



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/411
209/D/412

In-the Matter of Brent Moor
including Dockwell Ridge,
Hickley Plain and Zeal Plains,
in South Brent, South Hams District,
Devon

DECISION

Introduction

This matter relates to 132 registrations made under the 1965 Act. My decision as regards each of these registrations is set out in the Third (and last) Schedule hereto. The disputes which have occasioned this decision and the circumstances in which they have arisen and my reasons for my decision are as follows.


These disputes relate to the registrations at Entry Nos 1, 2, (3 has been cancelled having been superseded by No. 113), 4 to 42 inclusive (20 has been replaced by Nos 135, 137 and 138), (43 has as a number not been used), 44 to 95 inclusive (57 has been superseded by No. 128, 71 has been replaced by Nos 140 and 141 and 87 has been replaced by Nos 146, 147, 148 and 149), (96 has been cancelled), 97 to 106 inclusive, (107 has been superseded by No. 132), 108, 109, 110, (111 has been superseded by No. 131), 112, (113 has been deleted) and 114 to 132 inclusive in the Rights Section and at Entry Nos 1 and 2 in the Ownership Section of Register Unit No. CL161 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections Nos 216, 217, 220, 221 and 267 made by Joseph Grigg Kellock as Steward to the Management Committee of the Common of South Brent and noted in the Register on 16 October and 2 November 1970, by Objections Nos 653 and 656 made by South West Devon Water Board and noted in the Register on 1 March 1971 and 27 October 1970, by Objections Nos 467, 468 and 986 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 1 March 1971 and 23 June 1972, by the Rights Section registrations at Entry Nos 40 and 129 being in conflict and by the Ownership Section registrations at Entry Nos 1 and 2 being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 17, 18 and 20 July and 27 November 1984. At the July part of the hearing (1) Brent Moor Commoners' Association as successors of the said Management Committee, were represented by Mr R F D Sampson solicitor with Woollcombe Watts & Co, Solicitors of Newton Abbot; (2) South West Water Authority as successors of South West Devon Water Board were represented by Mrs F G Canning, solicitor in their Legal Department; (3) the Attorney General for the Duchy of Cornwall was represented by Mr C Sturmer the Land Agent of their Dartmoor Estate; (4) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bouchier Sayer applied for the Rights Section registration at Entry No. 5 attended in person on



her own behalf and as representing him; (5) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the Rights Section registration at Entry No. 6 was also represented by Lady S R P Sayer; (6) Ogle Estates Limited as successors of Dr Esmond Marshall Kingston Jellicoe and as successors of Mr John Elliot and Mrs Ethel Mary Hodson who applied for the Rights Section registrations at Entry Nos 40 and 129 respectively were represented by Mr P W Harker solicitor of Bellingham & Crocker, Solicitors of Plympton; (7) Mr Wilfred John Edmunds as successor of Dr John Henry Wildman and Mrs Margaret Joy Wildman who applied for the Rights Section registration at Entry No. 50 and who himself applied for the Rights Section registration at Entry No. 51, attended in person; (8) Mrs Eleanor Nancy Smallwood who applied for the Rights Section registration at Entry No. 106 was also represented by Lady S R P Sayer; (9) Mr Semaj John Dance who applied for the Rights Section registrations at Entry Nos 108 and 109, attended in person; (10) Mr John Trevarthen French who was one of the applicants, or the only applicant, for the Right Section registrations at Entry Nos 116, 117 and 118, attended in person. At the November part of the hearing (1) Brent Moor Commoners' Association were represented by Mr W T Edmunds (present also were Mr Robert Savery their chairman and Mr G W B Bateman their Hon Secretary); and (2) the Attorney General for the Duchy of Cornwall was represented by Mr Sturmer as before.

The land in this Register Unit ("the Unit Land") is a tract which if the irregularities of its boundaries are disregarded, is approximately triangular with sides all about 3 miles long; its west side (except at the north corner) adjoins Ugborough Moor (Register Unit No. CL156) and at the north corner adjoins (for about $\frac{1}{2}$ a mile) the Forest of Dartmoor (Register Unit No. CL164); its northeast side (except at the north corner) adjoins or is near to Dean Moor (Register Unit No. CL162) and at the north corner adjoins Huntingdon Warren which was but consequential on proceedings in 1982 no longer is, in Register Unit No. CL164; its southeast side adjoins enclosed lands to the north and northeast of South Brent.

The Land Section registration after being amended on 31 July 1973, being undisputed, has become final. The grounds of the said Objections, all to one or more of the Rights Section registrations, are specified in the First Schedule hereto. In the Ownership Section at Entry No. 2 the South West Devon Water Board are registered as the owners of the portion of the land lettered B on the Register map, which portion as a result of the said amendments in effect comprises all the Unit Land as it is now registered. In the Ownership Section at Entry No. 1, HRH Charles Prince of Wales, Duke of Cornwall is registered as the owner of the part ("the lettered A part") of the Unit Land on the Register map  lettered A, being an area approximately triangular situated at the north corner of the Unit Land and having sides of about southwest and northwest $\frac{1}{2}$ of a mile and east of about $\frac{1}{2}$ a mile.

Course of proceedings

At the beginning of the hearing (17 July), Mr Sturmer and Mrs Canning said that they were agreed that I might confirm Ownership Section Entry No. 1 (the Duchy of the lettered A part) without any modification, and confirm the Ownership Section



Entry No. 2 (SWDWB) of all, or all that remaining after the 1973 amendment) with the modification that there be excluded from it the lettered A part.

Next Mrs Canning gave oral evidence in support of the registration at Entry No. 2 in the course of which she produced the 1935 conveyance specified in Part I of the First Schedule hereto. On the plan annexed to the conveyance the lettered A part is edged blue although in the body of the conveyance there is no reference to any such edging; however endorsed on the conveyance is the following memorandum:-

"24 November 1976. The South West Water Authority as successor to the within written Kingsbridge and Salcombe Water Board acknowledges that part of the lands shown on the plan to the within written Conveyance which is edged blue thereon lying north of a line from Western White Barrow to Eastern White Barrow to Avon Ford is not held by the Authority and concedes the claim of His Royal Highness Charles Prince of Wales, Duke of Cornwall thereto and those to lines two lines form a boundary between His possessions and those of the Authority".

Having other business I adjourned the proceedings until 19 July.

Next (19 July). Mr Sturmer produced the map (Duchy/21) specified in Part II of the First Schedule hereto showing by straight lines the parts of the Unit Land, Ugborough Moor (CL156) and Harford Moor (CL195) which the Duchy claimed was of the Forest of Dartmoor and therefore in Duchy ownership. He explained that the evidence in support of this Duchy claim to the Unit Land part, being the lettered A part, would be essentially the same as that to the Ugborough Moor (CL156) and Harford Moor (CL195) parts. Because I was in the course of hearings about all three Moors, it was agreed by those present or represented at all three hearings that the evidence about to be given in support of these Duchy claims should be treated as given at all three hearings. At page 4 of this decision is an uncoloured copy of the said map showing the said straight lines and marking the parts claimed with the CL Nos of the Register Units; on this copy I have thickened these lines and also the lines of the relevant parts of the boundaries of these Moors and added their names and the name "The Forest" (Register Unit No. CL164) which extends many miles to the north.

Next oral evidence was given by Mr Grahame Haslam who is and has been since 1975 the archivist of the Duchy of Cornwall. He said (in effect) that from the documents kept in the Duchy Archives he deduced that from time immemorial the now relevant part of the boundary of the Forest of Dartmoor has always been treated as a straight line from Huntingdon Cross southwards to the top of Eastern White Barrow and thence a straight line westwards to the top of Western White Barrow, and thence a straight line to where Red Lake (a brook so called which flows down from Red Lake Mire) falls into the River Erme. In the course of his evidence he produced or referred to the documents specified in Part II of the Second Schedule hereto (other than Duchy/32 and 33), and explained and commented on them both in the introductory part of his evidence and in reply to questions by Mr Sampson, Lady Sayer and myself. In the said Part II, I have shortly indicated the parts of the said documents to which Mr Haslam drew attention. It should be noticed that the historical boundary lines so deduced by Mr Haslam is not the same as the modern Local Government boundary between South Hams District and West Devon District and between the parishes; the boundaries of the Unit Land and of the said Register Units Nos CL164, CL156 and CL195 as registered by Devon County Council as registration authority, follow the District and Parish boundaries.

Commons Commissioner



In the course of the evidence being given by Mr Haslam the documents specified in Part III of the Second Schedule hereto were produced on behalf of South Brent Commoners' Association, they having, so I understood, been provided by Mr R Savery.

Next Mr Wilfred John Edmunds who has been the Agister of the South Quarter of the Forest since 1963 gave oral evidence in the course of which he referred to the documents (Duchy/32 and 33) specified in Part II of the Second Schedule hereto. Under his 1968 tenancy agreement, he was (? still is) entitled to graze the land therein specified in words summarised in the said Schedule, and also entitled "to take in stock belonging to other persons to feed off the said land and to collect and retain for his own use all Venville Rents payable in respect of the following Parishes namely Dean Prior, Buckfastleigh West and Holne"; but liable to pay a rent, and taking subject to the rights set out in the Schedule to the said agreement (of the Venville Tenants, and others therein specified). He said (in effect):- He had since 1963 in succession to members of his family since 1843 been the Duchy Agister for the part of the Forest by South Brent, Ugborough and Harford. He had always understood the boundary of the part of the Forest to which he was concerned as Agister to be as drawn on the 1968 tenancy agreement plan, being (relevantly) the same as the plan prepared for the Royal Commission by the Dartmoor Commoners' Association (Duchy /33). As to his knowledge and activities as Agister he referred me to the evidence he had given at my 1982 hearing about the Forest of Dartmoor as recorded at page 67 of my decision dated 30 June 1983.

Mr Edmunds answered questions by Mr Sampson about the annual drifts and about there having been animals from Zeal Farm (owned by Mr Savery, see Entry No. 122) on the part of the Forest by South Brent parish; he agreed that there had been strays (animals of persons with no entitlement) on this part of the Forest but insisted that no animals from Zeal Farm were in his time (since 1950) leared there as far as he knew, and generally disagreed with any local opinion there might be, that the Duchy view as to the correct boundary of the Forest was mistaken.

Next (20 July), Mr Harker after explaining that he was then representing Messrs Semaj John Dance and John Henry Dance who as owners of Dockwell Farm had applied for the Rights Section registrations at Entry Nos 108 and 109, suggested that I adjourned the consideration of these registrations because they might as they now stand, give rise to practical difficulties perhaps avoidable by a discussion with the Brent Moor Commoners' Association; to this suggestion Mr Sampson agreed. As regards Entry Nos 40 and 129 a similar agreement was reached between Mr Harker for Ogle Estates Limited and Mr Sampson.

Next (20 July), Lady Sayer in support of the Rights Section registrations at Entry Nos 5, 6 and 106 (and also in support of the corresponding CL187 registrations at Entry Nos 1, 2 and 39) gave oral evidence in the course of which she read out as part of it the statement (Sayer/41) specified in Part IV of the Second Schedule hereto, in which she said (among other things):- The registered venville rights are exercisable over the central Forest of Dartmoor and the commons adjoining the Forest, which form a ring around the Forest and have been known from time immemorial as the Commons of Devon. Their status as venville right-holders were confirmed by the CL148 and CL190 decisions of the Chief Commons Commissioner (1976 and 1977) and a judgement of the High Court (1980) upholding them. Their rights had been confirmed on all the common land in the Forest itself (CL164). She agreed that the Duchy owned the parts of the Unit Land of which they had claimed ownership; such parts should properly have been included in CL164. The only objection to the Unit Land



registrations is in the name of J G Kellock (Objection No. 220); there is no reason for it; it is subject to venville rights and animals grazing on it cannot be prevented from grazing on the Forest, which adjoins, with no physical boundary between. They had been advised by Mr John Somers Cocks and the late Mr David Scott and were also versed in the findings set out in the 1890 book entitled: "A Short History of the Rights of Common Upon the Forest of Dartmoor and Commons of Devon". She herself is a parishioner of Widecombe, with an ancient holding which they had owned for 56 years, exercising their venville rights for the whole of that time.

Questioned in some detail by Mr Sampson, Lady Sayer insisted that the views of the South Brent Commoners' Association and modern usage so far as contrary to what she had said, were mistaken; the rights she claimed were granted by King John in the 13th century.

Next, against the claims of Lady Sayer, oral evidence was given by Mr John Trevarthen French who is a member of the Committee of the South Brent Commoners' Association and as such supported their Objection No. 220. He said (in effect):- The Committee were successors of the Committee for which Mr Kellock made the Objection. They objected to the registrations supported by Lady Sayer and all other "venville claims" because they as a committee did not recognise rights other than those attached to lands and holdings in South Brent parish, neither had they any knowledge of any person outside the parish having any rights, or taking part in any discussion about the running of, Brent Moor. The Committee at the date of the Objection was headed by Mr J D Kellock; he was there "as steward to the South Brent Commoners' Trustees".

Questioned by Lady Sayer, Mr J T French except possibly as regards grazing on the Forest considered that she was mistaken.

Next, Mr Sampson made submissions against the registrations at Entry Nos 5, 6 and 106 contending that they were not supported by the evidence above summarised, were contrary to local usage, and should therefore not be confirmed.

Next, Mr Sturmer said that Duchy Objection No. 467 (right does not exist on lettered "A" part) was withdrawn except as regards Entry No. 101 (made on the application of Mr P G Ansell for right attached to Upcott House in Okehampton). Mr Sampson contended:- any confirmation of the registrations to which this Objection applied should be limited to the lettered "A" part of the Unit Land being the part shown by the evidence of Mr Haslam to be part of the Forest; the County Council had prepared the Register on a parochial basis, overlooking the Forest is not recognised as being parochial: in any event the confirmation of Entry No. 101 should be wholly refused.

Mr Sampson referred to Duchy Objection No. 468 (no piscary) applicable only to Entry No. 8 (Messrs P F and W M Williams of Merrifield in South Brent), and contended that "piscary" should be excluded from this registration not only as regards the lettered "A" part (particularly mentioned in the Objection) but also as regards the rest of the Unit Land; Mr P F Williams had signed a yellow form dated 5/7/71 agreeing to the registration "being amended".

Next (20 July) Mr Sturmer said that Duchy Objection No. 986 (right does not exist on lettered "A" part) was (except as next hereinafter mentioned) maintained as regards all the registrations (more than 90) specified in it. Exceptionally as to



registration at Entry No. 82 made on the application of Mr J B Townsend of rights attached to land in Holne, the Objection was withdrawn because it had been discovered that this land was recorded as in venville. Exceptionally also the Objection was withdrawn as regards the registration at Entry No. 122 so far as necessary to give effect to the compromise next mentioned; by way of compromise he and Mr Sampson agreed that this registration at Entry No. 122 made on the application of Mr J Savery of rights attached to Zeal Farm and Lincombe Farm in South Brent should as regards the lettered A part (the Forest part) be modified by a proviso to this effect: "Provided that at one time not more than 30 NFU Stock Units shall graze on the land edged red and hatched in red on the plan attached to Objection No. 986".

Next, Mr Sampson said that he agreed every registration specified in _____> Duchy Objection No. 986 (except those at Entry Nos 116 and 118) which I confirmed as regards the part of the Unit Land other than that lettered A part, could be confirmed with a modification showing that from it is excluded the lettered A part (the Forest part); he excepted Nos 116 and 118 made on the application of Mr J T French of rights attached to Corringdon Farm and to land at Treelands and part of Merrifield Farm because (so I understood) evidence would be called about these registrations.

Next in support of MCCSB Objection No. 216 Mr J T French gave further oral evidence saying:- This objection relates to the registration at Entry No. 48 made on the application of Mr T Wakeham of a right "to stray" attached to land at Cannamore in Ugborough. This land is not in the parish of South Brent. He understood that straying rights were not registrable. For this reason he asked that the grounds of the Objection re stocking rate exceeds the agreed limit of 1 cow, 1 pony or 5 sheep, per acre should be treated as amended so as to put the registration wholly in question.

Next about MCCSB Objection No. 217, Mr G Bateman as Secretary of the South Brent Commoners' Association said that he and Mr French had been told by Wing Commander S J Furneaux who applied for the registration at Entry No. 130 (specified in the Objection) — that he would be quite happy if the part of the registration beginning "to shoot" (being the part specified in the grounds of the Objection) was deleted.

Next Mr J T French referred again to MCCSB Objection No. 220, and said that from it Nos 37, 39, 50 and 51 were withdrawn (these Nos on my copy are so marked by the County Council I suppose on the basis of letters dated 14 February and 1 September 1975, and 5 June and 3 July 1973 from Kellock & Johnson to them). He also said that from it No. 128 (Messrs H A Cocks and M B Cox of Crackhill) was also withdrawn, so that I could confirm all these five Entry Nos.

Having no more time I adjourned the proceedings generally to 27 November.

Next (27 November) Mr Edmunds said that following certain developments since the July part of the hearing, he thought that there were now no differences, meaning as I understood him, that no detailed evidence was required about any registrations with which anyone present or represented at the hearing was concerned (the evidence for and against Entry Nos. 5, 6 and 106 had been completed in July).



Next Mr Edmunds submitted and Mr Sturmer agreed that the registration at Entry No. 101 (P G Ansell) should in the absence of evidence be wholly avoided and that the registration at Entry No. 82 notwithstanding the Duchy concession about it, in the absence of evidence be confirmed with a modification excluding from it all the Unit Land except the lettered A part.

Next, about the registrations at Entry Nos. 116 and 118 (left open during the July proceedings) Mr Sturmer said he thought that Mr French had now withdrawn the claims he had made on 20 July, and Mr Edmunds said he had spoken to Mr French and understood from him that he was agreeable to these registrations being modified so as to exclude the lettered A part provided they remain (as was agreeable to Mr Edmunds) as regards the rest of the Unit Land.

As regards the registration at Entry No. 48 made on the application of Mr T Wakeham, Mr Edmunds contended it being expressed "to stray", should be cancelled, but so that he should have liberty to apply as he might have read the grounds of MCCSB Objection No. 216 as conceding the registration in part.

As regards the registration at Entry No. 130 made on the application of Wing Commander Furneaux, Mr Edmunds suggested that subject to the deletion of "to shoot ...", the registration could be confirmed without any other modification.

Mr Edmunds reminded me that at the July hearing on the evidence of Mr French, submissions had been made by Mr Sampson against the registrations at Entry Nos 5, 6 and 106 supported by Lady Sayer, and asked that like submissions should be treated as made by him against the registrations at Entry Nos. 72 to 89 inclusive and 114 and 115, also within MCCSB Objection No. 220, and he additionally submitted that these registrations should be avoided because there was no evidence in support of them.

Next Mr Edmunds said that MCCSB Objection No. 220 was withdrawn as regard Entry Nos. 34 (V C Ferguson), 41 (E M K Jellicoe), 53 (G W B Bateman), 58 (South Brent Feoffees), 67 (Exors of S Pearse), 90 (E and S F Steer), 98 (S J Warren), 128 (H A and M B Cox) and 129 (J Elliott and E M Hodson), and was in part withdrawn as regard Entry No. 38 (J H Steer of Choley Park) in that it had been agreed between Mr W Goodman as the present owner and Mr J T French representing the Commoners' Association that it should be confirmed with the modification that the number of animals be reduced to 5 cattle or 5 ponies of 12 sheep.

Next Mr Edmunds referred to the registration at Entry No. 55 made on the application of Messrs T and L N Cole of rights attached to land at Binnamore and Lower Badworthy which in the sheet annexed to MCCSB Objection No. 220 is listed with a "Reason for Objection" as "(that the rights do not exist at all) in respect of land at Binnamore". He produced a plan (SBCA/10) showing in four lots the land specified in the registration, lots 1 and 2 being north of Badworthy Brook and explained that lots 3 and 4 south of the Brook are known as "Lower Binnamore"



and contended that I should confirm the registration with a modification in column 4 reducing numbers "40 cattle or 40 ponies or 200 sheep" to "22 cattle or 22 ponies or 110 sheep" and in column 5 removing all land south of Badworthy Brook (thus leaving within it lots 1 and 2). There was no agreement with the present owner that the registration should be disposed of in this way although it had been so agreed on behalf of the South Brent Commoners' Association, and the present owner might therefore know. He submitted that in the absence of evidence in support of the registration it should be confirmed with modifications to this effect.

Next Mr Edmunds about the conflict between the registrations at Entry No. 40 (Dr E M K Jellicoe tenant of Exors of G L Hodson) and No. 129 (J Elliott and E M Hodson as prs of G L Hodson) said:- The lands at Thynacombe are virtually identical; Dr Jellicoe is no longer a tenant of any of the land; Mr J T French a few days ago had spoken to Mrs Ogle the wife of Mr B M Ogle who is the present tenant and understood from her that he was quite happy that No. 40 should go. He also said:- OS No. 1827 mentioned in Entry No. 93 is a field of which Mr Codd is no longer tenant; it has been taken in to the lands at Thynacombe of which Mr B M Ogle is the present owner and occupier, and to which the rights specified in the registration at Entry No. 129 are attached.

Next Mr Edmunds said:- The South Brent Commoners' Association insisted on Objection No. 220 so far as it related to Entry Nos. 42, 54, 69, 97 and 112 and submitted that confirmation of them should be refused for the lack of any evidence in support of them. No. 54 is extraordinary being made by Lt Cdr L G Turner as "owner of the manor of South Brent" and is expressed to be: "In gross". Nos. 42 (T K G Stephens and P A Stephens) and 69 (R G Prowse) are of rights attached to land in Ugborough; the South Brent Commoners' Association consider that no Ugborough land has rights over the Unit Land; further at the July part of the hearing Mr Prowse told him (Mr Edmunds) that he was not proceeding. The Association had no idea how Mr E Steer (he and his wife are now deceased) who applied for the registration at Entry No. 97 could claim a right as attached to "the undivided half part or share of Aish Ridge"; an identical registration over Aish Ridge (Register Unit No. CL60) is in the register recorded as "cancelled 26/7/73" (see Commons Commissioners file 209/D/414). About Entry No. 122 (B A Willitts and A F Willitts) Mr Bateman (Secretary of the South Brent Commoners' Association) said:- The "land at Hilstead and Hilstead Cottage" specified in the registration is a house with about 1/10th of an acre or less; the present owner is Mrs Philips and she said that Mr Philips before he went away said he would put the matter in the hands of a solicitor but she did not know whether he had done so.

Next Mr Edmunds said that the Association as regards the following registrations insisted on MCCSB Objection No. 220 and submitted they should be avoided because they were irregular being expressed as "stray" and there was no evidence in support of them:- Nos. 14 to 16 inclusive, 18, 19, 21, 23, 27, 29, 30, 47, 52, 62, 68, 99, 104 and 105.



Next Mr Edmunds submitted that in the absence of any evidence the registrations at Entry Nos. 13 (N Cawrse and A N C Cawrse) and 98 (J Colwill) as specified in MCCSB Objection Nos. 267 and 221 respectively should be avoided because expressed as "to stray", in the absence of any evidence in support of them.

Next there was some discussion as to the registrations expressed as "to stray" which were not within any MCCSB Objection but were in question by reason of

SWDWB Objection No. 653 the grounds of which were expressed as related to land of the Water Board now no longer part of the Unit Land and by Duchy Objection No. 986 the grounds of which were expressed to be limited to the land edged and hatched in red on the attached plan being the lettered A part of the Unit Land. As to these registrations, numbered as next mentioned Mr Edmunds submitted following decisions of mine about other Register Units in the Dartmoor National Park, that I should refuse to confirm them because they were expressed as "to stray", subject only to granting a liberty to apply: that is to say, Nos. 9 to 12 inclusive, 17, 22, 24 to 26 inclusive, 31 to 33 inclusive, 46, 49, 59 to 61 inclusive, 63 to 65 inclusive, 70, 71, 92, 102, 103, 107, 108, 117, 119 to 121 inclusive, 123, 124, 127, 132, 134 and 135.

Next I considered registrations at Entry Nos. 108 and 109 (S J Dance and J H Dance) which were by agreement adjourned to 20 July. Mr Edmunds contended that in the absence of any evidence I should refuse to confirm registration at Entry No. 108 being within SWDWB Objection No. 653 and Duchy Objection No. 98 therefore similar to 37 registrations next herein before listed. The South Brent Commoner's Association were agreeable to the registration at Entry No. 109 being confirmed, it had never been within any MCCSB Objection although it was within the said SWDWB and Duchy Objections. He also said that Mr J F French had told him that he had been in touch with Mr Dance who had told him (Mr French) that he was not proceeding; such conversation was on the basis that the Association would not agree No. 108 but would agree No. 109.

Next concluding the hearing Mr C Sturmer who has been employed by the Duchy since 1965 and who is and has been since 1970 the Land Agent of their Dartmoor Estate, gave oral evidence against the registration of any right of piscary or shooting, in the course of which he produced the documents specified in part VI of the Second Schedule hereto. He asked me to treat as before me the evidence he had given about such matters at my hearing in 1982 about the Forest of Dartmoor (CL164) summarised on page 80 of my CL164 decision dated 30 June 1983. He added that as far as he was aware no person had ever claimed a right to piscary or shooting either over the lettered A part or over any other part of the Unit Land. He concluded his evidence by confirming what had already been said in the course of the hearing that claims from Okehampton had never been recognised by the Duchy as being in venville and for this reason not only the piscary and shooting part but the whole of the registration at Entry No. 101 (P G Ansell) was by the Duchy disputed.



Ownership

No one at the hearing disputed the ownership position as agreed between Mrs Canning and Mr Sturmer. The 1935 conveyance (FGC/1) is evidence enough of the ownership of the part of the Unit Land claimed by the South West Water Authority. On the documentary evidence of Mr Haslam and the personal evidence of Mr Edmunds, I conclude that the lettered A part of the Unit Land has from time immemorial been treated as part of the Forest of Dartmoor for ownership (among many other) purposes. There was no suggestion that the Forest could be in any ownership other than that of HRH Charles Prince of Wales in right of his Duchy of Cornwall, and such ownership was implicit in the evidence of Mr Haslam and Mr Edmunds and in the evidence given before me at other hearings relating to Register Units in the Dartmoor National Park including particularly Register Unit No. CL164.

As to the boundary between (a) the Forest and (b) the rest of the Unit Land, of the CL156 land and of the CL195 land being a straight line as drawn on the map being page 4 of this decision:- I feel some doubt whether the documents produced by Mr Haslam show it to be one straight line all the way from Eastern White Barrow to the foot of Red Lake; perhaps it is two or more straight lines; however the angle between them is at the most very small and no one suggested at the hearing that the exact boundary within a few feet was of any practical importance. It may be that on the land there are boundary stones. In these circumstances, in this Unit Land decision I adopt as showing the true boundary of the Forest the delineation on the Register map of the land hatched (doubly horizontally and diagonally) red and lettered A on it.

For these reasons, as stated in paragraph 1 of the decision table being the Third (and last) Schedule hereto, I CONFIRM the Ownership Section registration at Entry No. 1 (the Duchy) without any modification, and I CONFIRM Ownership Section registration at Entry No. 2 (The South West Devon Water Board) with the modification in such paragraph specified.

Forest Part, rights

My decision under the heading Ownership is reason enough for my equating so far as I reasonably can the Rights Section registrations over the lettered A part (or "the Forest Part") of the Unit Land with the corresponding CL164 registrations.

In my CL164 decision dated 30 June 1983 after a hearing in 1982, I concluded that a number of registrations in such proceedings disputed had been properly made, the rights having been recognised by the Duchy, as being attached to lands in Venville and not disputed by anyone. Mr Sturmer said that the corresponding Unit Land registrations were similarly recognised as being in Venville. This is not enough to enable me to equate for all purposes of the 1965 Act, the Forest Part with the adjoining CL164 land, because



of the very many CL164 Rights Section registrations which in my 1983 CL164 decision I decided were properly made, only very few have corresponding registrations in the Unit Land Rights Section. I have no power (it was not at this Unit Land hearing suggested I have) to direct that the Forest Part of the Unit Land be removed from the Land Section of this CL161 Register and by way of transfer included in the CL164 Land Section, or to direct that any of the CL164 Rights Section registrations shall be inserted in the Unit Land Rights Section for the first time. So by the Commons Registration Act 1965 the historic connection between the Forest Part of the Unit Land and the rest of the Forest of Dartmoor comprised in CL164, has been for ever in part broken. The Act nowhere makes this result altogether unavoidable; but even with the hindsight I have as a result of this Unit Land hearing, I am unable to think of any way by which it could have been prevented by the Duchy or anyone else except at trouble and expense disproportionate to the value of any benefit which could have resulted.

First I consider the outside South Brent registrations specified in Part II of the First Schedule hereto, so far as possibly applicable to the Forest Part. Lady Sayer contended that those at Entry Nos. 5, 6 and 106 were properly made being in Venville and as having been confirmed by my CL164 decision (see CL164 Entry Nos. 123, 124 and 766); Mr Sturmer conceded that they were in Venville as he had done at my CL164 hearing; nobody contending otherwise, my decision is that these registrations were as regards the Forest Part properly made. Mr Sturmer made a similar concession about the other Holne registrations at Entry Nos. 72 to 88 inclusive (see CL164 Entry Nos. 678 to 694 inclusive)

which were by my said CL164 decision also confirmed; I have no reason for making any distinction between these registrations which were not supported at the hearing and those which were supported by Lady Sayer, so my decision is that they too were properly made. As regards the registrations at Entry Nos. 42, 69, 101, 114 and 115 Duchy Objection No. 986 was not withdrawn by Mr Sturmer and I had some evidence against them in that at my CL164 hearing it appeared that rights attached to lands in Ugborough, Okehampton and South Tawton were not recognised as being in Venville; however this may be in the absence of any evidence in support of these registrations and of any concession by the Duchy such as Mr Sturmer made as regards lands in Widecombe-in-the-Moor and Holne, my decision is that none of these registrations were properly made. The registration at Entry No. 89 is not within any Duchy Objection although it is in question under MCCSB Objection No. 220; it is of a registration attached to land in West Buckfastleigh and corresponds with CL164 Entry No. 695 which was by my said CL164 decision confirmed in the same way as the Holne registrations; I understood from Mr Edmunds that notwithstanding the generality of the grounds of MCCSB Objection No. 220, the South Brent Commoners Association had withdrawn any objection as regards the Forest Part to any registration to which the Duchy had made no Objection; accordingly my decision is that as regards the Forest Part No. 89 was properly made.



Next I consider the registrations of rights "to stray" specified in Part I of the First Schedule hereto so far as possibly applicable to the Forest Part. Mr Sturmer insisted they were not properly made at least as regards those to which the Duchy had made an Objection, that is as regards all except Nos 65, 68, 92 and 108; accordingly in the absence of any evidence or argument in support of them, my decision is that all these registrations except as aforesaid were as regards the Forest Part not properly made. As regards the excepted registrations I have no note or recollection of Mr Sturmer saying anything about them; however because the CL164 registrations at Entry Nos. 575, 580, 592 and 821 corresponding with them were by my CL164 decision confirmed with the modifications therein set out, my decision is that these four Unit Land registrations modified by substituting "graze" for "stray" were properly made as regards the Forest Part.

Lastly under this heading I consider the within South Brent registrations specified in Part III of the First Schedule hereto so far as possibly applicable to the Forest Part. All these registrations (except those at Entry Nos. 1, 2, 4 and 45) are within Duchy Objection No. 986, and being of rights attached to lands in South Brent were not conceded (other than that at Entry No. 122 as to which see below) by Mr Sturmer because they were not in Venville; in the absence of any evidence or argument in support of them my decision is that they (except as aforesaid) were not properly made. The registration at Entry No. 122 made on the application of Mr J Savery of rights attached to Zeal Farm and Lincombe Farm was I suppose included in Duchy Objection 986 because the Farms are in South Brent not recognised as a Venville parish, and confirmation of the corresponding CL164 registration at Entry No. 877 was by my said CL164 decision refused; nevertheless rights attached to these Farms over the Forest Part could by use be established either under the Prescription Act 1832 or under a grant presumed in accordance with *Tehidy v Norman* 1971 2QB 528; from the questions put to Mr Edmunds by Mr Sampson about grazing from these farms, I supposed that later oral evidence would be given by Mr Savery of grazing from them on the Forest Part; in these circumstances I consider (notwithstanding that Mr Savery did not give any evidence of use) I should accept the compromise agreed between Mr Sturmer



and Mr Sampson, and my decision is therefore in accordance with it as set out in sub-paragraph (C) of paragraph 4 of the decision table being the Third Schedule hereto. The registration at Entry No. 45 is limited to "that part of the land comprised in this register unit and CL156 (grazing rights only) that lie south of the assumed Forest Boundary and ..."; from Mr W J Edmunds being one of the applicants, I conclude that the "boundary" is the same as the boundary of the Forest Part; technically the registration is in question by reason of SWDWB Objection No. 653, and because it is undesirable that the Register should contain two different expressions for the same thing, although I can do nothing about the CL153 registration which being undisputed on the CL153 Register has become final, my confirmation of this Unit Land registration is subject to the modification specified in sub-paragraph (B) of the said decision table. About the registrations at Entry Nos. 1, 2 and 4 which are not within any Duchy Objection, I have no note or recollection of anything at the hearing being said about them; they are not within any Objection other than SWDWB Objection No. 653; notwithstanding that the grounds of such Objection have no relation at all to the Forest Part, the registrations are in law wholly in question see *re Sutton* 1980 1WLR 647 and *re West Anstey* 1985 2WLR 677; I am therefore obliged to consider whether they are in order; my decision against the other Part III registrations (except No. 122) is based on the Duchy's view generally accepted by all at the hearing that lands in South Brent (or partly in South Brent and partly in Ugborough are not in Venville and therefore have no rights over the Forest Part; in the absence of any evidence of special circumstances (such as would bring the 1832 Act into operation) my decision is that these registrations as regards the Forest Part were not properly made; because those concerned to support them may have failed to attend or be represented at the hearing in belief that their validity over the Forest Part would not be in question, I give to such persons liberty to apply for a continuation of the hearing so they can give evidence and/or offer argument contrary to this decision; such application should be made with the THREE MONTHS time limit and otherwise in accordance with paragraph 5 of the decision table the Third Schedule hereto.



- 15 -

South Brent, grazing from outside

Under this heading, I consider the registrations listed in Part II of the First Schedule hereto so far as possibly applicable to the part ('the South Brent Part') of the Unit Land other than the Forest Part.

Of these registrations, those at Entry Nos. 5, 6 and 106 were the only registrations about which there was at the hearing any conflicting evidence and argument, they being supported by Lady Sayer and opposed by Mr Edmunds. These registrations are all within MCCSB Objection No. 220, "that the rights do not exist at all"; so the burden of proving their propriety as regards the South Brent Part falls on those concerned to uphold them. The evidence and arguments offered at the hearing by Lady Sayer considered in isolation were too lacking in precision and too vague in her reference to documents to establish the existence of rights. However, I understood her to be referring generally to the documents and other evidence and arguments adduced at a hearing I held in 1982 by her solicitor about essentially identical registrations in Register Unit No. CL188 (Commons of Sheepstor); because Mr Edmunds was present at such hearing, and referred at this Unit Land hearing to my CL188 decision dated 30 June 1983, I treat all such documents, evidence and arguments as repeated at this Unit Land hearing. In my CL188 decision I refused to confirm the said registrations for the reasons which were therein set out by reference to my CL164 decision of the same date about the Forest of Dartmoor; such reasons would be treated as repeated herein and as applicable to these three Unit Land registrations.

As above recorded Lady Sayer in the course of her evidence said (in effect):- As owners of her ancient holding for 56 years they had been exercising their Venville rights for the whole of that time. Because this evidence could be regarded as enough to establish her claims under the Prescription Act 1832 or under a presumed grant in accordance with Tehidy v Norman 1971 2QB 528, I record that: as I understood Lady Sayer she was not alleging that any animals from her holding in Widecombe-in-the-Moor had actually grazed on the South Brent Part. However this may be, the distance between the Unit Land and Widecombe-in-the-Moor and Holne and the nature of the CL164 moor land are such that I am unable from anything said by her to ascribe to any grazing done from Widecombe-in-the-Moor or Holne as supporting any prescription under the 1832 Act or presumed grant. Additionally I have the evidence of Mr J T French which I accept that no animals either from Widecombe-in-the-Moor or Holne have been seen on the South Brent Part.

For these reasons my decision is that the registrations at Entry Nos. 5, 6 and 106 were not as regards the South Brent Part properly made.

As regards the other registrations listed in Part II of the First Schedule hereto, I accept the submission of Mr Edmunds that if they could be considered as being in Venville with any such consequence as was claimed by Lady Sayer, they were not properly made for reasons set out or referred to in my said CL188 decision; additionally I —————> conclude in the absence of any evidence or argument in support of them, that they were not properly made. My decision about them is accordingly as set out in paragraph 3 of the decision table being the Third Schedule hereto.



South Brent, straying on

Under this sub-heading I consider the registrations listed in Part I of the First Schedule hereto so far as possibly applicable to part ("the South Brent Part") of the Unit Land other than the Forest Part.

As regards the registrations at Entry Nos. 48, 104 and 105 I give leave to amend the grounds of MCCSB Objection Nos. 216 and 220 so as to put these registrations wholly in question, subject however to those concerned to support them being at liberty to apply for the hearing to be re-opened so that they can offer evidence and argument against any such amendment being allowed and for the registrations being confirmed with or without modification. Any such application should be made within the THREE MONTHS time limit and otherwise in accordance with paragraph 5 of the decision table being the Third Schedule hereto. Subject to such liberty to apply my decision about these registrations is that they were not properly made for the reasons set out in the next paragraph.

As to the other registrations specified in MCCSB Objections Nos. 220, 221 and 267, being Nos. 13, 14, 15, 16, 18, 19, 21, 23, 27, 28, 29, 30, 47, 52, 62, 68, and 99, no evidence or argument was offered in support of them and for the reasons set out in my CL164 decision dated 30 June 1983 under the heading "straying" I consider that a registration "to stray" is confusing and in the absence of any reason for modifying it should be avoided. Having no such reason, my decision is therefore that the registrations at these Entry Nos. were not properly made.

The registrations at the following Entry Nos. are not within any MCCSB Objection: 9, 10, 11, 12, 17, 20, 22, 24, 25, 26, 31, 32, 33, 46, 49, 59, 60, 61, 63, 64, 65, 70, 71, 92, 102, 103, 108, 117, 119, 120, 121, 123, 124, 127, and 132 (No. 20 has been replaced by Nos. 135, 137 and 138 and No. 71 has been replaced by Nos. 140 and 141). All these registrations are in question by reason of Duchy Objection No. 986 as regards the South Brent Part notwithstanding that the grounds of such Objection are limited to the Forest Part, see re Sutton supra and re West Anstey supra. For the reasons set out under the heading "straying" in my said CL164 decision I consider that these registrations are confusing and in the absence of any reason for modifying them should be avoided. My decision is therefore that they were not properly made. Because those concerned to support them may have not attended or been represented at the hearing in expectation that the registrations would be confirmed as regards the South Brent Part, I give to such persons liberty to apply to re-open the hearing so that they can offer evidence and argument in support of them; any such application should be made within the THREE MONTHS time limit and otherwise as specified in paragraph 5 of the decision table being the Third Schedule hereto.

South Brent, grazing within

Under this heading I consider that the registrations listed in Part III of the First Schedule hereto so far as possibly applicable to the part (the South Brent Part) of the Unit Land other than the Forest Part.



As to the words of the registration at Entry No. 130: "to shoot with shot-gun only game (not hooped) and vermin" within MCCSB Objection No. 217, no evidence or argument was offered in support of these words, and as above recorded I have some evidence that Wing Commander Furneaux is agreeable to their deletion. My decision is that this Objection succeeds and to this extent at least the registration should be modified.

The registrations at Entry Nos. 40, 54, 97 and 112 are all within MCCSB Objection No. 220, which as regards these registrations has not been withdrawn for the reasons given by Mr Edmunds and as above (27 November) recorded. In the absence of any evidence or argument in support of them, my decision is that they were not properly made.

The registrations at all the other Entry Nos. were either not within any MCCSB Objection, or were such that Mr Edmunds subject to reservations about Nos. 8, 125 and 131, about No. 38 and about No. 55 said were in the view of the South Brent Commoners Association properly made and should be confirmed without any modification. Although Mr Edmunds repeatedly used the words "without any modification" I understood him in the context to mean other than such as might be necessary to effect any exclusion of the Forest Part which I should think proper having regard to the submissions made by Mr Sturmer. I also understood him to mean that the view of the Association was a considered view held by Mr Edmunds and other responsible members, all of whom had local knowledge of the rights which were being or which were known or believed to have been exercised. Further I have in favour of these registrations the statutory declarations which were made by the applicants in support of them. My decision is therefore that all these registrations as to the South Brent Part were properly made and should be confirmed without any modification other than to Entry Nos. 130 (no shot-gun) as above mentioned and to Nos. 38, 125 and 131 (no piscary), No. 38 (fewer animals agreed), No. 55 (not south of Badworthy Brook).

As to Entry No. 55 I accept the evidence (27 November) of Mr Edmunds about this registration and my decision is therefore that MCCSB Objection No. 220 succeeds that there should be excluded from it land at Binnamore (south of Badworthy Brook) and that consequentially the number of animals specified in it should be reduced. The reduction proposed by Mr Edmunds seems to me appropriate. In the absence of any evidence or argument against the Objection my decision is as recorded in sub-paragraph (E) of paragraph 4 of the decision table being the Third Schedule hereto.

The rights at Entry No. 93 are attached to OS No. 1827 which is included at Entry No. 129 among the OS Nos. comprising the lands at Thynacombe therein specified. Although Entry No. 129 is only in question by reason of MCCSB Objection No. 253 and Duchy Objection No. 156 the grounds of which do not put it wholly in question, such Objections give me jurisdiction to deal with the registration as may be requisite. Clearly the registrations at Entry Nos. 93 and 129 cannot stand together. For the reasons given by Mr Edmunds above (27 November) I recorded my decision is that the registration at Entry No. 93 was not properly made.



- 18 -

As to the words "piscary" included in the registrations at Entry Nos. 8, 125 and 131, notwithstanding that the grounds of Duchy Objection No. 468 and SWDWB Objection No. 656 relate only to the Forest Part and to part of the Unit Land no longer included in the Land Section, these registrations are wholly in question see re Sutton supra and re West Anstey supra. I have no evidence that rights of piscary here exist, and there are many rights of fishing in law profits a prendre which are not rights of common of piscary and therefore not registrable under the Commons Registration Act 1965 and do not cease to be exerciseable if not so registered. Against "piscary" I have the evidence above summarised (27 November) of Mr Sturmer. My decision is therefore that the word "piscary" wherever it occurs in the Register should be deleted as regards the South Brent Part, as well as the Forest Part.

The registration at Entry No. 38 is wholly in question under the MCCSB Objection No. 220. About this registration as above recorded a compromise has been agreed between Mr Edmunds and Mr Goodman. I consider I can and should give effect to it and my decision is accordingly.

Final

The effect of the decisions herein before contained is set out in the decision table being the Third (and last) Schedule hereto, and such Schedule should be treated as part of this decision.

Because much of this decision relates to persons who were not present or represented at the hearing and is dependent on agreements and statements about which there may herein be some mistake or error which I ought to correct without putting the persons concerned to the expense of an appeal, I give liberty to apply to any person who might be affected by any such mistake or error. Such application should be made within the THREE MONTHS time limit and otherwise as specified in paragraph 5 of the decision table being the Third Schedule hereto.

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 this decision is sent to him, require me to state a case for the decision of the High Court.



FIRST SCHEDULE
(Rights Section registration)

Notes:- In this Schedule "the Forest part" means the part of the Unit Land lettered "A" on the Register map. All these registrations except No. 101 are within SWDWB Objection No. 653: "The Common Rights do not exist on the land coloured pink on the attached plan". SWDWB = South West Devon Water Board and MCCSB = Management Committee of the Commoners of South Brent.

Part I: to stray

Note:- All in this part are expressed as "to stray"; in brackets the names of applicant and the Register Unit from which stock may stray.

Numbers:- 9 (John Henry Bickford from CL162); 10 (Robert Edward Skelley from CL156 and CL164,S); 11 (William Anthony Daniels from CL156 and CL164,S); 12 (Henry John Daniels from CL156 and CL164,S); 13 (Nicholas Cawrse and Avril Mary Clemens Cawrse for CL156 and CL164,S); 14 (Harry John Ridgway from CL156 and CL164,S); 15 (Mary Florence Pennant from CL156 and CL164,S); 16 (Aubrey Allan Rogers and Margarita Opal Vivian Rogers from CL156 and CL164,S); 17 (Victor Lobb from CL156 and CL164,S); 18 (Gladys Grace Mitchell from CL156 and CL164,S); 19 (Edward Thomas Mitchell from CL156 and CL164,S); 20 (replaced by Nos 135, 137 and 138, Humphrey William Woollcombe and Francis Seymour Hurndall-Waldron from CL156 and CL164,S); 21 (Francis Seymour Hurndall Waldron from CL156 and CL164,S); 22 (Violet Dalby from CL156 and CL164,S); 23 (John Henry Smerdon from CL156); 24 (John Henry Smerdon from CL156); 25 (Thomas Cole from CL156); 26 (Frank Percival Coker from CL156); 27 (Harry Rickman from CL156 and CL164,S); 28 (John Colwill from CL195); 29 (Phyllis Margaret Gillard from CL195); 30 (John Henry Smerdon from CL156); 31 (William Hosking from CL156); 32 (Robert Henry Jane from CL156); 33 (Esmond Marshall Kingston Jellicoe from CL156); 46 Arthur Francis Luscombe and William Thomas Luscombe from CL156); 47 (Herbert Edward Coles and Rosamund Isabel Coles from CL195); 48 (Thomas Wakeham from CL156); 49 (Arthur Francis Luscombe and William Thomas Luscombe from CL156); 52 (Mary Florence Douglas Pennant from CL195); 59 (South Brent Feoffees from CL156); 60 (South Brent Feoffees from CL156); 61 (Charles Wroth from CL156); 62 (John Owen Mann from CL146 and CL164); 63 Reginald Norrish from CL162 and CL164,S); 64 (Richard Sparrow Coulton from CL162); 65 (James Edmund Mabin and Sylvia Maude Mabin from CL162 and CL164,S); 68 (Donald Pearse from CL146, CL162 and CL164); 70 (Eden James Hunderford Morgan from CL156 and CL164,S); 71 (replaced by Nos. 140 and 141, Patricia Mary Donnes from CL156 and CL164,S); 92 (Michael Burton Ogle from CL162 and CL180); 99 (William Hayward Hoskins from CL156); 102 (Joseph Grigg Kellock from CL156); 103 (John Henry Smerdon from CL156); 104 (John Henry Smerdon from CL156); 105 (John Henry Smerdon from CL156); 108 (Semaj John Dance from CL162, CL180, CL164 and CL218); 117 (Herbert Alfred French, John Trevarthen French and Geoffrey Herman French from CL156 and CL164,S); 119 (Reginald Jeffrey Hine from CL156); 120 (Henry George Hurrell from CL156); 121 (Henry George Hurrell from CL156); 123 (Henry George Hurrell and Lilian Hurrell from CL156); 124 (Henry George Hurrell and Terence Rodney Stockman from CL156); 127 (Ernest William Charles Hancock & Kathleen Elizabeth Hancock from CL156); 132 (Ernest Charles Cooper & Kathleen Ethel Cooper from CL162 and CL180); 135, 137 and 138 (see No. 20 above); 140 and 141 (see No. 71 above).



Representation:- Mr S J Dance (No. 108) attended in person. Mr J T French (No. 117) attended in person.

Objections:- MCCSB No. 216 applicable only to Entry No. 48: "Stocking rate exceeds the agreed limit of 1 cow, 1 pony or 5 sheep per acre". MCCSB No. 220 applicable to Nos. 14, 15, 16, 18, 19, 21, 23, 27, 29, 30, 47, 52, 62, 68, 99, 104 and 105: "That the rights do not exist at all (annexed sheet about Nos. 104 and 105 adds "except to stray)". MCCSB No. 221 applicable to Entry No. 28 only: "That the rights do not exist at all".

MCCSB No. 267 applicable to Entry No. 13 only: "That the rights do not exist at all". Duchy No. 986 applicable to all Entry numbers in this part except Nos. 65, 68 and 92 and 108: "The rights do not exist ... (on the Forest Part)...".

Part II: registrations of rights
attached to land outside South Brent

Note:- This Part does not include any registrations specified in Part I. In brackets names of applicants.

(A) Widecombe-in-the-Moor:- No. 5 (Guy Bouchier Sayer and Sylvia Rosalind Pleadwell Sayer).

(B) Holne:- Nos. 6 (David Miller Scott); 72 (Holne Parish Lands Charity); 73 (David Miller Scott); 74 (H D and E M Pearce); 75 (Lewis Olver Perkins); 76 (Alexander George Cousins); 77 (Philip Robert Layne-Joynt); 78 (Robert Ewing Adam); 79 (Leonard Jackson); 80 (Edwin Hooper Woodward and Isabella Amelia Woodward); 81 (Francis Arthur Perryman); 82 (James Barnes Townsend); 83 (Florence and Albert Edward Tozer); 84 (Raymond George Mortimore and Anne Bouverie Mortimore); 85 (Percy Albert Norrish); 86 (George Ernest Jonathon Cawthorn); 87 (Hugh Clarkson and Mary Isabel Clarkson); 88 (Mary Isabel Clarkson); 106 (Eleanor Nancy Smallwood).

(C) Ugborough:- Nos. 42 (Tom Kenneth George Stephens and Percy Arthur Stephens) and 69 (Robert Grant Prowse).

(D) West Buckfastleigh:- No. 89 (William Henry Norrish).

(E) Okehampton:- No. 101 (Peter George Ansell; owner part tenant remainder; Upcott House; Estovers, turbary, piscary, pannage, shooting, take sand, gravel earth and stone over that part of the land comprised in this register unit as lies within the Forest of Dartmoor).

(F) South Tawton:- Nos. 114 (Ellen Amy Joyce Worthington) and 115 (Vera Ellen Knapman).

Representation:- No. 5 Sir G B and Lady Sayer attended in person. No. 6 Sir James F Eberle as successor of D M Scott and No. 106 Mrs E M Smallwood were represented by Lady S R P Sayer.



Objections:- MCCSB No. 220 applicable to all Entry Nos. listed in this part:-
"That the rights do not exist at all". Duchy No. 467 applicable to Entry Nos. 5
6, 72 to 79 inclusive, 81 to 88 inclusive, 101 and 106:- "That the right does not
exist (on the Forest Part) ..." SWDWB No. 656 applicable to Entry Nos. 101, 114
and 115: "The Common Right of Piscary does not exist". Duchy No. 986 applicable
to Entry Nos. 42, 69, 82, 101, 114 and 115: "Rights claimed do not exist on (the
Forest Part) ...".

Part III: registrations of rights attached to
lands in South Brent

Notes:- This Part does not include any registrations specified in Parts I and II
above. In brackets name of applicant and land to which rights are attached.

Numbers:- 1 (Edgar James Bassett, High Badworthy); 2 (William Arthur Roy
Pearse and Dulcia Sophie Pearse, Town Farm); 4 (Cyril John Parnell Mead,
Bullhornstone Farm); 7 (Edgar John Bassett, part Merrifield Farm); 8 (Paul Fry
Williams and Winifred Mary Williams, Merrifield); 34 (Veronica Catherine
Ferguson, Shipley Bridge); 35 (Roland Edward Stuart Ferguson, Yelland Farm);
36 (Roland Edward Stuart Ferguson, Tangs Shipley); 37 (Thomas Kynveton Darnly
Anderson, Higher Downstow); 38 (John Henry Steer, Choley Park); 39 (Anthony
Seeby Church, Sanderson, Yelland Farm and part Higher Downstow Farm); 40 (Esmond
Marshall Kingston Jellicoe, part Thynacombe); 41 (Esmond Marshall Kingston
Jellicoe, Lower Beara Farm); 44 (Cyril Charles Henry Worth, Tor View, Staddon);
45 (Wilfred John Edmunds and Lucy Adeline Edmunds, Gribblesdown); 50 (John Henry
Wildman and Margaret Joy Wildman, Mann Aish); 51 (William John Edmunds, Treeby);
53 (George William Barthrop Bateman, land at Shipley); 54 (Lawrence Gilbert Turner,
in gross as owner of The Manor); 55 (Thomas Cole and Lilian Mary Cole, Binnamore and
Lower Badworthy); 56 (John Marwood James Hannaford and Mary Francis Hannaford,
Lower Badworthy); 58 (South Brent Feoffees, land at Aish OS No. 1276 etc);
66 (John Luce, Lower Downstow); 67 (Exors of Sarah Pearse, land at Aish OS
Nos. 251 etc); 90 (Ernest Steer and Sarah Florence Steer, Homer Stidston Farm);
91 (Phyllis Ruby Cleave and Frank Percival Coker, Middle Stidston Farm); 93 (John
Henry Codd, OS No. 1827); 94 (John Henry Codd, Gisper Down); 95 (Mollie Doreen
Mugridge, Binamor); 97 (Ernest Steer, undivided half of Aish Ridge); 98 (Stanley
John Warren, High Downstow); 100 (Thomas Wilfred Mugridge, Staddon and Higher
Binnamore); 109 (Semaj John Dance, part Dockwell Farm); 110 (Charles Percival
Stone and Robert Stone, land at Aish Woods); 112 (Joyce Willitts and Amy
Florence Willitts, Hillstead and Hillstead Cottage); 116 (Herbert Albert French,
Nancy Harriet French, John Trevarthen French, and Geoffrey Norman French,
Corringdon Farm); 118 (John Trevarthen French; Treeland and part Merrifields
Farm); 122 (John Savery, Zeal Farm and Lincombe Farm); 125 (Michael Burton
Ogle, Stippadon Farm); 126 (Frederick George Hard, Higher Binnamore);
128 (Horace Arthur Cox & Mary Burrows Cox); 129 (John Elliott and Ether May
Hodson pers. reps of Lord Hodson); 130 (Samuel John Furneaux, Greenacres,
Didsworthy); and 131 (Gerald Green and Michael Burton Ogle, Court Gate Farm and
Castleford).

Representation:- No. 129, Ogle Estates Ltd as successors of Messrs J Elliott and
E M Hodson were represented by Mr P W Harker. Nos. 50 and 51, Mr W J Edmunds as
successor of J H and M J Wildman and as himself applicant attended in person.
No. 109 Mr S J Dance attended in person. Nos. 116 and 119 Mr J T French attended
in person.



Objections:- MCCSB No. 217 applicable only to Entry No. 130: "the right to support with shotgun does not exist". MCCSB No. 220 applicable to Nos. 34, 38, 39, 40, 41, 50, 51, 53, 54, 55, 58, 67, 90, 97, 98, 112, 128 and 129: "The rights do not exist at all" but on annexed paper as to No. 55 marked "In respect of land at Binnamore". > Duchy No. 468 applicable to No. 8 "The right of piscary does not exist on "The Forest Part ..." SWDWB No. 656 applicable to Entry Nos. 8, 125 and 131 "The Common Right of Piscary does not exist". Duchy No. 986 at Entry Nos. 7, 8, 34, 35, 36, 37, 38, 39, 40, 41, 44, 50, 53, 54, 55, 56, 58, 66, 67, 90, 91, 93, 94, 95, 97, 98, 100, 109, 110, 112, 116, 118, 122, 125, 126, 128, 129, 130 and 131: "That the rights do not exist ... (the Forest Part) ..." Deemed objection applicable to Entry Nos. 40 and 129 because in conflict.

SECOND SCHEDULE

(Documents produced or referred to)

Part I: on behalf of South West Water Authority

FGC/1	16 January 1935	Conveyance by Ivy Constance Meynell to The Kingsbridge & Salcombe Water Board of "... Commons Moors and Waste Lands known by the name of Brent Moor ... surrounded by a red border on the plan ..."; with a memorandum dated 24 November 1976 endorsed thereon.
-------	-----------------	---

Part II: on behalf of the Duchy

Duchy/21	1975	OS map 1/25,000, Buckfastleigh marking location of Duchy claims.
Duchy/22	--	Pages 5 to 9 from "Old Map of Dartmoor" (an octavo booklet) comprising:- "Perambulation 24 Henry III, 1240. Printed from the copy on the back of the original map: ... Et sic per Wester Welbroke usq. cadit in Auena. Et inde Linealit usq. ad Yester Whyteburghe. Et inde Linialit usq. ad la Redelake, ubi cadit in Erme, ..." Perambulation of Dartmoor Forest 24 Henry III AD1240. Extracted from Risdon's Survey of Devon. (as above) Perambulation of the Boundaries of Dartmoor Forest, 24 Henry III AD1240. --- Extracted from Rowe's Dartmoor. (as above)"



- Duchy/23 1540 Copy map showing "Foresta de Dartmore" as a circle, and outlining River Avon and marking on the circumference "Ester Whiteburg".
- Duchy/24 ?
1894 Printed Extract entitled:—"Presentment of the Jury at a Survey Court for the Forest of Dartmore AD1609. --- Extracted from Rowe's Dartmoor.
- "... so by the same Wester Wellebrooke until it falleth into Owne, al's Aven, and from thence linyallie to Easter Whiteburrowe and from thence liniallie to Redlake foote whir it falleth into Erme ..."
- Duchy/25 13 October 1786 The Manor of Lydford and Forest of Dartmore. At a Court of Survey ... The Jurors returned ... First they present that the bounds of the said Forest of Dartmore have been used and accustomed to be ... from thence is West Wellebrook head and so down the said Brook will it fall ... (?) ... Owen or Avon by Huntingdon Cross, from thence to East Whettaborough, from thence to Redlake foote where it falls into the Erme and thence up to Erme head ..."
- Duchy/26 1808 "A plan of the Forest of Dartmoor. The property of His Royal Highness the Prince of Wales" endorsed (describing the several Newtakes etc). By Thomas Gray 1808 or ... (illegible)."
- Part 10 of map shows straight line from foot of "Western Wellbrook" where it joins "Aven" to an asterisk ($\frac{1}{2}$ " diameter) marked "East Whiteaborough" and thence a straight line westwards.
- Duchy/24
bis 21 September 1867 Deed made between (1) HRH Albert Edward Prince of Wales ... and (2) Henry Rivers and Henry Bowen Rivers defining the respective rights of HRH in respect of the Manor of Lydford and H and HB Rivers in and over Harford Moor ... The Duchy of Cornwall Management Act 1865" ... which said Moor is bounded as follows that is to say on the north by the Forest of Dartmoor the boundary of which in that



locality is an imaginary straight line drawn from the point where Redlake falls into the Erme in the direction of the Tor or Beacon called Western Wittaborough ... more particularly defined on plan annexed ... orange border ..." The annexed plan marks orange a straight line from Easter Wittaborough to Western Wittaborough and another straight line from Western Wittaborough nearly (a little northwards) producing such last mentioned line. Enrolled in the Office of the Duchy 2 December 1867.

Duchy/27 16 January 1935

Copy conveyance between Ivy Constance Meynell and The Kingsbridge & Salcombe Water Board (same as FGC/1 above)

Duchy/28 --

Copy memorandum on said conveyance (as on FGC/1)

Duchy/29 3 November 1976

Letter from South West Water Authority to Farrer & Co "... In view of information produced, the Authority agrees to forego any claim of title to the area coloured red on the attached plan ..."

Duchy/30 --

Paper (35" x 8", printed) of "Various Records of the Perambulation of The Forest of Dartmoor from 1240 AD", "Perambulation of 1608", Evidence 1689, 1699 and 1702, 1826". Parchment ... Ed III and extract "Feoda in Capite, Hen VIII.

Duchy/31 1970
2nd imp
1977

Extract, pages 279 and 280 from John Somer Cocks, Dartmoor: New Study (printed book):- Map illustrating the Paper on "The Bounds of the Forest of Dartmoor" by Arthur B Prowse (Devon Association July 1892) and (at page 279) "In 1240 the next bound is Eastern Whitebarrow ... The parish boundary is now drawn to Western. There does not seem to be much doubt that historically the lower but more conspicuous Eastern Whitebarrow is correct ..."



Duchy/32 10 June 1968

Tenancy agreement between The Lord Warden and Council of HRH Charles Prince of Wales Duke of Cornwall and Wilfred John Edmunds ("the Grazier"): entitling the Grazier "to graze with cattle and sheep and horses the land being a portion of the South Quarter of the Forest ... shown by pink colour on the plan attached ..." The plan shows the southeast boundary as a straight line from the Avon south to Eastern Whitebarrow and then a nearly straight line westwards through Western Whitebarrow to where the Red Lake Brook joins the River Erme.

Duchy/33 --

Map "Dartmoor, the Forest and Adjacent Commons being the same as Appendix I to the Memorandum of Evidence submitted by the Dartmoor Commoners' Association and by them considered on 30 April 1957.

Part III: on behalf of South Brent Commoners' Association

Savery/1 1557

(?) Inquisition (put to Mr Haslam when questioned).

Savery/2 1892

Map (another copy of Duchy/31 not marked).

Savery/3 1856

Extracts from Samuel Rowe; perambulation of Forest of Dartmoor; second edition; title page and pages 176, 177, 178 and 179; 328, 329, 330 and 331.

Part IV: by Lady S R P Sayer

Sayer/41 --

Statement of evidence on behalf of Sir Guy and Lady Sayer, Admiral Sir James Ebberley and Mrs Smallwood, also referring to extensions to Brent Moor (CL187).



Part V: on behalf of South Brent Commoners' Association

SBCA/1	--	Paper (8" x 6") showing Objection Nos and Entry Nos analysed.
SBCA/10	--	Plans 1/2500 of Badworthy and Binnamore by Luscombe, Maye & Co showing lots 1, 2, 3 and 4.

Part VI: on behalf of Duchy about piscary and shooting

Duchy/1	--	Specimen fishing licences, salmon week, salmon season, trout season, trout day and trout week.
Duchy/2	28 March 8 June 22 August 1908	Letters about shooting.
	23 April 24 May and 27 July 1910	Letters about shooting.
	10 September 1932	Letter about persons who rent shooting.
	2 October 1981	Letter enclosing £5 rent for permission to shoot over Riddon Ridge.
	22 July and 5 August 1953	Exchange of letters between Duchy and Devon River Board as to the Board's Bailiffs asking fishermen to produce their Duchy permits.
	28 January 1954	Letter to F Warne about payment by Duchy for ensuring that fishermen in Duchy Waters have appropriate Duchy fishing ticket.
	Before 1900	Specimen grant by Warden of the Stannaries in Cornwall and Rider and Master Forester of the Forest and Chace of Dartmoor of licence to hunt with Harriers from 1 October 18-- to 31 May 18--.



THIRD SCHEDULE
(Decision table)

1. I CONFIRM the registration at Entry No. 1 in the Ownership Section without any modification; and I CONFIRM the registration at Entry No. 2 in the Ownership Section with the MODIFICATION that there be added at the end of column 4: "except the land hatched (doubly horizontal and diagonal lines) red and lettered A on the register map".
2. As to the Rights Section registrations listed in Part I of the First Schedule hereto for the reasons set out under the heading South Brent, straying on, and added to under the heading Forest Part, rights:-
 - (A) I CONFIRM the registrations at Entry Nos. 65, 68, 92 and 108 with the MODIFICATION in column 4, for the word "stray" substitute "graze" and for the words "whole of the land comprised in this register unit ... to the last word in this coloumn, substitute "the part of the land comprised in this register unit hatched red (horizontally and diagonally) red and lettered A on the register map".
 - (B) Subject to the liberty to apply granted under the heading South Brent straying on I REFUSE to confirm the registrations at Entry Nos. 48, 104 and 105.
 - (C) I REFUSE to confirm the registrations at Entry Nos. 14, 15, 16, 18, 19, 21, 23, 27, 28, 29, 30, 47, 52, 62 and 99.
 - (D) Subject to the liberty to apply granted under the heading South Brent, straying on, I REFUSE to confirm the registrations at the following Entry Nos. (being all others specified in the said Part I): 9, 10, 11, 12, 13, 17, 20 (replaced by Nos. 135, 137 and 138), 22, 24, 25, 26, 31, 32, 33, 46, 49, 59, 60, 61, 63, 64, 70, 71 (replaced by Nos. 140 and 141), 102, 103, 117, 119, 120, 121, 123, 124, 127 and 132.
3. As to the Rights Section registrations listed in Part II of the First Schedule hereto, for the reasons set out under the heading South Brent, grazing from outside, as added to under the heading Forest Part rights:-
 - (A) I CONFIRM the registrations at Entry Nos. 5, 6, 72 to 88 inclusive, 89 and 106 with the MODIFICATION in column 4 for the words "over the whole of the land in this register unit" substitute the words "over the part of the land in this register unit hatched (doubly horizontally and diagonally) red and lettered A on the register map".
 - AND (B) I REFUSE to confirm the registrations at Entry Nos. 42, 69, 101, 114 and 115.
4. As to the Rights Section registrations listed in Part III of the First Schedule for the reasons under the heading South Brent, grazing within and added to under the heading Forest Part rights:-
 - (A) Subject to the liberty to apply granted under the heading the Forest Part, I CONFIRM the registrations at Entry Nos. 1, 2 and 4 with the MODIFICATION in column 4 after the words "over the whole of the land comprised in this register unit" insert the words "except the part hatched (doubly horizontally and diagonally) red and lettered A on the register map".
 - (B) I CONFIRM the registration at Entry No. 45 with the MODIFICATION in column 4 after the words "over that part of the land comprised in this register unit" delete



in this register unit lying south of the assumed Forest boundary", substitute "the whole" the land comprised in this register unit except the part of such land hatched (doubly horizontally and diagonally) red and lettered A on the register map.

- 28 -

1114

"and" and for such word "and" substitute the words "over the whole of the land comprised in this register unit except the part hatched (doubly horizontally and diagonally) red and lettered A on the register map and over that part of".

(C) I CONFIRM registration at Entry No. 122 with the MODIFICATION in column 4 after the words "on the whole of the land comprised in this register unit" insert the words "provided that under the right to graze at any one time not more than 30 NFU Stock Units shall graze on the part of the said land which is hatched (doubly horizontally and diagonally) red and lettered A on the register map".

(D) I REFUSE to confirm the registrations at Entry Nos. 40, 54⁴³, 97 and 112.

(E) I CONFIRM with the MODIFICATIONS next specified the registrations at the following Entry Nos. (being all others listed in the said Part III) Nos. 7, 8, 34, 35, 36,

37, 38, 39, 41, 44; 50, 51, 53, 55, 56, 58, 66, 67, 90, 91, ~~93~~ 94, 95, 98, 100,

109, 110, 116, 118, 125, 126, 128, 129, 130 and 131: first as regards all such Entry Nos. (modified in column 4

after the words "on the whole of the land comprised in this register unit" insert "except the part of such land hatched (doubly horizontally and diagonally) red and lettered A on the register map; secondly in column 4 of Entry Nos. 8, 125 and 131 delete "piscary"; thirdly, in column 4 of Entry No. 38 for the words "10 cattle or 10 ponies or 25 sheep" substitute "5 cattle or 5 ponies or 12 sheep"; fourthly in columns 4 and 5 of Entry No. 55 for the words "40 cattle or 40 ponies or 200 sheep" substitute the words "22 cattle or 22 ponies or 110 sheep" and remove from the land "as shown edged red in the boundary of the supplemental map" all land south of Badworthy Brook"; and fourthly in column 4 of Entry No. 130 delete "to shoot with shot-gun only game (not hoofed) and vermin".

5. Any application under any liberty to apply in this decision granted should be made within THREE MONTHS from the date on which notice of this decision was sent to the persons entitled to have it, but so that application may be made to a Commons Commissioner to enlarge this three month period. Any such application should in the first instance be by letter to the Clerk of the Commons Commissioners stating the alteration in this decision which the applicant considers should be made and the evidence (identifying the documents relied on) which would be adduced if the Commissioner directs a further hearing. A copy of the application should be sent to any person who might be adversely affected by it being granted and also to the County Council for their information as Registration Authority. As a result of the application the Commons Commissioner made direct a further hearing unless he is satisfied that the error or mistake is obvious and all those concerned are agreeable. Of such further hearing notice will be given only to the persons who on the information available to the Commons Commissioner appears to him to be concerned with the registration in question. Any person wanting to be given notice of any further hearing should by letter inform the Clerk of the Commons Commissioners as soon as possible specifying the registration a further hearing about which he might wish to attend or be represented at.

Dated the 15th day of November 1985.

a. a. Baden Fuller

Commons Commissioner