 54 Sedgley Road (except as...)and (ii) a piece containing 1670 square yards as delineated on a plan annexed to a conveyance dated 9 February 1948 from Frederick Chidlow to grantor, and (iii) a piece containing 1253 square yards as delineated on a plan annexed to a conveyance dated 16 November 1948 from Frederick Chidlow to the grantor.

Oral evidence:-

Mr. Downton said (in effect):- Mr. Russon kept 5 goats and probably 10 to 15 ducks; (on being questioned) he put it at about 1 or 2 goats and 10 to 15 geese.

Mr. Russon said:- "His father now deceased bought the land in 1943. He is now 40 years of age. When he was 16 (about 1951) he had 2 horses. He produced a number of photographs showing himself and members of his family, goats, horses and ducks. In Cross examination he only grazed the land for a year or 18 months."

Mr. Turner said (in effect):- The Russon family had goats and geese. I have never seen horses there or pigs.

Written evidence:-

Mr. Leek:-(Mr. Russon) has always had 12 goats as well as geese.

Mrs. Smith: He (Mr. Russon) kept 12 goats.

Schedule 12.

Entry No.12 made on application of Mrs. Joan Millicent Baker of 1 and 2 Brook Cottage, she was represented at the hearing by Mr. McEvoy of counsel. The right registered is attached to smallholding Brook Cottage (being O.S. Nos. 420,506,507,505 all north of Penn Brook and adjoining the Unit Land, and another triangular piece extending about 350 yards south of Penn Brook) of herbage and pannage for 25 cows or 150 sheep or 50 pigs or the equivalent in other animals.

Documents produced:-

(1) 1917 sale particulars, mentioned in schedule 6. the relevant land being lot 1 (tenants "reps of Mrs. Alice Smith") area containir 3a.Or.7p (all north of Penn Brook and in the Parish of Upper Penn).

(2) A conveyance on sale dated 16 October 1962 by Mr. T.E. and Mrs. E.A. Burke to Mrs. J.M. Baker of (1) small holding known as Brook Cottage and cowhouse, buildings, garden, orchard and pastures containing 3a,7p. shown on plan annexed to conveyance dated 9 March 1918 and made by the Duke of Sutherland and others to Emma Downton and (ii) piece of land at Gospel End containing 2 a 33p delineated on a plan drawn on a conveyance dated 11 April 1929 and made between the Earl of Dudley and others and Leonard Lewis Downton.

(3) An abstract dated 1965 of the title of Mrs. J.E. Downton to land comprising a conveyance dated 9 March 1918 by the Duke of Sutherland with the concurrence of his trustees of 3aOr,7p (OS Nos. 420, 506,507 and 505) to Mrs. Emma Downton widow with a memorandum endorsed of a conveyance dated 29 July 1976 of part of the land 1.536 acres (OS. Nos.420 and 507) by her to Mr. Leonard Lewis Downton.

Oral Evidence:-

Mr. Downton said (in effect):- They (his father died in 1950) lived at Brook Cottage from 1926 to 1957. His father kept 20 milking cows and about 10 followers (meaning store cattle): this is the number during the whole period even during the war. The holding was about 7¾ acres around the whole cottage. From about 1926 to about 1933, his father used to rent a piece of land 15 acres from Lloyds Farmers. The cattl

were turned out on the Common from 8am to about 9pm all day. There was good grazing. They had a milk round (his father produced the milk and he the witness, and his Uncle Tom sold it).

Mrs. Baker said:- Since she acquired the land (under the 1962 conveyance) we have grazed horses cattle and pigs on the common. We have had up to 30 cattle on the common of various ages. When she acquired Mr. & Mrs Burke (she was the daughter of a previous owner) had a dairy herd and also pigs. "We have had fowls and geese out".

Written evidence:-

Mr. Reade:- Mr. Downton who lived here kept 30 cattle and 3 or 4 horses.

Mr. Leek:- She (Mrs. Baker) kept 25 cattle and 5 or 6 horses as well as poultry.

Mrs. Smith:- She (Mrs. Baker) kept about 40 cattle or poultry.

Mrs. Richards said: "Brook Cottage was occupied by Smith until 1917 and he was tenant of the Duke of Sutherland. Downton followed him and although they kept about 25 cattle they were kept on fields which were rented at the Gospel End none were grazed on the common. When Burke took over Brook Cottage in 1954-1962 he grazed about 6 cattle on the common. He made the road to the cottage. Bakers the present occupiers took over 1962 and they have grazed as many as 26 cattle in the lastt year and grazed 2 horses and a donkey at times.

Mr. Perry:- Mr. Downton moved into Brook Cottage in about 1918. He had been a farmer at Lower Penn and brought 23 or 24 cows with him. He milked cows and used two fields in Red Lane Sedgley and some land off Chamberlain Lane. In 1954 he left and took his cattle with him to Brozeley. Burke came next and had 4 or 5 cattle until he left in 1962. Mrs. Baker is now in occupation.

Schedule 13.

Entry No.13 made on application of Mr. Thomas Eustace Pugh of Nash Coppice Farm Lower Gospel End he neither attended nor was represented at the hearing. The registered right is attached to land described in his application of pasture for 50 head of cattle.

Oral evidence:-

Mr. Downton said (in effect):- Mr. Pugh never turned out animals on the Common.

Written evidence:-

Mr. Reade: I do not think he (Mr. Pugh) turned anything out on the Common nor his tenants to my knowledge.

Mr. Leek:- He (Mr. Pugh)used to let 2 cottages and one of his tenants kept poultry.

Mrs. Smith:- He (Mr. Pugh) kept a lot of cattle pigs and poultry.

Mr. Perry said:- "Lower Gospel End Farm is two cottages knocked into one. Mr. Pugh has kept Gospel End Farm as long as I can remember they have never grazed animals. I cannot remember seeing any animals being grazed from the two small cottages which Mr. Pugh owns at the edge of the common near Spring Cottage.

Schedule 14.

Entry No.14 made on application of Mr. C. Richardson of Grassholme. At the hearing he was represented by Mr. McEvoy of counsel. The right registered is attached to Grassholme of pasture for 10 goats and 10 Geese.

Oral Evidence:-

Mr. Downton said that as far as he knew he only kept poultry.

Written evidence:-

Mr. Reade:- "I do not think he turned out anything".

Mr. Leek:- "He kept 3 or 4 goats".

Mr. Smith:- Mr. Priest who used to live here kept pigs and poultry.

Schedule 15.

Historical documents (or copy documents) produced or referred to:-

Part 1. Put in by Mrs. Pritchard.

1487. John Lord Dudley to the freeholders of Womborne those having common in a field called Baggeridge field shall have common in Baggeridge, Penn Wood (Dudley Public Library).

1707 (?1797) Plan of waste land called Penn Wood (from District Council)

1843	Extracts from Tithe Award and from Tithe map of Penn (Litchfield Diocesan Registry).
1880	Ordnance Survey map (1st edition: 6 inch)
undated (19th century)	Map from County Council.
26 October 1892	Press cutting from Wolverhampton Chronicle (at a meeting it was proposed to make the links on Penn Common providing the consent of the Lord of the Manor and the Commoners could be obtained).
6 April 1911	Press cutting Express and Star (giving the history of the Golf Club)

Part 2. Put to Mrs. Baker by the Club

16 Oct 1962	Map of pipes, based on 25 inch Ordnance Survey map.

Part 3. Referred to by Mr. Mackay.

24 October 1955	Conveyance by G.G. S-L-G Duke of Sutherland to the Club of the Manor of Penn expressly including Penn Common subject " to any commoners rights".
11 October 1955.	Statutory declaration by R.F. Allum, the Duke's Agent for the last 6 years at Trentham and for the previous 7 years his accountant there as to possession without adverse claims "Subject nevertheless to the right of the Commoners..."
19 July 1960	Deed of declaration made by Club under section 193 of the Law of Property Act 1925 in relation to Penn Common.
7 June 1962	Order of limitations made by Minister of Agriculture Fisheries and Food under Section 193 of Law of Property Act 1925 subjecting public right of access to scheduled conditions.
(?)	History of Wolverhampton by Gerald P. Mander (mention charter of King Ethelred AD 985)
1291 to 1316	Agreements.
1881	Domesday Studies, Staffordshire by Rev. R. Weytoun.
1941	The Ancient Manor of Sedgley by E.A. Vonderhill
	A list of the Lords of the Manor of Dudley (prepared by Mr. Mackay)
?	Hackwoods Sedgley Researches.

1530	A deed
—	Sedgley Parish Register
1649 to 1673	Extracts from the Proceedings of the Court Baron of Old Penn and Nether Penn.
1764	The plan of lands in Upper and Lower Penn belonging to Marquess of Stafford.
1680	A map of Staffordshire by G. Morden.
1797	A plan of wasteland called Penn Wood (the oldest map actually illustrating the Unit Land)
?	A survey of Over Penn and Nether Penn from a book of Lord Gowers.
1717	Court Baron and Court of Survey (the last full manorial survey Mr. Mackay has been able to find).
—	Plan of Nash Coppice.
9 August 1830	Record of vestry Meeting
1734	Abstract of will giving a legacy to the poor.
1764	A map from the Sutherland collection.
1814	A map of the property of the Marquess of Stafford by Hamilton Fulton.
1817	Gazeteer by Pitt.
1834	A plan of the estate in Penn the propertyof the Duke of Sutherland.
?	A draft of the tithe award map (original at Litchfield)
6 Feb 1849	Particulars of Sale by Auction in 22 lots with a plan of the various lots annexed thereto.
1850	The Earl of Duddley'sRent roll.
1870	A book Sedgley Sundries.
1851	Gazeteer by William White.
1836	Piggotts Directory
1852	A Tithe Valuation.
?1862	Plan of the estate of Rev. E.H. Wainwright
5 September 1862	A sketch plan.
1867	Extract from the History of Sedgley Park School (now Park Hall Hotel) (Bilston Library).

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April 1867 to 5 April 1867	Correspondence as to proposed enclosing of Common.
1879 1892/ 1900/	Extracts from Directories of Hickman, Beddard and Edwin Jones.
	Two Press cuttings about the proposed Golf Club for South Staffordshire (?1892 see part 1 of this Schedule)
1902	Staffordshire Place Names by W.H. Duignan
1908	Draft deed of appointment by Duke of Sutherland of George Roden as his bailiff of Penn Common.
5 March 1912	Order of High Court Schedule agreed terms relating to Penn Common "The Duke so far as he can bind the commoners"
Before 1917	Mining rights under common by H. Ogden Area Surveyor of Mineral estates.
1930	Lets Go To Staffordshire, by John Hinely.
20 May 1966	Conveyance by National Coal Board of Ivy Cottage to G.C.Statham.
Recent	The History of Penn and Church by Rev. E. Hartill Vicar of Penn 1918-48
5c	Minute book of joint meetings of Club and Commoners
1896-1939	1896 to 1908 and of "New Committee"1927-1939
20 July 1954 and 15 October 1954	Memoranda of meeting of Commoners and of formal meeting of Commoners and Golf Club Committee.

Schedule 16

(Order for Costs)

ORDER Mrs. Pritchard and Mrs. Baker to pay to the County Council and the Club the costs incurred by the Council and the Club in respect of the Rights Proceedings (as defined in the Appendix hereto) with the modifications (including a modification limiting such costs to the Preliminary Point in the Appendix defined) set out in the Appendix hereto.

AND ORDER the Club to pay to Higgs & Son, Solicitors of Brierley Hill, West Midlands, the costs incurred by their clients Mrs Hazeldine, Mrs. Pritchard, Mr. Russon, Mrs. Baker, and Mr. Richardson in respect of the Rights Proceedings (defined as aforesaid) with the modifications set out in the Appendix hereto.

AND ORDER the Club to pay to Mr. & Mrs Sharwin, to Mr. Lawton, to Mr. Turner, to Mr. Cooper, and to Mrs. F & Miss F.A.L. Chidlow respectively the costs respectively incurred by him, her or them in respect of the Rights Proceedings (defined as aforesaid) with the modifications set out in the Appendix hereto.

AND DIRECT that such costs so payable to the County Council and to the Club and all such costs so payable by the Club be taxed according to Scale 4 prescribed by the County Court Rules 1936 as amended.

Appendix

(A) In this Appendix; (i) "the Rights Proceedings" means the proceedings arising from the dispute (reference No. 233/D/2) occasioned by Objection No.64 and made by the Club; (ii) "the Land Proceedings " means the proceedings arising from the disputes (reference Nos. 233/D/1 and 233/D/3) occasioned by Objection No. 32 and made by Mr. Chatham; (iii) "The Ownership Proceedings" means the proceedings arising from the dispute (reference No. 233/D/4) occasioned by Objection No. 66 and made by Mrs. Pritchard; (iv) the Preliminary Point mentioned in the decision dated -1975 of the Commons Commissioners in this matter; (v) the Combined Hearing means the hearing of the Land Proceedings, the Rights Proceedings, and the Ownership Proceedings which lasted 9 days partly at Stafford and partly at London.

(B) The costs ordered to be paid by Mrs. Pritchard and Mrs. Baker are limited to the costs occasioned by the Preliminary Point, and to the whole of days 2 and 3 (14 and 15 November 1974) of the Combined Hearing and none of the other days of the Combined Hearing shall be treated as being spent in its consideration.

(C) As regards the costs payable to Higgs & Son, the costs of day 2 and 3 (14 and 15 November 1974) of the Combined Hearing shall be disallowed, and 2 per centum (one fiftieth) of the costs of all the other days of the Combined Hearing shall (as having spent on the Land Proceedings and the Ownership Proceedings) also be disallowed.

(D) The costs incurred by Mrs. Hazeldine in so far as they were increased by her support of Entry No.4 in the Rights Section (in respect of which she was unsuccessful) shall be disallowed.

(E) The costs incurred by Mrs. Hazeldine, Mrs. Pritchard, Mr. Russon, Mrs. Baker and Mr. Richards ~~as~~ (in respect of Entries Nos. 2,9,11,12 and 14 respectively they have been wholly or in part successful) shall not be apportioned or otherwise diminished merely because at the Combined Hearing their Counsel also represented the District Council and their counsel and Solicitors also represented persons who supported Entries in respect of which such persons have been unsuccessful or merely because Mrs. Hazeldine unsuccessfully supported Entry No.4 or merely because any of them were otherwise successful only in part.

(F) In respect of Entry No.2 in the Rights Section, not more than one set of costs should be allowed to both Mr. Lawton and Mrs. Hazeldine, so that from the costs payable to Higgs and Son there shall be deducted the difference (if any) between the costs which would have been payable by the Club under the Order if Mr. Lawton and Mrs Hazeldine had been both representated by the solicitors and counsel who represented her and the costs which under the order are properly payable to Mr. Lawton.

(G) The Registrar (subject as above) shall have a discretion as to all items which under the said Rules such discretion can be conferred on him by the Court.

Dated the 21st day of August 1975.

A. A. Baden Fuller

Commons Commissioner.