COMMONS REGISTRATION ACT 1965

Reference Nos. 209/D/421
209/D/422

In the Matter of Dunstone Down (part of) and Blackslade Down, (Manor of Dunstone), in Widecombe-in-the-Moor, Teignbridge District, Devon.

DECISION

Introduction

This Matter relates to 67 registrations made under the 1965 Act. My decision as regards each of the registrations is set out in the Third (and last) Schedule hereto. The disputes which have occasioned this decision, the circumstances in which they have arisen, and my reasons for my decision are as follows.

These disputes relate to the registrations at Entry Nos. 1, 4, 5, 8 to 15 inclusive, 17 to 19 inclusive, 21 to 27 inclusive, 30, 34, 35, 37, 38, 40, 42 to 71 (45 replaced by Nos 87 and 88) inclusive, 74, 76 to 80 inclusive and 83 in the Rights Section and at Entry Nos. 1 and 2 in the Ownership Section of Register Unit No. CL69 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections Nos. 245, 246, 249 and 250 made for Mrs A Brown as Lord of the Manor by Mr R J Michelmore, Steward of the Manor and noted in the Register on 26, 23, 19 and 19 (respectively) October 1970, by Objections Nos. 474 and 476 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 11 and 15 February 1971, by Objection No. 879 made by Mr J Zab and noted in the Register on 13 January 1971 and by the Rights Section registrations at Entry Nos. 21 and 79 and 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 Exeter on 11 April 1984. At the hearing: (1) Mrs Anstice Brown who made Objections Nos. 245, 246, 249 and 250 and applied for the Rights Section registration at Entry No. 79 and for the Ownership Section registration at Entry No. 1, was represented by Mr R J Michelmore chartered surveyor of Michelmore Hughes, Chartered Surveyors of Newton Abbot; (2) the Attorney-General for the Duchy of Cornwall who made Objection Nos. 474 and 476 and applied for the Ownership Section registration at Entry No. 2 was represented by Mr C Sturmer, the Land Agent for their Dartmoor Estate; (3) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bourchier Sayer applied for the Rights Section registration at Entry No. 18 attended in person on her own behalf and as representing him; (4) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the Rights Section registration at Entry No. 19 was also represented by Lady S R P Sayer; (5) Mr Frederick Archibald Mortimore who applied for the Rights Section registration at Entry No. 34 attended in person; (6) Mr Patrick Wrayford Coaker who with Mrs Edith Patricia Coaker applied for the Rights Section registration at Entry Nos. 48 and 49 and as successors of Mrs Linda Tremaine Nosworthy who applied for the registration at Entry No. 12 attended in person on his own behalf and as representing her; (7) Mrs Eleanor Nancy Smallwood who applied for the Rights Section registration at Entry No. 70 was also represented by Lady S R P Sayer.

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The land ("the Unit Land") in this Register Unit comprises two tracts. The eastern one ("The Blackslade Part") being southeast of the village of Widecombe-in-the-Moor is approximately triangular; its north side a straight line, adjoins Bonehill Down (the eastern part of Register Unit No. CL 68), its southeast side not so straight and a little under one mile long adjoins for about 250 yards at its north end part of Bagtor Common (Register Unit No. CL 26), and then for about 400 yards adjoins a tract known as or being near Grey Goose Nest (Register Unit No. CL 27) and then to its south corner Blackslade Ford adjoins a tract being the north part of Register Unit No. CL 248 and at its south corner has point (or a little more) contact with the north corner of Buckland Common) Register Unit No. CL 124; and its southwest side (an irregular line of which the extreme points are about one mile apart adjoins enclosed lands. The western one ("the Dunstone Part") being southwest of the village of Widecombe-in-the-Moor is about half a mile long from north to south and about 300 yards wide except at its southern end where it is about 800 yards wide; its west side nearly straight adjoins the remainder of Dunstone Down (the southwest part of Register Unit No. 70), its north side, a straight line, adjoins the south end of Hamel Down (being the west of the two tracts together making up Register Unit No. CL 68); its east and south sides (irregular lines) adjoin enclosed lands. In the Ownership Section at Entry No. 1 Mrs Anstice Brown is registered as owner of all the Unit Land, and at Entry No. 2, HRH Charles Prince of Wales, Duke of Cornwall is registered as owner of nearly all the Dunstone Part. Of the 83 Rights Section registrations, (not counting Nos 87 and 88 which replace No. 45) 18 (of which 11 are expressed as "to stray") being undisputed have become final, and one (No. 20) has been cancelled.

The grounds of the Manor Objections Nos 245, 246 and 249 are "no rights exist (as claimed)", No. 245 being applicable to Entry Nos 4, 5, 10, 11, 13, 15, 17, 18, 19, 24 to 27 inclusive, 37, 38, 43, 46, 47, 50 to 67 inclusive, 69, 70, 71, 76, 77 and 83; No. 246 being applicable to Entry Nos 1, 8, 9, 22, 23, 30, 34, 42, 44, 45, 48, 49, 68, 74 and 80; and No. 249 being applicable to Entry Nos 12, 35 and 78. The grounds of the Manor Objection No. 250 applicable to Entry No. 40 are "the quantification of grazing rights is in excess of that permitted on this Manor Common, in this case it appears the numbers should be 54 bullocks or ponies, 216 sheep". The grounds of Duchy Objection No. 474 applicable to Entry Nos 76 and 77 are that the right does not exist on the Duchy part of the Unit Land. The grounds of Duchy Objection No. 476 applicable to Entry Nos 14 and 35 are that the right of pannage does not exist on the Duchy part of the Unit Land. The ground of Zab Objection No. 879 applicable to Entry No. 71 are "the applicants are claiming common rights as part of Hatchwell Farm. This is incorrect, the land no longer forms part of Hatchwell Farm, therefore the rights do not exist".

At the beginning of the hearing Mr Sturmer said that the Duchy ownership claim was withdrawn and that I could therefore confirm the Ownership Section registration at Entry No. 1 (Mrs A Brown) without any modification and refuse to confirm the Ownership Section registration at Entry No. 2 (the Duchy). He also said that because the Duchy now had no ownership they would not support Duchy Objection No. 476 (no pannage).

Next as to the conflict between the registrations at Entry No. 21 made on the application of Mr Timothy Reep as tenant of Blackslade Farm and at Entry No. 79 made on the application of Mrs Anstice Brown as owner of the said Farm: Mr Michelmore said that Mr Reep is no longer tenant and is now in New Zealand. The registrations are identical or almost so (the difference is that No. 21 includes "73 bullocks 291 sheep or equivalent", and No. 79 includes "73 bullocks or ponies and 291 sheep"). After some discussion Mr Michelmore said that he was agreeable to my refusing to confirm No. 21 and to my confirming No. 79 with the modifications set out in paragraph 4 of the decision table being the Third Schedule hereto.

Next Mr Richard Jeffery Michelmore who was appointed Steward in 1953, gave oral evidence in support of the Manor Objections in the course of which he produced the documents specified in Part I of the First Schedule hereto. In his proof (AB/1/i), he said (in effect omitting the part relating to rights other than grazing):- The Blackslade Part and the Dunstone Part comprise two parcels separated by the Widecombe (East Webburn) Valley, each comprising typical moorland. The plan (AB/2) is a photocopy of an old plan showing the boundaries of the Manor edged green and is similar to the plan dated 1872 in the Manor Book (AB/3); the rights of common are exercisable only over 2 areas on such plan shown as rough land each being named thereon "Dunstone Common". The Manor Book (AB/3) is in his possession and shows that courts and perambulations have taken place at three yearly intervals. The interest taken by the Lord of the Manor, the commoners and steward has been and is high and many matters have been debated: particularly in 1968 it was agreed that as the 1965 Act required grazing rights to be quantified a stint should be 2 bullocks (or ponies) and 8 sheep for every 3 acres of the farm; previously there had been no stint as the rules of levancy and couchancy applied. Only those occupying properties for which Chief Rents were payable (until 1935) were entitled to grazing and other rights. The Manor Objections had been confirmed by the Court Leet; they were made against persons residing outside the Manor, persons residing in the Manor whose land has accommodation land with no ancient house, and persons whose stint was exceeded or who had only a cottage holding with no more than a concessionary stint of 1 mare or foal.

Mr Michelmore when reading his proof explained it, and as part of it produced the rules set out in the Second Schedule hereto as deducible from the Manor Book (AB/3) and said that by unlawfully in the last paragraph (of the Second Schedule) hereto he meant: not in accordance with the rules.

As to particular registrations Mr Mortimore in his proof said (in effect):- The Entry Nos specified in Objection No. 245 (including Nos. 18, 19 and 70 supported by Lady Sayer) were of persons living outside the Manor; none came within the rules which had been acted on in 1880, 1889, 1895 and 1902: "drift ... 15 July 1902 ... ponies ... impounded of which all were released belonging to adjoining manors except retained ... A fine was subsequently paid of 10s/- ... for an entire ... A mare and colt ... were unclaimed ... sold ...". As to Entry Nos. specified in Objection No. 246 (including Nos. 34, 48 and 49 supported by Mr Mortimore and Mr Coaker): although none of the claimants come within the rules for commoners, the objection was based on the belief that the claimants

are commoners on adjoining commons and therefore have a right to stray and no right to turn out and graze; no right should be registered under the Act. As to Objection No. 250 (applicable to No. 40) the quantification is in excess of the stint (see above). As to the Entry numbers specified in Objection No. 249 (including No. 12 supported by Mr Coaker); no Chief Rent is payable in respect of any of them; No. 12 made on the application of Mrs Nosworthy is for land bought from Bagpark Estate (outside the Manor) with no ancient house and no rights have been exercised; No. 35 made on the application of Mr W J Opie is for a cottage which only might have rights for a mare and foal (the foal to be removed at weaning), see 1912; Entry No. 78 (application of Mr and Mrs Circuit) is for Berrywood Cottage which is not an ancient cottage and therefore has no right.

In answer to questions by Lady Sayer, Mr Michelmore (in effect):- He had had notice of the 1975 hearing before the Chief Commons Commissioner relating to Register Unit No. CL148 (Coombe Down, Hookney Down and Headland Warren, North Bovey) and concluded that it had nothing to do with either Mrs Brown or himself; as to the Unit Land he doubted whether he would have been heard at the hearing. He had read and been present for one day of the taking of evidence by the Royal Commission on Common Land, one of his clients being concerned but he did not accept the evidence of Mr D Scott that the Forest of Dartmoor (CL164) and the adjoining common are all one common and knew that many commoners likewise did not accept "the Commons of Devon hypothesis". He knew that Mr Scott had in 1968 resigned from membership of the Dartmoor Commoners Association; he understood he had had "an argument about the Commons of Devon hypothesis".

Questioned by Mr Coaker about Entry No. 12 made on the application of Mrs W T Nosworthy and about the 1972 Conveyance (PWC/2) made to him and others, Mr Michelmore agreed that Higher Dunstone (specified in Entry No. 12) was within the Manor of Dunstone but insisted that no chief rent had even been paid in respect of it. It was part of the Bagpark Estate which included the manor house of the Manor of Widecombe-in-the-Moor; he would have expected that Higher Dunstone would have a right over Widecombe Town Common (Register Unit No. CL68) but not over the Unit Land because it did not pay a Chief rent. However he accepted that it would have a straying right upon the Unit Land but did not accept that any such right was registrable.

Questioned by Mr Mortimore, Mr Michelmore accepted that he had straying rights on the Unit Land but did not accept that such rights were registrable.

Lady S R P Sayer in the course of her oral evidence supporting the registrations at Entry Nos. 18, 19 and 70, produced the documents specified in Part II of the First Schedule hereto. In her statement (Sayer/403) she said (stating its effect shortly):- The Dunstone Part is, although the Blackslade Part is not, within the Commons of Devon over which "our" venville rights obtain. "Our status as venville tenants and the fact that the very ancient rights extend over the Forest and its contiguous commons" was confirmed by the CL148 and CL190 decisions dated 12 March 1976 and 29 June 1977 of the Chief Commons Commissioner and by a judgment of the High Court dated 11 January 1980. Her husband and she as owners of Cator since 1928 have exercised "our common right of grazing, turbary and estovers throughout the whole 56 years of our Cator ownership and

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well beyond the area of our home common of Spitchwick". Objection No. 245 clearly refers to Blackslade Down and "this has nothing to do with us". She mentioned the evidence given in 1959 to the Royal Commission The Worth's Dartmoor (1967, 3rd mp. 1981) and Moore & Birkett, Rights of Common upon the Forest of Dartmoor and the Commons of Devon (1890). About her statement she said (in effect):- She prepared it on the assumption that the Duchy were the owners of the Dunstone Part and did not know until that morning (11 April) that their ownership would be withdrawn and accordingly the letter of 18 October 1977 mentioned in her statement was not now relevant. The plan (Sayer/404) shows the Commons of Devon and the evidence before the Royal Commission shows that they and the Forest are one common; as also does Worth, Moore & Birkett supra. The Dartmoor rights of common were chaotic; I should follow page 7 the said CL148 decision (the Forest and Commons of Devon are one common).

Questioned by Mr Michelmore about the said decisions, Lady Sayer adhered to the views she had already expressed.

Lady Sayer also said she would not think of putting animals (from Cator) onto the Unit Land but animals on Spitchwick Common (CL33) from there go to Rowden Down (CL70) and thence onto the whole of Hamel Down (including the Dunstone Part).

Mr Patrick Wrayford Coaker in support of the registrations at Entry Nos. 12, 48 and 49 gave oral evidence in the course of which he produced the documents specified in Part III of the First Schedule hereto; he said (in effect):- He was born in 1938 and married in 1961. Until her father's death in 1943 his wife and her family lived at Bittleford Farm (Entry No. 49). Bittleford was let from 1943 to 1961 to Mr Trant. Rowden Farm (Entry No. 48) was in 1943 sold by his wife's family and in 1965 purchased back by himself and his wife from Mr Trant. To the best of his knowledge from Bittleford and Rowden his wife's father, grandfather and great grandfather had always stocked with either cattle, sheep or ponies on the Moor including the Unit Land and Register Unit Nos. CL67 (Hamel Down and Bonehill Down, Natsworthy Manor), CL68 (Hamel Down and Bonehill Down, Widecombe Manor), CL70 (Rowden Down, Jordan Manor) and CL109 (part Hamel Down). And there had never been any complaint since 1961 when he and his wife became owners of the farms. He also had a Venville right. He treated the Unit Land as one common although it comprised two tracts because they are both within the parish of Widecombe-in-the-Moor; all these manors "we graze" except CL109) with ponies. The crux of his argument is that they are all small commons and they are all one; it is impossible to graze CL70 (Rowden Down etc) without grazing the others; people with rights on the Unit Land have registered rights on CL70 and it is impossible to separate them; they are small parcels of land and the only way to treat them is as one in the parish. As to Higher Dunstone (Entry No. 12) of which he and his wife became the owners in 1972 (TWC/2) they are not the only fields in the area known as Higher Dunstone.

Questioned by Mr Michelmore, Mr Coaker said (in effect):- He agreed that CL70 (Jordan Manor) was his "home common". It was difficult to answer the question whether they were strays on the other Register Units because as far as he was concerned all his animals were grazing on the other Register Units and that was

why he registered rights over them. He registered all the places where his animals grazes; and in fact they now graze there. As to all these Unit Lands being a very considerable area, if he turned animals out they went back to where they were accustomed to graze within a matter of hours. He thought that before 1965 there was a right to stray which is not registrable; his animals (on the Unit Land) were not strays; they grazed where they were born. They are the same as has been for 100 years all over Dartmoor. He had established a right over Widecombe Manor (CL68); the Objection to his CL68 registration had been withdrawn before he bought the Manor. Bittleford Farm is about 72 acres and Rowden Farm about 102 acres.

In answer to questions by me, Mr Coaker added:- He kept sheep, cattle and ponies; sheep mainly grazed in the summer on the Forest of Dartmoor (CL164) with a venville right and only occasionally do they run on the commons close by. His cattle as do the ponies run on the commons (meaning the Unit Land etc) but not on the Forest. The ponies run on the Forest as well; ponies travel all over the Moor and nobody can dispute that fact. When he said that animals turned out went to where they were born, he was referring more to ponies; his ponies were Dartmoor ponies. His cattle were South Devon and Galloway namely from Bittleford and Rowden Farm; also since 1972 from Dunstone where he acquired 30 acres of land in 1972 (Entry No. 12) his grazing cattle during summer are out night and day and winter out by day and in by night; his sheep graze on the Forest (CL164) to exercise a venville right about 6 miles away.

Mr Frederick Archibald Mortimore in support of the registration at Entry No. 34 gave oral evidence in the course of which he produced the map specified in Part IV of the First Schedule hereto, saying (in effect):- Lizwell Farm is about 208 acres and is south of Bittleford Down (CL70). He raised no objection to what Mr Michelmore said about straying. He grazed the CL70 land. The map he produced showed Jordan Manor and the ground for grazing drawn from information received from Mr W J Mann the previous owner and occupier of Lizwell as to the rights exercisable by him. The map shows CL70 by a red dotted line excluding CL67, CL68 and CL69. He was the tenant of Mr G H Ridd who purchased Lizwell from Mr W W Whitley. So his claim was a grazing right within the red dotted line (CL70) with straying rights over the Unit Land and Register Units Nos. 67 and 68.

On 14 April accompanied by Mr P W Coaker, Mrs E P Coaker and Mr F A Mortimore I inspected the Unit Land; we started from Widdecombe Village, went to Crosses (the northwest corner of the Dunstone Part), went by Higher Dunstone, then across Dunstone Bridge up to Chittleford, by Scobitor and across Pudsham Down to Cold East Cross. My inspection ended at a point near the road from Rowden Cross to Jordan from which it was possible to see (or at least see the situation of) Bittleford Farm and Lizwell and the Dunstone Part. And it was agreed that for the purposes judging the situation of the farms with which I was ⟶ concerned relative to the Unit Land, I had seen enough.

Venville

Under this heading I consider the registrations at Entry Nos 18, 19 and 34 at the hearing supported by Lady Sayer. In my opinion Mr Michelmore by completing paragraph 5 of Objection No. 245: "CL69 Blackslade", did not impliedly limit the grounds set out in paragraph 8 to the Blackslade Part hereinbefore defined; I record that if at the hearing I had thought otherwise, I would have then given unconditional leave to amend paragraph 8 by negativing any such implication.

The registrations are essentially the same as those considered in my decision dated 30 June 1983 about land in Sheepstor (Ditsworthy Warren etc being CL188) and which for the reasons therein set out I refused to confirm. At the CL188 hearing in 1982 about these registrations evidence was adduced and arguments made in some detail by a solicitor acting for Lady Sayer and those she represented at this Unit Land hearing. The solicitor dealt in detail with the 1976 and 1977 decisions, the 1980 judgment and the 1890 history. Her evidence and argument at this Unit Land hearing added nothing to the said CL188 evidence and arguments. I am not persuaded by anything in her said statement that I should not adhere to the reasoning set out in my said CL188 decision, and accordingly in relation to the Unit Land registrations for the reasons therein set out my decision is the same.

I do not accept the suggestion made by Lady Sayer that she has ever in any now relevant sense exercised the rights specified in the registration at Entry No. 18 over the Dunstone Part.

Further in accordance with the evidence of Mr Michelmore and the documents produced by him, I conclude that the grazing rights claimed certainly have not existed from time immemorial; and accordingly could only be established under the Prescription Act 1832 or a presumption of a grant in accordance with Tehidy v Norman 1971 2QB 528; of any grazing as of right enough to establish a right under such Act or in accordance with such presumption I have no evidence at all.

For the above reasons my decision is that these registrations were not properly made and that as against them Objection No. 245 wholly succeeds.

Higher Dunstone, Rowden
and Bittleford

Under this heading I consider the registrations at Entry Nos. 12, 48 and 49 supported by Mr Coaker to which are applicable Objections Nos. 249 and 246 (both to the same effect). First about Nos. 48 and 49.

In my decision dated 30 June 1983 re Forest of Dartmoor (CL164) under the heading "straying" are my reasons for refusing in the absence of special circumstances to confirm a registration expressed as "to stray". Mr Michelmore in effect conceded that there were attached to Bittleford and Rowden rights over CL70 (in Jordan Manor) and that animals from these farms put on CL70 ("their home common") if found on the Unit Land would be treated as strays and being from an adjoining common would if found in a drift not be impounded (that is would be released without penalty). I am not in these proceedings concerned with animals from these farms so put out or with the registrability of such a right of "to stray", because Mr Coaker made it clear that he claimed

a right for animals (particularly ponies) from Bittleford and Rowden Farms to be put out directly onto the Unit Land, not only onto the Dunstone Part (onto which strays from CL70 would be likely) but also onto the Blackslade Part. Mr Coaker in support of his claim produced no documents and did not suggest that those produced by Mr Mortimore helped him. So his claim succeeds only if the grazing described by him was: (a) "as of right" within the now relevant legal meaning of these words; and (b) for long enough. In my opinion the documents produced by Mr Michelmore negative the existence of the rights claimed by Mr Coaker as existing from time immemorial; so their existence is not established by prescription at common law.

By section 16 of the Commons Registrations Act 1965 the periods of 30 and 60 years mentioned in the Prescription Act 1832 are to be taken back from the date of the Objection, in this case 26 August 1970. For a presumed grant in accordance with Tehidy v Norman 1971 2QB 528, the grazing as of right relied on must be for 20 years; by analogy with section 16 I consider this 20 year period should be taken back from August 1970; alternatively because a person who has made an objection in accordance with the 1965 Act can reasonably take no other action in support of the Objection until a Commons Commissioner has given a decision, I consider that in the absence of special circumstances of which there was here no evidence, no grazing after August 1970 by Mr Coaker can be as of right. Nevertheless I must consider how far if at all the grazing after 1970 he described can be reflected back as having been done before 1970.

I reject Mr Coaker's implied (perhaps expressed) claim that the mere circumstance that his ponies were on the Unit Land grazing as they would naturally do, automatically establishes that they were there grazing "as of right". The legal principles under the heading "As of right" in my said CL164 decision should be treated as repeated herein. Applying them, ponies which are grazing in circumstances consistent with them being strays, are not grazing as of right; that Mr Coaker intended his ponies to graze and exercise a right other than as strays, is not by itself enough if his intention was "secret" and would not be attributed to him by a person diligent in the protection of his own interests. It may be that a pony which has spent the first year of its life on part of a moor will go to that part if it can get, and knows that it can get, there without meeting any fences or other obstruction and without any human interference; but I decline to infer (as was in effect suggested by Mr Coaker) that for that reason a pony which has not spent the first year of its life on the Unit Land and which is put onto the CL70 land pursuant to a right of presumably manorial origin from land within the manor cannot sensibly be grazed there without incidentally doing so pursuant to some larger right extending over the Unit Land; in my view such an inference would be contrary to the Manor documents produced by Mr Michelmore, to the Lizwell evidence of Mr Mortimore, to what I saw during my inspection and the information I have acquired at hearings I have held about other Register Units in the Dartmoor National Park.

Mr Coaker's grazing with ponies started in 1961; I am inclined to infer from his evidence and what I saw during my inspection that such grazing would have started with the CL70 land and that since 1961, the number of his ponies and the area of their grazing (other Register Units) have been increasing; however this may be, I find that before 1970 (and perhaps also afterwards) his grazing of ponies on the Unit Land has not been as of right.

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In making this finding, I have not overlooked that Mr Coaker claimed that the Unit Land and the other Register Units CL67, CL68 and CL70 are only grazeable as one common, because they are all small and/or there is nothing to prevent animals going from one to the other. I see no parallel between any such supposed one common grazing and the grazing on the Forest (CL164) which at other hearings I had evidence has existed from time immemorial; this indisputable fact has I think no relevance to grazing from Bittleford and Rowden Farms on the Unit Land and the CL67, CL68 lands which are different from the Forest.

Whether or not the grazing of Mr Coaker as described by him was as of right, it having started in 1961 was not for long enough to establish a right either under the 1832 Act or a presumed grant. So I am concerned to consider whether such grazing can be ascribed to Mr Trant who was in occupation from 1943 to 1961 and to Mrs Coaker's father and grandfather who were there before. I refuse to make any such ascription from the hearsay evidence of Mr Coaker because in my view any such supposed one common grazing would have been either impracticable or unusual before the introduction of cattle grids (since 1970) and would in the way he described (principally ponies) have been extraordinary outside the Forest (CL164), and contrary to the Manor documents produced by Mr Michelmore.

Mr Coaker emphasised the propensity of ponies to wander great distances; in this context the form of his registrations "units of the NFU scale", like many others in the Dartmoor National Park is relevant as denoting a right for grazing sheep, cattle or ponies in the alternative; for the majority such a right is only exercisable for ponies over an area (may be larger) practically the same as the area grazed by the sheep and the cattle. The area grazed as of right must I think be determined by having regard to both the larger propensities of ponies and the smaller propensities of sheep and not by having regard only to the larger propensities of ponies.

So upon the above considerations, my decision is that the registrations at Entry Nos. 48 and 49 were not properly made.

I have given the above decision on the evidence at the hearing and what I saw on my inspection. I record that at the conclusion of my inspection I asked Mr Coaker to expand on his evidence that it was impossible to graze ponies otherwise than as he had described at the hearing, because from what I had seen it seemed so plain that it was possible. He said (in effect):- His ponies were brought back to one of the Farms when they were in need of food, but (apart from this) he encouraged them to forage around as much as possible. Not all his ponies were descendants from his original herd; he had made additions of about 50 also some south Devon cattle grazed there in the summer. He had a lear in the Forest (CL164) 6 miles away. His idea of a lear was not that he had a lear for his ponies but each pony had its own lear; so that to some extent the lear of a pony depended on the choice of the stallion.

The idea so expressed by Mr Coaker of building up a herd which would forage for themselves and establish their own lear was not put forward at the hearing although perhaps it was implicit from some of the evidence then given by Mr Coaker. Being of the opinion that this idea does not favour Mr Coaker, I consider that I can and should express an opinion about it without further hearing Mr Michelmore. If Mr Coaker had any reasonable ground for supposing that

he had rights over the Unit Land the CL67 land and the CL68 land, he could perhaps claim that a herd of ponies built up to forage on all such lands was an exercise of a right. I have already said that I think he is mistaken in thinking that these Register Units can properly be regarded as one common. To let loose ponies over all these Register Units for each to establish a lear over whatever common it fancies, is in my opinion not grazing a right. The superficial resemblance of such grazing to what is done on the Forest (CL164) which is one common, is irrelevant.

As to the impossibility so much relied on by Mr Coaker at the hearing:- By building up a herd which included ponies born out of, and therefore leared out of, the Manor of Jordan (CL70), he may for himself have made it impossible to prevent them going straight to the Blackslade Part or beyond. In my view this impossibility is a result of his own choice: if he had limited his herd to ponies born in and therefore leared in, the Manor of Jordan (CL70), they would (as long as there was enough grass for them) have (by and large) stayed there, except when they wandered away as strays; so I infer from the said evidence of Mr Michelmore and Mr Mortimore, and from what I saw.

As to the Higher Dunstone registration at Entry No. 12, Mr Coaker offered no evidence about any grazing before 1972, and his case support of the rights claimed is weaker than as to Bittleford and Rowden. For this reason my decision is that this registration too was not properly made. But I record, although it was not mentioned at the hearing, that I then had 2 letters dated 26.10.70 from Mrs Nosworthy, in one of which (addressed to "Clerk of the Council, County Hall ... your ref OBJ249") she agreed to her registration at Entry No. 12 being cancelled and in the other of which she said: "I now see my mistake, it should have been the Manor of Widecombe & not Blackslade, I am sorry for my mistake ..."

Lizwell

Under this heading I consider the registration at Entry No. 34 to which Manor Objection No. 246 is applicable.

Mr Mortimore in the course of the proceedings agreed as above recorded that over the Unit Land he had no more than straying rights and had no objection to what Mr Michelmore said about their non-registrability. During my inspection he spoke to me to the same effect. Animals which are straying, that is in a place where neither they nor their owner want them to be are not grazing in exercise of a right of their owner; so Mr Mortimore's evidence was as also was that of Mr Michelmore, against the registration as it now stands. As to possibly modifying the registration by substituting "stray" for "graze", for the reasons set out under the heading "Straying" in my said CL164 decision, I consider that any such registration should be avoided in the absence of special circumstances (none was suggested). So my decision is: this registration was not properly made whether or not it is treated as modified.

I record that in my view by avoiding this registration, I am not affecting any excuse there may be for animals from Lizwell put on the CL70 land straying onto the Unit Land, or criticising any practice there may be that animals rightly grazing on an adjoining Common collected in a drift on the Unit Land can and should be released to the owner without payment.

Conflict

Under this heading I consider the conflict between the registration at Entry Nos. 21 and 79 which are not within any Objection expressly referring to them, but by regulation 7 of the Commons Commissioners Regulations 1971 each is to be treated as an Objection to the other. I accept what Mr Michelmore said about them in the course of the proceedings as above recorded, and my decision is therefore that the registration at Entry No. 21 should be avoided and the registration at Entry No. 79 should be modified as Mr Michelmore suggested.

Pannage

Under this heading I consider the registrations at Entry No. 14 made on the application of Mrs Iris Marion Woods of rights attached to Dunstone Cottage, and at Entry No. 35 made on the application of Mr William John Opie of rights attached to land at South View. Both are within Duchy Objection No. 476 ("...right of pannage does not exist..."), and Entry No. 35 is also within Manor Objection No. 249 ("no rights as claimed").

In favour of these registrations I have the Duchy's decision stated in the course of the proceedings as above recorded not to support their Objection. Against them both I have that Mr Michelmore's statement (AB/1/i) of the rights acceptable to the Lord of the Manor and the Commoners did not include pannage (or right to graze one pig); so I infer he supported the Duchy Objection; additionally neither registration was by either applicant supported at the hearing. Although No. 35 is by Objection No. 249 put wholly in question, Mr Michelmore in effect (AB/1/vii read with AB/1/i) admitted a concessionary stint of a mare and foal (to be removed at weaning).

At other hearings relating to Register Units in the Dartmoor National Park, I had had evidence from Mr Sturmer given on behalf of the Duchy to the effect that pannage was a right not generally exercised because there are (with some now irrelevant exceptions) no oaks and therefore acorns. I infer therefore that the Duchy's lack of support for their Objection is not because they had now concluded that such a right should be recognised but because having withdrawn their claim for ownership, the Duchy did not wish to be concerned.

Under the Commons Registration Act 1965, once an objection has been made and referred to a Commons Commissioner, the registration is wholly in question and the Commons Commissioner concerned must give a decision on the evidence available, see re West Anstey (Court of Appeal), Times Newspaper 9 January 1985. My decision is that these registrations so far as they contain "graze ... one pig" or "pannage" were not properly made.

But for Mr Michelmore's admission, I would for the reasons below stated under the hearing Others have avoided the registration at Entry No. 35 altogether. But his said admission is I think evidence enough that the registration was to this extent (but no more) properly made, and my decision is accordingly.

Others

The registration at Entry No. 40 made on the application of Messrs Arthur William Mann and Oliver Sylvester Mann of rights attached to Great Dunstone is within Manor Objection No. 250. In the absence of any evidence or argument in support of the registration and upon the evidence of Mr Michelmore (AB/1/vi), my decision is that this registration was not properly made as regards so much of it as comes within the grounds of the Objection: "...numbers should be 54 bullocks or ponies, 216 sheep".

The following registrations mentioned in Manor Objection No. 245 at Entry Nos. 4, 5, 10, 11, 13, 15, 17, 24 to 27 inclusive, 37, 38, 43, 46, 47, 50 to 67 inclusive, 69, 71, 76, 77 and 83; mentioned in Manor Objection No. 246 at Entry Nos 1, 8, 9, 22, 23, 30, 42, 44, 45, 68, 74 and 80; and mentioned in Manor Objection No. 249 at Entry No. 78 are put wholly in question by the said Objections. In the absence of any evidence or argument in support of them and having regard to the evidence given by Mr Michelmore in the course of the proceedings as above recorded against them, my decision is that none of them was properly made.

I need not say anything about Duchy Objection No. 474 applicable to Entry Nos 76 and 77, because their non support of their Objection cannot prevent my giving full effect to Manor Objection No. 246 which includes these Entry Nos.

Objection No. 879 to Entry No. 71 made by Mr J Zab was not supported by anyone at the hearing, and in the absence of any explanation of the grounds in it, I feel some doubt as to the modification he wished to be made to the registration. However I need not consider this objection particularly because the registration is by Manor Objection No. 245 put wholly in question and is within my decision as above stated in the second paragraph under this heading.

Ownership

But for the Duchy registration at Ownership Section Entry No. 2, the Mrs Anstice Brown registration at Entry No. 1, being undisputed would have become final under section 7 of the Commons Registration Act 1965 without any hearing before a Commons Commissioner. As I understood Mr Sturmer his statement that the registration at Entry No. 2 would not be supported was made after full investigation by the Duchy. Mr Michelmore gave evidence in support of the ownership of Mrs Brown (AB/1/iii); she is in the Manor Book (AB/2) in the Entries made for 29 March 1968, 17 March 1973 and 1 September 1977 named as Lady of the Manor. Nobody at the hearing suggested that anyone else could be the owner or that Mr Michelmore had not by her been properly appointed as a steward.

Upon these considerations, my decision is that the registration at Entry No. 1 was properly made and that the registration at Entry No. 2 should be avoided as the Duchy has agreed.

Final

The effect of my decisions as above given is set out in the Third (and last) Schedule hereto which should be treated as part of this decision.

From my copy of the Register, Sheets Nos 37 to 41 inclusive are missing and Sheets Nos 42 and 43 record Nos 107, 108, 109 and 110 as having replaced No. 65. I assume that the missing Sheets contain no more than replacements of Nos which I have considered; accordingly references in this decision to any registration by No. should be treated as applicable to any registration which has since replaced it. About this paragraph of this decision, the liberty to apply in the next paragraph below granted is applicable.

Because much of this decision relates to persons who were not present or represented at the hearing and is dependent on agreements or statements about

which there may herein be some mistake or error which ought to be corrected without putting the parties to the expense of an appeal, I give to any person affected by such mistake or error liberty to apply about it; such application should be made within the THREE MONTHS period and otherwise as specified in paragraph 9 of 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 the decision is sent to him, require me to state a case for the decision of the High Court.

FIRST SCHEDULE
(Documents produced)

Part I: on behalf of Mrs A Brown

AB/1	--	Papers prepared by Mr R J Michelmore Steward (since his appointment in 1959) of the Manor of Blackslade and Dunstone:- (i) proof of evidence, (ii) rules governing Blackslade and Dunstone Manor, (iii) ownership of the eastern portion of Dunstone Manor; (iv) persons living outside the Manor with no rights, Objection No. 245 applicable; (v) straying rights only Objection No. 246 applicable; (vi) quantification in excess of stint, Objection No. 250 applicable; and (vii) Entry Nos 12, 35 and 78, Objection No. 249 applicable.
AB/2	(1872)	Map of Manor of Dunstone otherwise Blackslade in the parish of Widecombe in the Moor.
AB/3	--	Book (foolscap bound) of the Manor of Dunstone otherwise Blackslade commencing with a minute (pages 2 and 3) of court held on 11 June 1872 and concluding with a minute (pages 127, 128 and 129) of a court held on 10 May 1980.
--	--	Copy of AB/3.

Part II: by Lady S R P Sayer

Sayer/403	--	Statement of evidence in support of rights over the Dunstone Part.

1209

Sayer/404	--	Map of Dartmoor: the Forest and adjacent commons: from a Duchy map of 1890, submitted in evidence by the Dartmoor Commoners Association to the Royal Commission on Common land.

Part III: by Mr P W Coaker

PWC/1	29 March 1978	Conveyance by John Coaker, Tom Davey and Marion Davey to Patrick Wrayford Coaker and Edith Patricia Coaker of Higher Dunstone by reference to Conveyance of 30 November 1972.
PWC/2	30 November 1972	Conveyance by Linda Tremayne Nosworthy to J Coaker, T Davey and M E Davey of fields commonly known as Higher Dunstone containing 16.82 acres.
PWC/3	3 October 1871	Conveyance by Joseph Sherwell to Joseph (?) Hart of fields OS Nos 665, 666, 670, 671, 673, 674, 675 and 725 part of the Manor of Dunstone containing 151.3r.24p.

Part IV: by Mr F A Mortimore

FAM/1	--	Map of Jordan Manor showing Rowden Down etc (CL70) by a red dotted line.

SECOND SCHEDULE
(Rules)

The rule of Levancy and Couchancy, of Subdivision of the Holding and who are Commoners is repeated frequently in the Court Leet records. Relevant presentments are as follows:-

1872 "We present that persons who are not Tenants of the Manor are not entitled to take peat or turf or to turn out cattle horses ponies sheep pigs or geese thereon, also that no person is entitled to take peat turf or other materials of the soil off the Manor".

1877 - re Division of Tenement -

"The Homage certify the same and present that by ancient custom of this Manor the right of pasturage, turbary etc pertain to the residence within the Manor in respect only of ancient tenements therein and that the erection of new houses or the division of ancient tenements into two or more parts does not confer any new rights on the holders thereof nor extend or increase the rights previously enjoyed by such ancient tenement".

1892 - re Levancy and Couchancy and Division of Holding -

"We present that by the custom of this Manor each holder of an ancient original house tenement within this Manor and paying Chief rent to the Lord in respect of such house tenement is entitled by the custom of the Manor to cut not exceeding 750 fags in any one year in respect of and for consumption in such house tenement; but has no pasturage rights over the Manor Commons unless he holds farm lands within the Manor capable of supporting sufficient live stock and pays Chief rent for such pasturage rights. And that no division of ancient original house tenements or farm lands into two or more tenements or holdings has heretofore increased or multiplied such rights nor can hereafter do so.

We present that by the custom of this Manor persons who are not Tenants of the Manor or who do not pay Chief rent or who only pay acknowledgements for encroachments are not entitled to take peat or turf from or to turn out cattle, horses, ponies, sheep, pigs or geese on the Manor Commons - also that no person is entitled to take fern, peat, turf, soil or other materials off the Manor ....."

These presentments are frequently repeated being last set out in full in 1930.

There are frequent records that ponies and bullocks unlawfully depastured were impounded and only released on payment of a fine. Fines were not charged for stock straying from adjoining Commons.

THIRD SCHEDULE
(Decision table)

1. For the reasons given under the heading Venville, I REFUSE to confirm the registration at Rights Section Entry Nos 18, 19 and 70.

2. For the reasons given under the heading Higher Dunstone, Rowden and Bittleford, I REFUSE to confirm the registrations at Rights Section Entry Nos 12, 48 and 49.

3. For the reasons given under the heading Lizwell I REFUSE to confirm the Rights Section registration at Entry No. 34.

4. For the reasons given under the heading Conflict I REFUSE to confirm the registration at Entry No. 21 and CONFIRM the registration at Entry No. 79 with the MODIFICATION in column 3: add at the end "and also (application no. 1062 dated 5 June 1968) Timothy Reep, Blackslade Farm, Widecombe-in-the-Moor, Newton Abbot; tenant".

5. For the reasons given under the heading Pannage, I CONFIRM the Rights Section registration at Entry No. 14 with the modification in column 4 delete "one pig" and at Entry No. 35 with the MODIFICATION in column 4 substitute "one pony" for "three ponies" and delete "pannage".

6. For the reasons given under the heading Others, I CONFIRM the registration at Entry No. 40 with the MODIFICATION in column 4 substitute "54 bullocks or

ponies 216 sheep" for "50 cows and followers, 50 ponies and followers 150 ewes and followers".

7. For the reasons given under the heading "Others" I REFUSE to confirm the other registrations not in this schedule above mentioned which are specified in Objection Nos 245, 246 and 249 that is to say (Objection No. 245) Nos 4, 5, 10, 11, 13, 15, 17, 24 to 27 inclusive, 37, 38, 43, 46, 47, 50 to 67 inclusive, 69, 71, 76, 77 and 83; (Objection No. 246) Nos 1, 8, 9, 22, 23, 30, 42, 44, 45, 68, 74 and 80 and (Objection No. 249) No. 78; and including Nos 87 and 88 which replace No. 45.

8. For the reasons given under the heading Ownership I CONFIRM the Ownership Section registration at Entry No. 1 without any modification; and I REFUSE to confirm the Ownership Section registration at Entry No. 2.

9. Where in this decision a liberty to apply is given such application should be made within THREE MONTHS from the day on which the decision is sent out (or such extended time as a Commons Commissioner may allow) and should in the first instance be by letter to the Clerk of the Commons Commissioners stating the mistake or error and the applicant's reason for thinking it should be corrected. A copy of the application should be sent to any person who might be adversely affected by the application being granted and for their information to the County Council as registration authority. As a result of the application the Commons Commissioner may direct a further hearing, unless he is satisfied that the error or mistake is obvious and all concerned are agreeable. Of such further hearing notice will be given only to those persons who on the information available to the Commons Commissioner appear to him to be concerned with the registration in question. Any person who wishes to be given notice of such 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 this 22nd day of April 1985.

A. A. Baden Fuller

Commons Commissioner