

The Trehudreth Common

Transcript of Shorthand Writer's Notes of

- Hearing & Judgement -

MR SQUARE: In this case I am appearing for plaintiff and my friend Mr Laskey for defendant, and there will be a number of witnesses as to fact, and I think there may be some conflict so that it might be wise if witnesses were out of court. All witnesses as to fact, that is.

THE JUDGE: Very well.

MR SQUARE: In this case the plaintiff being the owner and occupier of certain lands in the parish of Blisland know as Trehudreth Downs, is bringing an action against Mr Roose of Penstroda for damages for wrongly placed his cattle or sheep on the Downs, and for wrongly removing turves from the downs, and is asking for an injunction restraining him from placing or leaving cattle on the downs, and a further injunction restraining him from removing turves. That summons having been issued, we were asked to supply further and better particulars of our claim, and I think you will see on the file there are further particulars there showing the property in respect of which we claim. Paragraph 1 says "Trehudreth Downs is shown on the Ordnance Survey map, Cornwall, Sheet 26(4), and Sheet 26(8) Second Edition, 1907, as bounded by land marks (marked 'stone' in each case on the said Map, where such downs abut on other downs or unenclosed land. It abuts on the enclosures shown by the following numbers on the said map, namely:- 1111, 1178, 1177, 1175, 1174, 1171a, 1172, 1162, 1173, 1212 and 1215. It is on the lower map here. Then there stones running up here into the portion of what was originally Trehudreth Common, and stones along here to a point here. As a matter of fact, in the further and better particulars, it has been said that we follow fields 1212 and 1215 – that is that field, it only means that small portion there. Then we say there are rights from the stone there a point in the hedge we cannot indicate up to the little forked piece there, and down by stones to that stone and to that portion known as Hayward's Moor. Then we go to another row of stones which we have marked here, Blisland Manor. It belonged undoubtedly to the Gilbert family at one time, and is a small portion of the moor carved out of the original Trehudreth. These fields here were all stolen from the moors at some time or other, because in the Tithe Map they are shown as a portion of the moor. The whole of Trehudreth Moor is enclosed. We purchased Little Trehudreth Farm and Trehudreth Moor itself, which is the green portion I have shown you, and since we have purchased it we have noticed that the defendant has placed on lands adjoining our moor a substantial number of cattle, 20 bullocks from January 1<sup>st</sup> to June 7<sup>th</sup>, 4 horses between May and June, and after the issue of the summons no less than 54 sheep. That is not denied. We have called upon the Defendant to supply us with further and better particulars of his defence, and those further and better particulars, which are on the file, show that he claims common of pasture for Penstroda. Paragraph 1 of the Statement of Claim is denied. 2. The Defendant is entitled to common of pasture and common of turbary on Trehudreth Common or Downs in the parish of Blisland, and, in exercise of those rights, to place his cattle and sheep on and cut turves in and from the said Common or Downs. The claim there is the right to put on the Common or Downs, not a right to put on his own land, which is adjoining ours, but actually to put on the Downs themselves. Then we asked for further and better particulars, and asked whether the

common of pasture claimed on Trehudreth Downs was claimed to be appendant, appurtenant or in gross. These are the questions put on July 28<sup>th</sup>. The answer is appurtenant and/or appendant and/or by reason of vicinage. Then the next question is, to what land is the alleged common appendant or appurtenant, as the case may be, identifying the said land clearly and stating whether such land is arable, pasture or what otherwise, and the answer is appurtenant and/or appendant to the Defendant's farm known as Penstroda in the Parish of Blisland. The said farm is partly arable". The next question is in respect of what class of beast the alleged common of pasture is claimed and the number thereof. The answer is commonable animals levant and couchant on the said farm. Then we ask whether the common of turbery claimed is so claimed as appendant, appurtenant or how otherwise, and the answer is appurtenant and/or appendant. Then we put another question, in respect of what hereditament or hereditaments (defining such clearly) the alleged common of turbarry is claimed to be appendant, appurtenant or otherwise incident as the case may be. The answer is appurtenant and/or appendant to a messuage on the said farm numbered 1736 on the tithe map for the Parish of Blisland. The next question was as to the quantity of turves the Defendant claimed the right to cut and the answer is sufficient turves for fuel for the said messuage. So we have defined our issue to certain interests, and there is no denial to the statement that there had been placed on our land so many bullocks, so many horses, and so many sheep. That being so, I propose to put my client into the box to prove he is the owner of the freehold of Trehudreth Down or Common or Moor, and then if my learned friend alleges he has a right of common it is for him to prove his rights.

MR RICHARD HICKS CHAPMAN was then sworn

MR SQUARE: Your name is Richard Hicks Chapman?

MR CHAPMAN: Yes.

MR SQUARE: And you reside at Little Trehdreth?

MR CHAPMAN: Yes.

MR SQUARE: In the parish of Blisland, and you are a farmer?

MR CHAPMAN: Yes.

MR SQUARE: On June 28<sup>th</sup> 1920 did you purchase from Dame Sarah Elizabeth Morshead certain freehold premises known as Little Trehudreth and Trehudreth Common in the Parish of Blisland?

MR CHAPMAN: Yes, I did.

MR SQUARE: And do you produce the Conveyance of those properties?

MR CHAPMAN: Yes.

THE JUDGE: He purchased the Common from –

MR SQUARE: Dame Sarah Elizabeth Morshead. I will just read the material parts and then pass the Deed to you. In consideration of £1575 the Vendor as beneficial owner conveyed to you all that farm, dwelling house, lands and hereditaments known as Little Trehudreth in the Parish of Blisland in the County of Cornwall, whereof the particulars are contained in the Schedule hereunder written, and also all those lands called or known as Trehudreth Common all manner of mines, metals, china clay, china stone, mica clay, ores, minerals and mineral substances in or under the lands hereby conveyed or any part thereof, together with full power at all times hereafter to put underground workings enabling the Vendor to mine, work, dress, manufacture, use, make marketable and remove and cart away all or any of the said excepted products and substances, and for the purposes aforesaid or any of them to do all things in the premises hereby conveyed as may be necessary or convenient to be done in respect of or in connection with the said excepted purposes and substances or any of them, so that the vendor, her heirs and assigns, shall not in the exercise of the powers, liberties and rights aforesaid, enter upon the premises hereby conveyed or any part thereof, and so that the surface of the premises hereunder conveyed or the buildings for the time being shall not be deprived or support or injured. They were conveyed to you in fee simple?

MR CHAPMAN: Yes.

MR LASKEY: The date itself is admitted.

MR SQUARE: We have here an official shorthand writer and it has been agreed between us that the note taken by the official shorthand writer shall be Your Honour's Note. Should that shorthand writer be sworn, sir? It has just struck me.

MR LASKEY: Since it is agreed between us that the shorthand writer's note shall act in place of your Honour's note, I presume it will not be necessary for the shorthand writer to be sworn. I shall raise any objection on account of his not being sworn.

THE JUDGE: I had better put that down to begin with.

MR SQUARE: I think, Sir, I put it in a letter to the Registrar, in view of the fact that whoever wins this case is going to be at a loss because costs cannot be recovered, that the whole cost of the shorthand writer and transcript should be paid by the loser.

THE JUDGE: It is agreed that the shorthand notes shall be taken as a resort of the proceedings, and that all the expenses of taking note and making a transcript.

MR SQUARE: Three copies. One for you and one each for us.

THE JUDGE: No doubt it will facilitate matters a good deal. The transcript is to be in triplicate?

MR SQUARE: Yes. I suggest it shall be sent to us so that any technical mistakes and so forth may be corrected and agreed on.

THE JUDGE: You will agree on the transcript between you?

MR SQUARE: Yes. There is the Deed sir. I don't know if you would like to look at it. Apparently, there is nothing in that Deed. It conveys - -

MR LASKEY: My learned friend has drawn attention to the salient points. If I might just refer to the ones I particularly want noted, and that is all this land called or known as Trehudreth Common, by estimation 300 acres or thereabouts, but there is no reference in the Schedule to them. The Schedule contains the other lands that form the dwelling, lands and hereditaments.

THE JUDGE: The Common is not in the Schedule?

MR LASKEY: No.

MR SQUARE: Because the farm is set out in the Schedule, and then they say Trehudreth Common.

THE JUDGE: Then there is a reservation as to mines under the Common, is there not?

MR SQUARE: Yes. There is no power to dig or open pits, the right being reserved to the vendor. I am going to introduce another Deed which may not be really material to the issue. Mr Chapman, do you now produce also a Deed of Conveyance, dated September 20<sup>th</sup> 1920, made between Dame Sarah Elizabeth Morshead of the one part and yourself of the other part, being a conveyance of the mines and minerals under the lands in the Parish of Blisland?

MR CHAPMAN: Yes.

MR SQUARE: The material part being that in consideration of £50 the vendor as beneficial owner hereby grants and conveys unto the purchaser all manner of mines, metals, china clay, china stone, mica, mica clay. Ores, minerals and mineral substances, within or under the premises conveyed by the hereinbefore recited Indenture or any part thereof, (the hereinbefore recited Indenture being that of June 28<sup>th</sup>, 1920,) together with full power and liberty at all times hereafter to mine, work, dress, manufacture, use, make marketable and remove and cart away all or any of the said products and substances, and for the purposes aforesaid or any of them to do all things that may be necessary or convenient to be done in respect of or in connection with the said products or substances or any of them, to the use of the purchaser in fee simple.

THE JUDGE: That is admitted too, Mr Laskey?

MR LASKEY: That is admitted too.

Ordnance Sheets were then put in.

MR SQUARE: Now, Sir, you will see just to north-east of Peverell's Cross, which is on the main road from Bodmin to Launceston, a stone.

THE JUDGE: Yes.

MR SQUARE: You will see to the north west of that another stone; in fact a line of stones, running almost due north-west, 1, 2, 3, 4.

THE JUDGE: There are two, which look as if they might be stones, a cross a Peverell's Cross, do you mean?

MR SQUARE: No, Sir. That mark put on the Ordnance sheets to show the ownership of adjoining land, the change of boundary.

THE JUDGE: It is a parish boundary probably.

MR SQUARE: A parish boundary, Sir. There seems something like a pair of dumb-bells, Sir. That is a change of boundary indicating the point at which the character of the boundary changes. Now I want you to go further up the road, and you will see a stone. Those stones run to the north-west of that, 1, 2, 3, and against the third, looking towards the cultivated land. Then we go to stone No.4, and we have another stone close to the cultivated land. Then, Sir, the line of stones runs from there more towards the north, running 1, 2 stones, then it turns sharp to the left, going south-west, to 1, 2 stones.

THE JUDGE: Wait one moment.

MR SQUARE: When you get to the apex, you turn left-handed.

THE JUDGE: Yes, there are two. There is one starting near cultivated land, one a little north-east of that, another a little north-west of that, and another larger one a little north-west of that.

MR SQUARE: I have only got three stones here. Sir.

THE JUDGE: I have got four.

MR SQUARE: Is it printed in as "stone".

THE JUDGE: Yes. Starting from the road here, it is going north-east of that. There is one about an inch on the Ordnance map; another one two inches to the north-west of that one; another one, a larger one, about two inches to the north-west of that.

MR SQUARE: Then we turn down to the south-west and there are two stones, according to the Ordnance map, there which stop, we will say for the sake of argument, a matter of 30 yards north of the cultivated land, which is your map is coloured red, I expect.

THE JUDGE: Yes.

MR SQUARE: Then we go north from the edge of the moor there. Those are bond stones which are marked with private marks or owners - - -

MR LASKEY: Of course that I do not agree.

MR SQUARE: They are so obvious. One is known as Hayward's Moor. We will take, for instance, the first stone I spoke about. The stone has on the south-west of it "H.P." which can only mean "Hayward's property."

MR LASKEY: All I say is there is a stone there with "H.P." on it. It might mean "High Pressure."

MR SQUARE: On the other side, there is an "M" and a "P" and we say that is "Morshead's Property." On another stone it is marked exactly the same way, the third one is the same. When we get close in to the cultivated land it is simply marked "H.P." on the south-eastern side.

THE JUDGE: There is no mark on the other sides.

MR SQUARE: No. Then we go on to the other one. We have the "M" marked on the east, the "H" marked on the south-west, on the south-west, and the Manor mark, the Molesworth mark, on the south-east, and then, when we look to the stone which is immediately opposite that, to the cultivated land it is again marked "H.P." to the north-west and has the Manor mark on the south-east. So what I say is that this piece of land down here is not only known as Hayward's Moor but is in fact their freehold.

MR LASKEY: This part is the Hayward freehold?

MR SQUARE: Yes. And then when we get towards the end of Wallhouse, which Your Honour will notice is to the north - -

THE JUDGE: I have got before me now the Ordnance map.

MR SQUARE: Yes.

THE JUDGE: What I am looking at, what is it supposed to show, the colour?

MR SQUARE: That will come out later. There are four or five titles on this property, and they are coloured according to their titles.

THE JUDGE: But is that supposed to be a farm?

MR SQUARE: That is this property which is coloured on the map before you. They are under various titles and coloured accordingly. Now, Sir, if you will go north to that field which is marked in the Ordnance 1111, just above Wallhouse you will notice there is a stone there to the north-east of the boundary, and also one stone in the moorland to the west; then a third stone in the enclosure, just above Trehudreth Down.

MR LASKEY: The actually a stone within 1111.

MR SQUARE: Now these stones are all marked with the Morshead mark. That is, the stone just above the enclosure 1111, the one further to the north-east, and the one at the apex of the triangle. Are they all marked with the Morshead mark on the south-east side?

MR CHAPMAN: Yes.

THE JUDGE: The one on 1111?

MR SQUARE: Just above 1111. There is one on the west of 1111.

THE JUDGE: And there is one outside on the Downs?

MR SQUARE: That is it, and going down north-east there is another stone a good four inches away.

THE JUDGE: I see. It is rather small. It is on the Downs.

MR SQUARE: Yes, on the Downs itself, with another stone about an inch and a half further on. This is going into other rights for the moment. Altogether, there are 1, 2, 3 stones has got the Morshead mark on the south-eastern side of it?

MR CHAPMAN: Yes. That is right, as far as I know.

MR SQUARE: And has the stone at the apex, the top of the triangle, got a mark on the Newton Down side of it?

MR CHAPMAN: Yes. There is an "H" on that side.

MR SQUARE: No. On the Newton Downs side. There are three or four sides to that stone.

MR CHAPMAN: I think it is the letter "O" on that.

MR SQUARE: It is an indistinct mark, which might be either a "G" or an "O"?

MR CHAPMAN: Yes that is it.



MR SQUARE: And is there on the north-eastern side of that stone another mark?

MR CHAPMAN: Yes.

MR SQUARE: Facing Greenbarrow Downs?

MR CHAPMAN: Yes, I think. I am not clear on that point.

MR SQUARE: You went round yesterday to be clear and now I want you to be clear. You made notes in your notebook.

MR CHAPMAN: We are speaking about all the stones adjoining Newton now?

MR SQUARE: The most northerly part of your rights.

MR CHAPMAN: I think there is an indistinct "O" on it.

MR SQUARE: And on the eastern side facing Newton Downs?

MR CHAPMAN: An "H".

MR SQUARE: Any other letter?

MR CHAPMAN: A "P" I believe.

MR SQUARE: "H.P"?

MR CHAPMAN: That post is very much sunken down.

MR SQUARE: And you can only see the "H", can you?

MR CHAPMAN: I think I saw them both. I think I am correct in saying the usual mark was on that post.

MR SQUARE: That is the "H.P" on the east of it, and another mark on the west of it towards Derfold?

MR CHAPMAN: That would be the "H" mark towards Derfold.

THE JUDGE: Towards Newton Downs?

MR CHAPMAN: Yes. It is practically in the same direction.

THE JUDGE: Can I mark this map?

MR SQUARE: Do, Sir, Do.

MR LASKEY: By all means.

MR SQUARE: Have you, by any chance, your notes you made yesterday when you went round?

MR CHAPMAN: No, I have not.

MR SQUARE: Well, we went there for the purpose of taking notes for today. At any rate, there is an apex stone where Newton Down, Greenbarrow Down, on the east, Derfold Down, which is not marked on the tithe map, and Trehudreth on the south meet. I want to get if we can the markings on that stone. You say there is an "O" or a "G" on the Newton side?

MR CHAPMAN: On the north. It is indistinct.

MR SQUARE: And on the south?

THE JUDGE: You have not got the Ordnance there?

MR SQUARE: I have a copy of the tithe map here.

THE JUDGE: Is it just below the words "Newton Downs?"

MR SQUARE: You will see something like an arrow with two heads.

MR LASKEY: It is due south of the letter "D" in the words "Newton Downs."

THE JUDGE: That is just above the arrow. I see.

MR SQUARE: And that has four sides upon it. On the north side is the letter "O" or "G".

MR CHAPMAN: And the "H" as well.

MR SQUARE: Not on the north side. On the south side you have the Morshead mark. That is the "M" with the broad arrow?

MR CHAPMAN: Yes.

MR SQUARE: And on the Greenbarrow side what mark have you got there?

MR CHAPMAN: I don't know. There is no - -

THE JUDGE: That is the east side.

MR SQUARE: Yes. What mark is there?

MR CHAPMAN: I take it the "H" and the "O" are on the same side, and the Morshead mark is on the south side.

MR SQUARE: Well, we have better leave that stone alone. Then going directly south-east from that point, are there a number of stones marked?

MR CHAPMAN: Yes.

MR SQUARE: What marks have these stones got on them?

MR CHAPMAN: The Morshead mark on this side.

MR SQUARE: The west side?

MR CHAPMAN: Yes, and the "H.P" on the east.

THE JUDGE: That is just near the Greenbarrow Downs?

MR SQUARE: That is right, Sir. And these marks are on the other stones below it?

MR CHAPMAN: Yes.

MR SQUARE: Now, do you say that you claim, whatever else may have been sold to you as Trehudreth Common, that portion which is within the stones which we have mentioned is your freehold?

MR CHAPMAN: Yes, I do.

MR SQUARE: The south-eastern boundary being partly road and partly the parish bound?

MR CHAPMAN: Yes.

MR SQUARE: Now, in following the line as we did yesterday from one stone to another, is there a sort of heaped up mound from one stone to another?

MR CHAPMAN: There is a portion of the way.

MR SQUARE: Most of the way?

MR CHAPMAN: Not a great way.

THE JUDGE: Between what stones?

MR SQUARE: You remember where there is a raised mound between stones on the boundary close to the road?

MR CHAPMAN: Yes.

MR SQUARE: And does that mound go from the point where the line from Newton Common past Greenbarrow towards the south-east strike another parish boundary?

MR CHAPMAN: It does.

THE JUDGE: Where is that.

MR SQUARE: You see there a parish boundary?

THE JUDGE: Yes that runs in the middle of the road.

MR SQUARE: No, Sir. It goes inside.

THE JUDGE: Yes, it takes a turn northward and then goes away north but you are coming back -

MR SQUARE: No, Sir, where the line from Newton Common runs south-east from the apex straight down towards the road.

THE JUDGE: You mean to say that between these stones you are talking about there is a mound running along.

MR SQUARE: Is there a mound along there, running along from the apex stone towards the road?

MR CHAPMAN: No, no mound. Only the stones.

MR SQUARE: But when you get down towards the road, where this dotted line is, is there a distinct mound along there?

MR CHAPMAN: Oh, yes.

MR SQUARE: And does that mound run from a right-angled turn down there in a straight line from this point here, Sir - - I don't know if you can follow it - - the road from Bodmin to Launceston is here, Sir, does that mound run straight along there past the new Launceston road on towards the old Launceston road?

MR CHAPMAN: Yes.

MR SQUARE: And as the apex of that point out there is there another Morshead stone?

MR CHAPMAN: Yes.

THE JUDGE: It is marked here, "C Bank." Is that right?

MR SQUARE: Yes, Sir, that is right. I don't know what the "C" stands for. There is a bank which runs straight along there, and is there at the end of a Morshead stone?

MR CHAPMAN: Yes, at the lower side of the Bodmin and Launceston road.

THE JUDGE: Is that shown here?

MR SQUARE: Yes, Sir, you will get it there on the Ordnance. Can you point it out to the Judge?

MR CHAPMAN: The map does not continue to that point.

MR SQUARE: It comes beyond that map?

MR CHAPMAN: Yes, it does.

MR SQUARE: At any rate, it is not really material to this action. And you say this "C Bank" runs along this line here where you have marked your own map in green and down to the road, and along from the road to this point here beside this stone here?

MR CHAPMAN: Yes.

MR SQUARE: He claims as his freehold for the purposes of this action what is within these boundary stones I have given you.

THE JUDGE: That is to say coming down from the apex stone?

MR SQUARE: Down towards the road where the parish boundary is. This might help you, Sir.

Another map handed in.

THE JUDGE: It is shown coloured green on the map, is it not?

MR CHAPMAN: Yes.

MR SQUARE: For the purposes of this action we will say what is contained within the pencil line on this map.

MR LASKEY: The line only passes to the north of that tumulus.

THE JUDGE: It goes to the west and south of the tumulus here. It goes down these stones.

MR LASKEY: I see, To the south-west. I am much obliged.

THE JUDGE: To that stone which lies just below the tumulus.

MR SQUARE: Yes.

THE JUDGE: It follows the stones south.

MR SQUARE: Yes. Now, Mr Chapman, to get it on the record, towards the end of the last year did you have reason to complain of a quantity of cattle being placed on your moor or allowed to transfer themselves to your moor?

MR CHAPMAN: Yes, I did.

MR SQUARE: And did you speak to Mr Roose about it?

MR CHAPMAN: Yes, I did.

MR SQUARE: Was there any question as to whose cattle they were?

MR CHAPMAN: No.

MR SQUARE: Whose cattle were they?

MR CHAPMAN: Mr Roose's.

MR SQUARE: And how many bullocks had he on the moor about that time?

MR CHAPMAN: At the time I complained he had 18.

MR SQUARE: And I believe you could not see eye to eye with each other. You could not agree on your differences, and as a result you consulted a solicitor?

MR CHAPMAN: I did.

MR SQUARE: Did you also complain to him with regard to cutting the turves?

MR CHAPMAN: Yes, I did. Not in December. My first really serious complaint was in December, but I complained in regard to the turbary question in June, the beginning of June.

THE JUDGE: Last June?

MR SQUARE: Last June twelve months?

MR CHAPMAN: Last June twelve months.

THE JUDGE: You complained of the turbary before you complained of the cattle?

MR CHAPMAN: Oh, no. I complained of the cattle first.

MR SQUARE: These proceedings were taken in June of this year, 1926, so that in that month you had to complain of his cutting turves?

MR CHAPMAN: Yes.

MR LASKEY: In June of this year, and the cattle was in December of last year?

MR SQUARE: And how many turves had been cut?

MR CHAPMAN: I think about two cartloads.

MR SQUARE: From what portion of the moor had that been cut?

MR CHAPMAN: Well, on the higher lying portion of the moor.

MR SQUARE: Have you got a specimen of it here?

Specimens of turves were produced by witness.

MR SQUARE: I want you to give me a specimen of turve cut from your moor.

MR CHAPMAN: This is it.

MR SQUARE: Do you also produce a proper piece of peat?

MR CHAPMAN: Yes, I do.

MR SQUARE: That would be cut from the real peat moors?

MR CHAPMAN: Yes, this came from the Manor moor. That is, the Shallow-water moor.

MR SQUARE: It is rather interesting from a moorland point of view, and might interest Your Honour. You say that peat is quite poor quality stuff?

MR CHAPMAN: Third quality. You see, in obtaining a supply of this description, you would have to go over a larger area. You would destroy it.

MR SQUARE: The other peat is closely woven, wet, moorland, bog peat?

MR CHAPMAN: Bog peat.

MR SQUARE: Then, I don't think it is denied that from January 1<sup>st</sup>, 1926, up to June 7<sup>th</sup>, 1926, were there consistently on your moor from 18 to 20 head of cattle belonging to Mr Roose?

MR CHAPMAN: Yes.

MR SQUARE: And from May to June were there in addition a further four head of horses?

MR CHAPMAN: Yes, that is so.

MR SQUARE: And subsequent to the issue of the writ, did he put 54 sheep on it?

MR CHAPMAN: Yes, sheep and lambs.

MR SQUARE: That was done in spite of and really in challenge of your request to him to let you know what rights he claimed?

MR CHAPMAN: Quite, Sir.

MR LASKEY: You brought this property; this Conveyance was of June 28<sup>th</sup>, 1920, was it not. That is the Conveyance, you know.

MR CHAPMAN: Yes, I think that is the date.

MR LASKEY: At that time, I suppose, you did not consider the moorland part of it was of very great value, did you?

MR CHAPMAN: I considered it was of value.

MR LASKEY: Did you? Do you mean to say that if you considered that was a really valuable right, you were content to leave it in the Conveyance in these words, "and also all those lands, called or known as Trehudreth Common, containing by estimation 300 acres or thereabouts." You know those are the words of the Conveyance?

MR CHAPMAN: Yes.

MR SQUARE: I think your answer to that is that you had a solicitor acting for you.

MR LASKEY: The solicitor is not in the box, and this gentleman is. Did you realise the description was very vague?

MR CHAPMAN: No, I did not.

MR LASKEY: Did you realise at the time there was nothing in the way of a boundary defined, defining these 300 acres or thereabouts?

MR CHAPMAN: I did not realise that.

MR LASKEY: Do you say you really did not take any interest in getting a clear boundary, if you thought this property was of value?

MR CHAPMAN: Certainly, I knew there was an acreage defined.

MR LASKEY: Of 300 acres or thereabouts.

MR CHAPMAN: I should not care about two or three acres on either side.

MR LASKEY: Do you really tell us that you did not know from between 1920 and December, 1925, that for the whole of that time the Defendant was grazing his cattle and taking turves from this land?



MR CHAPMAN: I did not know that he was.

MR LASKEY: You did not?

MR CHAPMAN: What? Taking turves? No certainly, he has never taken turves from there.

MR LASKEY: You say he was not grazing cattle the whole time?

MR CHAPMAN: I know his cattle were running there - - a certain number - - from his own unenclosed land.

MR LASKEY: You knew his cattle were running along this moor from 1920 to 1925, and you never said a word until December did you?

MR CHAPMAN: Yes, I did.

MR LASKEY: You told my learned friend just now you complained about the cattle in December, 1925?

MR CHAPMAN: Did I not say that was the first time I complained seriously?

MR LASKEY: You want to alter that now?

MR SQUARE: No, he does not want to alter that. He answered the question put to him.

MR LASKEY: Well, what was the first time you complained to him?

MR CHAPMAN: I don't remember the dates.

THE JUDGE: You say the cattle were running there from the time you first became the owner?

MR CHAPMAN: Yes, Your Honour, a certain number. I allowed him that in consideration of the 13 acres he told me originally belonged to him. I was prepared to carry on on a give and take system provided he kept his numbers to a reasonable extent.

MR LASKEY: Do you say there was an agreement to allow his cattle to run on the Common?

MR CHAPMAN: There was no agreement. We had a mutual under-standing.

MR LASKEY: When was that come to?

MR CHAPMAN: I don't know I can fix any date in particular.

MR LASKEY: Nothing written.

MR LASKEY: Or said?

MR CHAPMAN: Yes, we had a conversation a time or two, but I cannot give you the dates.

MR LASKEY: You say in conversation you said to him, "You are running cattle on the Common but I don't mind because you claim part of it."

MR CHAPMAN: I don't remember what the words were, but I remember having a conversation with him at Derfold sale on the matter.

MR LASKEY: There has never been any suggestion up to now that you were allowing him to run cattle on the Common. It has never been suggested till this moment, has it?

MR CHAPMAN: I cannot say.

MR LASKEY: Now, I just want to ask you about these boundaries before we go on. Just one other thing. You knew, didn't you, that from time to time the Defendant was cutting turves from this Common?

MR CHAPMAN: No, never before.

MR LASKEY: Did you know that other people were doing so?

MR CHAPMAN: No.

THE JUDGE: Not until June of this year.

MR CHAPMAN: No. No one other than myself. I got my own supply of peat from there.

MR LASKEY: Now I just want to ask you about these boundaries on this Common. You have told us, you have pointed out, the position on the map of a large number of stones that you claim. Have you always been quite decided, quite certain in your own mind, which were the stones which bounded your own property?

MR CHAPMAN: I have in regard to my own property and the Haywards.

MR LASKEY: Where are the stones which bound your property on the south-east side near the road. You have got the maps before you. There is one stone near Peverell's Cross?

MR CHAPMAN: Near Peverill's Cross. 200 yards, probably. I cannot say.

MR LASKEY: Now, near Peverell's Cross there is the Launceston road, and a distance of half a mile away up in Temple parish there is another stone?

MR CHAPMAN: Yes.

MR LASKEY: The Temple parish stone is not on your map at all, is it?

MR CHAPMAN: It is not shown here.

MR SQUARE: The two parishes are bounded by the stream and the stone we saw yesterday is just on the Blisland side of the stream.

MR LASKEY: At any rate, you say, do you, that your property runs in a straight line from that stone by Peverell's Cross up to that stone which at any rate is near Temple parish, if not in it?

MR CHAPMAN: Oh, no. Not at all.

MR LASKEY: There is no stone between these two, is there?

MR CHAPMAN: Yes, there is.

MR LASKEY: Not these stones you are telling us of. There is no stone marked on the Ordnance map between the two, is there?

MR CHAPMAN: Yes, here it is. It turns a sharp angle to the north.

MR LASKEY: There are things marked "B.S" but they are not the stones you are telling us about now, are they?

MR CHAPMAN: I know there are two stones marked with the Morshead mark here following the Cardinham boundary. I don't know anything about the "B.S".

MR LASKEY: As I got it in examination in chief he said half a mile away there was a stone put in Temple parish, which, I think, is right off the map, and as far as I got it at the time, there were no stones in between. There is not stone marked on the Ordnance map, except two little things marked "B.S" which are quite different from what we have been hearing about. Do you say there are stones which are marked "stones" on the Ordnance map between these two stones?

MR CHAPMAN: Most decidedly. Here they are.

MR SQUARE: In effect, the stones are the boundary stones, and they are marked with the letters, B.S."

MR CHAPMAN: They bear the Morshead mark.

MR LASKEY: That mark is of quite a different character in the Ordnance map, and you say they are the same as the other stones?

MR CHAPMAN: Except they do not carry the Hayward mark.

MR LASKEY: You talk about these things as the Morshead mark and the Hayward mark. That is what you understand, I suppose? What somebody has told you?

MR CHAPMAN: That is what I understand.

MR LASKEY: You say your boundary follows along the road and then runs up from these stones to the other stone?

MR CHAPMAN: After leaving the Peverell Cross stone and going on to the next by the Launceston and Bodmin road, we turn sharp-angled to the north, just an inch on the map, and then we follow that boundary out to the Launceston and Bodmin road. In fact, my boundary stone is on the lower side of the road.

MR LASKEY: On the other side of the road?

MR CHAPMAN: Yes. But it is in rather a damaged condition. The top of it has been broken off but there remain some remains of the Morshead and Hayward marks.

MR LASKEY: That is not the only stone on which the inscription is almost indecipherable, is it?

MR CHAPMAN: No. I think there are other stones.

MR LASKEY: Have you heard that some of these stones have been shifted about from time to time?

MR CHAPMAN: I don't know. I have not been in the neighbour-hood very long.

MR LASKEY: You have nothing in the Conveyance to you or any other Deed which refers to the stones as marking the boundary, have you?

MR CHAPMAN: No, I don't know that I have, but I have 300 acres of this moor conveyed to me.

MR LASKEY: The fact is this, that Trehudreth Downs are marked on the Ordnance map as containing 536 acres, are they not? Just under the name of Trehudreth Common or Downs on the map, there is a figure given, 536.

THE JUDGE: That acreage marked would probably include other downs, the whole of these downs going away, till you got to Bodmin Moors.

MR LASKEY: That is for the acreage in that common. There is another enclosure to the north in the right-hand top corner of the map, to the north of the clayworks. There is an enclosure. It is, I think, No.901, and the acreage, 170.299, in the right-hand corner of the first map.

THE JUDGE: Yes, but that I take it is divided up by the road.

MR LASKEY: I take it it is the road.

THE JUDGE: I think that dotted line is a division. You see, there are no coupling marks on the lower road.

MR LASKEY: At any rate, that is the position, is it not, that there is a large down of over 500 acres, of which you claim some 300?

MR CHAPMAN: Yes.

MR LASKEY: And as you yourself have said, there are these stones and over the lesser part of the way there is a sort of mound?

MR CHAPMAN: Yes.

MR LASKEY: And it is on that you are relying as defining the area of your moor?

MR CHAPMAN: What? The mounds?

MR LASKEY: You are relying on the stones and the mounds?

MR CHAPMAN: Yes, combined.

MR LASKEY: Whatever they mean, as defining your part of the moor?

MR CHAPMAN: Yes.

MR LASKEY: I asked you just now whether you had been quite decided in your mind as to what your boundaries were. Do you remember having to deliver further and better particulars of the area you claimed? Do you remember Messrs Coulter, Hancock and Thrall delivering further and better particulars for you as Defendant's request?

MR CHAPMAN: Probably he did.

MR LASKEY: Do you remember that a certain number of enclosures were stated as being the enclosures bounding your property? Do you remember that?

MR CHAPMAN: Probably.

MR LASKEY: The particulars given were "Trehudreth Down is shown on the Ordnance Survey Map as bounded by land marks (marked "stone" in all cases) where such stones abut on other downs or unenclosed lands." And then you give a series of numbers, beginning from the northward end, 1111, and then following it down, 1212, which is just on the extreme west corner. It just

touches the property you are claiming in the extreme west corner there, where, in fact, there is no stone at all. Do you realise that?

MR CHAPMAN: Yes, I do. There is a mound which runs down to that.

MR LASKEY: And you say by reason of that you claim to that road junction at that corner?

MR CHAPMAN: Yes.

MR LASKEY: Of course, if one took the line of the other fields round to the stone, it would cut that corner off altogether, would it not?

MR CHAPMAN: Yes.

MR LASKEY: You cannot suggest anything except the fact that there is some mound there which you say you rely on as a boundary from that stone?

MR CHAPMAN: I rely on that as a boundary.

THE JUDGE: Is there a boundary by that south-east stone.

MR LASKEY: The line my learned friend has stated runs from that stone - - actually the direction is south-east - - to enclose a narrow piece of land. There is, in fact, is there not, a very uncertain and undecided line which might run south-west and might run due south from the point where that stone is?

MR CHAPMAN: Which stone?

MR LASKEY: The stone which is put near that road junction or entrance.

MR CHAPMAN: Yes, it is very evident, the mound there, is. There is no question about it.

MR LASKEY: I suggest that other people who have been there recently have found it very difficult to trace any particular mound, There is more than one?

MR CHAPMAN: Are you speaking of the mound just as we enter the Downs? It is defined very evidently.

MR LASKEY: There is one very evident and you can find others, which are also very evident if you will look for them, cannot you? There are any number of them, are there not?

MR CHAPMAN: Not with the landmarks.

THE JUDGE: I understand now, Mr Square, he does not claim, though his particulars say it, the downs abutting on these enumerated pieces of land. He does not now claim the inter-mediate bit between them and the line running north of the stones? Is that so?

MR LASKEY: No, he does not.

MR SQUARE: None of the fields here mentioned are included in these further and better particulars.

THE JUDGE: May I see what you claim?

(Particulars were handed in and explained).

MR LASKEY: Now while we are on these stones, Mr Chapman, I want to ask you another question about this area you don't claim between the part you claim marked green and the actual enclosures. The first form part of my client's property. There is a stone down near Peverell Cross, and then a line of stones running north-west from that?

MR CHAPMAN: Yes.

MR LASKEY: Do you know that a short distance from two of these stones there are two further stones much closer to my client's property?

MR CHAPMAN: Yes.

MR LASKEY: These stones have got marks on them, have they not?

MR CHAPMAN: Yes.

MR LASKEY: For some reason best known to yourself, you prefer to take the two north-eastern stones rather than the south-western stones. Is that not right?

MR CHAPMAN: Well, they were on my boundary, the other two stones are not touching my boundary.

MR LASKEY: You say the two upper stones are the boundaries of your property?

MR CHAPMAN: Yes.

MR LASKEY: And so you have chosen them, rather than the others?

MR CHAPMAN: I have nothing to do with the others. They are not on my property.

MR LASKEY: You know it would be possible to take a line from the Peverell Cross stone to these lower stones, the ones nearer our property, and then to continue with another line running up to the north-western stones?

MR CHAPMAN: You can take a line anywhere in any direction you like, I understand.

MR LASKEY: From stone to stone there is an alternative line, is there not.

MR CHAPMAN: Yes.

MR LASKEY: You have chosen that particular one. Now, Mr Chapman, you, of course, were present at the sale. Did you know this country before you came to the sale in 1919?

MR CHAPMAN: Not intimately.

MR LASKEY: At the sale, do you remember questions were asked by persons who were there about any rights?

MR CHAPMAN: Yes.

MR LASKEY: The auctioneer was Mr Button, was he not?

MR CHAPMAN: Yes.

MR LASKEY: You remember his answering there were common rights?

MR CHAPMAN: No, not on the Morshead property.

MR LASKEY: Do you know Mr Roger Bunt?

MR CHAPMAN: YES.

MR LASKEY: Do you know he distinctly asked the question of Mr Button as to whether there were common rights?

MR CHAPMAN: I don't know Mr Roger Bunt at the moment.

THE JUDGE: You say you did not hear the question asked?

MR CHAPMAN: Oh, yes, I did.

MR LASKEY: And did not Mr Button say there were common rights?

MR CHAPMAN: No, I don't believe he did. Not on the Morshead property.

MR LASKEY: That was the property that was being sold?

MR CHAPMAN: Certainly.

MR LASKEY: You have admitted that question was asked, and I put it to you the answer was that there were common rights.

MR SQUARE: We are calling the auctioneer tomorrow.



MR CHAPMAN: I understood I was buying the sole grazing rights of these 300 acres.

MR LASKEY: What you are claiming now is not the grazing rights but the freehold of these 300 acres, and you are claiming it for the purposes of this action only. Mr Chapman, did you read the conditions of sale?

MR CHAPMAN: I am not sure that I did.

MR LASKEY: Did you see this, the announcement of the sale and the lots?

MR CHAPMAN: Yes, I had the catalogue in my hand.

MR LASKEY: Didn't you know there was a condition of sale, No. 11, at this particular sale on November 1<sup>st</sup>, 1919, "No evidence of the identity of the property shall be required beyond what is afforded by the said statutory declaration. In the case of the property having rights of common appurtenant thereto and of common lands included in the sale, the vendor shall not be bound to define or explain the rights enjoyed by the owners or occupiers of such property or to give particulars of the properties in respect of which such rights are enjoyed."

MR SQUARE: Therefore, the auctioneer could not have said there were common rights. He certainly could not.

MR LASKEY: He had precluded the necessity for defining them. The auctioneer was the vendor's agent and was under no obligation to define what the rights were.

MR SQUARE: Of course, Mr Button could not have given him any explanation about common rights, because the vendor's solicitor was present. He would have been the person to ask.

MR LASKEY: Now you knew then, Mr Chapman, there were possibilities of this question of common arising?

MR CHAPMAN: Possibilities.

MR LASKEY: And also, this particular area of land we are discussing was sold to you as Trehudreth Common, was it not? Not as Trehudreth Downs.

MR LASKEY: But the Conveyance, not the advertisement. Now I just want to ask you about these other objections. You told us you have not objected to Mr Roose exercising these rights for over a period of five years. Do you know a Mr Harper of Greenbarrow?

MR CHAPMAN: Yes.

MR LASKEY: Did you raise an objection with him about cutting turf or stacking turf on the Common?

MR CHAPMAN: No, never.

MR LASKEY: Be careful, because we have got Mr Harper here. Did you not ask him about a turf stack he had got on the Common, and suggest he had no right to have it there?

MR CHAPMAN: No, I only inquired of him about a payment he used to make many years ago for stacking his peat rick on a particular spot. I raised no objection. He had not placed any turf stack on my land.

MR LASKEY: You were going to suggest he should make you a payment for putting up a stack?

MR CHAPMAN: What. Before he put it there?

MR LASKEY: He had got a turf stack there, had he not?

MR CHAPMAN: No.

MR LASKEY: You did have a conversation about a turf stack and did not Harper ask you which part of the Common you claimed?

MR CHAPMAN: I don't remember.

MR LASKEY: It was with reference to his right to put a turf stack there at all that you asked him about it, surely?

MR CHAPMAN: Yes, certainly I did.

THE JUDGE: The turf stack was not on your property at all?

MR CHAPMAN: No, but many years ago, I understand a turf rick was placed on what is now my property. I simply asked him with regard to days gone by.

MR LASKEY: Why did you ask him at all if nobody was doing anything?

MR CHAPMAN: I was simply inquiring about a matter of history.

MR LASKEY: It would surprise you to know he at any rate took it you were questioning his right to put a turf stack there?

MR CHAPMAN: It would –

MR LASKEY: Do you remember his asking you where you said your 300 acres were?

MR CHAPMAN: On Trehudreth Downs?

THE JUDGE: The question is do you remember his asking you where you said they were.

MR CHAPMAN: I don't remember it. He may have done.

MR LASKEY: At any rate, you did not make any further inquiry or raise any further objection about the turf stack, did you?

MR CHAPMAN: NO.

MR LASKEY: It was merely an archaeological discussion, Your Honour, I understand.

THE JUDGE: He says there had been a practice but Mr Harper had not put a stack there.

MR LASKEY: Therefore the inquiry was entirely superfluous. Do you know a Mr Thomas, or Wallhouse?

MR CHAPMAN: Yes.

MR LASKEY: Did you tell him, Mr Thomas of Wallhouse, he had right to put animals on the Common?

MR CHAPMAN: Yes.

MR LASKEY: And he told you he had?

MR CHAPMAN: Yes.

MR LASKEY: And since has he gone on putting animals on the Common?

MR CHAPMAN: He or his agent has.

MR LASKEY: And you have not raised any further objections?

MR CHAPMAN: No. I don't admit it.

MR LASKEY: His deeds were produced to your solicitors?

MR CHAPMAN: No.

MR LASKEY: You say he did not make an appointment with you to produce his Deeds at your solicitor's office?

MR CHAPMAN: At his solicitors. Not at mine.

MR LASKEY: At any rate, the Deeds were produced, were they not?

MR CHAPMAN: Yes.

MR LASKEY: And you raised no further objection?

MR CHAPMAN: No. I did not admit it, though. I asked for that Deed to be submitted to my solicitors.

MR LASKEY: You know that is some years ago, is it not?

MR CHAPMAN: Two or three years ago.

MR LASKEY: And you made no objection?

MR CHAPMAN: I knew his tenant had been paying for a grazing right on my Downs previous to my going to Blisland. I can prove that.

MR LASKEY: You are talking, are you, of Mr Bunt, your agent, collecting rent from Mr William Greenaway? Is that what you are talking about?

MR CHAPMAN: Mr Bunt was not my agent.

MR LASKEY: Mr Bunt was the person who collected it.

MR CHAPMAN: Mr Bunt was the occupier of Trehudreth.

MR LASKEY: Do you know that Mr Bunt tried to collect and he collected one or two payments of £1 a year from Mr William Greenaway and several others?

MR CHAPMAN: Yes.

MR LASKEY: And you know that Mr Greenaway refused to pay?

MR CHAPMAN: He refused to pay me, unquestionably under the influence of others. There has been a conspiracy.

MR LASKEY: Never mind under whose influence. It was Thomas's instructions. Thomas told you about your having no right to receive £1?

MR CHAPMAN: Possibly he did.

MR LASKEY: And you have not insisted upon it since, have you?

MR CHAPMAN: No, I have allowed it since, but I don't know I shall allow it indefinitely.

MR LASKEY: You know that for many years, long before you had anything to do with this property, the Defendant and many other people have turned out their animals on this Common?

MR CHAPMAN: No. Not irrespective of rights. Not irrespective of numbers. Not unlimited numbers.

MR LASKEY: Nobody is suggesting there are unlimited numbers.

MR SQUARE: Oh, yes. You are claiming without stint. I have a letter from my friend's client in which he says this: "Your letter of the 1<sup>st</sup> in reference to my trespassing on the said Downs is very amusing. I and my father before me had undisputed rights of grazing and turbary on those Commons for a continuous period of over 60 years, and have always stocked it with more horses, cattle and sheep than any other farmer who claimed rights on the said Downs. I may state that I bought these farms from my late landlord, Rev. Charles Vernon Collins, just over 20 years ago. My title deeds go back for over 150 years, and for any information concerning them please communicate with my solicitors, Messrs Pomeroy and Gill, of Bodmin." Messrs Coulter, Hancock and Thrall at once wrote and said "With reference to your letter to Mr Roose of the 1<sup>st</sup> instant he tells us you are acting for him. In a letter which we have received from him today he claims common of pasturage and we shall be obliged if you will let us know if his claim is to common of pasturage without stint and if so in respect of what holding he makes that claim." That is ignored. Then, in a further letter, Messrs Coulter, Hancock and Thrall wrote asking the same question. Messrs Peter say they make a claim on behalf of a large number of farmers and we wrote and asked for the names of the other commoners, and also "who will tell us precisely on what parts of the Common you say dangerous pits and excavations have been made?"

MR LASKEY: And here we have the answer in the pleading. It is answered in our further particulars.

MR SQUARE: Now, Mr Chapman, let us deal with Mr Thomas. Mr Thomas was the owner or occupier of Wallhouse, was he not?

MR CHAPMAN: Yes, he is at present.

MR SQUARE: Now is Wallhouse or was Wallhouse the old principal manor house in that district?

MR LASKEY: I object, Your Honour. This witness has said he was comparatively new to the district. How can he know that?

MR SQUARE: If my learned friend objects I will get it from other witnesses. And did you have a meeting with him at his solicitor's offices?

MR CHAPMAN: Yes.

MR SQUARE: Where Mr Thomas produced a Deed to you?

MR CHAPMAN: He produced it to a solicitor.

MR SQUARE: Which would have been Greek to you if you had read it, and you, in fact, asked him to be good enough to let your solicitor see it?

MR CHAPMAN: I am not sure. I asked him to put it in the hands of my solicitors.

MR SQUARE: You have not had it?

MR CHAPMAN: No.

MR SQUARE: And you don't know what it contains?

MR CHAPMAN: It was some old Deed.

MR SQUARE: And, perhaps, in the 17<sup>th</sup> Century he had some rights of common over this land?

MR CHAPMAN: Yes.

MR SQUARE: Now Harper has been a tenant since 1828, he and his family, of land at Greenbarrow, a small plot of land, about nine acres?

MR CHAPMAN: Yes.

THE JUDGE: Where is that?

MR SQUARE: Greenbarrow is just to the south of the most eastern point on your map.

MR CHAPMAN: It is near the Temple clayworks, Your Honour.

MR SQUARE: The piece of land which was let to Mr Harper was a piece of land between the old Launceston-Bodmin road and the new Launceston-Bodmin road, and comprises about nine acres in extent. That also is part of Trehudreth Common?

MR CHAPMAN: I understand it was.

MR SQUARE: And when you went to see Mr Harper, could you tell us when it was?

MR CHAPMAN: Just a week or so back.

MR SQUARE: To see whether he was prepared to give evidence for or against you, and your conversation with Mr Harper was, I understand, something like this, was it not? What was it? Just tell us what was said. You saw him with reference to an old payment, which was made in respect of a stack of peat.

MR CHAPMAN: I saw Mrs Harper first and she told me about it and I called at the house and Mr Harper was not at home.

MR SQUARE: And then subsequently you saw Mr Harper?

MR CHAPMAN: Yes.

MR SQUARE: And was reference then made to a stack of peat?

MR CHAPMAN: Yes, which many years back was placed on a certain plot of land.

MR SQUARE: Which you considered would be yours?

MR CHAPMAN: Yes, I did.

MR SQUARE: And did you see him with the object of getting his evidence as to the payments made for putting that stack on your land?

MR CHAPMAN: I had that object in view.

MR SQUARE: So instead of that happening some considerable time ago, it was an inquiry by you whether Harper himself could come to this Court and prove that payments had been made in respect of encumbrances upon the Common?

MR CHAPMAN: Yes.

MR LASKEY: I understood, I put it to the witness that in fact the conversation about the turf stack was some years ago.

MR SQUARE: You say you had that conversation about a week ago?

MR CHAPMAN: Yes, a week or ten days. I cannot be sure.

THE JUDGE: Thomas was this two or three years ago.

MR SQUARE: Yes, but the suggestion was Harper was to our prejudice two or three years ago, and that we were trying to force a payment from him for peat stack on the moors. Now, can you remember at this moment whether you have ever had any previous conversation with Harper with regard to this peat stack?

MR CHAPMAN: Yes, I had some about 2½ or 2 years back.

MR SQUARE: And will you tell us your recollection of that conversation?

MR CHAPMAN: I know where it was better than the date. It was in the White Hart stable yard here in Bodmin.

MR SQUARE: You were talking about peat, were you?

MR CHAPMAN: We were talking about Trehudreth Downs.

MR SQUARE: I think you had better tell us what the conversation was.

MR CHAPMAN: Well, I think the matter was in regard to fencing, enclosing these lands.

MR SQUARE: Yes. Harper's land, in fact, is a piece which has been "pinched" from the moor.

MR CHAPMAN: I cannot say - - presumably.

MR SQUARE: And so is some of Greenbarrow. It has been taken in by the lord of the manor in conjunction with the tenants. And was anything said then about this peat stack?

MR CHAPMAN: No. The "subject" we had then was in regard to fencing these lands. I claimed that I could enclose mine, that is, fence it in. I bought it as freehold land. And he said he had heard that the owner of Greenbarrow had said he would enclose the 80 acres provided his father would break up so many acres yearly and bring it into cultivation.

MR SQUARE: As a matter of fact, Greenbarrow has been sold?

MR CHAPMAN: I maintained that if the owner of Greenbarrow could fence his piece, I could fence mine.

MR SQUARE: You were at this sale in 1919?

MR CHAPMAN: Yes.

MR SQUARE: You bought either then or subsequently?

MR CHAPMAN: Yes.

MR SQUARE: Amongst the properties sold, were there four or five lots of land known as Pendrift?

MR CHAPMAN: Yes.

MR SQUARE: And were each of those lots sold with rights of common?

MR CHAPMAN: Yes.

MR SQUARE: And those rights of common are defined as being, in some cases, eight-fiftieths of the moor, one-fifteenth of so many parts - - you have it there, Sir - - 18½ undivided fiftieth shares, three undivided fiftieths, so that something might have been asked about those, but you say you recollect no question being asked at the auction as to whether there were any rights of common on Trehudreth itself?

MR CHAPMAN: No. I do not remember there were.



MR SQUARE: My learned friend questioned you as to why you had taken that particular line of stones on the moor as being your boundary. What do you say as to that? The stones you have taken have all got the Morshead mark on them?

MR CHAPMAN: Yes. I asked Mr Roose to meet me there one day in December last and the owners of the two Penstrods to identify the rights.

MR SQUARE: They came?

MR CHAPMAN: Yes. They met me at the entrance to the Downs.

MR SQUARE: So as to go along the bond stones and point out which was which so as to avoid trouble in the future?

MR CHAPMAN: Yes.

MR SQUARE: Did you go as far these bond stones?

MR CHAPMAN: Yes. I met them at the entrance to the Downs, and asked Mr Roose to point out to me his land. He said, "Very well, I will do so, and yours as well, if you like."

MR SQUARE: Yes.

MR CHAPMAN: So we started from the entrance to the Downs and came up to the first stone, bearing those letters we have already been talking about. A stone and mound.

THE JUDGE: Is that going in at Peverell Cross?

MR SQUARE: No. Going in from Trehudreth.

MR CHAPMAN: Just leaving the entrance to the downs from the Trehudreth direction.

MR SQUARE: You say you came up to the stone, which is a little bit higher up than the road, a rise into the moor, and you saw there the Morshead mark on one side, and the Hayward mark on the other?

MR CHAPMAN: Yes.

MR SQUARE: And what did he say and do?

MR CHAPMAN: He waved his hand and said, "There. That is yours, that side."

MR SQUARE: Was that the side the Morshead mark was?

MR CHAPMAN: Yes.

MR SQUARE: And he looked to see what the "H.P" side was, and what did he say then?

MR CHAPMAN: That is mine and Mr White's.

MR SQUARE: Mr White purchased a portion of one of the Penstrodas. There are three Penstrodas. You went on to another stone, did you?

MR CHAPMAN: Yes.

MR SQUARE: You proceeded in a north westerly direction and came to another stone similarly marked?

MR CHAPMAN: Yes.

MR SQUARE: And what did he say there?

MR CHAPMAN: He said, "That's yours there," pointing to the Morshead side of the post, and "That's mine and Mr White's here."

MR SQUARE: Then you went to the top, did you?

MR CHAPMAN: I am speaking of when we got to the second stone.

MR SQUARE: This is a little tongue of common say was cut out of the common by the Molesworths and Morsheads by arrangement.

THE JUDGE: And the third one? He said the same thing?

MR CHAPMAN: That stone was to indicate that the direction changed.

MR SQUARE: What did he say there?

MR CHAPMAN: He said, "There. That is your land, and this is mine and Mr White's here."

MR SQUARE: Meaning the land behind it?

MR CHAPMAN: Yes. I said, "Mr Roose, I don't want you to point out Mr White's land. I want you to identify you own land." He said "That is mine there, and Mr White's."

MR SQUARE: Mr Roose had 12 acres of this moor, and sold three of it to Mr White?

MR CHAPMAN: Yes.

MR SQUARE: We have got that conversation with regard to the boundaries. Now after that, I think, young Roose butted in and was rather hot tempered

and you agreed not to talk about - - - more? He, being young and inexperienced, started - - -

MR CHAPMAN: I asked Mr Roose to send his son back and he would not do so.

MR SQUARE: And you being a foreigner, a stranger in a strange land, it broke up the happy meeting?

MR CHAPMAN: The conference broke up immediately.

MR SQUARE: Now I want to deal next with the interview you had with Roose with regard to his grazing moor. My learned friend suggested that you had not discussed matters with him until quite recently. You told him in answer to his questions, you spoke to Roose about it on the occasion of the Derfold sale?

MR CHAPMAN: Yes.

MR SQUARE: When was that held, do you remember?

MR CHAPMAN: It was when the Horton family left and the Bennett family came there.

MR SQUARE: When would that be?

MR CHAPMAN: Two or three years back.

MR SQUARE: What was said on that occasion about the stocking of the moor?

MR CHAPMAN: I don't remember the particulars of the conversation, but it was in regard to the grazing of cattle. I don't particularly remember the words that were passed. I gave him to understand I felt I was being imposed on.

MR SQUARE: Because of why?

MR CHAPMAN: Well, the numbers of cattle, and the regardless way of turning them on.

MR SQUARE: As a matter of fact, if Trehudreth does consist of 300 acres, what would be an average number of bullocks that acreage could graze during the year?

MR CHAPMAN: Well, if it was continuously grazed like Mr Roose did, he always turned on from January 1<sup>st</sup> to the last day of December, I think 30 bullocks on that run would be quite sufficient. In fact, I think their rations would have to be supplemented during the winter. One bullock to ten acres is the general thing.

THE JUDGE: You are taking the capacity of the lands grazed on. It has nothing to do with the capacity of the farm.

MR SQUARE: No, Sir, not for the moment.

MR CHAPMAN: I think there were some complaints alleged against me at the time, only that was why the conversation started, in regard to a young bullock which fell in a pit. No, that was later. I can hardly say how that conversation started, but I remember having a conversation with Mr Roose at the Derfold sale on the downs matter.

MR SQUARE: If Mr Roose were to keep continuously on that moor about 20 head of cattle, there would be left grazing, perhaps, enough for ten of your own bullocks?

MR CHAPMAN: Yes, possibly.

MR SQUARE: now, my learned friend has drawn your attention to the variations in the marks in the Ordnance map of the stones, which you say are your boundary stones, and are marked as stones in the Ordnance map, and the stones which you also say are your boundary stones but which are marked with "B.S"

MR CHAPMAN: Yes.

MR SQUARE: What are the markings on these two stones? You know the stones I am speaking of?

MR CHAPMAN: I am not quite sure I do. You mean on the Cardinham boundary?

MR SQUARE: Yes.

MR CHAPMAN: Oh, yes.

MR SQUARE: What are these marks on them?

MR CHAPMAN: The Morshead mark. I don't know if there are any additional marks.

MR SQUARE: Well, as a matter of fact there are not. You looked at them yesterday with me. These letters are cut in inch wide letters in granite, and there is no doubt about them being there, and you say these are obviously marks of boundaries at some time or other?

MR CHAPMAN: Yes.

MR SQUARE: My learned friend stopped you answering one question just now, why you thought there were not any on these moors, and you said because when the moor was advertised it was called Trehudreth Downs?

MR CHAPMAN: Yes.

MR SQUARE: Are there the particulars of sale at the time you bought in 1919?

MR CHAPMAN: I expect they are. I do not know. I saw a poster of that description. I saw an advertisement in our local paper.

MR SQUARE: Trehudreth Downs, also held with Trehudreth Farm, containing by estimation 300 acres or thereabouts. That is why you say you knew it as Trehudreth Downs?

MR CHAPMAN: Yes, it was brought to my notice under that heading.

MR LASKEY: I have not cross-examined as to the numbers of the beasts witness has said were being put on this property by my client. I want to make it clear I do not accept his numbers. That is in dispute.

MR SQUARE: May I have your ruling as to that? We have asked for particulars of their defence. They have not denied the statement contained in our particulars that these bullocks were there, and they are stopped now from saying we ought to produce more evidence.

MR LASKEY: We do not deny that we put cattle there. The average number in the further and better particulars was given as 20.

MR SQUARE: From January 1<sup>st</sup> to June 7<sup>th</sup>, at 1s. per head per week.

MR LASKEY: That is in the further and better particulars. The particulars of claim are simply that defendant has recently placed his cattle or sheep - -

MR SQUARE: He is asked to file his defence and does not deny it in any way, and is estopped, Sir - -

THE JUDGE: The allegation is that you put there an average number of bullocks of about 20.

MR LASKEY: For one thing, of course, I have not got to plead definitely to further and better particulars. One pleads to the actual claim itself. In my defence I plead a right.

THE JUDGE: If you establish a right, how can it matter what the number is?

MR LASKEY: It is a question of the limits.

THE JUDGE: If you fail in your claim, then the amount of damages you would have to pay would only be a small matter, the amount of damage you have, in fact, inflicted on that Common.

The Court adjourned for lunch.

On resuming after Lunch:-

MR SQUARE: There was one question I think I ought to put to you, Mr Chapman, and that is about these sheep; the sheep referred to in the further and better particulars of your claim that we say were put on the moor after the summons was issued.

MR CHAPMAN: Yes.

MR SQUARE: Do you say, as a matter of fact, they numbered 54 sheep and lambs?

MR CHAPMAN: Sheep and lambs.

THE JUDGE: I don't know the number. I have got down they were put there after the summons was issued. Before that there had been no sheep turned out.

MR CHAPMAN: Not this summer, Your Honour.

THE JUDGE: He did so before?

MR CHAPMAN: Oh, yes, but I am not sure of the numbers.

THE JUDGE: Then as I rather gathered from your answers, you did not object very much at first until you found out the numbers were increasing?

MR CHAPMAN: That is it.

THE JUDGE: Until the numbers were increasing, you did not object?

MR CHAPMAN: Not while the number was a reasonable number?

MR SQUARE: May I just interpose. Mr Chapman came into this district as a stranger, a foreigner. He bought this Common and did not know where he was. He knew cattle were going on to the moors and at last he said, "Let us find out our rights."

THE JUDGE: To being with, do you think they turned out a reasonable number?

MR CHAPMAN: Yes.

THE JUDGE: But after a bit you found the numbers were increasing and so you objected?

MR CHAPMAN: Yes, I did.

THE JUDGE: What were the numbers they turned out at first which you did not object to?

MR CHAPMAN: Well, I don't exactly know but it was a smaller flock of sheep.

THE JUDGE: Do you mean you wished to be on good terms with your neighbours, and without going into details of your legal rights, so long as a few animals were there you did not mind?

MR CHAPMAN: Oh, no, I should not mind that.

THE JUDGE: But afterwards they increased to very much larger numbers, and you have begun to investigate your legal position?

MR CHAPMAN: Yes, that is it.

THE JUDGE: Yes, you have proved your title. It is admitted that you are the owner of the land. Your title was traversed. You have proved your title.

MR LASKEY: Might I say at once - - I do not want to take my learned friend by surprise - - but I intend to make a submission that he has not, in fact, proved his title.

THE JUDGE: But why?

MR LASKEY: I had better do it now.

MR SQUARE: My learned friend said so at lunch very kindly, but my brain is a blank. I cannot see where I have not.

THE JUDGE: You do not want to call any more witnesses?

MR SQUARE: No.

MR LASKEY: Your case is closed?

THE JUDGE: Yes, Mr Laskey.

MR LASKEY: Well, sir, I apprehend that if there be a case for the Defendant to answer, it is necessary for Plaintiff to have proved he is the owner of the property, and that there was a trespass.

THE JUDGE: There is an admission they were turned on there.

MR LASKEY: I am not contesting that. It is on the first point I want to make a submission, though in a way the two are bound up together. In particulars of claim Plaintiff is the owner and occupier of certain lands. The further and better particulars given go as follows:- "Trehudreth Downs is shown on the Ordnance survey map, the number of the map is given, as bounded by land marks marked 'stone' in each case where such Downs abut on other Downs or unenclosed lands. It abuts on the enclosures shown by the following numbers," and it is on that the issue is taken. What is the proof that has been given? First there is Conveyance, surface conveyance, I will call it, which

conveys certain enclosed properties and also all those lands called or known as Trehudreth Common, containing by estimation 300 acres or thereabouts. There is no identification of any particular area as being those 300 acres, and nobody has been called to say that the 300 acres conveyed is the 300 acres we are talking about now. Instead of that, evidence is offered on the lines of the further and better particulars that there are certain stones on this Common with marks on them, and there is not evidence what those marks mean. My learned friend has surmised what those marks mean but it is pure surmise. Your Honour has seen that including the stones on which my learned friend bases his case there are numbers of other stones in the neighbourhood, and Your Honour has no evidence that these other stones have no marks on them.

THE JUDGE: Your submission is that this particular Common might be somewhere a hundred miles away?

MR LASKEY: No, but the Common is of considerable area, and although the name of the Common is included in the Deed, no particular area of 300 acres is indicated.

THE JUDGE: A man says "I have bought some property and it is of a certain area, and on that property some animals have been turned out - -

MR LASKEY: I appreciate that. I should not deny for a moment that the animals tasted food all over this area. I should think they did. But surely the position is that a person proving a title and saying "I own 300 acres somewhere in this area, and at some time or other some animal has fed over part of the area I own," ought to prove his title.

THE JUDGE: I have heard the evidence of the Plaintiff. He has said that his property consisted of a certain area, and he has defined it. He has a certain area which he has described, and he says, "On that, my property, animals have fed."

MR LASKEY: Surely, that is proof of occupation but not proof of title, and what we are contesting is proof of title.

THE JUDGE: If you suggest he has bought some other land - -

MR LASKEY: I do not suggest an alternative. What I am limiting my submission to is the case he has put forward.

THE JUDGE: He says "I have bought some land, and the Conveyance described it." That Conveyance describes certain property. He says where it is and says, "On that area, an my land somewhere, animals have fed."

MR LASKEY: Surely, that is entirely consistent with squatter's occupation?

THE JUDGE: Never matter. He says so. You are submitting there is no case to answer.



MR LASKEY: In proving title it is not enough to say "I have had conveyed to me 300 acres out of a much larger area, but I sat that 300 is within a particular line I define. I have never had that particular line indicated to me by my vendor."

THE JUDGE: That does not matter a bit. He says so today. Here he is. He says the land is there and has defined it.

MR LASKEY: Well, there is just this further point. This Conveyance of 1920 is a very recent matter, and no effort has been made to show that the person who executed the Conveyance had any right to convey the property.

THE JUDGE: How far are you going back, for you might go back over hundreds of years?

MR SQUARE: Let us get to the main issue between two farmers residing in the same area who want to know what their rights are. Not technical affairs. We have not been brought down here from Plymouth and London for the sake of technicalities.

MR LAKSEY: The case I have to meet is this, that an attempt is being made to deprive my client of rights he has exercised all his life, and I am entitled to take objection as to whether the Plaintiff's title is a good title or not.

THE JUDGE: The Conveyance, Plaintiff was called to put in this Conveyance, and that recites:- (The Conveyance was read).

MR LAKSEY: May I read it? "Between Dame Sarah Elizabeth Morshead of the one part and Richard Hicks Chapman of the other part, whereas Sir Warwick Charles Morshead by his Will dated November 22<sup>nd</sup>, 1984, gave, devised and bequeathed - -

THE JUDGE: You have cross-examined him on it.

MR LASKEY: But do not forget he spoke of nothing before that.

THE JUDGE: He said he was owner of the land. You should have cross-examined him and asked how he knew he was the owner of the land.

MR LASKEY: I did ask him whether he was not a newcomer and whether he knew anything about the land before he came to Tredudreth.

THE JUDGE: If you are going to make a point of that sort, you should make it by cross-examination.

MR LASKEY: I certainly thought my cross-examination had covered that point. At any rate, it is evident from the issues on pleadings that the ownership is denied. All that I was asked by my learned friend was whether I required the Deed to be proved, and, of course, having particularly in mind at the time the County Court rules, Order 18, Rule 9, I did not call on him to prove the Deed.

THE JUDGE: It would be very easy to prove. The attesting witness, I see is in Court.

MR LASKEY: I do not suggest now that the Deed was improperly executed but I do not admit all the recitals it contains and I was not asked to do so. It has never been suggested I should. Surely, in every case of conveyance I have seen before, there has been an identification of the property conveyed.

THE JUDGE: Plaintiff has already done that in the witness box.

MR LASKEY: In that case I will call my witnesses.

THE JUDGE: You might just outline what your case is because I am rather at sea with regard to it.

MR LASKEY: Yes, Your Honour has before you an Ordnance map which is marked in different colours with the property of which my client is owner and occupier, except that there is one area which has been left uncoloured. The areas uncoloured are these - - there is one that is marked 1590, there are the two areas marked in red, the northernmost one of those is close to that road junction - -

THE JUDGE: 1214 and 1215?

MR LASKEY: Now to the south of 1215 there is an area which was bought separately and which at that time was not enclosed from the roadway. There is a road leading down at the entrance where the road leads into the corner of the property that the Plaintiff claims. It leads down past 1215 and then on to 1244, and then runs down to the farm, and then 1243 and 1242. There was an area there, a triangular area just by that corner.

MR SQUARE: Would you like to have my tracing of the tithes? It might help you.

MR LASKEY: Your Honour will see there is a part of these fields left uncoloured. That is an area of about three acres separately conveyed to us and the enclosure seen to since. Now this is shown on the Ordnance map enclosed right up to the road, but it was transferred as a small green and was not enclosed. That is one area; that is my client's property – There is also one other area also uncoloured, and that is known, I think, as the 12 acres, and that is enclosed between the land which Plaintiff now claims and those four fields, 1215, 1216, 1217 and 1248. It is roughly a triangular shape.

THE JUDGE: That belongs to you, does it?

MR LASKEY: That belongs to my client and to Mr White. There are three acres that were conveyed to Mr White by my client.

THE JUDGE: There are also 1252 and 1253.

MR LASKEY: Those don't belong to my client. There are two. The part that is adjoining 1252 and 1253 is, I am instructed, a former part of Blisland Manor, and not of Trehudreth Manor. They do not belong to us.

THE JUDGE: They are coloured on this plan.

MR LASKEY: Oh, 1252 and 1253 do, but not the moor behind. We stop short there.

THE JUDGE: You get a very large triangular piece?

MR LASKEY: That is right. It is 12 acres in area.

THE JUDGE: And it belongs to defendant?

MR LASKEY: Except that there are three acres which have been conveyed to Mr White.

THE JUDGE: Which acres are those?

MR LASKEY: I do not know and I doubt very much whether they can be defined apart. The next area, between Plaintiff's land and down to the road at Peverell Cross again is not my client's property.

THE JUDGE: It is claimed by somebody?

MR LASKEY: It is claimed by somebody.

THE JUDGE: Is that enclosed land?

MR LASKEY: All unenclosed. It is just a strip from the end of our property down to Peverell Cross. Now, Your Honour, the property of which my client is owner is, apart from these particular areas, that coloured in different ways on the map before you. Those colours – the purple colour shows an area of about 20 acres. All these properties were conveyed to my client, the purple, the green and the red were all conveyed to my client in 1908. It is a conveyance from the Rev E V Collins, dated March 23<sup>rd</sup>, 1908, to the Defendant, and all the parcels are set out in the schedule to that conveyance, and that conveyance also included an area behind that which is coloured in this map – It was a holding called Rickard's Penstrode and the part my client is now owner of are the two fields marked red and the triangular area of common. My client then conveyed all the parts of Rickard's Penstrode which are not coloured to his cousin, and that left all the property coloured, including the two areas marked red and the triangular part.

THE JUDGE: All that was coloured and the triangular part was conveyed to him?

MR LASKEY: And another bit which is not coloured, as well. Another 45 acres.

THE JUDGE: I do not see why the red fields are distinguished in any way. He conveyed this other bit back again to somebody else?

MR LASKEY: That is a map which shows the position as regards that 45 acres. There are the two fields coloured red, there is the rest of the area he conveyed, which is not coloured on that map.

THE JUDGE: That is not all that was conveyed in the 1908 conveyance?

MR LASKEY: That is the whole of what he did not keep, the area marked Penstroda on the Ordnance map was conveyed to him and included this large area. He conveyed all that away the next day and he kept these two with the rest of the coloured area on the map.

THE JUDGE: I want to know why you distinguish these two red bits from the other coloured bits.

MR LASKEY: Because his title comes from the conveyance to him.

THE JUDGE: The conveyance conveyed to him the two bits coloured red, another bit - - it is an earlier title, that is why. There are three earlier titles.

THE JUDGE: The 1908 Conveyance conveyed to him all the coloured area, the red, purple and green?

MR LASKEY: That is so. It conveyed all that and more. The red part is part of an earlier conveyance to Mr Collins, who sold to my client, and it is because of these earlier titles this land has been coloured in different colours. Perhaps, I might be able to pass up the Conveyance, by which Your Honour will see the actual parcels conveyed were at the top. That collection at the top, it is enumerated here, is the area called Rickard's Penstrode. The last two are 1171 and 1172. They are the tithe numbers. These make about five acres of enclosed land adjoining Trehudreth Common.

THE JUDGE: That is 12 acres. That is the triangular bit?

MR LASKEY: Yes. All that is conveyed with those other parcels which are then enumerated, and the position is this. My client will tell you he has lived there for very many years and the whole of that time he has pastured cattle on the Common and he will tell you the numbers he has pastured.

THE JUDGE: That is since 1908?

MR LASKEY: Oh, no. For 59 years. He was born in this neighbourhood. They were only tenants, they become owners more recently, but they were there for a very long time before, he and his father before him

THE JUDGE: What was he tenant of?

MR LASKEY: It was the area marked purple, as I am told.

MR SQUARE: That is Lower Penstrode.

MR LASKEY: I am so sorry. It is the green area. The titles to these areas, the green and the purple, were in Mr Collins from 1847 and 1853, and as I am told my client and his family were tenants of this property.

THE JUDGE: I think you said the whole of that was conveyed on March 23rd, 1908?

MR LASKEY: He became owner in 1908. The other area marked red was rented to another man, but the two areas marked green and purple my client was in occupation of as tenant for long before he became owner, and it was as tenant of these areas that these cattle were put out on the Common. Of course, the measure of the right amount of cattle is the measure that his own lands will support, and it is on this point that the question of title may be important, and I have the deeds here to show, if the necessity arises – not only my client's title but the earlier titles as well.

THE JUDGE: Of course, they come through divers channels, and you are going to prove that the different owners had got these rights? Then you must trace it back from them.

MR LASKEY: That is so and particularly if, as we do, we claim to have title by prescription.

THE JUDGE: That is your claim, prescription?

MR LASKEY: A claim by vicinage, and also by common appendant, and if one can prove that the land over which right is claimed is part of the waste of the original manor and that the person claiming is tenant of land which also formed part of the lands of the original manor, I cannot see there is not a prima facie case there.

THE JUDGE: A certain number of persons have no rights of common over wastes, even now.

MR LASKEY: I think there are quite clear proofs that the greater part of this land, at any rate, was land which formed part of the original Trehudreth Manor, and consequently land the tenants of which at common law would have a right of common under the manorial system.

THE JUDGE: If they were freehold tenants or copyhold tenants enfranchised.

MR LASKEY: I think it was tenants in common stockage, not freehold tenants of the Manor, but, of course, it would not apply to a non-freehold tenancy. But if a copyhold tenancy were enfranchised, in that case it would apply to a copyhold tenant.

MR SQUARE: There is no evidence of copyhold here.

THE JUDGE: When the land is sold again there may be a question of the manorial rights, and the question would be whether the words included a re-creation of the rights. In some cases the words were not used, and no common right was re-created; in other cases the words were used.

MR LASKEY: I think I have got what is the leading case on that point, *Baring v Abingdon*. I have got the Law Times report.

THE JUDGE: The Law Journal sets it out clearly. The only report is on one point, that is to say, the case in which rights were held not to be re-created.

MR LASKEY: And Mr Justice Sterling says "It seems significant that the words "Heretofore or at any time heretofore" are left out in a case where they were specially appropriate.

THE JUDGE: The queerest part about that is that they did re-create it. It is rather curious they should report one and not the other.

MR LASKEY: It is in respect of my client's ownership of this land which is defined on the map before you that he claims the pasturing of cattle as a right that has been exercised, as I shall be in a position to show by evidence, for over 60 years. It has been exercised only in respect of commonable beasts and there is no question that the number has always been within the numbers that this particular holding could support.

THE JUDGE: Out of all these properties he has bought?

MR LASKEY: Right has been exercised in respect of practically the whole of these properties, because as tenant he was tenant of the properties with the exception of the areas marked red for a very long time before he became owner, and I shall be able to call witnesses that they, for his father, drove animals on to the Moor from time to time, and what classes of animals they were. I quite recognise that one has to deal with the class of the animals and the number with respect to the holding. In dealing with the number of animals that this holding will support we are dealing with quite a different type of ground to the moor areas we have been speaking of. The Plaintiff said for the area he claims to be owner of, the right number of animals would be one bullock to ten acres. That is unimproved land. That, of course, has no bearing upon the question of the number of beasts my client drives on to it. He may drive on to it so many that they extract a very thin living from it. That is his matter as long as he does not drive on more than his holding would support. Other commons adjoin these moors and are not separated from them, and, of course, the number of animals which might go on those moors and the other moors might be largely in excess of what this particular moor would support.

THE JUDGE: You have only the right to claim the number your common would hold. You began, first of all, with your own common, and your common will

carry a certain number of beasts. Then, by this practice or custom, someone else who has got property has his commonable rights and proceeds to stock the common, and instead of bringing actions against one another they assume mutual agreements between them to just let things go.

MR LASKEY: To save the whole trouble of fencing, probably. It does not justify putting a larger number on the common.

THE JUDGE: It is only trespass of such animals as are excess. I suppose you might turn out more animals than your common would carry and only those animals your common would not carry might stray, and you might be able to justify the straying by the fact that not more than half your animals had strayed. But that is rather beside the question.

MR LASKEY: We have got a right, we claim, on the common lands of the Manor of Blisland.

THE JUDGE: And then you have, first of all, to prove your right to turn on the land.

MR LASKEY: That is so.

THE JUDGE: In the old days, an animal was impounded, and you said that animal was there by virtue of your prescriptive right of turning out on Trehudreth Downs or your prescriptive right of turning in on some other Downs, by which it escaped to Trehudreth Downs. If you are going to prove by vicinage, you must prove you turn out on a particular common.

MR LASKEY: The position is, of course, that the original titles were three. Part of that land is property that came from the Morshead, who were vendors to the Plaintiff. Surely the position is this, that this was an area which had formed part of the Molesworth property over 100 years ago, and which had reached us after various conveyances. That is, as regards the purple area. That was part of the Manor of Trehudreth, but the green area comes from a different title altogether and was a Molesworth title, and was originally part of the Manor or Blisland as was shown by the fact that there was a rent payable. It was purchased by the Molesworth family. We have got nothing to show when that title actually originated. The only thing the conveyance says is that it was part of Blisland Manor. At least, there is a rent payable to Blisland Manor.

THE JUDGE: Assuming that it was part of the Blisland Manor originally?

MR LASKEY: And as such, the tenant of that property would have the right of common over the waste lands of the Manor.

THE JUDGE: Quite so. And it was purchased back by the then owner of the Manor?

MR LASKEY: As I understand it. The Molesworth property has never been repurchased by the owner of the Manor. At a very distant date it formed part of

the property of the Manor, but on the other hand this 35 acres coloured green on the plan before you is property derived from the Molesworth title, and has nothing in common with the period of the deeds we have with the Morshead title under which Plaintiff derives. That is the position and as regards that area there is no sort of evidence that it was repurchased in recent times. I have a number of witnesses on the question of prescription.

THE JUDGE: Had you not better take the question of the title first?

MR LASKEY: If you please.

THE JUDGE: It will be very much easier to follow.

MR LASKEY: Perhaps I might call solicitors first.

MR ERNEST GILL was then sworn.

MR LASKEY: You have the deeds appertaining to this property, I think?

MR GILL: Yes.

MR LASKEY: That is, all those in the Defendant's custody?

MR GILL: Yes.

MR LASKEY: Perhaps, we had better start with the earliest deed.

Copies of the Deeds were handed in.

MR LASKEY: You have before you a copy of the Conveyance in 1008 to my client. That is, of course, the recent one. The oldest one is dated 1847. That is a Conveyance by John Gilbert to John B Collins, a conveyance of Penstrode in the parish of Blisland. That is all the area marked purple in the map.

THE JUDGE: Is that all the purple?

MR LASKEY: That is all the purple.

MR LASKEY: That is an indenture of December 25<sup>th</sup>, 1847, made between John Davis Gilbert and John Bassett Collins, and the area of land that refers to is all that marked purple.

THE JUDGE: How do you define this purple land?

MR LASKEY: That is, in fact, the land which is that area - - the other deeds set forth the particulars, the 1908 conveyance gives the particulars of the actual fields. It is a conveyance to Collins who subsequently conveyed to us. Now that is the purple area which was sold to us in 1908.

THE JUDGE: There are three heads?



MR LASKEY: Your Honour will see in the first one there is an addition which, I think, with the area we are dealing with, makes up the 22.

MR SQUARE: That is the 20 acre farm. I have a document here. I have got it described in 1808 and it works out almost exactly. It is lot 114, Penstroda or Penstradden, and it works out at 20 acres, 3 roods, 1 perch.

THE JUDGE: What is item 1590a, Penstroda Farm, common or waste?

MR LASKEY: It is the uncoloured piece on the Ordnance map, which was, at that time, unenclosed. The next thing is the title to the green part, the Molesworth property. Now, that is the deed of July 20<sup>th</sup> 1853. Have you got that?

MR GILL: Yes, between Sir William Molesworth and John Bassett Collins, granting all that messuage, tenement and farm called or commonly known as Penstroda, containing by estimation 35 acres. (Witness proceeded to read the deed.)

MR LASKEY: The really significant things are the words "Now or at any time heretofore."

THE JUDGE: Those words are, of course, only powerful as between the owner of the Manor and the vendor.

MR LASKEY: And there is a schedule and covenant to produce but I don't think there is anything else of note in that Conveyance. That is a Conveyance which gives rise to what I have called the Molesworth title as regards the lot of lands marked green.

THE JUDGE: How did that get to Molesworth? It must have been by an original move out of the Manor?

MR LASKEY: Yes. It has no relation to the Morshead title at all. The next deed is one dated November 29<sup>th</sup>, 1856. There is a declaration about exchange. It refers to the rental of 15s. per annum which is mentioned in the other deed, the redeemed land tax, and it is a declaration in regard to that.

(Mr Laskey proceeded to read the declaration).

THE JUDGE: How does this effect it?

MR LASKEY: It is a declaration with regard to land tax made at the time of that conveyance.

THE JUDGE: How does that effect the question of title?

MR LASKEY: I do not think it does affect the title. The redeemed land tax was, of course, conveyed by the conveyance we last referred to. It is specifically

referred to in it. Now, the indenture of November 29<sup>th</sup>, 1856 refers to part of Trehudreth Common and is that little coloured area to the north-west. It is between Phillip Bird of the first part, William Morshead, Joseph Connor and John Bassett Collins, and refers to all of that piece of common or unenclosed land sometimes known as Penstroda Green.

THE JUDGE: Which is now part of the Common or unenclosed land known by the name of Trehudreth Common?

MR LASKEY: And at the end there is, "Provided always and it is hereby expressly agreed by the said parties that the grant hereunto contained shall not give to the said John Bassett Collins any rights of pasturage or turbary upon or over the commons or said unenclosed land of the Manor of Trehudreth." That is a reservation of the right of common in respect of this smaller area of about three acres.

THE JUDGE: This Simon Morshead was Lord of the Manor.

MR LASKEY: William Morshead, he was the Lord of the Manor.

THE JUDGE: It looks as if somebody had got rights of common there

MR LASKEY: Now there is a deed of October 1<sup>st</sup>, 877, which relates to the two fields marked red and the 12 acres. Have you got that, Mr Gill? From the trustees of James Hayward to John Bassett Collins, several hereditaments specified in the first schedule, together with all commonable rights in as full and ample a manner as the same now or have heretofore been enjoyed. There are other deeds to the property but I do not propose to go into them. I merely put them in formally as proving our title down to the present date,; and then there is a mortgage of March 25<sup>th</sup>, 1908.

MR GILL: The Conveyance first, March 23<sup>rd</sup>, 1908.

MR LASKEY: Yes, September 18<sup>th</sup>, 1909 the further charge and December 23<sup>rd</sup>, 1920 re-conveyance?

MR GILL: Yes. Those are all on one document.

MR LASKEY: Conveyance and re-conveyance. There is a Conveyance to the Blisland China Clay Company of December 24<sup>th</sup>, 1920, and a Conveyance in the opposite direction from the Blisland China Clay Company to Mr Roose in 1922. It does not matter, because it was conveyed back two years later, and finally there was the mortgage of November 2<sup>nd</sup>, 1922. That completes the deeds.

THE JUDGE: It comes to this, that first of all the conveyance of the purple land which is described as being formerly part of the Manor?

MR LASKEY: I shall put before you in a moment some further deeds which go back to 1808.

THE JUDGE: That is the only thing that is material in this excepting that they mention common rights and rights of turbary?

MR LASKEY: Yes, and that in certain cases there are reservations of common rights in respect of other properties.

THE JUDGE: Hayward was the owner of adjacent land, therefore he conveyed part of his property, together with rights of common, except rights of common over some other common. The inference would be that he had rights of common over the land he was conveying and that was not in the present title, I understand?

MR LASKEY: As I understand, the deeds which will be produced will show that the Hayward title was the same as the Morshead title. The land was conveyed from Morshead to Gilbert and from Gilbert to Hayward, I understand.

THE JUDGE: That will not affect it at all. Hayward makes a Conveyance with all rights of common, but excepting those rights over a certain particular common. Now, you say, let us by inference suggest that he has got some rights of common that can be conveyed. If his land is similar to the Morshead property how can that be so?

MR LASKEY: If the Morsheads were at the time they originally conveyed the Lords of the Manor, and conveyed property which was not of the Manor waste, they could convey with it any rights of common they possessed, and I understand that was done, and then by subsequent conveyances the same rights could be passed down to Hayward.

MR SQUARE: Mr Gill, you are more conversant with these Moors than I am, and I want you to help me if you will. Have you investigated the earlier deeds relative to the West Penstrode property, the land coloured pink here.

MR GILL: No, the deeds I have produced here were restricted. We were told by Mr Roose the title did not go further back.

MR SQUARE: A usual practice in Cornwall, is it not? Restriction of title?

MR GILL: Yes. It has been done away with specially by Lord Birkenhead's Act as being too scandalous to last any longer. The law runs even in Cornwall.

MR SQUARE: That has led to a number of complications, has it not?

MR GILL: In the earlier deeds, I dare say. But I don't admit it in connection with my own firm.

MR SQUARE: Of course not. Now, will you tell me where is the Manor of Barlandew?

MR GILL: I cannot help you there.

MR SQUARE: There is a tithe map to be produced?

MR GILL: Yes.

MR SQUARE: Well, will you show me the Manor of Barlendew?

MR GILL: It won't show the Manor.

MR SQUARE: It will show the house?

MR GILL: It will show the house, certainly.

MR SQUARE: It is in the parish of Blisland, is it not?

MR GILL: Oh, yes.

MR SQUARE: Now do you know from your investigation of the deeds in this case that West Penstrode, otherwise Rickard's Penstrode, is part of the Manor of Barlendew?

MR GILL: I cannot say that without looking through the deeds again.

MR SQUARE: I just want to get into His Honour's mind that Rickard's Penstrode never was a part of Trehudreth Manor at all, and in fact is described in the old deeds as part of the Manor of Barlendew?

MR GILL: That I cannot say from my own knowledge.

THE JUDGE: That is the green, is it?

MR SQUARE: No, the whole of the red, Sir. So that under the manorial system, the sockage system or any other system upon which common appendant might arise, Penstrode would only have common appendant in Barlendew?

MR GILL: I won't say that until the whole of the deeds are produced.

MR SQUARE: It would have no right to common appendant in Trehudreth. It could not have because common appendant only arises out of arable lands of the manor?

MR GILL: Yes.

MR SQUARE: You agree with me, do you? We may wipe out that part of the case? As to common appendant in regard to Rickard's Penstrode?

MR GILL: I cannot agree with you as to that. You are asking rather a lot I think.

MR SQUARE: The first note I have got of any 12 acres of unenclosed land being part of the moor, being conveyed, is in the Conveyance of 1877?

MR GILL: I think that is so.

THE JUDGE: Where is that?

MR SQUARE: The 12 acres of unenclosed land in the Conveyance of 1877, Hayward to Collins.

MR GILL: That appears in the parcels.

MR SQUARE: Are you responsible for that Conveyance or is Mr Collins?

MR GILL: The deed is dated 1877.

THE JUDGE: Where do you get this about the other Manor you are speaking about?

MR SQUARE: That appears later on. You will get some more deeds presently. In a deed of 1809 it is called in the Manor of Barlendew.

THE JUDGE: Can you tell me where that land is?

MR GILL: It is only in the schedule, Your Honour. The last item in the first schedule.

MR SQUARE: Which are these 12 acres. Where are they?

MR GILL: As far as I know they are the 12 acres outside the entrance to the moor from Trehudreth farm.

MR SQUARE: Is that 12 acres?

MR GILL: That I cannot say.

MR SQUARE: I am told it is only seven. Have you any evidence that that is 12 acres?

MR GILL: No.

MR SQUARE: Do you think that that land marked with granite posts to which I have referred is the land referred to in that Conveyance and these particulars of sale?

THE JUDGE: It would be adjacent to that?

MR GILL: Yes, there would be no room for 12 acres further along Penstrode itself.

MR SQUARE: And these posts were put there for the purpose of marking out the boundaries of the then owners?

MR GILL: That I cannot say.

MR SQUARE: There cannot be any question about it, can there? The Gilberts, the Morsheads, and so on used to have their bound beatings just as the Coldrenick people do?

MR GILL: I dare say they did. I have no evidence of it.

MR SQUARE: And when they are beating the bounds they would to these stones and beat them saying what side was theirs. The moor farmers would go?

MR GILL: They would attend.

MR SQUARE: And the moor men would go?

MR GIL: Oh, yes, because certain privileges attached.

MR SQUARE: And the moor men are the persons who rent the moors from the lords of the Manor and collect grazing rents?

MR GILL: I cannot say.

MR SQUARE: At any rate, there being an "H" on the south of these posts, the inside of the posts referred to in that triangle that was the property subsequently sold by Hayward to Roose?

MR GILL: I don't know that the "H" stands for Hayward.

THE JUDGE: On the assumption that it does.

MR SQUARE: Well, there is one other question I want to ask. This green property is Molesworth property I understand, the Molesworth title?

MR GILL: I understand it is.

MR SQUARE: And the Molesworth people then had a very large quantity of moorland property in the Blisland neighbourhood?

MR GILL: They had then.

MR SQUARE: And the whole of the moors at the back of this property belonged to them?

MR GILL: No.

MR SQUARE: What about Blisland Common?

MR GILL: Newton Common?

MR SQUARE: Newton Common belonged to Trehudreth. Blisland Manor common is or was the property of the Molesworths?

MR GILL: I cannot say.

MR SQUARE: The Hawkstor common, probably the Molesworth's?

MR GILL: I cannot say that. The only part I have dealt with outside the present common is the common adjoining Newton.

MR SQUARE: That is Derfold?

MR GILL: Outside Newton.

MR SQUARE: That is Blisland Manor moor. And the whole of Menacrim, the very large moor up here is, or was, the Molesworths' property?

MR GILL: I cannot say that.

MR SQUARE: And Shallow-water is another property belonging to the Molesworths?

MR GILL: I cannot say.

MR SQUARE: Is not Shallow-water the finest place around here for cutting peat?

MR GILL: I cannot say.

MR SQUARE: It is a pretty good place?

MR GILL: There is a very good place for getting peat on the other side of Shallow-water. There are several pits there.

MR SQUARE: That is Menacrim. I suggest to you that the peat you get from Trehudreth Moor is hardly worth calling peat. It is moorland turf?

MR GILL: I cannot say. I am not in the habit of burning peat.

MR SQUARE: What I am suggesting to you is this, that your client, Mr Roose, if he has got any rights of turbary at all has rights of turbary in respect of this main Blisland moor at Menacrim and Shallow-water?

MR GILL: There are two ways of cutting turf.

THE JUDGE: For burning?

MR GILL: Yes. The peat used for burning in Devonshire are flat square pieces of turf and are quite hard like the sample Mr Chapman produced here. Skim peat in Devonshire is like that; it is very hard.

MR SQUARE: Skim peat is just the thickness of the turf?

MR GILL: Yes, but it is certainly of great value. You find nothing else burnt in Devonshire.

MR SQUARE: And the only turf you could get by way of turf cutting at Trehudreth would be by skimming the surface of the earth?

MR GILL: I cannot say that. You ought to ask some of the people who get turf whether you can get turf deep on Trehudreth, I don't know.

MR SQUARE: If you get turf you are taking all the grazing away.

MR GILL: It can be skimmed two or three feet thick.

THE JUDGE: What is skimmed turf?

MR GILL: I understand they use a different knife here altogether. It is cut at an angle. It does not go straight down but is cut at an angle. In Devonshire it is nearly all skim.

MR SQUARE: Skim peat is three inches deep, and ordinary peat is three feet deep; is not that about the difference?

MR GILL: I expect Mr Chapman knows more about it than I do.

MR SQUARE: Well, we have heard about the Gilbert title, At one time the Gilberts owned Trehudreth Common, did they not?

MR GILL: Did they?

MR SQUARE: If you look here at the apportionment you will see in 1840 the Gilberts were owners of Trehudreth Common?

MR GILL: That is not evidence of ownership, the tithe apportionment map.

MR SQUARE: Trehudreth Common is shown on the tithe apportionment as being 1591 in the tithe map, 1591 is Trehudreth Common which we are talking about. It was in 1840 the property of the Gilberts?

MR GILL: 194 acres is it not?

MR SQUARE: 194 acres of the common, and then when Gilbert sold to Collins in 1845 they sold Penstrode or Penstradden, which is the purple here, with such rights of common as were then in existence? Is that so?



MR GILL: Well, in 1877 it was sold subject to a tenancy of lives.

MR SQUARE: Now will you tell me what the effect of the words at the foot of that are.

MR GILL: The right of common on Trehudreth Common is reserved to the vendor.

MR SQUARE: So when the vendor sold Penstradden the right of common on Trehudreth Common was reserved to him?

MR GILL: In the condition of sale, yes.

THE JUDGE: What are these words there?

MR SQUARE: I am reading from the conditions of sale of Penstradden in 1808.

THE JUDGE: Apparently Penstradden is the same property conveyed by this deed of 1847?

MR GILL: Yes, it is the same property.

MR SQUARE: In respect of that property there is that note that the right of common on Trehudreth Common is reserved to the vendor? Are those the words?

MR GILL: Yes, that is so.

MR SQUARE: Do you mind turning back to lot 90?

MR GILL: Yes.

MR SQUARE: That is also of Penstrode?

MR GILL: Rickard's Penstrode.

MR SQUARE: And you examined that book in my office and you examined your deeds and maps with it?

MR GILL: Yes, there is no footnote to the effect that - -

MR SQUARE: I will come to that in a moment. That is identical with this Rickard's Penstrode as purchased from the Haywards by Mr Collins in 1877?

MR GILL: The acreage varies slightly.

MR SQUARE: With the exception of the outside piece of moor?

MR GILL: Outside the gate.

MR SQUARE: Which was not conveyed in 1808?

MR GILL: No. The acreage in the conditions of sale is 51 acres, 31 poles, and this is 50 acres 1 rod 35 poles.

MR SQUARE: It is a matter of which way you look down the theodolite, is it not?

MR GILL: I would suggest it is the same property.

THE JUDGE: What is the first property mentioned in that?

MR SQUARE: Penstrode or Penstradden, Sir.

MR GILL: Lot 114.

MR SQUARE: Which you say is now identical with Lower Penstrode, don't you?

MR GILL: I think it is.

MR SQUARE: This purple is known today as Lower Penstrode?

MR GILL: Yes, it is.

THE JUDGE: Then the other lot?

MR SQUARE: Lot 90?

THE JUDGE: Is apparently the same as Rickard's Penstrode.

MR GILL: It is called Rickard's Penstrode in this.

MR SQUARE: It is the land coloured pink on the map.

MR GILL: Yes, the higher portion sold to Mr E J Roose.

THE JUDGE: The property conveyed by the deed of October 1<sup>st</sup> 1877?

MR SQUARE: With the exception that 12 acres of unenclosed land were sold also.

MR GILL: I am trying to identify these conditions of sale with the land as it exists at present. It is a question of identification of these conditions of sale with the present Ordnance survey. There are no tithe numbers here.

MR SQUARE: It is 32 years after. I agree.

MR GILL: It is difficult to say that these are the same properties, but it looks to me that they were on account of the acreage, the name and the tenancy.

MR SQUARE: Field 1736 is the one in respect of which a right of turbary is claimed.

MR GILL: Penstroda Green is that.

MR SQUARE: No. It is in respect of 1241 on the Ordnance, and that is in respect of Molesworth land.

MR GILL: The green is Molesworth.

MR SQUARE: Can you give us any idea as to who is the owner of the piece of moor after you have left Hayward's portion and the Manor portion and between the Manor portion and the road on the right?

MR GILL: Between that 12 acres and Peverall Cross?

MR SQUARE: No, after the 12 acres you have the Manor.

MR GILL: Adjoining the 12 acres?

MR SQUARE: Adjoining the 12 acres is the Manor piece, and then some more land, all marked "H.P" (Hayward's Property) or Hayward's Portion. Do you know who that belongs to today?

MR GILL: No.

MR SQUARE: When Mr Roose sold to the Blisland China Clay Company was it for the purpose of destroying the surface and getting clay out?

MR GILL: No, not destroying all the surface, because he took a lease of grazing rights of the portion that was not. There was an arrangement; not an actual lease, that he could graze on that portion.

MR SQUARE: So he sold his land for the purpose of china clay works and the purchaser allowed him to graze on that land?

MR GILL: Yes, to turn cattle on what was not required.

THE JUDGE: How much was it?

MR GILL: He sold nearly the whole of the farm.

MR SQUARE: He sold 50 odd acres.

MR GILL: He reserved a field or two and the house, for which he gave an option which was never taken up because the Company went into liquidation.

It is a question what was the nature of the works contemplated by this Company when they started.

THE JUDGE: They purchased 50 acres?

MR GILL: Roughly 50 acres. 50.983 acres.

THE JUDGE: Where was that?

MR SQUARE: It is practically the whole of Molesworth Penstrode and Penstradden joined together.

MR GILL: There is a plan.

MR SQUARE: There will be a point to be decided as to whether they have not abandoned the rights of common in regard to that if they ever existed. And that was one of Mr. Roose's happy ventures?

MR GILL: It turned out very successfully.

MR SQUARE: He sold for £5,000 and bought it back for £600?

MR GILL: £800 I think it was.

MR LASKEY: Do you know if Mr. Roose went out of occupation of that property?

MR GILL: No, he never went out of occupation of the land or the house.

MR LASKEY: And whether, in fact, any considerable amount of damage was done to the land? Do you know that?

MR GILL: Oh, yes.

MR LASKEY: What was the work carried on?

MR GILL: Several pits were dug, I believe, over several portions of that neighbourhood.

MR LASKEY: On Mr. Roose's property and other person's property?

MR GILL: Yes.

MR LASKEY: This is a deed I am going to have formally proved in a moment. It contains provisions I should like to put to the witness as to that reservation of rights of common. (A release dated July 4<sup>th</sup> 1809 was handed to witness). Now on the page before you I think you will see set out in the parcels, the properties, to which it refers. Will you tell us who the deed is between first of all?

MR GILL: Between William Morshead, John Aslip, John Honey, of the first part, James West, James Thomas, of the second part, Peter Stowe and Willoughby Rockett, of the third part, Frederick James Morshead, John Wallis and John Bennett.

MR LASKEY: What are the properties to which it relates?

MR GILL: Oh page 4 there are parcels.

MR LASKEY: I think it is on page 5 Penstrode is set out. Will you find that, because there are a large number of properties conveyed by that deed?

MR GILL: Yes. All that messuage and tenement farm and lands called Penstrode, otherwise Penstroda, situated in the said parish of Blisland, having by estimation 20 acres 3 roods and 1 perch.

MR LASKEY: That is the property my learned friend was asking you about in the conditions of sale.

MR GILL: Lot 114.

MR LASKEY: In that there had been a footnote that the rights of common had been reserved?

MR GILL: Yes.

MR LASKEY: Will you look at the paragraph on page 7 dealing with rights of common?

MR GILL: Commons, common of pasture, common of turbary, mines, minerals, quarries, etc.

MR LASKEY: Will you go on?

MR GILL: Quarries, customs, tolls, duties, trees, woods, underwoods, coppice and the - -

MR LASKEY: Hedges, ditches, etc. (The remainder of the document was read).

THE JUDGE: I don't know what this deed is about.

MR LASKEY: I am going to prove it in a moment.

THE JUDGE: It is much better if I know what it is. Was this a conveyance by somebody who was Lord of the Manor?

MR LASKEY: It is a Conveyance after the sale of which particulars have been referred to by my learned friend, a conveyance by the Lord of the Manor or by

his mortgagee. And is there any reservation in that deed, at any rate, so far as those words are concerned, "all rights of common?"

MR GILL: No.

THE JUDGE: You have looked, have you, Mr Gill? There are no exceptions?

MR GILL: No.

MR LASKEY: Consequently, if there was any exception under the conditions of sale that exception was not given effect to.

THE JUDGE: No, it is only in the conditions.

MR LASKEY: Can you tell me whether that deed also conveys the property we call Rickard's Penstrode, at the bottom of page 4, I think it is?

MR GILL: Page 4 ends up with the conveyance of the Manor of Trehudreth.

MR LASKEY: At the bottom of page 6?

MR GILL: All that messuage, lands and tenements called Rickard's Penstrode, containing by estimation 51 acres, 38 perches.

MR LASKEY: That is the same as the one we know now as Rickard's Penstrode, lot 90?

MR GILL: Yes.

MR LASKEY: I think there is a further conveyance under that deed by Frederick Charles Morshead of all that Manor or Lordship of Trehudreth in the parish of Blisland and Temple?

MR GILL: Yes, together with several high and chief rents, issuing and payable or heretofore accustomed to be paid to the Lord of the said Manor, amounting in the whole to 5s. 6d., and the sum of 3s. yearly for a water course in the parish of Blisland, payable by heirs of Sir William Molesworth, Bart., deceased.

MR SQUARE: When you were giving that description of Rickard's Penstrode, is it in the deed described as being part of the Manor of Barlendew?

MR LASKEY: I agree. It is so described.

MR GILL: I understand it is part of the Manor of Barlendew.

MR SQUARE: You have got it there?

MR GILL: Yes, that is right. They are reputed to be part of the Manor of Barlendew.

GEORGE WALLIS TREVAN was then sworn.

MR LASKEY: Are your firm solicitors to Mr Frank Parkin?

MR TREVAN: Yes.

MR LASKEY: Is Mr Frank Parkin the present owner of the greater part of what was Hayward's property?

MR TREVAN: That is so.

MR LASKEY: And consequently do you produce the deeds of title from 1809 onwards dealing with that property?

MR TREVAN: Yes.

MR LASKEY: Is the first of these dates June 23<sup>rd</sup> and 24<sup>th</sup>, 1809?

MR TREVAN: Yes.

MR LASKEY: That is a lease and re-lease?

MR TREVAN: Yes, 23<sup>rd</sup> and 24<sup>th</sup>.

MR LASKEY: Now which property does that deed relate to?

MR TREVAN: It relates to a large number of properties.

MR LASKEY: What does that relate to? Does it concern this property, do you know?

MR TREVAN: I do not know that it does. It contains a great many properties. (Witness read the names of some of the properties mentioned).

MR LASKEY: Apparently, it does not. Let us get on with the next deed that does.

MR TREVAN: Just a moment.

MR LASKEY: After the description of the properties, there are words relative to commons, common of pasture, and other commonable rights?

MR TREVAN: General words.

MR LASKEY: Yes.

MR TREVAN: "Commons, common of pasture, and other commonable rights."

THE JUDGE: It does not affect the property at all, does it?

MR LASKEY: I do not thin it affects these properties at all. Now the second one is a lease and release of July 3<sup>rd</sup> and 4<sup>th</sup> 1809?

MR TREVAN: Yes.

MR LASKEY: The lease is the one we need look at, I think. Now as to the properties. That Manor or Lordship or reputed Manor or Lordship of Trehudreth?

MR TREVAN: Yes.

MR LASKEY: It is an indenture made by William Morshead and other people, and John Bennett?

MR TREVAN: Wallis, I take it. Bennett was a trustee.

MR LASKEY: That is right.

MR TREVAN: It refers to all that Manor or Lordship or reputed Manor or Lordship in the parish of Blisland and Temple. (Witness then read the Deed).

MR LASKEY: The Molesworth property, of course, is not included in this Deed, is it?

MR TREVAN: No, sir.

MR LASKEY: Now the parcels of that messuage and tenement farm and lands called Penstrode, otherwise Penstroda, situated in the said parish of Blisland, containing by estimation 20 acres, 3 roods, 1 perch.

MR TREVAN: And reputed to be part of the Manor of Trehudreth, it follows on, sir.

MR SQUARE: That being the 20 acres, Sir.

THE JUDGE: That is the purple?

MR SQUARE: Yes.

MR LASKEY: This is 1809, Your Honour.

THE JUDGE: It is still described in 1847?

MR LASKEY: Yes. There is a further reference to Rickard's Penstrode, or Rickard's Penstrode?

MR TREVAN: All that messuage and tenement and farm called Rickard's Penstrode, containing by estimation 51 acres and 38 perches more or less ... reputed to be part of the Manor or Lordship of Barlendew.



MR LASKEY: And there is a reference to commons, common of pasture, common of turbary, mines, minerals, etc.?

WITNESS: Yes. (Witness proceeded to read the reference in question).

MR LASKEY: Is there any reservation or rights of common at all in regard to any of these properties?

MR TREVAN: There is no reservation at all in this Deed.

MR LASKEY: I will formally put in the other Deeds, Your Honour, but I do not propose to go into them in detail.

THE JUDGE: What are the other Deeds you put in?

MR LASKEY: There is an Indenture, a Schedule to the Deed of October 1<sup>st</sup>, dated 1877.

MR SQUARE: I want the Deed of December 30<sup>th</sup>, 1840, first. That is Wallis to Hayward.

MR LASKEY: It is the last Deed contained in the second Schedule.

THE JUDGE: You have put in the Deeds comprised in the Schedule?

MR LASKEY: Yes. That Deed is an Indenture of re-lease, dated December 30<sup>th</sup>, 1840. What are the parcels of land it refers to?

MR TREVAN: The parcels are all those lands, tenements and hereditaments described or mentioned in the first or second Schedules, which are described or mentioned in the third Schedule, and then the Schedule, of course, contains the whole lot of properties.

MR LASKEY: Yes. Does it include the Pentrodes at all?

MR TREVAN: I shall have a look for it. It contains Rickard's Pentrode at any rate.

MR LASKEY: And then the other Deeds you produce are the ones mentioned in the Schedule, 1809, 1814, 1818, 1823 and 1829?

MR TREVAN: Yes, sir.

MR SQUARE: In the first Schedule of the last-mentioned Indenture, we find Greenbarrow in Blisland is sold and conveyed to the Haywards?

MR TREVAN: That is right.

MR SQUARE: And all that tenement called Under Tor?

MR TREVAN: That is right.

MR SQUARE: Containing altogether by measurement 82 acres, 3 roods and 3 perches or thereabouts?

MR TREVAN: That is right.

MR SQUARE: Then if you turn to the second schedule, we find that there is a Conveyance to the Haywards of all that piece or parcel of land, part of a certain Common called Trehudreth Common?

MR TREVAN: Yes, that is so.

MR SQUARE: In the parish of Blisland in the said County of Cornwall, containing by estimation 80 acres or thereabouts, and all that other piece or parcel of land, part of the said Common called Trehudreth Common, containing by estimation 11 acres, 2 roods, 2 perches, or thereabouts?

MR TREVAN: Yes. That is so.

THE JUDGE: First, 80 acres?

MR SQUARE: The first, 80 acres, the second, 11 acres, 2 roods and 2 perches.

THE JUDGE: They are described there as being part of the Common?

MR TREVAN: Yes.

MR SQUARE: Although Richard Harper had enclosed it by that time.

MR LASKEY: This is a different area from the 12 acres we have been hearing about.

MR SQUARE: I am only making that point to show that there have been enclosures all over the Moor, and that these properties are allocated to these particular farms to avoid any excessive grazing of the Moor. Mr Trevan, you have searched out a number of papers for me. Have you been able to help me at all?

MR TREVAN: I don't know much about that.

MR SQUARE: Have you found any beating of the bounds or any moorland visitings?

MR TREVAN: I have some books. I have some records relating to various Manors. There are lots of things here as to the viewing of the boundaries of the unenclosed Common and so on from time to time.

MR SQUARE: Will you be staying up here tonight?

MR TREVAN: I shall not, sir.

MR SQUARE: You would not trust me with those documents to search tonight?

MR TREVAN: I am not authorised to do so. I don't mind staying after the rising of the Court for you to look through them.

MR SQUARE: And also with regard to any payments made by Mr Parkin or to him?

MR TREVAN: Nothing, I think, that will help you. I have some books here relating to payments.

MR KENRICK EYTON PECK was then sworn.

MR LASKEY: Will you tell me what these Deeds are and relate to? There is first a Deed of 1846, is there not?

MR PECK: There is a Deed of 1846 which I am not summoned to produce for your clients. Unfortunately, Mr Square is out of court.

MR LASKEY: Mr Square said "Carry on," but perhaps we had better go on to the next Deed until he returns, in case he has any objection. Now tell us what this Deed is?

MR PECK: This is a settlement made on the marriage of Sir William Molesworth with Mrs Lucia Grant West. It does not affect these properties at all. It was a settlement on the marriage, conveying to trustees for a term certain properties in Cornwall. It does not touch any Blisland Manor property at all.

MR LASKEY: What is the date, mr Peck?

MR PECK: July 8<sup>th</sup>, 1844. The parties were Sir William Molesworth of the first part, and Lucia Grant West of the second part, and the Rev Gilbert Henry West and Philip Moysey Little of the third part.

MR LASKEY: This is the Deed that is mentioned in the Schedule to the Indenture of July 20<sup>th</sup>, 1853. That is a Deed relating to the Molesworth property.

THE JUDGE: Mr Peck says it does not affect the properties at all.

MR LASKEY: There is a Covenant to that settlement. There may be a Covenant as to required annuity in the Schedule I really cannot say.

MR PECK: If I might suggest it, it might be a charge for an annuity on certain lands, part of the estate.

MR LASKEY: Sir William Molesworth was the first party to this Indenture?

THE JUDGE: Mr Peck suggests there was a charge for an annuity.

MR LASKEY: Have you seen the other Deeds set out in the Schedule? There is an original Will of 1797, and lease and re-lease of 1799, an Indenture of Bargain and Sale of May, 1831, and an exemplification of recovery, Trinity Term, 1<sup>st</sup> William. Have you made search for those Deeds?

MR PECK: I have.

MR LASKEY: Have you been able to find them?

MR PECK: None at all, save the marriage settlement I have already produced.

MR LASKEY: I think you have acted as solicitor for the Molesworth family?

MR PECK: Yes.

MR LASKEY: And for the Morshead family?

MR PECK: Yes.

MR LASKEY: You have got another Deed of 1846, have you not?

MR PECK: I have.

MR LASKEY: My learned friend agrees to that being produced now. What is it?

MR PECK: It is a deed of lease and re-lease by Mr John D Gilbert to William Morshead.

MR LASKEY: And it is dated?

MR PECK: March 26<sup>th</sup>, 1846, and I think from the description already before the Court it deals with the same property which has already been mentioned from another source of Deed.

MR LASKEY: Which property is that?

MR PECK: Trehudreth itself.

MR LASKEY: Is that the Manor?

MR PECK: No. What we have called Little Trehudreth in practice. 20 acres. All that messuage, tenement and premises situate in Trehudreth in the parish of Blisland and containing by estimation 21 acres 18 perches, formerly in the occupation of William Studdridge, and now subject to a lease of 99 years. The

said messuage, tenement and premises are parts and parcels of the Manor or reputed Manor of Trehudreth in the parish of Blisland and Temple and of its commons, wastes or manors in Trehudreth, containing by estimation 300 acres more or less, also all that messuage adjoining called Merrymeet, and also that messuage and tenement called Treverda, situate in the said parish of Blisland, containing by estimation 19 acres more or less, also all that tenement called Cassacawan, containing by estimation 21 acres, be the same more or less, also that tenement called Tregadick, containing 17 acres more or less, and now subject to a lease thereof for 90 years, also all that tenement called Kitwell, containing by estimation 10 acres, 2 roods, 15 perches, and now subject to a lease thereof of 99 years, and also all that messuage and tenement called Kelly, containing by estimation 16 acres, 2 roods, and also the following high and chief rents, reserved and made payable to the Lord of the Manor of Trehudreth. That is to say, the sum of 6d. yearly out of the tenement of Trehudreth Mills, the sum of 1s. yearly out of the tenement called Medland in the parish of Temple, together with all houses, out-houses, barns, mills, orchards, gardens, common of pasture, turbary, and other commonable rights, mines, ores, minerals, pastures open or not open, heaths, moors, marshes, waste ground, etc.

THE JUDGE: Is there any qualification to the habendum?

MR PECK: There is no restriction.

THE JUDGE: There is no express holding subject to common rights?

MR PECK: No.

THE JUDGE: That includes the Manor?

MR SQUARE: And the Common.

THE JUDGE: What is it in effect?

MR PECK: It is in effect a conveyance on sale.

MR LASKEY: It is a conveyance back to the Morshead family.

MR SQUARE: We have not got it yet that they got it from the Morsheads.

MR LASKEY: Yes, in 1809. This is the Manor. The Manor was conveyed away by the Deed of 1809, July 4<sup>th</sup>, 1809, and this is the Conveyance back again to Morshead.

MR SQUARE: We have it now proved that the Manor of Trehudreth was sold by the Morshead mortgagees to somebody, to Wallis, in 1809?

MR LASKEY: I have heard that in Court today.

MR SQUARE: And we hear in 1840 it is sold by Wallis to Hayward, and that in 1846 it is sold, so far as the Common is concerned, by Gilbert to Morshead. Can you give us any idea how it got from Haywards to the Gilberts, or from the Wallis's to the Gilberts?

MR LASKEY: May be I quite clear on that point? The word Manor was used a minute ago. Do I understand it is the Manor we are speaking about or the Common.

MR SQUARE: The Common. The Common has got into the hands of the Gilberts. Can you tell us how it got into the hands of the Gilbert?

MR LASKEY: I am afraid I am not prepared to say that.

MR SQUARE: There is nothing in this Deed of sale of various Commons?

MR LASKEY: This is a sale of various farms.

THE JUDGE: It is a sale of 1808, followed by a Conveyance of 1809.

MR SQUARE: And there seems to be no Conveyance in the Deed of 1809 or Trehudreth Common at all.

THE JUDGE: That Deed does not include the Common at all, does it?

MR SQUARE: I can see no reference to a large common freehold like Trehudreth Common in the Deeds.

THE JUDGE: It was in the Conditions of Sale?

MR SQUARE: Lots 90 and 114 , which were referred to were farms. The right of common on Trehudreth Common was reserved to the Vendor. There is no reference at all that I can see to Trehudreth Common itself.

THE JUDGE: As being sold, no. But the conditions of sale referred to the Common.

MR SQUARE: To the right of common. Your Honour had better see it for yourself. There is Trehudreth Barton, 110, Trehudreth Mills, Trehudreth itself, Treswiga and Penstrode, 109 onwards, and they all have the same note at the foot, that the right of common on Trehudreth Common is reserved to the Vendor. It is a very curious point. They are farms which have been let on long leases for lives. But on selling, the Vendor reserved to himself the rights of common on Trehudreth Common.

THE JUDGE: Where is the Conveyance that follows this?

MR LASKEY: The Conveyance of 1809 expressly grants this.

MR SQUARE: The Conveyance of June 24<sup>th</sup>, 1809, subject to correction.

MR LASKEY: July 24<sup>th</sup> , 1809. June 24<sup>th</sup>, 1809, has nothing to do with these properties.

MR SQUARE: Well, I am very sorry to disagree. It deals with Trehudreth.

THE JUDGE: Does it deal generally with all rights of common.

MR LASKEY: And all rights heretofore enjoyed.

MR SQUARE: Whatever they may be.

MR LASKEY: There was certainly no reservation.

THE JUDGE: The Common itself, we have heard now, was conveyed back from Gilberts to Morsheads by this Deed of 1846. Where had the Common got away?

MR SQUARE: Can you tell use at all, Mr Peck, how the Common got into the Gilberts' hands.

MR PECK: I am afraid I cannot assist you there at all.

MR SQUARE: We find the Gilberts selling to Sir William Morshead 300 acres of common in 1846, Wallis having sold to Hayward 80 acres, a part of Trehudreth Common, in 1840. I know Mr Laskey and I have tried very hard to get these documents, and it is almost impossible.

THE JUDGE: Wallis got hold of the Manor in some way?

MR SQUARE: He got hold of part of it, at any rate.

MR LASKEY: It does not mean anything at all. It simply means chief rents, It take it it carries a titular lordship of the Manor.

MR SQUARE: But that does not put very much cash in the pocket.

TH JUDGE: What they call the seignury, whatever that may be.

MR SQUARE: I want to put a question to you. It is a theory I have that there were several owners of the Moor at that time. There were 300 acres of the Common left. A further 80 acres had been used up on Greenbarrow Moor by the sale by Hayward. A further 11 acres was used up on the sale to Hayward of what subsequently became Hayward's Moor. That gives us 400 acres. Then there was Derfold, another 1277 acres, is it not, roughly?

MR PECK: I cannot bear in mind the acreages.

MR SQUARE: And Newton. All these Downs, in fact, formed Trehudreth Downs, but under different ownerships, and when the owners who were

concerned in this little bay of Trehudreth here, Trehudreth Common, met, they measured out their freehold rights by stones, and do you know, Mr Peck, that there are a number of stones on this Moor containing the marks of the Morsheads and the Molesworths?

MR PECK: I think as a matter of recollection that the last time we bounded the Manor's bounds was in 1911. I was there for, I think, Molesworth and for Morshead, and the owners, I think, Sir William Onslow, of Glencross, with representatives of Hayward's trustees and Gilbert's trustees. I think altogether there were from 12 to 15 different owners of either Manors or common rights present at that viewing.

MR SQUARE: And did you go over Trehudreth Common?

MR PECK: No. Round it.

THE JUDGE: When was that?

MR PECK: I think Your Honour, I am speaking from recollection, I think it was in the year 1911. The only true copyhold Manor, to the best of my belief is Blisland Manor. That is a copyhold Manor.

MR SQUARE: And what would be the method of going round? I suppose when you got, for instance, to Trehudreth Manor, you would go by certain bond stones or marked stones, and see where the marks were on those stones, and form conclusions in the presence of everybody as to which portion of the land belonged to which?

MR PECK: Yes, stones were followed up consecutively. If they had fallen down, in some cases when we have had very wet times they have become submerged, particularly in Shallow-water. It is very marshy right through the middle of that Common, and very often there are two or three stones running which were down, and we have had to take measurements, and order them to be reset.

MR SQUARE: So we may take it that the owners of these various Manors were jealous of their rights, and were sufficiently keen to go round and see their rights were properly marked off and bounded?

MR PECK: They certainly were in those times.

MR SQUARE: I don't know if you heard the point I brought out when Mr Chapman was in the box about those stones running along here, that we have the Hayward mark on one side and the Morshead on the other, and down to a point where there is a Molesworth, a Morshead and a Hayward mark on one stone?

MR PECK: I have heard that in Court this afternoon, but I cannot identify the exact locality from merely hearing. I do not know if I can do it from the map but I may be able to. I have not seen the map.



MR SQUARE: There is, is there not, a v-shaped portion of the Common of Trehudreth, apparently cut but by two lines of stones, the inside of which is an isosceles triangle. The stones were all marked "H.P" on the outside. The stones are marked "M" with a broad arrow and a "P" underneath inside and it is suggested that the marks on those stones are put there for the purpose of showing the freehold rights of the Morsheads and the Haywards.

MR PECK: I cannot confirm that or contradict it either.

MR SQUARE: Would that be the way these stones should be marked?

MR PECK: So far as I know the only significance the stones have had to me in the course of my representation of the two families is that they are simply bond stones and nothing else, irrespective of the nature of the property.

MR SQUARE: Freehold bondmarks?

MR PECK: I don't know I can go so far as that.

MR SQUARE: That would be the explanation of the sale by Hayward of 30 acres of land at West Penstroke?

MR PECK: That I cannot say.

MR SQUARE: It would be an adornment of the Common. It extinguishes the rights of common over the Moor and if the solicitors concerned at that time conveyed a portion of the Common over which there might be a right of common, that would, in fact, and ipso facto, destroy the right of common on the Moor altogether?

MR PECK: I am afraid I cannot give an opinion.

MR SQUARE: Now in 1856 the Morsheads sold a portion of Trehudreth Common, consisting of three odd acres of land, known as Pentroda Green, and actually sold that to the owner of this purple land here, which was Penstradden or Lower Penstroke, and in that Conveyance, I notice, there is an actual statement that the conveyance of that land to the purchaser shall not carry with it any right of common. Can you tell us when that was enclosed?

MR PECK: No, I am afraid I cannot. It was enclosed, I think, before my firm's stewardship. We did not assume the stewardship until Sir Warwick Morshead's death in 1905.

MR SQUARE: You know a lot about these moors. Your firm have been stewards for the Molesworth family for over 150 years. Have you ever heard of any right of common over Trehudreth Common?

MR PECK: Yes.

MR SQUARE: In respect of what property?

MR PECK: In respect of Trehudreth and Little Trehudreth and Trehudreth Mill.

MR SQUARE: That being on this map. Great Trehudreth is here with fields, Little Trehudreth is there with fields, Trehudreth Mill is there and, of course, here is Trehudreth Common. You say so far as you are aware with all your knowledge of these things, you know of no right of common on Trehudreth Common except these?

MR PECK: No, none, and I made special inquiries to try to learn what rights there were, if any.

MR SQUARE: Now, with regard to Molesworth land, the Molesworths themselves did not own any portion of this Trehudreth Common we are talking about?

MR PECK: Never in my recollection.

MR SQUARE: Their property, was it Shallow-wate, Menacrim, Blisland Manor Common, and Nailly Down, all being well away to the north of Trehudreth Common?

MR PECK: Yes.

MR SQUARE: And if this green land here was part of the Molesworth property and of the Manor of Blisland, they claimed common rights, had they got to go outside and get their turf and so on?

MR PECK: I could not say that any particular tenant there had rights appurtenant on another common.

MR SQUARE: In 1799 there is a Deed of Exchange between the Tremaynes and the Molesworths?

MR PECK: Yes.

MR SQUARE: Have you been able to trace that?

MR PECK: No. I have been able to find no trace of it at all.

MR SQUARE: It is referred to in the declaration of Mr Woollcombe, a former member of your firm, made in 1853. At the time your firm put Trehudreth Common up for sale, or had intended to sell it was it subject to any rights of common at all?

MR PECK: Yes. The condition of sale, I think, expresses that.

MR SQUARE: Yes. But what rights of common?

MR PECK: Such as there are.

MR SQUARE: And these were the only ones you know of at all, the three tenants of Trehudreth?

MR PECK: Yes.

MR LASKEY: The conditions of sale you are speaking of are those which are before His Honour, the conditions of the sale of 1919?

MR PECK: Yes.

MR LASKEY: Were you present at the sale?

MR PECK: I was.

MR LASKEY: Did you hear any question asked about the rights of common?

MR PECK: I cannot remember any.

MR LASKEY: Now you have been asked about the examination of the boundaries around Trehudreth Common. I think you said you went around the Common rather than across it. Is that right?

MR PECK: Yes, sir. We only went down to it.

MR LASKEY: Do you remember on that occasion whether you paid any special attention to those stones with "H.P" and "M.P" on them?

MR PECK: The particular ones mentioned in Court today?

MR LASKEY: Yes.

MR PECK: No.

MR LASKEY: I do not think it is suggested these are the boundaries between Manors, are they. If they were not Manor boundary stones, they would not interest, would they?

MR PECK: The object was simply to see there were no displacements of any of the stones which were regarded as boundaries between owner and owner, not necessarily Manor and Manor. Property and property.

MR LASKEY: Were you often on the Common, do I understand? Were you in this neighbourhood frequently?

MR PECK: I generally went to the farms on the Moors on my visits. If they wanted anything special done, we would go out over the land, but otherwise one simply paid a visit to the farms.

MR LASKEY: Were you frequently there?

MR PECK: Oh, yes.

MR LASKEY: You would go to the farms and you might go on to the common lands afterwards?

MR PECK: Yes, if there was anything to see.

MR LASKEY: Now the farms you have told us of as having common rights are exercising those common rights up to the present time, I take it?

MR PECK: I cannot tell you that. I ceased to have anything to do with the property after the sale in 1919.

MR LASKEY: At any rate, up to 1919 they were exercising these rights?

MR PECK: The whole Common was let to the adjoining occupier of Great Trehudreth, including in his holding.

MR LASKEY: I am speaking of people who were exercising the right of common, you are not speaking of a right of common at all. You are speaking of cattle being put on by the lessee of Great Trehudreth.

MR PECK: The lease of the greater portion of that land was also the lessee of the Common itself.

MR LASKEY: Then there were the other farms you have mentioned.

MR PECK: Trehudreth Mill was sold off some time ago.

MR LASKEY: You have told us this had common rights and they were exercised throughout the time you had to deal with the property?

MR PECK: It was a family arrangement.

MR LASKEY: I suppose you did not ever go up and examine the posts on the Moor?

MR PECK: Never, sir.

MR LASKEY: Were there any complaints about any rights of common being wrongfully exercised by anyone.

MR PECK: I remember a tenant on one occasion saying he was getting a lot of trespass on the Common, but I never inquired as to the nature of the trespass. I took it to be general trespass.

MR LASKEY: Nothing was ever done about it?

MR PECK: No, sir.

MR LASKEY: Just one other thing about the Molesworth property. I think you know that by the Deed of 1809 there is a rent of 5s. 6d. reserved from the Molesworth property to the Manor of Trehudreth. What do you say that means? Would that indicate that the Molesworth property was once part of the Manor of Trehudreth.

MR PECK: It sounds as if it were but it is just possible it was not. It may have been for some extra privilege. To the best of my belief, it never has been paid in my time from Molesworth to Morshead.

MR SQUARE: Might we have those Deeds, Sir. Those leases?

MR PECK: As a matter of fact, the leases were handed to the purchasers at the time of the sales, so I have none I could produce.

MR SQUARE: I am asking leave to ask Mr Peck whether this is the lease of Little Trehudreth to Mrs Mary Cawrse, granted in 1909?

MR PECK: Yes.

MR SQUARE: And is this the copy of a lease of Trehudreth Farm, Blisland, to Charles Cawrse. I just want to identify the draft Tenancy Agreement. I have subpoenaed Mr Cawrse to produce the original and it may not come forward. And is that a copy of the lease of Great Trehudreth to William Bunt on September 28<sup>th</sup>, 1896?

MR PECK: Yes.

The Hearing was adjourned.

NOVEMBER 6<sup>TH</sup>

The Hearing was resumed at 11 o'clock.

MR LASKEY: I will call the Defendant.

MR SQUARE: Now, with Your Honour's permission, might I recall Mr TrevAn first. I want to get in some documents he did not produce yesterday with Your Honour's permission.

THE JUDGE: Yes.

MR TREVAN was recalled.

MR SQUARE: You told us yesterday you act on behalf of Mr Parkin, who was the principal owner of the land which had been conveyed in 1840, I think, to Mr Hayward?

MR TREVAN: Yes.

MR SQUARE: Have you in your possession a book containing particulars of bound viewings on the Moor?

MR TREVAN: Yes, sir.

MR LASKEY: Perhaps, I had better object at once. I should like to know how this book is evidence against my client or can be evidence in this case.

THE JUDGE: In reputation. It is probably within a certain area. In the ordinary way reputation is only evidence on matters of public importance, public reputation, but in the case of commons my impression is that as there are an unlimited number of public interested, evidence of reputation is admissable.

MR LASKEY: If Your Honour pleases.

THE JUDGE: I will take your objection.

MR LASKEY: No, I will not make an objection.

THE JUDGE: Someone has a book, no doubt, upon it.

MR LASKEY: If the matter might be left formally. I understand this was an entry made in the course of duty?

THE JUDGE: This is still, Mr Square, you are still upon the question of the extent of the Plaintiff's holdings?

MR SQUARE: Yes, Sir, and the evidence will be that on a certain date in 1866 there was a bound viewing held at which our - - -

THE JUDGE: Mr Trevan was called by Mr Laskey?

MR SQUARE: Yes, Sir.

MR LASKEY: But his evidence having been concluded he is being recalled by my learned friend.

THE JUDGE: He is being recalled to put some further questions in cross-examination. That is what he is asking to do, subject, of course, to any further re-examination afterwards.

MR LASKEY: But my objection would apply to a document for which I have not asked at all, and which my learned friend is seeking to prove.

THE JUDGE: Putting aside the question of recalling him, he obviously can be cross-examined by Mr Square on any document.

MR LASKEY: But that document cannot be put in and made evidence in the case.

THE JUDGE: No, but in a case of this sort I should allow both sides great latitude, because it is a difficult case in regard to title, and if either of you as the case progresses wishes any further opportunity to throw light on the title I should allow you reasonable latitude.

MR LASKEY: Yes. Perhaps you will note my objection to his putting this book in as evidence. Of course, I cannot object to questions being asked about it.

MR SQUARE: Now, Mr Trevan, will you just explain to His Honour what that book purports to be?

MR TREVAN: The book is labelled, "John Hayward, Esq. Common Lands." It refers to various Manors, including that of Barlendew.

THE JUDGE: In your custody is a book purporting to relate to - - -

MR TREVAN: Viewing of the boundaries.

MR SQUARE: Of the Manors of?

MR TREVAN: Casacawan, Trehudreth, Newton and Barlendew.

MR SQUARE: Barlendew is West Penstrode for the moment.

THE JUDGE: Is that the only one?

MR SQUARE: It goes further than that. That is the label on it.

MR TREVAN: It leads off with a memorandum as to viewing the boundary of the unenclosed and common land belonging to James Hayward, Esq, situated in the parish of Blisland, in May, 1866, in regard to which handbills had been printed and circulated in the neighbourhood of Blisland, and was attended by a large number of inhabitants of Blisland.

THE JUDGE: What is the date?

MR TREVAN: May 30<sup>th</sup>, 1866.

MR SQUARE: And it purports to show there was an advertisement by handbills and other reasonable means so that the inhabitants of the district might come. Now we will turn, first of all, to the page dealing with the marks on the stones.

MR TREVAN: That leads off, Sir, it shows they left Blisland Church Town and viewed the bounds in the following order. The tour began in the Manor of Blisland and a piece of ground marked by three posts marked "M.H." The letters have been partly defaced since the 26<sup>th</sup> instant when they were seen by John Stevens. It was stated that Capt. Morshead claimed the ground between

the posts as his property. Ford denied any knowledge of the letters having been cut out and asserted that he did not believe Capt. Morshead had any knowledge of it.

THE JUDGE: Whose was that book?

MR TREVAN: It is signed by John L Code, who was apparently agent of Capt. Morshead.

MR SQUARE: He was a well-known solicitor of Liskeard.

THE JUDGE: He was solicitor to Capt. Morshead?

MR SQUARE: To John Hayward, He was solicitor and conducted the sale in 1877. Then you have something else?

MR TREVAN: No.4 was Derfold Common, the property of Mr Hayward defined by granite posts. No.5 was Trevere Gate, enclosed by John Bassett Collins in 1857. After bound viewing Mr Code met Mr Collins at Pounds Cross.

MR SQUARE: Pounds Cross being just on the bottom side of Peverell Cross?

MR TREVAN: When it was agreed that posts should be fixed in the grounds to define the extent of Mr Hayward's right. There is a note, "Josiah Stevens has fixed one post. 80 acres."

MR SQUARE: Being the Greenbarrow Common. You remember in 1912 Mr Parkin purchased Greenbarrow Common?

MR TREVAN: Yes. He or Mr Parkin always refers to it as being 80 acres.

MR SQUARE: It was part of Trehudreth Common?

MR TREVAN: Yes. This 80 acres, the private property of Mr Hayward. The position of Barley Well was pointed out but stated by John Ford to be incorrect. It was then pointed out but he again defined the exact spot. A granite post had been fixed by Josiah Stevens at Barley Well to define the position. Then it goes on to Manacrim Common. It was agreed by Mr Rickard and Mr Code that the boundary between Newton and Blisland Manor Common should be defined by granite posts, starting at the north end of Greenbarrow Farm and extending to the water marsh. Then there is a note, "Posts fixed by Josiah Stevens." The boundary against Hawks Tor Common is to be defined by granite posts to be fixed on certain points agreed on. Posts fixed by Josiah Stevens. Private unenclosed land at Greenbarrow bounded on the south side by Greenbarrow parish and on the west by turnpike road. The unenclosed ground, part of Penstrode Farm, lying between enclosures 1162 and 1163, on the tithe map - -

MR SQUARE: 1162 and 1163 are part of West Penstrode.



THE JUDGE: What are those numbers on the Ordnance?

MR SQUARE: They would be 1213 and 1214.

THE JUDGE: They are off the picture here.

MR SQUARE: They are not quite off the picture. They are on the map.

THE JUDGE: They are the other side of the road.

MR SQUARE: Yes. That is right.

MR TREVAN: That reads, the unenclosed land, part of - - - 1163 on the tithe map on the parish road to Waterloo. John Ford, for Captain Morshead, claimed the land as waste of Trehudreth Common, but Mr Code claimed it to be Mr Hayward's ground. A piece of unenclosed ground - - -

THE JUDGE: That was claimed by Morshead as waste of the Manor of Trehudreth?

MR SQUARE: Because he had, of course, purchased the Common of Trehudreth from Gilberts in 1846. This viewing was 20 years afterwards. They came along from that marsh there and he said "I claim this as part of my moors I bought 20 years ago."

THE JUDGE: Whose title was that?

MR TREVAN: Mr Hayward's. He took from Wallis and Wallis took from Morshead.

MR SQUARE: West Penstroke.

THE JUDGE: He claims it as unenclosed land.

MR LASKEY: Part of Rickard's Penstroke.

THE JUDGE: Waste of some Manor in the first instance.

MR TREVAN: It was unenclosed land in the first instance.

THE JUDGE: Then that must have belonged to the Lord of the Manor.

MR SQUARE: Hayward was owner of West Penstroke which was part of the Manor of Barlendew. Morshead had purchased at that time the 300 acres of Trehudreth Common and said "No. That is waste of the Common and not of Barlendew."

THE JUDGE: It was claimed by the two rival owners of the Manors of Barlendew and Trehudreth?

MR LASKEY: I think the entry was that Mr Hayward claimed it as part of West Penstrode Farm; that is Rickard's Penstrode.

THE JUDGE: It cannot be part of the farm. It is unenclosed, therefore, it is waste of some Manor, I assume.

MR LASKEY: That would be Barlendew, of course.

THE JUDGE: Yes, belonging to Mr Hayward. Hayward's title also comes originally from Morshead. Was Morshead the owner of Barlendew at one time?

MR LASKEY: Under the 1840 Deed. Under the 1809 Deed this property of West Penstrode was conveyed and there is no doubt that was part of the Manor of Barlendew. It was sold by the Morsheads in 1809. . The Manor of Trehudreth and the Manor of Barlendew. Then there was the Deed of 1840.

THE JUDGE: The only note I have got of that is that the Deed of December, 1840, includes Greenbarrow and the second Schedule includes part of Trehudreth Common, two different parcels of Trehudreth Common.

MR LASKEY: The Deed that brings Barlendew in is the one of October 1<sup>st</sup>, 1877, which is the one by which he conveys Rickard's Penstrode to Collins. That is the Barlendew Manor.

MR SQUARE: The date is this, July 4<sup>th</sup> 1809, Morshead to Wallis, with the Manor or Lordship or reputed Manor or Lordship of Barlendew.

THE JUDGE: Is the whole of the Manor included in that?

MR SQUARE: The whole of the Manor as a Manor is included in that.

MR LASKEY: That, the 1840 Deed has recited. It is the first recital in the October 1<sup>st</sup>, 1877 Conveyance. The recital is by Indenture of Re-lease, dated December 30<sup>th</sup>, 1840, granted on lease for a year, expressed to be made between the said James Hayward of the first part and the said John Wallis of the second part is for the considerations therein mentioned the hereditaments hereinafter mentioned and entitled to be hereby granted, that is Rickard's Penstrode, with their appurtenances, together with other hereditaments, granted to the said James Hayward.

THE JUDGE: That is Wallis to Hayward. That included the Manor of Barlendew?

MR LASKEY: That included the Manor of Barlendew, so that comes in down to the Hayward title.

MR SQUARE: Morshead, Wallis, Hayward.

THE JUDGE: Then the Manor of Trehudreth comes from Morshead, down to Molesworth?

MR LASKEY: Conveyed back to Morshead in 1846. The Deed also conveyed back to them the Common which, so far as one can trace, had not been conveyed in 1809. At some time before 1846 Gilbert had come into possession of the Common.

MR SQUARE: Not necessarily from Morshead.

MR LASKEY: I cannot say from whom. At any rate, he had it to convey then, and he conveyed it in 1846 to the Morsheads.

THE JUDGE: It was originally part of the Morsheads?

MR SQUARE: I cannot say.

MR LASKEY: It was originally part of the Common and in 1809 the Morsheads were Lords of the Manor.

THE JUDGE: Which must have got somehow from the Morsheads to the Gilberts.

MR LASKEY: What we do know is that in 1809 Morsheads were Lords of the Manor of Trehudreth, that they conveyed away a very large part of their property but we cannot say if it was all of their property.

THE JUDGE: Where do you get the proposition that Morshead in 1809 was Lord of the Manor?

MR LASKEY: Because by the Deed of July 4<sup>th</sup>, 1809, he conveyed the Manor of Trehudreth as well as the Manor of Barlendew.

MR SQUARE: That is in the parcels Sir.

MR LASKEY: He conveys the Manor in 1809.

THE JUDGE: Who to?

MR LASKEY: To Wallis.

THE JUDGE: I am only making quite short notes of these things but the things I have got are that that Deed of July 4<sup>th</sup>, 1809, was to John Wallis?

MR SQUARE: That is right.

THE JUDGE: It refers to the Manor of Trehudreth and includes Penstrode, 50 odd acres, then a part of Trehudreth. But it also includes the Manor of Barlendew?

MR LASKEY: And the Manor of Trehudreth.

MR SQUARE: The Manor of Trehudreth comes first, Sir.

MR LASKEY: I may say, Sir, we have not got copies for you, but we have got copies being prepared.

THE JUDGE: It includes both Barlendew and Trehudreth.

MR LASKEY: Copies are being prepared for Your Honour. This 1809 Deed, is, of course, very important.

THE JUDGE: These two Manors at one time were acquired by Wallis and at some time or other they got back to Gilberts and Gilbert conveyed them to Morshead?

MR LASKEY: That was the 1846 Deed.

THE JUDGE: Yes, between 1809 and 1846.

MR SQUARE: The Manor would not necessarily include the Common.

THE JUDGE: No. I am not dealing with the Common now. Both Manors were conveyed from Morshead to Wallis by that Deed. Then in 1846 the Gilberts conveyed the Manor, was it not? Did this include the Common?

MR SQUARE: No, Sir.

MR LASKEY: The Manor sale? The Manor and the Common.

MR SQUARE: My recollection was Trehudreth Barton, Trehudreth Mills and 300 acres of Trehudreth Common, but my recollection may be wrong on that.

MR LASKEY: I think that is right.

MR SQUARE: Your Honour will have these documents.

THE JUDGE: The only question that Mr Laskey raised today was about the re-creation. You see, the law to remember is that if a Common is in the hands of the Lord of the Manor, he can create or re-create any rights of common over it. If he parts with it it is the owner of the Common who must create any future rights of pasturage, and therefore on a Conveyance by a vendor of property which claims to have rights of common over the Common which is in the hands no longer of the Lord of the Manor but a third party, he cannot re-create any rights excepting with the concurrence of the owner of the property. So it is no use to you to say there are no rights of common now or heretofore if at one time there were rights of common which belonged or were appertaining to the property, if they can re-lease them in some shape or form he cannot release them. It can only be the owner of the Common or the Lord of the Manor if the Common is still part of the Manor.

MR SQUARE: Would you mind repeating that, Mr Trevan? You were saying they came to the pieces of waste land between 1162 and 1163 and the main road or the parish road leading to Waterloo, and there Captain Morshead said, "This is mine," and Mr Hayward or Mr Code said, "No, it is not. It is mine?"

MR TREVAN: You want me to follow on from there?

MR SQUARE: If you will.

MR TREVAN: Mr Code asserted Mr Hayward's claim.

THE JUDGE: This was in 1866.

MR SQUARE: 1866, Sir.

THE JUDGE: Mr Hayward claimed it as part of Barlendew?

MR SQUARE: Yes, as being part of West Penstrode and sold him with West Penstrode. We had better have only the words in the book, Sir.

MR TREVAN: It says, Mr Code asserted Mr Hayward's claim.

THE JUDGE: Then Mr Hayward's claim must have been as owner of the Manor of Barlendew at that time?

MR TREVAN: I cannot say that.

THE JUDGE: That presumably would be so. This was unenclosed land, was it not?

MR TREVAN: Mr Hayward was then Lord of the Manor of Barlendew. The next item is a piece of unenclosed ground, part of Penstrode Farm, adjoining Trehudreth Common, and outside enclosures No. 1171, 1570, 1571, 1172 on the tithe map. The same boundary with posts. This is Mr Hayward's private property.

THE JUDGE: That lies between what you claim?

MR LASKEY: It is what we call the 12 acres, Sir.

MR SQUARE: Marked by posts.

MR TREVAN: The next item is Whiteposts in the Manor of Barlendew, as defined by mounds outside 853 on the tithe map.

MR SQUARE: It looks to me as if that number is in the neighbourhood of 1304 on the Ordnance and came down close to the road. This is either 1317 or 1355. The configuration is somewhat altered. In the tithe map of this open land there is a line shown between 1309 and Peverell Cross. Do you agree?

MR LASKEY: Yes.

MR SQUARE: That may have some bearing or none.

MR TREVAN: It says, John Ford stated that Captain Morshead claimed the ground as part of Trehudreth Common. Mr Burrows of Penrose in Blisland stated it was always considered a portion of Barlendew Manor.

MR SQUARE: At any rate, whoever it belonged to, it has been enclosed since?

MR TREVAN: That ends the memorandum, and it is signed "John L. Code."

MR SQUARE: Was there a second bound viewing shortly afterwards?

MR TREVAN: Yes. It reads "the following party attended the bound viewing inter alia." (Witness proceeded to read a long list of names).

MR SQUARE: The main people round just about that spot?

MR TREVAN then proceeded to read memorandum.

THE JUDGE: At that time, Whiteposts had got to be recognised - -

MR SQUARE: As Barlendew, and by 1907 is enclosed land right up to Peverell Cross. They enclosed all that between that area. Well, now, Mr Trevan, there is one other question I want to put to you. In 1912 Mr Parkin purchased from the trustees of Hayward certain lands known as Derfold and Gawns in the parish of Blisland?

MR TREVAN: Yes. I cannot give you definitely the lots he bought. I have not got his Conveyance.

MR SQUARE: Could you, by looking at this draft, say if it was correct?

MR TREVAN: No, I could not.

MR SQUARE: I just want to put one or two questions on this to you. The draft I have purports to convey the building known as Derfold and Gawns in the parish of Blisland, containing 167 acres, together with rights of common thereto belonging, subject to a lease granted in October 1907 for a term of seven years. Then it goes on Greenbarrow and Under Tor, Blisland, containing 80 acres or thereabouts, and coloured green on the plan, together with rights of common thereto belonging, then let on lease to Frederick East for a term of 14 years, and then it says thirdly, part of Trehudreth Common in the parish of Blisland, called 80 acres, coloured yellow on the plan here. These premises were then let on lease to Mr Frederick Parkin for a term of 50 years, determinable on 12 months' notice, and also the common or commonable lands known as Menacrim in the parish of Temple and Blackpool and Yellow

Tor in the parish of Blisland, coloured purple, and the Manors or Lordships or reputed Lordships of Barlendew and so forth. Does that bring back to your memory the contents of the Deeds?

MR TREVAN: No, it does not. I cannot say anything about the descriptions of the property.

MR SQUARE: It is in the description in the leases, that the last-mentioned Manors are referred to as being conveyed on January 1<sup>st</sup>, 1835, by a Deed made between John Wallis and William Morshead by way of demise of rights, at a rent of £4 per annum. Can you tell us whether that £4 per annum is still being paid?

MR TREVAN: Yes, that is still being paid.

MR SQUARE: And the premises are all sold with rights of common to the tenants of the respective Manors in which the Commons are situated and of the owners or occupiers of farms called Penquite, Derfold, Gawns, Greenbarrow and Under Tor, and all other Manorial rights to which the land is subject. I believe that document is either drafted or settled by the learned Registrar in this Court?

MR TREVAN: I cannot speak about that.

MR SQUARE: Well, would there be any objection on the part of my learned friend to the original Deed being placed before the Court, a copy of it?

MR TREVAN: I have that Deed with me here.

MR SQUARE: Will you produce it?

MR TREVAN: This is the Deed, John Wallis to Captain Morshead.

MR SQUARE: Oh, not that one.

MR TREVAN: Captain Morshead's Conveyance.

MR SQUARE: Yes.

MR TREVAN: No, I cannot produce it.

MR SQUARE: Can we have copies made?

THE JUDGE: Where has it got to?

MR SQUARE: It is in witness's possession but apparently - - -

THE JUDGE: You know it is amongst your titles?

MR TREVAN: At the present moment it is amongst those in Mr Parkin's own possession.

MR LASKEY: We have no right to obtain it. The other Deeds have been produced under Covenant.

MR SQUARE: I thought this would be in Court yesterday, and for some reason I forgot to ask him about it. I think the Court ought to have the benefit of that.

THE JUDGE: Well, yes. We must get it.

MR SQUARE: Well, Mr Parkin is very friendly disposed to all the parties and I am sure he would like to help the Court.

THE JUDGE: Well, if Mr Parkin will be kind enough to throw a little more light upon this case we shall be very much obliged to him.

MR TREVAN: I will convey that to him.

MR SQUARE: As far as I am concerned, I shall be satisfied with a copy that is certified correct; not an affidavit.

MR LASKEY: I will now proceed to call the remaining witnesses for the Defendant's case. The Defendant, Mr Roose.

MR CLAUDIUS CLARENDON ROOSE was then sworn.

MR LASKEY: Is your full name Claudius Clarendon Roose?

MR ROOSE: Yes, Sir.

MR LASKEY: You are at present occupying and farming these lands which have been described to His Honour and are marked on the Ordnance map?

MR ROOSE: Yes.

THE JUDGE: Is he the owner?

MR LASKEY: He is the owner.

THE JUDGE: Owner and occupier?

MR LASKEY: Owner and occupier of the land. In the further particulars called for, appurtenant and appendant to the Defendant's farm known as Penstrode in the parish of Blisland.

MR SQUARE: That, of course, is Lower Penstrode and what we call for the sake of convenience Molesworth Penstrode.



MR LASKEY: That is the 20 acres and the 35 acres, and a matter of a further five acres, I think, about. That merely gives a general description. The title deeds to your property were produced yesterday by Mr Gill?

MR ROOSE: Yes.

MR LASKEY: He is solicitor to the mortgagees?

MR ROOSE: Yes.

THE JUDGE: Does the farm consist of anything more than the premises coloured purple, green and red on the map you handed up to me?

MR LASKEY: I think there is besides that the 12 acres. As I understand it, there were three acres conveyed to Mr White which have never been defined. Then there is the area which I think has not been coloured, in which was originally Trehudreth Green.

MR SQUARE: Penstrode Green.

MR LASKEY: Just to the west of the purple coloured portion.

THE JUDGE: Those are still in his occupation?

MR LASKEY: Still in his own occupation. Nine of the acres of that are still his own property. Now, Mr Roose, I think in your father's time your father farmed Stokely as well as Penstrode, and you were yourself born at Stokely?

MR ROOSE: That is right.

MR LASKEY: It is a short distance to the south. Perhaps it is a matter of hearsay but as far as you understood, you were born at Stokely?

MR ROOSE: Yes.

MR LASKEY: And your earliest recollections are connected with it?

MR ROOSE: Yes.

MR LASKEY: And you are 59 years of age?

MR ROOSE: 59 years next June, sir.

MR LASKEY: Now I think at that time your father rented Stokely and Penstrode and farmed the two?

MR ROOSE: Yes.

MR LASKEY: But you lived at Stokely?

MR ROOSE: For so many years.

MR LASKEY: And tell me, the buildings that we are talking about at Penstrode, we are not talking about Rickard's Penstrode but the ones on the land you now occupy, were they occupied in those days?

MR ROOSE: By my father.

MR LASKEY: Who actually lived in them? Did your father live there or some of his men?

MR ROOSE: His workmen.

THE JUDGE: His workmen occupied the farm premises?

MR ROOSE: Yes.

THE JUDGE: That is, the farm labourers, I suppose?

MR ROOSE: Yes.

MR LASKEY: Now in 1877 as we have heard, Mr Collins bought Rickard's Penstrode?

MR ROOSE: Yes.

MR LASKEY: That is West Penstrode or Rickard's Penstrode, Your Honour. Just to the north of our property.

THE JUDGE: You moved down?

MR LASKEY: That was while your father was living, of course?

MR ROOSE: That is right.

MR LASKEY: And did you continue to live there, Mr Roose, until 1908, when you bought this property?

MR ROOSE: Yes, sir.

MR LASKEY: Up to this, you had been farming as tenant, and then you became owner of the property?

MR ROOSE: That is right.

THE JUDGE: Your father bought or you bought?

MR LASKEY: You bought, didn't you, Mr Roose?

MR ROOSE: Yes.

THE JUDGE: That is Penstrode he bought?

MR LASKEY: Actually you bought all of them, didn't you?

MR ROOSE: Yes.

MR LASKEY: And what happened to Rickard's Penstrode?

MR ROOSE: I sold that to my cousin Edward Roose.

MR LASKEY: I think the next day after you bought it?

MR ROOSE: Yes.

MR LASKEY: That is to say you bought the one that is generally known as Penstrode or Penstradden. That covers the 20 acres of Morshead title and the 35 acres of the Molesworth title?

MR ROOSE: Yes, sir.

MR LASKEY: And West Penstrode?

MR ROOSE: I kept back two fields this side of the main road.

MR LASKEY: And the 12 acres?

MR ROOSE: Yes.

MR SQUARE: No, he didn't.

MR LASKEY: Yes, he did, Your Honour, the 12 acres less 3.

THE JUDGE: Which farm was that.

MR LASKEY: It belonged to Rickard's Penstrode. He conveyed away the three to somebody else. It was nine out of the 12 acres?

MR ROOSE: That is right.

MR LASKEY: Have these 9 acres ever been marked out apart from the rest?

MR ROOSE: No, sir.

THE JUDGE: I see. Excepting 3 acres out of the 12 and the two fields coloured red?

MR LASKEY: They come to about five acres/altogether, I think.

MR ROOSE: Six acres, I think.

THE JUDGE: Which are those?

MR LASKEY: On the tithe, Your Honour.

MR SQUARE: 1215 and 1248.

MR LASKEY: The two coloured red.

THE JUDGE; They belonged originally to Rickard's Penstrode?

MR LASKEY: Yes.

MR LASKEY: Now I think there is a further point which might be conveniently dealt with in this, and that is, can you tell use about the gates from your land leading up to the Common. There is a gate, I think, in one of those fields. Is there not?

MR ROOSE: Yes.

MR LASKEY: Is that the south-east field, the one farthest away from the road, from the land into the farm?

MR ROOSE: The fourth field up. The gate opens on the Common.

MR SQUARE: Is that 1217 or what?

MR LASKEY: That is 1248.

MR ROOSE: And that gate leads on to the nine acres.

MR LASKEY: It leads on to the 9 acres. How is there another gate in a field further away to the south? The field we have been talking about. Is there a gate in the next field?

MR ROOSE: In the next field again. That field opens out on the Manor of Blisland.

MR LASKEY: Is that 1253?

MR ROOSE: Yes.

THE JUDGE: There is a gate leading on to the adjoining lands in 1253?

MR ROOSE: Yes.

MR LASKEY: He says that is part of the Manor of Blisland.

THE JUDGE: Is that agreed?

MR SQUARE: I am prepared to accept it, Sir. That is the piece of land, you will remember, we proved yesterday was marked on the south-east with a bond stone with "M" and a cross on it.

THE JUDGE: That is the first stone you began with?

MR SQUARE: No, the third up.

MR LASKEY: It is between the third and fourth up.

THE JUDGE: There are two stones set outside these fields.

MR LASKEY: If one drew lines adjoining these stones, the third and fourth stones my learned friend has mentioned, then one would get a wedge-shaped piece of land enclosed which is what the witness speaks of when he speaks of part of the Manor of Blisland.

THE JUDGE: The whole land is roughly a long rectangular piece. Is that all one piece?

MR SQUARE: No, Sir. You will remember the stones. The first stone was Morshead-Hayward, Hayward on the south nearest Peverall Cross.

THE JUDGE: The south side?

MR SQUARE: And Morshead on the north. "H.P" on the one side, and the other is "M" with an arrow and "P".

THE JUDGE: A broad arrow?

MR SQUARE: Yes. It is not a Government mark.

THE JUDGE: And the next one?

MR SQUARE: The next one is also marked on the south side "H.P" and on the north side "M" broad arrow "P".

THE JUDGE: The broad arrow comes between the two?

MR SQUARE: It comes between the two. The third stone up is marked "H.P" between the enclosures and "M" arrow "P" towards the Moor. Then there is a stone in further, closer to the enclosure, which is marked "H.P" on the side facing the road. No mark on either of the other sides we can find. Then the fourth stone is marked with the Morshead mark, "M" arrow head.

THE JUDGE: Do you mean to the north of these two?

MR SQUARE: Yes, Sir. There are four in almost straight line.

THE JUDGE: They are all marked in the same way?

MR SQUARE: No. The fourth is marked "M" arrow "P" on the side facing upon the Moor, "H.P" on the side facing towards the stone No.3.

MR LASKEY: That is exactly south.

MR SQUARE: South-east. It is not true south, either. It is south west and south east, meaning the Manor of Blisland.

MR LASKEY: "M X" it looks like.

MR SQUARE: And on the stone close to the enclosure, immediately beside that outside stone, is the "M X" on the side towards the road, and "H.P" on the side to the recognised 12 acres.

THE JUDGE: Then there was this gate, you say, leading into - - -

MR LASKEY: The Manor Moor. Did you drive cattle out through those gates?

MR ROOSE: Very often, sir.

THE JUDGE: You say the whole of that piece is admitted to be the Manor of Blisland?

MR LASKEY: That square of it. That is to say, the northern section of the two bounded by the four stones at the corners. That is, the two stones nearest our enclosure and the two stones further away, which form the third and fourth stones. All the ones the Plaintiff has described. That encloses a wedge-shaped piece which appears to be part of the Manor of Blisland.

THE JUDGE: Adjoining these two stones, and then making up an irregular figure as the result. That is admitted to be waste of the Manor of Blisland?

MR LASKEY: Yes.

MR SQUARE: I cannot go so far as to admit it is now part of the Manor of Blisland but it has been.

MR LASKEY: It is admitted, I think, that "M X" is the Manor of Blisland. My learned friend has said it was himself.

MR SQUARE: Yes.

THE JUDGE: Then the other part, the part nearest to the road, is Hayward's?

MR LASKEY: As I understand now, it belongs to Mr Parkin. It was formerly Hayward's property.

MR SQUARE: Who told us that, I do not know.

MR LASKEY: Mr Trevan.

MR SQUARE: He did not refer to these stones at all.

MR LASKEY: It bears the Hayward mark, you know. You brought that out yourself.

THE JUDGE: Then whereabouts is this bit in 1253?

MR LASKEY: Mr Roose, the bit in 1253, the second field you have told us about, not Rickard's Pentrode field but the other one. Which field does it lead into?

MR ROOSE: That field opens this way into the Manor of Blisland.

MR LASKEY: You remember that there are two stones near your property and almost opposite them two stones further away. Now supposing those stones are joined up by lines forming not a square but something like a square, would that gate lead on to other land than that square or on to the squire itself?

MR ROOSE: On to the square itself.

THE JUDGE: That is to say, if you are standing at the gateway, the stone, the further stone, would be on your right, is that so?

MR ROOSE: Yes, Your Honour.

THE JUDGE: That is to say, the gateway lies between these two stones just outside your property?

MR ROOSE: Yes.

THE JUDGE: He seems to acquiesce in it rather than to assert it.

MR ROOSE: You open the gate and there is one stone here and another stone there, and my gate opens right out on to the Manor of Blisland.

MR LASKEY: Now, you told us how in 1908 you bought this property, and then you sold Rickard's Penstrode, all except this part reserved, to your cousin?

MR ROOSE: Yes, sir.

MR LASKEY: Now did you go and live somewhere else, then?

MR ROOSE: I went up to live where I am living now.

MR LASKEY: At Penstrode?

MR ROOSE: Yes.

MR LASKEY: And did you build your house there?

MR ROOSE: Yes.

MR LASKEY: And is that a house just to the north of where the old houses still are?

MR ROOSE: Just above them.

MR LASKEY: And you are living there at the present day?

MR ROOSE: Yes.

MR LASKEY: Are the old houses still standing?

MR ROOSE: Yes.

MR LASKEY: And still occupied?

MR ROOSE: They are not occupied at the present time.

MR LASKEY: Have they been occupied up to recently?

MR ROOSE: I always use the house.

MR LASKEY: What for.

MR ROOSE: Cattle.

THE JUDGE: The old buildings you use for housing your cattle, do you?

MR ROOSE: Yes.

THE JUDGE: And near to the old house is your new one?

MR ROOSE: When I bought the property, I built the house.

THE JUDGE: But how far off is your new house from the old dwellings? How far?

MR ROOSE: Not very far. Just above. The old house is here, down in a pit, and the new one is here. I built it on the bank.

THE JUDGE: This is the house on which turbary is claimed. This is very material.

MR LASKEY: I quite agree. Your Honour realises that these houses still exist?

THE JUDGE: As far as your chimney capacity goes down to the new flues, were all these things stereotyped?



MR LASKEY: We are not claiming in respect of the new house. We are claiming for the old house.

THE JUDGE: Oh, I see.

MR LASKEY: The whole case was discussed in a case. At General v. Reynolds.

THE JUDGE: The allegation was that it must be foursquare with the old house and Lord Summers decided it was not necessary.

MR LASKEY: We cannot at the moment claim this is a re-building of the old house, because the old house is still standing and not impossible of occupation. I think that is the position. Mr Roose, will you tell use about the people who lived in the old house? Who they were and up to how recently? Tell us about a man called Cole, for instance. Is he here today?

MR ROOSE: His son is.

MR LASKEY: His father, Cole. Did he live in this old house?

MR ROOSE: He lived in one end of the house, and Mr Josiah Stevens lived in the other.

THE JUDGE: Until when?

MR ROOSE: Until he died.

MR LASKEY: How long ago was that? Five Years? Ten Years?

MR ROOSE: Before that. Forty years ago.

MR LASKEY: Is this Cole or Stevens?

MR ROOSE: Stevens. But the house has always been occupied until I bought the property. Mr Bate occupied the house in until I bought the property.

MR LASKEY: That was in 1908?

THE JUDGE: Then it has not been occupied since?

MR ROOSE: When I built the new house I went up there to live and I turned this house into a cattle house.

THE JUDGE: It was occupied by human beings up to then? It was not so occupied since?

MR LASKEY: Perhaps that question can be left open as to the house on which a right of turbary can be claimed. It has not actually defined in the pleadings.

MR SQUARE: Oh, yes. Holiding 1736.

MR LASKEY: Yes, I agree. Now tell me, as regards the putting cattle on the Moor. Can you tell me as to when you can remember cattle being stocked on the Moor?

MR ROOSE: Me and my father have stocked the Moor for 61 years last Michaelmas.

MR LASKEY: What is the period you can remember? When did you commence working on the Moor?

MR ROOSE: When I was a boy. 50 years I can remember.

THE JUDGE: Before that, perhaps. You did not have to go to school then.

MR LASKEY: No. People went to work a good deal earlier in those days. Now, you tell us you can remember about this. Where were the cattle driven from generally?

MR ROOSE: From Penstrode, and turned on the road and right on to the Common.

MR LASKEY: They would go up the road from where the houses were?

MR ROOSE: Yes, and sometimes go down the road towards the fields.

MR LASKEY: Would that be near one of these fields you have retained from Rickard's Penstrode where the entrance is?

MR ROOSE: Yes.

THE JUDGE: And through these two gates you have spoken of?

MR ROOSE: Yes, Your Honour.

MR LASKEY: Now, was that occasionally only or did it happen often?

MR ROOSE: Always in the winter. Every day in the winter unless it was very bad weather, and I would keep the cattle in.

MR LASKEY: And what sort of animals were they?

MR ROOSE: Devon cattle.

MR LASKEY: Nothing else? No sheep?

MR ROOSE: I put sheep on the Common always, summer time. Never winter.

MR LASKEY: And that was in your father's time, and has that continued since?

MR ROOSE: Always.

MR LASKEY: Now, until Mr Chapman came on to this property was there any objection made?

MR ROOSE: No. Never a word was said about my stocking the Common.

MR LASKEY: We have heard of Captain Morshead. Did he ever raise any trouble?

MR ROOSE: No, sir, and I have met Sir Warwick Morshead and Mr John Ford on this Common many a time when I was up there seeing my cattle.

MR LASKEY: I think your cattle have a distinctive mark, which is rather different to some?

MR ROOSE: A spade mark on the ear, sir.

MR LASKEY: That would enable your cattle to be readily known by anyone who knew the neighbourhood?

THE JUDGE: Who was the person he said was there?

MR LASKEY: Sir Warwick Morshead. Who was the other gentleman?

MR ROOSE: Mr Ford, his agent. Many a time I have met them on the Common.

MR LASKEY: Now, tell me what was about the number of animals you have driven on.

MR ROOSE: In my time, sir?

MR LASKEY: Yes.

MR ROOSE: Oh, from 12 to 15 bullocks. It might be a bullock or two more.

MR LASKEY: And your own farm, of course, taking the whole lot of it - - that is, the Morshead and the Molesworth - - that comes to about 55 acres. How many animals could your winter there on your own property - - the whole lot?

MR ROOSE: I generally winter about 32 beasts, fat bullocks.

MR LASKEY: Now I want you to tell us how many could be wintered if you were using the 35 acres only, that is to say, the Molesworth land. You know, that comes to 35 acres?

MR ROOSE: Oh, about 20.

MR LASKEY: Now, you have told us that it was not until Mr Chapman came on that there was any sort of complaint. When did Mr Chapman first speak to you about it?

MR ROOSE: Back in last December.

MR LASKEY: Did he say anything to you before that?

MR ROOSE: Never.

MR LASKEY: You know he has told us that he met you at a sale at Derfold and talked to you about it then. Do you remember anything about that?

MR ROOSE: He never mentioned a word to me about turning my cattle on this Common before last December, and then he asked me to pay him £4 a year for my cattle running on this Common.

MR LASKEY: Just one or two other things. The question of the cutting of the turf. Can you tell us when that has been done?

MR ROOSE: 14 or 15 years ago.

THE JUDGE: That was the first, you mean? It was done first of all 14 or 15 years ago?

MR ROOSE: Oh, Mr Bate got turf there 60 years ago.

MR LASKEY: He was the person who was living in the house. You say 14 or 15 years ago turf was got from the Moor. It was after that that the house ceased to be used for people to live in?

MR ROOSE: Yes. But we have fires in the house now sometimes because the chimneys are still there.

MR LASKEY: That is to say, the old house standing on Penstrode Farm, before yours was built?

MR ROOSE: Yes.

MR LASKEY: The chimneys are still there and you still make turf fires in them?

MR ROOSE: Now and then.

THE JUDGE: Turf fires? You burn turf there?

MR ROOSE: Yes, Sir.

MR LASKEY: You mentioned 14 years ago. Has the turf been cut since that time for the purpose of making fires in that house?

MR ROOSE: Never before now that there has been a dispute.

THE JUDGE: No.

MR SQUARE: I gather he said turf was last cut 14 or 15 years ago by Bate. He has not cut it since until the question of this dispute arose.

MR ROOSE: Yes.

MR LASKEY: You said that you used the fireplaces in that old house still? What firing do you use in them?

MR ROOSE: Well, if you wan to use them for boiling potatoes for food or anything, we use them.

MR LASKEY: What firing do you use?

MR ROOSE: Turf and wood as well.

MR LASKEY: Is that turf you get from elsewhere or from the Common?

MR ROOSE: Off the Common.

MR LASKEY: But you have told us for 14 years up to the time of the dispute arising you have not cut turf from the Common.

MR ROOSE: I have been cutting turf from the Manor of Blisland.

MR SQUARE: That is where he has a right.

MR LASKEY: And since this dispute has arisen, in order to assert your rights you have cut turf on Trehudreth again?

MR ROOSE: Yes, Sir.

MR LASKEY: And I think there are a number of your men here who have done the same, have they not?

MR ROOSE: Yes.

MR LASKEY: There is only one other matter of title I want to ask you about, and that is this. We have heard about Penstrode Green. That is a small bit of land and near the farmhouse, up to the right of the road as you go up towards the Common. Do you know anything about that? Can you remember any time when that has not been enclosed as it is now?

MR ROOSE: I think it was enclosed just as my father came there.

MR LASKEY: Would that be before your anyway?

MR ROOSE: You mean the Hathaway field?

MR LASKEY: It is the end of the fields right up by the road.

MR ROOSE: I think when Mr Collins bought it - - he and Mr Harris was farming Stokehay, and he took it in with his fields at the time.

MR LASKEY: Can you ever remember these fields not being carried right up to the road?

MR ROOSE: No.

THE JUDGE: Those are the fields - - -

MR LASKEY: Those are the little bits not coloured. I want to get it clear.

MR SQUARE: Now, Mr Roose, you have cut this turf on Trehudreth Common for the purpose of asserting your right and annoying Mr Chapman?

MR ROOSE: No. Protecting my right.

MR SQUARE: Although for the past 15 years, when you have required turf you have gone out to Shallow-water for it.

MR SQUARE Shallow-water is a matter of three miles away from you?

MR ROOSE: Somewhere like that.

MR SQAURE: You have a motor-car to do it in? What do you use, pony cart or what?

MR ROOSE: A horse and cart.

MR SQUARE: Do you send a man with it or go yourself?

MR ROOSE: Go myself.

MR SQUARE: So you have taken all the trouble and all the time of your horse and cart and yourself going three to four miles out into the country to Shallow-water to get your turf when there is some immediately outside your front door. Why did you do it?

MR ROOSE: Because the turf out there, there is not a lot of turf out on Trehudreth Common and out there it was a little better turf.

MR SQUARE: One place it is peat and the other it is not?

MR ROOSE: No.

MR SQUARE: We have seen the difference here. The peat ties are in Shallow-water?

MR ROOSE: And so they are on Trehudreth Common.

MR SQUARE: Is it not a fact that the main peat ties in this part of Bodmin Moors are Menacrim and Shallow-water?

MR ROOSE: And you can see many turf ties in Trehudreth Common as well.

MR SQUARE: Where? Let us have exactly where.

MR ROOSE: On the flat of Trehudreth Common.

MR SQUARE: On the flat?

MR ROOSE: Yes.

MR SQUARE: How far up is that? Up past Wallhouse?

MR ROOSE: No. Near the turnpike?

MR SQUARE: In the centre of the Common?

MR ROOSE: Yes. Right out from the Manor of Blisland.

MR SQUARE: Towards Greenbarrow?

MR ROOSE: Yes.

MR SQUARE: Right on the top there?

MR ROOSE: On the flat.

MR SQUARE: Would that be nearly over to the boundary stones?

MR ROOSE: Yes.

MR SQUARE: Dividing Greenbarrow from Trehudreth?

MR ROOSE: Yes.

MR SQUARE: Have you ever taken any turf from there?

MR ROOSE: No.

MR SQUARE: That is definite? You have never taken turf from there yourself?

MR ROOSE: No, but my tenants have.

THE JUDGE: What tenants?

MR ROOSE: Mr Bate and also Mr Cole.

MR SQUARE: We can deal with that stile when we get to it. They were labourers occupying this house 18 years ago. He says that he personally has never got any turf on Trehudreth Common. You personally, but that your tenants have?

MR ROOSE: Yes.

MR SQUARE: Having abandoned any attempt to interfere with other persons' property for 18 years, was it only for the purpose of annoying Mr Chapman, your neighbour, you went there and cut turf in January last?

MR LASKEY: He said already it was to assert his rights.

THE JUDGE: He is entitled to put his question. Sometimes, a witness answers the second time when he does not answer the first.

MR LASKEY: What I am getting at is that he answered it and said he did it to assert his rights.

MR SQUARE: You had had a little difficulty with Mr Chapman in December?

MR ROOSE: Last December.

MR SQUARE: And he told you that if you put any more cattle on the Moor after January 1<sup>st</sup> he would summon you?

MR ROOSE: Yes.

MR SQUARE: And you continued to do so?

MR ROOSE: I done it right up to today.

MR SQUARE: And eventually a summons was issued, and before the summons was issued you suddenly thought you would go and get some turf?

MR ROOSE: All I got the turf for was to claim my rights. I did not think whether he would issue a summons or not.

MR SQUARE: How much did you get?

MR ROOSE: Oh, maybe a cartload.

MR SQUARE: Two cartloads?

MR ROOSE: No.



THE JUDGE: This is before the summons was issued, was it?

MR SQUARE: Just before the summons was issued, Sir. Now when you go right out to Shallow-water to get turf and you bring it in to your holding, where do you put your stack? I saw one there on Wednesday?

MR ROOSE: Up by the side of my house.

MR SQUARE: Your new house?

MR ROOSE: Yes.

MR SQUARE: Which is in a field on the opposite side of the road to where the old house was?

MR ROOSE: Yes.

MR SQUARE: And up at the top of that field?

MR ROOSE: No, just inside the gate there by the road.

MR SQUARE: Your house is, I am talking about the house, your house is up at the top of the field?

MR ROOSE: Yes.

MR SQUARE: So is it reasonable and fair for me to ask the Court to believe you built this house quite close to the hedge to the north-west side of field 1725 on the tithe map? Is that right?

MR ROOSE: Yes. The house is built right above the road.

MR SQUARE: At the back of the field, so you get the whole slope of the field in front of you?

MR ROOSE: Only part of the field. Halfway up in the field.

MR SQUARE: If you take the field that way, but right at the back if you take the field that way.

MR ROOSE: If you take the field this way it is nearly halfway.

MR SQUARE: Just look at the map. Do you see Penstroke printed just below the Mill? I have put a pencil mark there close up to the hedge of the field, the opposite side of the road from the old buildings of Penstroke?

MR ROOSE: The house is built about ten paces from the hedge adjoining the road.

MR SQUARE: How much is there in a pace?

MR ROOSE: Three feet. It is about 30 feet in from the road.

MR SQUARE: Have you ever measured it?

MR ROOSE: That is something about it.

MR SQUARE: It is put well back. You have got a nice drive up to it, a nice gravel path up to it, steps?

MR ROOSE: It is not more than ten paces.

MR SQUARE: How many steps have you got there?

MR ROOSE: Only two.

MR SQUARE: And then you go gradually up a nice little path and you have got a greenhouse?

MR ROOSE: You walk up the path but it is not more than ten paces.

MR SQUARE: I suggest it is more like 50 yards?

MR ROOSE: It is not. It is not more than half a gunshot.

MR SQUARE: How much is a gunshot? It depends on the gun, does it not?

MR LASKEY: I think 60 yards is fairly well recognised measure.

MR SQUARE: More than a stone's throw?

MR ROOSE: No, sir.

THE JUDGE: We will get this measurement, of course, in some other way.

MR SQUARE: Yes, we can. Now, Mr Roose, if you are using that turf for the old building, why do you put it up outside the back door of the new one?

MR ROOSE: I am not using it for the old building. The turf I am using for the old building is up on the Common; not carted yet.

MR SQUARE: All right, that will do for me. He does not use the turf he gets from Shallow-water for the old building but for the new building.

THE JUDGE: What is stacked by the new house is from Shallow-water, is it?

MR SQUARE: That is all from Shallow-water. And you say you have not taken any turf from Trehudreth for the past 18 years. You have not been able to warm your cow-houses you have been so anxious to warm with turf fires?

MR ROOSE: I have not done it but my tenants have.

MR SQUARE: And the other tenants left in 1908, 18 years ago?

MR ROOSE: I think Mr Bate will tell you it is 15 or 16 years ago.

MR SQUARE: You told us you purchased in 1908, when you immediately removed to the new house, shall we say, 1909, you went to the new house?

MR ROOSE: Mr Bate was still living in my cottage.

MR SQUARE: When you purchased the whole property Mr Bate was still living in the old farmhouse?

MR ROOSE: Yes.

MR SQUARE: And he remained in the old farmhouse how long, three years?

MR ROOSE: I cannot say exactly, now.

MR SQUARE: How long was it before you had your new house ready? It was rather an event for you. You were buying a bit of property where you had lived all your life, you and your father before you. It was not a thing that happened every day of the week. You must have known something about it. When did your cousin go into the house at West Penstroke?

MR ROOSE: Twelve months after I bought it.

MR SQUARE: Then you must have gone out before he went in?

MR ROOSE: I came out and he went in.

MR SQUARE: You went into your new house in 1909. Was Bate at that time still living in the old house?

MR ROOSE: Living in my cottage.

MR SQUARE: That is the old farmhouse?

MR ROOSE: Yes.

MR SQUARE: And did he continue living in that old farmhouse for some time after?

MR ROOSE: For some time after.

MR SQUARE: Some year or two?

MR ROOSE: Some time after. He lived on in the same house.

MR SQUARE: Was it some year or two?

MR ROOSE: Well I cannot say. I have forgotten.

MR SQUARE: What did you get rid of him for?

MR ROOSE: I cannot say now what date he did leave, hardly.

MR SQUARE: You must remember why you got rid of him. He had been for some years helping on the farm?

MR ROOSE: He was there before I went there.

MR SQUARE: How many years did he remain in the old farm house before you gave him notice to quit and turned him out? Had the war begun?

MR ROOSE: No.

MR SQUARE: Was it much before the war?

MR ROOSE; Not much.

THE JUDGE: He was one of your farm labourers?

MR ROOSE: Yes.

THE JUDGE: And he lived in the house when you first bought it. He lived in the house with you?

MR SQUARE: No, he lived in the old farm house.

THE JUDGE: You went to live in the new house and left him in the old house?

MR SQUARE: Bate was living at Lower Penstrode. He was living at Rickard's Penstrode.

THE JUDGE: He buys both Penstrodes.

MR SQUARE: All three Penstrodes. He was then living in Rickard's Penstrode and Bate was living in Lower Penstrode, Penstradden.

THE JUDGE: I thought he sold next day.

MR SQUARE: He may have sold but he did not give possession for 12 months, and during that 12 months he was building this house.

THE JUDGE: Then he moved up to - -

MR SQUARE: Lower Penstrode. The new house, in 1909, leaving Bate.

THE JUDGE: I thought he remained at Stokely.

MR SQUARE: That was where he was born. Your father moved to Rickard's Penstrode in 1877, was it?

MR ROOSE: Something like that, I think.

THE JUDGE: Collins bought. Then they moved up from Stokely. They were tenants of Collins, and they moved up to Rickard's Penstrode?

MR SQUARE: Yes.

THE JUDGE: They remained there. Then he bought Penstrode from Collins. He was still then living at Rickard's Penstrode at that time, I suppose, and he remained at Rickards' Penstrode until he built the new house into which he moved?

MR SQUARE: Yes, leaving Bate in the old farmhouse, and Bate was at that time, perhaps, using peat in his fires. I do not know. As a matter of fact, Mr Roose, did not Bate do the same as Mr White is doing today? Mr White is now the owner of Rickard's Penstrode, is he not?

MR ROOSE: Yes.

MR SQUARE: Did not Bate do exactly the same then as White is doing today?

MR ROOSE: No, he did not. Bate used to work for me and he was getting turf on the Manor.

MR SQUARE: You mean that?

MR ROOSE: Yes.

MR SQUARE: Never went out to Shallow-water?

MR ROOSE: No.

MR SQUARE: Why should you go to Shallow-water if he never went there?

MR ROOSE: I can please myself where I get my peat/

MR SQUARE: No, you cannot please yourself where you get your peat.

MR ROOSE: I think I can.

MR SQUARE: Have you heard that Brown Willy has been sold?

MR ROOSE: Yes.

MR SQUARE: Is it true you claim a right of common over Brown Willy?

MR ROOSE: I know I don't.

MR SQUARE: Is it not a fact you claim a right of common over nearly the whole of Bodmin Moors?

MR ROOSE: I do not claim over it.

MR SQUARE: Have you not said so?

MR ROOSE: Never in my life.

MR SQUARE: I suggest to you that whilst your workmen were engaged in Lower Penstrode they never got a piece of turf from Trehudreth Common, but always went to Shallow-water like Mr White does?

MR ROOSE: Who did?

MR SQUARE: Bate.

MR ROOSE: I never knew him go to Shallow-water at any time.

MR SQUARE: Have you asked Mr White to come and give evidence for you?

MR ROOSE: No.

MR SQUARE: What?

MR ROOSE: I have not.

MR SQUARE: Have you not? You know he claims that he has no right of common on Trehudreth, don't you?

MR ROOSE: He has three acres.

MR SQUARE: Except for three acres he has no right on the Moor at all?

MR ROOSE: That has to be proved.

MR SQUARE: You know that is what he says?

MR ROOSE: He never told me so.

MR SQUARE: Are you sure?

MR ROOSE: When I sold that farm to Edward Roose I sold him three acres and when Stanley Roose bought from him he sold the same three acres.

MR SQUARE: And you think because you have a paltry three acres of the Moor you can put as many bullocks on the Moor as you like. Is that the idea? That 12 acres went with West Penstrode when you sold it you retained two fields bordering on the Moor and nine acres outside. What was the object of that? Was it not so that you might have a road out on to the Moor?

MR ROOSE: I always used to turn my cattle out there before I bought the property.

MR SQUARE: Did you not retain that because you wished to retain a road out on the Moor?

MR ROOSE: It was adjoining my property, right outside the hedge. That was why I did not sell it.

MR SQUARE: So you might put your cattle out on the Moor?

MR ROOSE: No.

MR SQUARE: What was the object?

MR ROOSE: Because my gate opens right out on the Common.

MR SQUARE: I suggest the idea in your mind was that as you had a little bit of Trehudreth Common your own freehold property, you could put as many bullocks and sheep and things on the Common, as you liked and they could wander all over the place? Was that not your idea?

MR ROOSE: It is not so. I never turned out more cattle than my farm will support on Trehudreth Common.

MR SQUARE: Now when you owned all that land, Mr Roose, West Penstrode, Rickard's Penstrode, and the Molesworth Penstrode, how many bullocks did you put on the Moor then?

MR ROOSE: I turned out more cattle when I owned all the property.

MR SQUARE: How many would you put out then?

MR ROOSE: About 30, I think.

THE JUDGE: When was that?

MR SQUARE: When he occupied, Sir - -

MR ROOSE: When I occupied the three farms.

MR SQUARE: You then occupied 110 acres?

MR ROOSE: Something like that.

THE JUDGE: I do not recollect that. I thought he bought the two.

MR SQUARE: He occupied the whole lot first. Then he bought the freehold from Mr Collins.

THE JUDGE: Of all three?

MR SQUARE: Yes.

THE JUDGE: Then he sold off Rickard's at once?

MR SQUARE: West Penstrode and Rickard's Penstrode are the same thing. Penstrode or Penstradden or Lower Penstrode is the other. They are really two, but they have added to it the Molesworth land below. It has been agreed on the map, if you remember. You say when you occupied the whole of that 100 odd acres you used to place on the Moor about 30?

MR ROOSE: It all depends on the season. If we had a good season I used to place out more cattle.

MR SQUARE: A great portion of the Molesworth land is moor land, is it not?

MR ROOSE: No.

MR SQUARE: Is it not shown on the Ordnance map as being reclaimed moor-land? Is that not the marsh and moor land, 1308, 1307, 1296, 1295?

MR ROOSE: No, not much. Not much more than four or five acres on my enclosure.

MRSQUARE: Is it not as a matter of fact eight acres of rough moor-land stuff?

MR ROOSE: Only about five.

MR SQUARE: Three fields?

MR ROOSE: Yes.

MR SQUARE: You say the cattle used to get on to the Moors by wandering along the main road?

MR ROOSE: Yes.

MR SQUARE: The district road?

MR ROOSE: It is a lane.



THE JUDGE: I thought he answered Mr Laskey by saying he used to turn out when he was occupying the whole of this farm from 12 to 15 bullocks; it might be one or two more.

MR LASKEY: That is the number he actually does turn out as occupying the Molesworth and Morshead property, but not Rickards.

THE JUDGE: That is the green?

MR LASKEY: And the purple. Rickard's, of course, is not shown. Much the greater part of Rickard's he is not now occupying, but there are, I think, the two fields coloured red, which round off his property, and, of course, the triangle which is not coloured.

THE JUDGE: The purple - - -

MR LASKEY: That is Morshead.

THE JUDGE: And the red?

MR LASKEY: That is Penstrode. Actually, the whole of the green and the purple are called Penstrode, but the buildings are on the green part, the old buildings. There are really the two distinct branches under which this title falls, the Morshead and the Molesworth. The Molesworth is not traced back to any common origin with the Morshead except that there is a payment of chief rent.

THE JUDGE: He used the term of 12 to 15 bullocks?

MR LASKEY: That was in respect of the area he is now occupying, and then I asked him -

THE JUDGE: Quite so. And I think he said just now that he used to put on about 30 when he was occupying the whole?

MR LASKEY: That was when there were 50 acres more, during the time he or his father rented Rickard's Penstrode. Then he had West Penstrode, the farm he bought, and sold to his cousin.

MR SQUARE: In other words, when he had another 50 acres of land he put on another 15 bullocks. Well, now, how many cattle have you had on the Moor at the most this year?

MR ROOSE: It varies, sometimes 5, sometimes 10, sometimes 15, but the last two months I have not had more than 10 bullocks there, and last winter I had 15; the, I think, I turnd out three more, 18.

MR SQUARE: And at one time your were actually grazing 24 there?

MR ROOSE: Never. I dare any man to say he ever saw 24 cattle on that Common belonging to me.

MR SQUARE: I did not say of your own. What were Mr Rich's cattle doing there?

MR ROOSE: I do not know.

MR SQUARE: Yes, you do know.

MR ROOSE: I have never seen his cattle there.

MR SQUARE: Has he not got some Aberdeen cattle?

MR ROOSE: I don't know what cattle he has got any more than you do.

MR SQUARE: Is Mr Rich your brother in law?

MR ROOSE: He is.

MR SQUARE: And Mr Rich has some black-polled cattle, Aberdeens, has he not?

MR ROOSE: He used to have. He has sold them.

MR SQUARE: He has got some cross-bred Scotch steers?

MR ROOSE: I have never seen them on Trehudreth Common anyway.

MR SQUARE: Has he got some cross-bred Scotch steers?

MR ROOSE: I don't know.

MR SQUARE: Think a bit.

MR ROOSE: I don't know what cattle Mr Rich has got any more than you do, or what number of cattle he has got, I don't know.

MR SQUARE: You are his brother in law. You meet him continually and in a little parish like Blisland you know how many bullocks and how many pigs everyone in the place has got. He came to your place at Christmas, didn't he?

MR ROOSE: He always does.

MR SQUARE: And he brought his bullocks, two or three Aberdeens, two or three Scotch steers, and some Devon bullocks.

MR ROOSE: I never saw him bring any bullocks there.

MR SQUARE: Did he ask you to shut your eyes when he put them on the Common?

MR ROOSE: No.

MR SQUARE: I put it to you that in January you put your 14 or 15 bullocks and also 7 or 8, if not more, of your brother in law, Mr Rich?

MR ROOSE: Never. I have never put out cattle on that Common belonging to anyone else but myself.

MR SQUARE: And, of course, you would have no right to do it, would you?

MR ROOSE: Certainly not.

MR SQUARE: You recognise that, don't you?

MR ROOSE: I do not interfere with other people.

MR SQUARE: You recognise you would not have any right to take other people's cattle and put them on the Moor?

MR ROOSE: I have got enough to do to mind my own business.

MR SQUARE: What is your own business? What are you?

MR ROOSE: A farmer.

MR SQUARE: What else?

MR ROOSE: Nothing at the present time.

MR SQUARE: But generally speaking what are you. Are you not a cattle dealer?

MR ROOSE: No, unless I want any cattle for my own keeping.

MR SQUARE: What other lands do you rent?

MR ROOSE: I have got two meadows here in Bodmin.

MR SQUARE: What are their acreage?

MR ROOSE: Seven acres.

MR SQUARE: Each?

MR ROOSE: No.

MR SQUARE: What other grass do you rent?

MR ROOSE: I take grass sometimes.

MR SQUARE: Where do you take that grass?

MR ROOSE: I have taken some grass up Cooksland this year.

MR SQUARE: How many acres?

MR ROOSE: Seven or eight acres.

MR SQUARE: Where else?

MR ROOSE: Nowhere else.

MR SQUARE: Sure?

MR ROOSE: Yes. And I have rented three acres at Cooksland.

MR SQUARE: And anywhere else?

MR ROOSE: No.

MR SQUARE: I tell you what I suggest you are doing, you are a cattle dealer, I am suggesting?

MR ROOSE; No, I am not.

MR SQUARE: And you buy a large quantity of cattle, as many as you can graze, run them out on the Moor in the winter while they are in a condition of store cattle?

MR ROOSE: I have never run cattle on the Moor more than I rear on my farm.

THE JUDGE: You buy and sell them, you say?

MR ROOSE: Sometimes.

MR SQUARE: That is something like a cattle dealer, is it not? I suggest you bring store cattle out to Penstrode, you allow them to run wild on the Moor by day - -

MR ROOSE: It is not so.

MR SQUARE: You just turn them into this parish road and allow them to run on to the Moor?

MR ROOSE: I dare you to say so because it is not so.

MR SQUARE: And when it comes to the time to fatten them you send those cattle down to the meadow lands nearer Bodmin?

MR ROOSE: I keep them there and change them to and fro here. Then I take some from here and put them in the market.

MR SQUARE: When they look in decent condition you bring them in here into the lush grass, feed them up, and take them in to the market? Is that not so?

MR ROOSE: When I do not stock my land at home with them.

MR SQUARE: The result is you always have on your moorland farm from 20 to 25 bullocks for which the farm will not find sufficient grass?

MR ROOSE: It all depends how you farm your farm.

MR SQUARE: I know it does, and this is a rough, moorland farm?

MR ROOSE: You will find, I think, some good land on my farm.

MR SQUARE: Is your farm worth 15s. an acre?

MR ROOSE: I should not like to sell it for 30s.

MR SQUARE: As a matter of fact this stuff is land which has been close to the Moor for generations, and I suggest to you you cannot feed on land of that character more than one bullock for every three acres of land?

MR ROOSE: It is not so. If you farm the land in a proper manner you can stock one bullock per acre.

MR SQUARE: Out there?

MR ROOSE: If you farm it in the proper manner. If you let it go to a wilderness it is a different thing.

MR SQUARE: This land is poor stuff?

MR ROOSE: No, it is not.

MR SQUARE: Rich grass?

MR ROOSE: Some good land.

MR SQUARE: And I suggest the proper quantity for a sheep, you would put about two sheep to two acres?

MR ROOSE: I know one thing, I have got power to grow 20 bushels of oats with no trouble at all.

MR SQUARE: But you had to cut it down with a grass machine didn't you?

MR ROOSE: No. Only for straw that went down bad.

MR SQUARE: Last year being the very best harvest practically for years past you had to cut it down with a mowing machine?

MR ROOSE: I thrashed some corn this year worth 18s a bushel.

MR SQUARE: Well, now, I have got a letter from Mr Peter here dated January 23<sup>rd</sup>. He says, "We have been instructed by Mr Claudius Clarendon Roose of Penstrode, Blisland, on behalf of himself and many other commoners stocking the above Common". Who are these other commoners?

MR ROOSE: I do not know, sir.

MR SQUARE: Now, you are only up to be shot at, are you not. You are acting for a number of commoners. Who are they?

MR ROOSE: Mr Greenaway, Wallhouse, is one.

MR SQUARE: And you know he has paid for grazing on Trehudreth Common, don't you?

MR ROOSE: Unknown to his landlord, I think.

MR SQUARE: Who is the next one?

MR ROOSE: Mr White of West Penstrode.

MR SQUARE: Who told you you were acting for Mr White of West Penstrode?

MR ROOSE: He turns his cattle up there.

MR SQUARE: No, he does not. He does not claim any right of common over this Moor?

MR ROOSE: He turned his cattle there all last winter.

MR SQUARE: You say you are acting for Mr White, do you?

MR ROOSE: I am acting for no-one but myself.

MR SQUARE: Is it true you are acting on behalf of yourself and many other commoners?

MR ROOSE: Mr Harper is stocking the Common.

MR SQUARE: That is on Greenbarrow?

MR ROOSE: Yes.

MR SQUARE: Who else?

MR ROOSE: Mr Bennett of Derfold.

MR SQUARE: He is the gentleman who had a horse fall down a pit, is he not?

MR ROOSE: I think so.

MR SQUARE: Anybody else?

MR ROOSE: I think Mr Jane at Newton and Mr Runnells of Treswiga.

MR SQUARE: He is another gentleman who cattle have been turned on this Moor?

MR ROOSE: Not turned on the Moor. They go on the Moor.

MR SQUARE: Is there anybody else you are acting for?

MR ROOSE: I am acting for myself.

MR SQUARE: Are these gentlemen in Court?

MR ROOSE: Yes, I think they are.

MR SQUARE: They are all going to be called as witnesses for you?

MR ROOSE: Yes.

MR SQUARE: And anybody else?

MR ROOSE: Nobody else.

MR SQUARE: Then we know what we have got to meet. You had a bit of luck four years ago, didn't you?

MR ROOSE: I might have.

MR SQUARE: You sold the greater portion of your Penstrode properties, didn't you?

MR ROOSE: I sold part of it.

MR SQUARE: How many acres of it?

MR ROOSE: 50, I think.

MR SQUARE: 50 out of 53.

MR ROOSE: Out of my 76.

MR SQUARE: Have you got 76 acres?

MR ROOSE: Yes.

MR SQUARE: That is adding the 12 acres?

MR ROOSE: Yes.

MR SQUARE: You sold them to the Blisland China Clay Company?

MR ROOSE: Yes.

MR SQUARE: Got a nice little sum for it?

MR ROOSE: It was all right.

MR SQUARE: And what purpose did you sell that to them for?

MR ROOSE: They started there for clay but I still occupied the land.

MR SQUARE: Never mind. You sold it to them for the purpose of china clay works?

MR ROOSE: Yes.

MR SQUARE: And they had a right, had they, if they desired to take all the turf off the fields you sold them to search for china clay?

MR ROOSE: They could do as they liked. It was their property.

MR SQUARE: You sold it right away with no reservations?

MR ROOSE: Yes.

MR SQUARE: And did you also sell them six acres of this 12 acres of moorland?

MR ROOSE: Yes.

MR SQUARE: Why did you sell them that. You are still retaining this small 3 acres of yours. Why did you sell them six acres?

MR ROOSE: I did not want to sell them.

MR SQUARE: Why did you sell them those?

MR ROOSE: To make up the 50 acres.



MR SQUARE: Now I suggest to you that when you sold them that you never intended to claim any right of grazing cattle that might be in that part you sold to Blisland China Clay Works?

MR ROOSE: I was still enjoying the same rights I had before over all of it. I never gave it up.

MR SQUARE: But if they had desired to get up the turf and dig big china clay pits, you would have had no claim whatever to any grazing upon it there or upon the Moor?

MR ROOSE: They would not have cut it all up; not in my lifetime.

MR SQUARE: And then the Blisland China Clay Company became bankrupt after three or four years, after spending some thousands of pounds on your property, and you buy the property back at a tenth of what you got for it. It was a good deal on your part. Now, Mr Roose, you agree, with everybody else that these stones on the Moor were not put down in idleness; they were put down for a purpose, were they not?

MR ROOSE: I cannot remember when the stones were put down, but I think it tells in the Deed that Mr Joseph Stevens who lived in my house put them there.

MR SQUARE: How old was Mr Stevens when he died?

MR ROOSE: An old man.

MR SQUARE: And he is the Mr Stevens referred to in the Hayward bound viewing we have had here today?

MR ROOSE: That is right. He is the man who put in those posts.

MR SQUARE: He was your tenant?

MR ROOSE: Yes, or father's tenant.

MR SQUARE: He occupied one of the houses in Lower Penstrode?

MR ROOSE: Yes.

MR SQUARE: And you have heard it said that he used to see the Moor was properly marked with boundaries?

MR ROOSE: Yes.

MR SQUARE: Will you tell me why the Manor have got a post down here close to your land, close to the Gilbert land?

MR ROOSE: I don't know anything about it.

MR SQUARE: You never heard?

MR ROOSE: More than it is a Manor mark.

MR SQUARE: Who does this other piece of land, Hayward's Moor, below to, down close to the road?

MR ROOSE: Nearest the turnpike?

MR SQUARE: Yes.

MR ROOSE: Well, I understand Mr Parkin bought all Mr Hayward's property.

THE JUDGE: Mr Stevens was one of your labourers, who lived in the old house?

MR ROOSE: Yes, Your Honour.

MR SQUARE: You remember Mr Stevens' name was mentioned in the book.

THE JUDGE: Yes.

MR SQUARE: Now, can you tell me, Mr Roose, which portion of the 12 acres you sold your cousin?

MR ROOSE: I do not know. It was never defined. I simply sold him 3 acres of the 12.

MR SQUARE: Did you not have any marks to show what you were selling him?

MR ROOSE: Nothing whatsoever.

MR SQUARE: Did you tell a solicitor what part you were selling?

MR ROOSE: I simply sold him three acres of the Common.

MR SQUARE: Don't you think that is a kind of thing that leads to actions of this kind?

MR ROOSE: No.

MR SQUARE: Another action between you and Mr White which might take the Court three days?

MR ROOSE: It never will.

MR LASKEY: There is provision under the new Property Act that in cases of undivided property of this kind the owners become the trustees for its sale. It seems to be rather problematical.

MR SQUARE: Now, Mr Roose, Mr Chapman is a stranger amongst you men up there. He has come from a distance?

MR ROOSE: Yes.

MR SQUARE: Is he called by you a foreigner. I do not mean in an offensive way, but, of course, he is a foreigner?

MR ROOSE: I believe he is called Richard Hicks Chapman.

MR SQUARE: It takes 60 years for a person coming from a distance to get to be known and liked by the related families all round the Moor. Is that so?

MR ROOSE: No.

MR SQUARE: He is called a foreigner, is he not?

MR ROOSE: I have never called him that.

MR SQUARE: When he found your cattle were roaming about the Moor, did he not have a talk with you one day at Derfold sale?

MR ROOSE: Never. He never said anything to me about my cattle before last December.

MR SQUARE: He said you had got too many bullocks on the Moor?

MR ROOSE: He never said anything of the kind.

MR SQUARE: He said, "I cannot have you wandering all over the Moor with all your cattle. Just come up and show me what your rights are." Is that what happened?

MR ROOSE: I have turned by cattle on the Common the same as my father.

MR SQUARE: I want to know what happened in December?

MR ROOSE: I still turned my cattle out.

MR SQUARE: Did he ask you to go up and settle the matter?

MR ROOSE: He did not.

MR SQUARE: Did you meet him on the Moor?

MR ROOSE: I met him at the land end.

MR SQUARE: For what purpose?

MR ROOSE: To show him my rights.

MR SQUARE: Did you show him your rights?

MR ROOSE: Part of it.

MR SQUARE: You showed him where the bond stones were?

MR ROOSE: I showed him where the first one was. Then I went up to the next post.

MR LASKEY: Do you know where Mr Chapman does come from? From how far away?

MR ROOSE: From Penquite, St Kew, I think.

MR LASKEY: Is that about two parishes away?

MR ROOSE: Yes.

MR LASKEY: Do you call people who are two parishes away from you foreigners?

MR ROOSE: No.

MR SQUARE: You do in Cornwall.

MR ROOSE: The other side of St Tudy.

MR LASKEY: Tell me, you have been asked about why you kept part of Rickard's Penstrode. There are two fields there which just round your property off? Those two fields were surrounded by your own, were they not?

MR ROOSE: Certainly.

MR LASKEY: You have been asked also about the condition of the fields in your farm and have been referred to some fields marked on the Ordnance map, as showing them to be something like moorland land at the time the map was made. Are they anything like moor land now?

MR ROOSE: No.

MR LASKEY: Have you put work into them to improve them?

MR ROOSE: Yes.

MR LASKEY: As you said, it is a question of good farming?

MR ROOSE: I have spent hundreds of pounds to improve them.

MR LASKEY: You have been asked whether you have not had in the last harvest a very poor crop from one field?

MR ROOSE: Only one field.

MR LASKEY: Was there a storm at any time which affected the harvest?

MR ROOSE: It broke up and the corn got a bit rusty and went down before it was ripe. Then I had to cut it with grass cutter. I could not cut it with a binder.

MR LASKEY: You have been asked about other persons who are interested in this matter as commoners. Is there any foundation for the suggestion that they are paying any part of your costs.

MR SQUARE: I have not suggested that. I only wanted to know who I had to meet.

MR LASKEY: About these fields sold to the China Clay Company. Did you ever go out of occupation of those fields?

MR ROOSE: Never.

MR LASKEY: Did you ever cease grazing and keeping your stock on them?

MR ROOSE: Never.

MR LASKEY: And did the Company in fact strip much turf from the fields or make any large excavations on your fields?

MR ROOSE: Nothing to speak of, and if they put down a pit when they had finished they filled it in again.

THE JUDGE: Now I want to ask him one or two questions. I do not quite understand, you only turned your animals out in the winter, the bullocks - -

MR ROOSE: I turned out some 15, 16 or 17.

THE JUDGE: In the winter?

MR ROOSE: In the winter.

THE JUDGE: And in the summer you turned out sheep?

MR ROOSE: From 10 to 12 weeks summer time I turned out my sheep. Not winter at all.

THE JUDGE: Did you turn any bullocks out in the summer?

MR ROOSE: Some days I have got five there and some days 10 and some days 12.

THE JUDGE: You turned out much fewer in the summer than in the winter? You looked upon it really as a winter feeding place?

MR ROOSE: Yes.

THE JUDGE: When you said "your farm", did you mean the whole lot, it would carry 32 bullocks, you said. You said you could winter 32 bullocks on the whole farm. That is reckoning that you got their feed on the Common. Suppose you had no grazing rights at all on the Common, how many animals could you have kept on the farm?

MR ROOSE: About 25.

THE JUDGE: Out of the 35?

MR ROOSE: Yes.

THE JUDGE: If it had not been for the grazing?

MR ROOSE: Yes

THE JUDGE: And then, taking the 35 acres only, how many could you have kept on 35 acres if you had had no grazing at all?

MR ROOSE: 20 bullocks. It all depends on the season.

THE JUDGE: That is rather peculiar.

MR SQUARE: I don't know how he carries on the 20.

THE JUDGE: The whole was 100 and something, was it not?

MR SQUARE: Something under 110, I think.

MR LASKEY: With Rickard's Penstrode I think it was just about 100 acres. Rickard's Penstrode was 51, I think. But then these two fields had to come off that.

THE JUDGE: "I generally winter 32 bullocks on the whole farm." That would be 100 acres.

MR LASKEY: Yes.

THE JUDGE: Then in 5 he could keep about 20.

MR ROOSE: No, Sir, that would be 32 bullocks on the 76 acres.

THE JUDGE: That is not the whole farm then? Then he does not seem to have given us any information on which we can go with regard to the whole farm.

MR LASKEY: I understood the 32 is the number which refers to the whole of the property as it now stands, and not the present holding and Rickard's Penstrode as well.

MR SQUARE: Yes.

MR LASKEY: I thought so, too.

THE JUDGE: What is it now?

MR LASKEY: Well, I understand the 32 refers to his present holding.

THE JUDGE: Well, how much is that?

MR LASKEY: The fields coloured here are 76 acres. You winter 32 now.

MR ROOSE: Yes.

THE JUDGE: On 76 acres?

MR ROOSE: Yes.

THE JUDGE: Then if you were only farming 35, about half, you would still keep 20?

MR ROOSE: Yes.

THE JUDGE: Why is that? It seems to be rather disproportionate.

MR LASKEY: The 76 acres includes 9 acres of moor.

THE JUDGE: Then again, you say 30 acres would have carried 20 bullocks without any grazing rights at all?

MR ROOSE: 35 acres.

THE JUDGE: But supposing you had no grazing rights at all, how many would that carry in the winter?

MR ROOSE: It would not carry more than about 15.

THE JUDGE: When you turned them out, they went down the road and turned up and came in at the corner to the Common?

MR ROOSE: Yes, Sir.

THE JUDGE: Is the whole of that claimed by the Plaintiff?

MR SQUARE: Yes, Sir. We claim that but I think they must have a right of way across that of necessity. When I visited the place there appeared to be no gate in the outer wall of this corner field at all. If there never was a gate there, and there is this wedge-shaped piece of land there, they must of necessity have a right of way.

MR LASKEY: There is a track there, is there not.

MR SQUARE: It is not a horse track. It is a sheep track.

THE JUDGE: You claim right up to that?

MR SQUARE: We say that is ours.

MR LASKEY: Your Honour will remember the further and better particulars gave the particulars 1212 and 1215 as part of the Plaintiff's claim.

THE JUDGE: If it was not it might belong originally to what was the 12 acres.

MR SQUARE: If it was not he could turn on to the 12 acres.

THE JUDGE: And the gate from your field 1253, may not go onto Trehudreth Common at all?

MR SQUARE: No, that goes on to Blisland.

THE JUDGE: You sometimes turned your cattle out by the gates and sometimes by the road?

MR ROOSE: By the road.

THE JUDGE: And when you went out by the gates, you were not turning them out on the Common at all?

MR ROOSE: No, turning them out on the Manor of Blisland.

THE JUDGE: Then you claim pasturage rights over Blisland too?

MR ROOSE: You see, as soon as my cattle come out they go right up on the Manor of Blisland.

THE JUDGE: What right have you to put them there? Do you claim pasturage rights?

MR ROOSE: Oh, I claim right there. My cattle always goes there.



THE JUDGE: And you claim that still, do you?

MR ROOSE: Yes. They have been running there for over 60 years and never been disputed.

THE JUDGE: You still put them there?

MR ROOSE: Yes, when I open the gate the cattle run out and I leave them alone.

THE JUDGE: And they remain on the Blisland property?

MR ROOSE: If they don't go away. It is undivided property and they can go where they like.

THE JUDGE: You turn them out and they go where they please?

MR ROOSE: I turn them out just like as if I turn them out from the yard and they go up the road. It is just the same.

THE JUDGE: They could go wherever they liked to go?

MR ROOSE: They go up on the Common.

THE JUDGE: You have got to establish a right of having taken by the mouths of your beasts pasturage off several different properties for a number of years?

MR ROOSE: They have been doing it for over 60 years.

THE JUDGE: And you turn them out quite indefinitely, sometimes by the gate, sometimes by the road?

MR ROOSE: Yes.

THE JUDGE: Just tell me about the turbary. You say this turf was always taken by your tenant off this Trehudreth Common?

MR ROOSE: Yes, Your Honour. Mr Bate and Mr Cole took it.

THE JUDGE: Where from?

MR ROOSE: From the flat. You can see scars of old turf ties now.

THE JUDGE: You came and built a house and lived in it?

MR ROOSE: Yes.

THE JUDGE: Why did you not get your turf from the same place?

MR ROOSE: I did not think anyone could build a new house and go and get turf. That is why I did not do it.

THE JUDGE: You thought you had not got a right to do it?

MR ROOSE: No, I did not.

THE JUDGE: Is that the reason. I only want to know the reason.

MR ROOSE: We always went to Menacrim or Shallow-water for our turf.

THE JUDGE: Not till you went to live in the house?

MR ROOSE: And we go there for turf now.

THE JUDGE: You did not go to Shallow-water for turf until you went to this new house. You said your tenants always went to Trehudreth Common?

MR ROOSE: Yes.

THE JUDGE: Well, when you built your new house, why did you not go to Trehudreth Common for your turf?

MR ROOSE: Well, there was no dispute then, and as I lived in Rickard's Penstrode and always go my turf at Menacrim and Shallow-water I carried on.

THE JUDGE: Before you went to the new house you used to get turf from Shallow-water?

MR ROOSE: Shallow-water and Menacrim.

THE JUDGE: I should have thought you would have gone to the place where anyone living in the old buildings always went for their turf, unless you had a great deal of legal knowledge and knew you could not do it.

MR LASKEY: Might I ask one other question. It is a matter which escapes my memory before. I just wan to ask you, Mr Roose, about the fields of the Molesworth property, the ones other than the fields you have actually improved. There are some that are stated to have been at some time moorland property. Have they been so at any time in your memory?

MR ROOSE: There are four fields there.

MR LASKEY: Tell us what it was, were they enclosed before or were they part of the Moor, or is it their nature has been changed?

MR ROOSE: They were always enclosed but I have improved them.

MR LASKEY: The question is, I want to ask you about the rest. Has the rest always been proper improved land. Or has it been at any time moorland?

MR ROOSE: It has always been improved land.

The Court adjourned for Lunch. On resuming

MR ARCHIBALD ROOSE WAS THEN SWORN.

MR LASKEY: Archibald Roose, is that your full name?

MR ROOSE: Archibald Albert Roose.

MR LASKEY: You are the son of the last witness, are you not, and were you living at his house up to last Michaelmas?

MR ROOSE: Yes.

MR LASKEY: And you acted as cattle man, did you?

MR ROOSE: Yes.

MR LASKEY: I think at Michaelmas you got married and went to live at Liskeard?

MR ROOSE: Yes.

MR LASKEY: How old are you?

MR ROOSE: 26.

MR LASKEY: From what age did you act as cattle man on your father's farm?

MR ROOSE: From about 14.

MR LASKEY: That would be about 12 years ago?

MR ROOSE: About 12 years.

MR LASKEY: Can you tell us anything about where you drove his cattle to whilst acting as his cattleman?

MR ROOSE: The cattle would be turned out on the road and they would go up on the Common themselves, the same as other people's.

THE JUDGE: They went along the road till they found something to eat?

MR ROOSE: Yes, that is the custom of everybody's cattle, to go up the road to the Common.

THE JUDGE: Does everybody's cattle do that?

MR ROOSE: Other people who have a right to.

MR LASKEY: Everybody who had a right, their cattle went up the lane. Do you know whether they stopped in the lane or went on to the Common?

MR ROOSE: In the mornings they would go on to the Common.

MR LASKEY: Did they come back on their own or have to be fetched?

MR ROOSE: Come back on their own.

THE JUDGE: Your duties seem to have been rather light?

MR ROOSE: Only in summer time.

MR LASKEY: You had to go and turn them out, I suppose?

MR ROOSE: Well, sometimes.

MR LASKEY: For how long did that go on. Was it all the time you were there?

MR ROOSE: All the time until I left.

MR LASKEY: Was there any other route you remember them taking?

MR ROOSE: Always go up the lane unless we turned them out through our fields on to the Commons.

MR LASKEY: You took them that way sometimes, did you?

MR ROOSE: Well, if they were up there we would go there and turn them out.

MR SQUARE: If they happened to be in the neighbourhood of the Manor gate, they would be turned out that way?

MR ROOSE: They would be put on the Commons. They grazed on the Commons.

MR SQUARE: Your bullocks in the mornings would be down in the yard?

MR ROOSE: That is in the winter time.

MR SQUARE: Let us deal with the winter time first. Your bullocks would be in the yard?

MR ROOSE: Yes. Evenings and mornings.

MR SQUARE: At night. And the yard was the yard where there are three or four outbuildings including the old house of Penstradden?

MR ROOSE: Yes.

MR SQUARE: And they would have cowhouses there in which they could go if it was a cold night, and in the morning you would go down and open the gate?

MR ROOSE: We would turn them out, open the gates and turn them out on to the Commons.

MR SQUARE: You would turn them out on to the road, the district road, and let them find there own way?

MR ROOSE: Yes, that's right.

MR SQUARE: So they didn't do very much grazing on your farm, did they?

MR ROOSE: If they wished to graze by the side of the road they could.

MR SQUARE: They did not do very much grazing on your fields?

MR ROOSE: There were no fields for them to go on when they were turned out. Some we would keep in on our own fields, and some we would turn out.

MR SQUARE: How many cattle did you keep there in the winter, how many last winter did you keep there?

MR ROOSE: Somewhere about 25, I suppose. There might have been a bit over.

MR SQUARE: Be certain. You ought to know.

MR ROOSE: Say 28.

MR SQUARE: And these cattle were kept in the yard during the night? Is that right?

MR ROOSE: That is right.

MR SQUARE: And in the morning the gate was opened and they had to fend for themselves?

MR ROOSE: Not all that lot. Some were turned out.

MR SQUARE: How many of them?

MR ROOSE: From 15 to 17 were turned out on the Moors. The younger ones were kept in the fields.

MR SQUARE: That is, the calves and yearlings?

MR ROOSE: Yes, what looked right to keep in.

MR SQUARE: So you would have 10 to 14 on the fields?

MR ROOSE: The fields.

MR SQUARE: Which fields would they be grazing on?

MR ROOSE: Where we wished to put them.

MR SQUARE: Yes, I suppose so. Did you have any sheep in the winter?

MR ROOSE: Yes.

MR SQUARE: About 40.

MR SQUARE: And they, of course, would be in the fields in the winter?

MR ROOSE: Yes.

MR SQUARE: You would have 40 sheep and 10 to 14 bullocks kept in grazing on your own land during the winter?

MR ROOSE: Yes.

MR SQUARE: How many of those would be on the lower part of the farm and how many on the higher part?

MR ROOSE: The sheep were generally kept on the higher part and the young bullocks on the lower part.

MR SQUARE: The sheep on the old Penstradden farm?

MR ROOSE: The farm the higher side of the road.

MR SQUARE: That is mainly the old Penstradden farm?

MR ROOSE: Old Penstrode farm.

MR SQUARE: Penstradden farm. You know which fields belonged to Molesworth and which fields belonged to Gilbert, don't you?

MR ROOSE: Of course, I cannot go back over that. That is to do with father.

MR SQUARE: Now which fields would be used by the sheep, those two red fields?

MR ROOSE: All the lot at different times.

MR SQUARE: But during the winter?

MR ROOSE: Well, changing from one to the other.

MR SQUARE: I thought you told me the sheep were kept in the higher part of the farm and the bullocks in the lower part of the farm?

MR ROOSE: Well, so they are.

MR SQUARE: And those on the higher side of the road are all sheep?

MR ROOSE: Yes.

MR SQUARE: And on the lower side of the road were all bullocks?

MR ROOSE: Yes, but sometimes we used to change them.

MR SQUARE: Then what was the object of your saying the sheep were kept in the higher and the bullocks in the lower?

MR ROOSE: Well, changing them, the same as other people do.

MR SQUARE: You want to alter what you said?

MR ROOSE: I don't want to alter what I said. We changed them as we wished.

MR SQUARE: In other words, you did not mind where you kept them?

MR ROOSE: Kept them on our own rights, the same as other people would do.

MR SQUARE: You kept them within your fields, and you allowed a certain number to wander off wherever they liked?

MR ROOSE: To go on our own Common where they had a right to go.

MR SQUARE: And 15 to 17 bullocks would be kept down close to the old farmhouse all night?

MR ROOSE: In the night times.

MR SQUARE: In the winter?

MR ROOSE: Yes, in the house.

MR SQUARE: And directly you started working in the morning the gates were thrown open and they were allowed to wander off?

MR ROOSE: Yes.

MR SQUARE: They would wander off on their lonesome?

MR ROOSE: They would not always wander off. Sometimes we would put them on the Commons.

MR SQUARE: Now what happened in the summer?

MR ROOSE: The cattle would be turned on the Moors to graze in the summer.

MR SQUARE: And the sheep as well?

MR ROOSE: In some months of the summer.

MR SQUARE: For about four months of the summer you would turn the sheep out?

MR ROOSE: About that.

MR SQUARE: Before Midsummer, wouldn't you? You would put sheep on the Moor from the end of May?

MR ROOSE: Sometimes they would not go out before June.

MR SQUARE: Until when?

MR ROOSE: About August-September.

MR SQUARE: And the bullocks, of course, would go out with them?

MR ROOSE: Sometimes. Sometimes we would not have any bullocks there at all.

MR SQUARE: The bullocks were there sometimes?

MR ROOSE: Yes, sometimes all night. We never had more than 8 out there in the summer at the outside.

MR SQUARE: Why was that?

MR ROOSE: Because we would have our young bullocks here in the fields at Bodmin at graze.

MR SQUARE: On fields they used to hire, Sir.

MR LASKEY: The fields the Defendant spoke of.

MR SQUARE: 7 or 8 would be put out there in the summer because all the rest would be in here near the market?

MR ROOSE: Not all of them.

MR SQUARE: What would be kept on the fields near Bodmin?



MR ROOSE: The bullocks he wanted to sell and some of his young stock.

MR SQUARE: How many would they be?

MR ROOSE: It depended on what he wanted to sell.

MR SQUARE: How many?

MR ROOSE: Perhaps 10 or 11.

MR SQUARE: And in the other fields?

MR ROOSE: What fields?

MR SQUARE: The ones he told us about this morning. How many fields does your father rent for grazing?

MR ROOSE: Five this summer. Three in other summers. Two we bought and one we rent.

MR SQUARE: What I suggest is that this little farm is an excellent place to run raw cattle on?

MR ROOSE: Yes, and others.

MR SQUARE: How many cattle do you keep there besides store cattle?

MR ROOSE: That depends.

MR SQUARE: How many did you keep last winter?

MR ROOSE: Three for fattening.

MR SQUARE: And the rest, 25 were store cattle?

MR ROOSE: Store cattle.

MR SQUARE: And these 25 would be allowed to roam about the Moor?

MR ROOSE: No, only 17 of them.

MR SQUARE: Why?

MR ROOSE: Because the younger ones would not be allowed to be turned out on the Moors.

MR SQUARE: So you had 17 bullocks older than yearlings?

MR ROOSE: Two year olds.

MR SQUARE: And the other 11 would be yearlings and calves?

MR ROOSE: Yearlings and calves.

MR SQUARE: And the small ones would be kept on the fields in the farm, and the rest would be grazing the Moor?

MR ROOSE: Yes.

MR SQUARE: So it really comes to this. You say your father can only keep on this farm 11 yearlings during the winter months and sheep?

MR ROOSE: He can keep more if he wishes to keep them in.

MR SQUARE: Then why did he not keep more?

MR ROOSE: Because he had a right of grazing.

MR SQUARE: I see. A cheaper way of getting them fed on somebody else's acres than on your own?

MR ROOSE: On our own. We don't take liberties with other people's acres.

MR SQUARE: When you turned these sheep out on to the Manor piece of Moor, where did you think they were going to get from the Moors?

MR ROOSE: They would go up on the Commons. There was nothing to stop them.

MR SQUARE: I see. You put them on the Manor moor of about 3 acres in extent, is it not?

MR ROOSE: I cannot tell.

MR SQUARE: You ought to. You know more about farming than I do. You are here to help us. Is it not a fact that that piece of land outside the holding here which is marked with the manor marks is about 3 acres in extent?

MR ROOSE: I cannot say.

MR SQUARE: You mean you don't know anything about farming at all?

MR ROOSE: I know about farming but I don't know about that.

MR SQUARE: You have been a cowman for the past 12 years, and you cannot measure a field's acreage?

MR ROOSE: I have never had occasion to do it.

MR SQUARE: Do you mean to say as a farmer you cannot measure up a field with your eyes?

MR ROOSE: I don't know anything about it.

MR SQUARE: Is there a farmer who on going into a field cannot tell you the exact acrae by standing at the gate and looking at it?

MR ROOSE: I cannot answer about that.

MR SQUARE: Would you say it is over 5 acres?

MR ROOSE: I cannot say how big it is.

MR SQUARE: Is it 10 acres?

MR ROOSE: I cannot say.

MR SQUARE: Is it 50 acres?

MR ROOSE: I cannot say.

MR SQUARE: No. In fact, you won't help the Court at all. Do you know what the size of your own fields are?

MR ROOSE: I know what the size of some of them are.

MR SQUARE: What are the sizes of the fields facing Blisland Moor, 1253, 1252?

MR ROOSE: Different sizes.

MR SQUARE: What are their acreages?

MR ROOSE: About 2½.

MR SQUARE: Both of them together?

MR ROOSE: You mean the two little ones?

MR SQUARE: Yes.

MR ROOSE: About 2½ acres.

MR SQUARE: Then is the piece of Manor outside very much bigger than that?

MR ROOSE: I cannot answer for the Manor.

MR SQUARE: Shall we say it is twice the size, and say it is six acres in extent?

MR ROOSE: I cannot say.

MR SQUARE: Well, we will say for the sake of argument it is six, or give you 10 acres. How many bullocks are you going to graze on 10 acres of Moor in a day? Not one, is it not?

MR ROOSE: It is more than 10 acres we have got to graze over.

MR SQUARE: If there are 10 acres of land there which belong to the Manor and you put 10 bullocks on it how many bullocks can graze on that 10 acres?

MR ROOSE: There is not limit.

MR SQUARE: All want to be tied up by the neck and feed round in a circle like they do in Belgium and France. I see.

THE JUDGE: Do I understand in the winter, after these beasts are all housed for the night, you open the gates and let all the young ones an things that ought to be kept at home into the road and they can feed by the side of the road or they can make their way on to the Common?

MR ROOSE: That is true.

THE JUDGE: And they generally made their way on to the Common?

MR ROOSE: Always.

THE JUDGE: And came back by themselves?

MR ROOSE: Yes.

THE JUDGE: And if you happened to have them on some fields away from the house you would let them out from the fields?

MR ROOSE: Yes.

THE JUDGE: Your father told us about the two gates, one which went into the 12 acres and the other which went into the bit of waste common, and you have some times taken them out that way?

MR ROOSE: Sometimes, if they were up there.

THE JUDGE: All you did was to open the gates and let them go?

MR ROOSE: Drive them in.

THE JUDGE: All you did was to drive them out of your own property?

MR ROOSE: Drive them out of our own property and drive them in.

THE JUDGE: The only thing you would see about was to get them out of your own property. They would then go on the Moors and feed?

MR ROOSE: It all depends. If we wanted them to go out and feed, we would open the gate and let them go out and feed.

THE JUDGE: You did not care where they went?

MR ROOSE: Well, we should go up and see then now and again.

THE JUDGE: They were turned out for the day?

MR ROOSE: In the evening they would come home by themselves.

THE JUDGE: They would come down by the road?

MR ROOSE: Yes.

THE JUDGE: So you would not want to go and drive them through the gates again. They would come home of their own accord by the road?

MR ROOSE: Yes.

THE JUDGE: So you simply let them out to go where they liked?

MR ROOSE: Yes.

THE JUDGE: Did you know the boundaries and extent of the Plaintiff's property?

MR ROOSE: Well, I could not have pointed out the boundaries.

THE JUDGE: You could not tell the least bit whether they were going on his property or somebody else's.

MR ROOSE: Oh, they could go anywhere. It was open common. They could go where they liked.

THE JUDGE: The whole of Greenbarrow Downs and Newton Downs?

MR ROOSE: Yes, there is nothing to stop them.

THE JUDGE: And so when you turned them out you turned them out with a view of their looking after themselves anywhere where they could get the best food?

MR ROOSE: Yes.

MR LASKEY: There is just one thing, in the winter when the beasts went out in the morning and came back in the evening, did they, in the winter time, range all over the Common?

MR ROOSE: They went all over the Common.

MR LASKEY: You said in the winter time you did not turn the yearlings out. It is too rough on the Moor for yearlings?

MR ROOSE: Yes.

MR LASKEY: My learned friend was asking you about - - you did not keep sheep only on one ... any ground for the suggestion ...farm is worse than the other.

MR ROOSE: Oh, no. We should change them from one part to the other.

MR ALBERT ROOSE WAS THEN SWORN.

MR LASKEY: Mr Albert Roose, is that your full name?

MR ROOSE: Yes, sir.

MR LASKEY: You are brother of the Defendant?

MR ROOSE: I am the eldest of the family, sir.

MR LASKEY: But there is another brother and he is between you and him?

MR ROOSE: Eight years.

MR LASKEY: Do you remember living with your father at Stokely?

MR ROOSE: I can, sir.

MR LASKEY: You are 74 years of age, I think?

MR ROOSE: I can mind back 61 years last Michaelmas. I am over 70.

THE JUDGE: How old are you?

MR ROOSE: Born in '52', Sir. 74 last birthday.

MR LASKEY: And you can remember 61 years back?

MR ROOSE: Back to Michaelmas.

MR LASKEY: That was when you went to Stokely?

MR ROOSE: Yes.

MR LASKEY: And at that time you were 13?

MR ROOSE: Yes, sir.

MR LASKEY: At the time you were living at Stokely was your father farming that land at Stokely?

MR ROOSE: He was farming both.

MR LASKEY: The other is Penstrode?

MR ROOSE: Yes.

MR LASKEY: That is the present farm.

MR SQUARE: Penstradden.

MR LASKEY: It is the whole farm except the two big fields. The green plot carries the farmhouse and the purple plot does not. Can you tell us was your father a tenant of Mr Collins?

MR ROOSE: Yes, sir. Mr Collins' property.

MR LASKEY: At the time you tell us of when you went to Stokely, were you working for your father then?

MR ROOSE: Working with a horse, sir. I was 13 years old.

MR LASKEY: Can you tell us where your father used to graze his cattle in those days?

MR ROOSE: Yes, he turned them out.

MR LASKEY: Where did they go to when they were turned out?

MR ROOSE: They would go up on the Moors. They would be turned out of the gate on to the highway and go on the Moors.

THE JUDGE: They went on to the Moors?

MR ROOSE: Yes, Sir. That is winter time, Sir.

MR LASKEY: Can you give us any idea how many there would be turned out?

MR ROOSE: They would vary. Perhaps 20 sometimes. Of course, little bullocks you would not put there. They would be too small to go to the Moors.

MR LASKEY: And what made you leave there, Mr Roose?

MR ROOSE: Oh, I got married after a bit and I went away for a bit.

MR LASKEY: When did you get married?

MR ROOSE: Oh, I was married when I was 31. In 1883.

MR LASKEY: And then you were away for a bit?

MR ROOSE: Yes.

MR LASKEY: And when did you go back?

MR ROOSE: I was away at Altarnun for 12 years.

MR LASKEY: And have you been there or thereabouts since 1895?

MR ROOSE: Oh, I cam back to Stokely and am there now.

THE JUDGE: You are farming there now?

MR ROOSE: No, Sir. I gave up 10 years ago.

MR LASKEY: When you came back in 1895 you came to farm Stokely farm?

MR ROOSE: Yes.

MR LASKEY: Then 10 years ago you left there and cam to live in Bodmin?

MR ROOSE: Not 10 years. I cam here five years ago.

MR LASKEY: During the time you were there, can you tell us whether the turning out of the cattle lasted during that time?

MR ROOSE: It went on all the time. Never had no denial.

MR LASKEY: Nobody ever raised an objection?

MR ROOSE: No, never.

MR LASKEY: Mr Roose, there is just one other matter I wanted to ask you about and that is on a question of memory. Do you remember some enclosing being done on Penstrode a long time back?

MR ROOSE: Yes, sir. They took in some moorland there.

MR LASKEY: Whereabouts was that?

MR ROOSE: Oh, close to the farm.

MR LASKEY: How long back was that?



MR ROOSE: I think it was in '68'.

THE JUDGE: Those were the two little bits?

MR LASKEY: That is what he says. You can tell us whereabouts were they. Supposing you go out from the farmhouse up towards the lane, whereabouts would those bits be?

MR ROOSE: Up by the road, sir.

THE JUDGE: On your right-hand side?

MR ROOSE: Yes.

THE JUDGE: They were on your right-hand side after you got out from the farm?

MR ROOSE: Yes. On your way up on the right-hand side as you are going up towards the entrance to the Common.

MR SQUARE: And after that field was enclosed, what did you use it for?

MR ROOSE: Turned it into agricultural purposes.

MR SQUARE: Did you keep bullocks there?

MR ROOSE: Of course, kept bullocks there.

MR SQUARE: Sheep?

MR ROOSE: Everything else that goes on a farm.

MR SQUARE: Did these bullocks walk up to the Moor too?

MR ROOSE: We should have to turn them out of the gate into the highway. Otherwise, how could they get there? They could not get over the hedge.

MR SQUARE: In other words, although this piece of land was sold to your landlord with direct instructions that he should not have any right of common in respect of it, you still kept your bullocks on that land and sent them up on the Common?

MR ROOSE: Yes. They always went up on the Common.

MR SQUARE: That piece of land was sold by Morsehead to Collins in 1856 with direct instructions that by reason of the sale of that piece of Common no right of common should exist in respect of the possession of that property.

MR LASKEY: Oh, that is argument.

MR SQUARE: It is not argument; it is fact. What right had you to put your cattle on the Moor after they had been in that field?

MR ROOSE: We put them there, sir, and were never told to keep them away.

MR SQUARE: That is right. I thought that was what happened.

MR ROOSE: We were going on; we were never stopped.

MR SQUARE: You were going on until you were stopped?

MR ROOSE: I don't know, sir, I would not say that.

MR SQUARE: What do you mean then?

MR ROOSE: It was my father's business, not mine.

MR SQUARE: And the bullocks you had feeding on that ground were turned out on the Moor just like other bullocks?

MR ROOSE: They would be put on the Moor in the summer time. The biggest bullocks and the little ones would be at home grazing.

MR SQUARE: And the little ones were kept on this field in the autumn?

MR ROOSE: Not only on this field. They grazed on all the fields. It was only adding on to the next field the piece took in, making it a little bit bigger.

MR SQUARE: And they were allowed to run up on the Moor just like any others?

MR ROOSE: I suppose Mr Collins would not have done it if it would not have made the land bigger.

MR SQUARE: When you came back you came back to Stokely?

MR ROOSE: I did.

MR SQUARE: And Stokely is down in the south of Thorne?

MR ROOSE: Yes.

MR SQUARE: Did you send any of your bullocks from Stokely on to the Moor?

MR ROOSE: Yes, turned them out of the gates. They could go on to the Moor if they liked. There was nothing to keep them out.

MR SQUARE: You did?

MR ROOSE: When we did turn them out. In very bad weather we should not have turned them out at all.

MR SQUARE: Did you know you had no right at all?

MR ROOSE: We had a right, otherwise we should not have been able to turn them out.

MR SQUARE: I know what you farmers are. A little bit of common is very useful. If the landlord lives some distance away, say in London, it is rather useful to be able to turn your bullocks out when his back is turned?

MR ROOSE: I would not say that.

MR SQUARE: Do you think Sir Warwick Morshead knew you turned your bullocks at Stokely out on the Moor?

MR ROOSE: Probably he did.

MR SQUARE: He has never spoken to you about it, has he?

MR ROOSE: No. He might have to my father, but I never had much to do with the bullocks. I was a horseman when I was young.

MR SQUARE: Did you turn the horses out too?

MR ROOSE: Of course, sir.

MR SQUARE: And when you came back to Stokely after you had been away a matter of 20 years, did you find they had enlarged Stokely? Had they taken some Moor in?

MR ROOSE: I don't know about that.

MR SQUARE: As a matter of fact, when you came back from your farm at Altarnun you found, didn't you, that a portion of the Moor had been enclosed?

MR ROOSE: Well, I didn't claim it.

MR SQUARE: Did not that interfere with your farm. I am talking of the bit of moor down by Peverell Cross?

MR SQUARE: But you know Mr Collins enclosed right up to Peverell Cross?

MR ROOSE: I don't know anything about the rights there. I never took any interest in it. I never used to go there very much. My father generally used to feed the cattle. I have other work to attend to.

MR SQUARE: But you do know that Mr Collins did enclose a portion of Trehudreth Common for the purpose of adding to Thorne and Stokely? That is so, is it not?

MR ROOSE: I cannot say so.

MR SQUARE: But you were living next door to it?

MR ROOSE: I know he enclosed a bit there.

MR SQUARE: By the main road?

MR ROOSE: I helped draw the stones to build the hedge.

MR SQUARE: And that did away with your right of common?

MR LASKEY: Are you speaking of the road that leads past Stokely, or the road leading up from Penstrode? Which one was it where you made the enclosure?

MR SQUARE: The main road, he has said.

MR ROOSE: There is only one road to go up there.

MR LASKEY: Is it the road from Penstrode you are speaking of?

MR ROOSE: It brings you up to the Common.

MR LASKEY: From which place?

MR ROOSE: From Penstroda to Penstrode. It is not much more than 100 yards up the Common. 200 yards or so.

THE JUDGE: I thought you said down by you at Stokely a house was built?

MR ROOSE: Oh, no. Never.

MR SQUARE: He said he helped to build a wall.

MR LASKEY: Now is there any other wall you helped to build anywhere else?

MR ROOSE: Not that I know about, Sir.

MR LASKEY: Now you have been asked by my learned friend whether your father told you anything about his having got anything - - about this bit of land up by Penstroda?

MR ROOSE: No, sir.

MR LASKEY: Do you know that that was actually sold to Mr Collins in 1856, and you would have been four years old at the time, and probably did not

remember your father saying anything about it. Now which is the Manor nearest to Stokely?

MR ROOSE: There is a road which goes right on from the turnpike?

MR LASKEY: Now on the opposite side of the turnpike, is there a Moor there?

MR ROOSE: Stokely goes right up by the turnpike.

MR LASKEY: Now is that the beginning of Cardinham or Coldrenick?

MR ROOSE: Oh, Coldrenick Moor adjoins that.

MR LASKEY: Now which of the Moors is it you used to graze on from Stokely? That Moor down there?

MR ROOSE: You could turn them out there. They would go where they liked. Sometimes you might find them at Shallow-water or you might find them nearer.

THE JUDGE: That is when you were with your father, before you were married in 1883? You say you were there.

MR ROOSE: That was when he came to the farm.

THE JUDGE: And you say the beasts used to be turned out there all the time?

MR ROOSE: Winter time, S

THE JUDGE: In the winter they were just simply turned out from the farm and would make their own way up there?

MR ROOSE: Yes.

THE JUDGE: And when you turned them out of the farm they could go where they liked?

MR ROOSE: Oh, yes. There was nothing to stop them.

THE JUDGE: They could go anywhere and get what food they could over anybody's land?

MR ROOSE: Yes, there was nothing to keep them back.

THE JUDGE: And you turned out your beasts at Stokely in exactly the same way?

MR ROOSE: Yes.

THE JUDGE: And trusted to them to find their way to the best bit of pasturage?

MR ROOSE: Yes.

THE JUDGE: I suppose they would soon find out the best place to go?

MR ROOSE: I dare say they would.

THE JUDGE: And where the best place to let them go was you would let them go?

MR ROOSE: Nobody said anything against it.

MR ELIJAH ROOSE WAS THEN SWORN.

MR LASKEY: Is that your full name?

MR ROOSE: Yes, sir.

MR LASKEY: I think you are the elder brother of the Defendant?

MR ROOSE: Sort of the elder brother.

MR LASKEY: And what is your age?

MR ROOSE: 67 next May.

MR LASKEY: 66 now?

MR ROOSE: 67 next May.

MR LASKEY: Can you tell me when you were a boy and working with your father where was he living and farming land?

MR ROOSE: Stokely, sir.

THE JUDGE: You used to work for your father when you were a boy when he was at Stokely?

MR ROOSE: Yes, sir.

MR LASKEY: Do you remember when you went to Stokely?

MR ROOSE: Yes, sir.

MR LASKEY: When was that. About how old were you then?

MR ROOSE: About 7 years old.

MR LASKEY: And when did you begin working for him?

MR ROOSE: Just as I was going to school. I went to school a little while and was working the same time.

MR LASKEY: Was he farming Stokely and Penstrode?

MR ROOSE: Yes, sir.

MR LASKEY: And what work were you doing for him?

MR ROOSE: Oh, about the cattle.

MR LASKEY: Did you ever drive the cattle from Penstrode?

MR ROOSE: Turned them out on the Downs above Penstrode, sir.

MR LASKEY: That was on the road up from Penstrode, was it?

MR ROOSE: Ye, and on the Common.

MR LASKEY: And where did they go to when they were turned out on the road?

MR ROOSE: Up on the Downs.

MR LASKEY: Was there anywhere else for them to go to?

MR ROOSE: No other road, sir.

MR LASKEY: Were you never stopped doing that?

MR ROOSE: Never, sir. Never heard tell of anyone being stopped.

MR LASKEY: Ever heard a protest against it?

MR ROOSE: Never, sir.

MR LASKEY: And did that sort of thing happen only occasionally or often.

MR ROOSE: What sort.

MR LASKEY: Turning out the cattle.

MR ROOSE: Oh, almost every day, sir.

MR LASKEY: Now, just roughly, about how many would be turned out from Penstrode?

MR ROOSE: Oh, from 16, 16 to 17. Not a great number, but you cannot tell to a bullock or two.

MR LASKEY: I think you remember a building being put up by someone near there?

MR ROOSE: Yes, sir, a cattle shed.

MR LASKEY: Where was that?

MR ROOSE: At Penstrode, sir.

MR LASKEY: Was that near some buildings that already existed there?

MR ROOSE: Yes, sir. In the farm yard. One each side of the yard.

MR LASKEY: About how long ago would that be?

MR ROOSE: I can hardly tell you. A good many years ago.

MR SQUARE: And what happened with the cattle at Stokely? Did they also go up this lane?

MR ROOSE: I had nothing to do with Stokely.

MR SQUARE: You said your father farmed Stokely.

MR ROOSE: That is right.

MR SQUARE: You say your father at Stokely?

MR ROOSE: Yes, sir.

MR SQUARE: Where did you live?

MR ROOSE: Stokely.

MR SQUARE: Who lived at Penstrode?

MR ROOSE: Mr Colwell, the workman.

MR SQUARE: Then why should you go from Stokely in the winter mornings up to Penstrode?

MR ROOSE: I did not go every morning. My father usually went. I went sometimes with father.

MR SQUARE: How often did you go with your Father?

MR ROOSE: Perhaps two or three times a week.

MR SQUARE: Did you keep the Stokely cattle up there too?



MR ROOSE: No, sir.

MR SQUARE: What happened to the Stokely cattle?

MR ROOSE: We used to turn them out and they would go on the Manor or Blisland.

MR SQUARE: Would that be what was then moorland by Thorne?

MR ROOSE: Just above Thorne.

MR SQUARE: Would you drive them out there?

MR ROOSE: Never drive them at all. We would turn them out on the main road and they would go there.

MR SQUARE: Were there any police in those days?

MR ROOSE: It was the custom, sir. Cattle would go where they liked.

MR SQUARE: Was that because Stokely was part of the Blisland Manor?

MR ROOSE: Stokely had a right to the Blisland Manor.

MR SQUARE: This was Molesworth property?

MR ROOSE: I cannot tell you that, sir.

MR SQUARE: You know who had Blisland Manor?

MR ROOSE: I don't know the names exactly.

MR SQUARE: But you were born there. How long is it since you were there?

MR ROOSE: I have been there all my lifetime.

MR SQUARE: Where are you living now?

MR ROOSE: I am living in Bodmin.

MR SQUARE: What are you now?

MR ROOSE: Independent man, sir.

MR SQUARE: How was it you had the fortune to become independent?

MR ROOSE: That is nothing to do with you, sir.

MR SQUARE: I did not mean to be rude. What was your profession in life?

MR ROOSE: Farmer, sir.

MR SQUARE: Where was your farm?

MR ROOSE: Cardinham.

MR SQUARE: What part of Cardinham.

MR ROOSE: The other end of Cardinham near Mount.

MR SQUARE: Some ten miles away from here?

MR ROOSE: About seven miles.

MR SQUARE: And how far from Stokely?

MR ROOSE: About four.

MR SQUARE: Of course, Stokely had only common rights on Blisland?

MR ROOSE: On Shallow-water as well, I think.

MR SQUARE: But if your cattle happened to walk across the road on to the Cardinham moors, you did not worry, did you?

MR ROOSE: There was nothing to keep them out. They could go anywhere.

MR SQUARE: Did you claim a right of grazing on Cardinham?

MR ROOSE: No, sir.

MR SQUARE: Although you can come here and swear that all the bullocks were turned out and used to go on Cardinham Moors?

MR ROOSE: No, sir. Very often you would not see them on Cardinham rights. They all used to go up on their own rights.

MR SQUARE: Do you mean to say they had so much sense they knew which was right from wrong?

MR ROOSE: It is chiefly rocks on Cardinham Moors.

MR SQUARE: But if they saw some nice stuff on the rocks they would get there and you did not care where it was as long as they came home in the night time?

MR ROOSE: Oh, we did not want them to do any damage.

MR SQUARE: You did not worry where they went?

MR ROOSE: Oh, yes, we did.

MR SQUARE: You let them go out of the front gate and come back at night?

MR ROOSE: But we did not want them to do any damage.

MR SQUARE: But you could not do any damage to the Moors?

MR ROOSE: Oh, yes, you can. There are fields of corn there.

MR SQUARE: But they fence it, don't they?

MR ROOSE: The bullocks can get over fences.

MR SQUARE: But it is the farmer's fault if he does not fence it against the Common.

MR ROOSE: They don't always do it.

MR SQUARE: And if your bullocks come back full of corn you don't mind.

MR LASKEY: You have said you always found them in Blisland. Did you go there and find them at night times?

MR ROOSE: They always came home at night times.

MR LASKEY: Have you ever seen them on Blisland?

MR ROOSE: Our own bullocks, sir?

MR LASKEY: The ones that came from Stokely?

MR ROOSE: Scores of times.

MR LASKEY: We have heard that in the summer they stayed out all the time?

MR ROOSE: Not winter time.

MR LASKEY: When you began to get them back in winter time, somebody had to go and drive them back?

MR ROOSE: Always came back themselves.

MR LASKEY: When did they know. What date was it they started to come back?

MR ROOSE: Just before Christmas.

THE JUDGE: They would all make up their minds the same time, or some come home before the others?

MR ROOSE: Oh, no. They would come home together.

MR LASKEY: Taking, first of all, Penstrode, you were cattle man there. You used to go up there with your father two or three times a week?

MR ROOSE: Yes.

MR LASKEY: And in the winter you would just open the gates and let them out into the road and they would go up themselves on to the Moor?

MR ROOSE: Yes.

MR LASKEY: And then they would go anywhere when they got there, I suppose?

MR ROOSE: They could go anywhere on the Moors.

MR LASKEY: They might go on to Greenbarrow or anywhere they liked?

MR ROOSE: Oh, yes.

MR LASKEY: And then they came home?

MR ROOSE: Yes.

MR LASKEY: Then sometimes, we have heard, if they happened to be on the farm somewhere near the edge of the Moor, where there are two gates, you used to open the gates that way and let them out again the same way?

MR ROOSE: Yes, it would be more convenient.

MR LASKEY: And you took no more trouble about them, you did not care where they went?

MR ROOSE: No.

MR LASKEY: And in the same way, in the summer, they would not come home; they would stay out all night?

MR ROOSE: Yes.

MR LASKEY: And with your Stokely animals you did the same thing?

MR ROOSE: Yes.

MR LASKEY: You drove them off and there again they could go where they liked?

MR ROOSE: Yes.

MR LASKEY: They did not always go to Blisland, I suppose?

MR ROOSE: I cannot say that. They could go anywhere.

MR JOHN RUNNALLS WAS THEN SWORN.

MR LASKEY: John Runnalls is that your full name?

MR RUNNALLS: Yes, sir.

MR LASKEY: You are a farmer, are you not?

MR RUNNALLS: Yes, sir.

MR LASKEY: How old are you?

MR RUNNALLS: 64 last birthday.

MR LASKEY: Where are you living now Mr Runnalls?

MR RUNNALLS: Near Kerrow, Blisland.

MR LASKEY: Have you farmed anywhere else on Blisland or near there?

MR RUNNALLS: The first farm was Treswiga in the parish of Blisland.

MR LASKEY: How long ago was that?

MR RUNNALLS: 1874.

MR SQUARE: It is to the north behind Blisland Moor.

MR LASKEY: Have you got rights of common for some Moor or Manor waste in the neighbourhood there?

MR RUNNALLS: In the Manor of Blisland, sir.

MR LASKEY: Is that near Trehudreth Common?

MR RUNNALLS: Yes.

MR LASKEY: And do you yourself have occasion to go on to Trehudreth Common?

MR RUNNALLS: Yes, sir.

THE JUDGE: Is that joined on to this string of Downs?

MR SQUARE: Yes.

THE JUDGE: Is it all unenclosed?

MR LASKEY: In what direction does Blisland Common lie?

MR RUNNALLS: It would be north.

MR LASKEY: You have told us you have yourself turned on Trehudreth Moor?

MR RUNNALLS: Turned cattle out from the gate of Treswiga on to Naillybarrow, and then they go on to Newton Bridge and from there on to Trehudreth Moor.

MR LASKEY: That would be the Newton Down end, would it?

MR RUNNALLS: Sometimes Newton Down and sometimes on the land all over the Moor.

THE JUDGE: Your animals you turned out at Blisland. They would go on down south sometimes on to Newton Downs and sometimes they would go through Newton Downs to Trehudreth Downs or they might skip Newton Downs and go down to Trehudreth Downs?

MR RUNNALLS: Yes, sir.

THE JUDGE: And they would pass through Greenbarrow Downs, would they?

MR RUNNALLS: That is right, sir.

THE JUDGE: In fact, they would go anywhere?

MR RUNNALLS: Yes. When they were out they would make that round every day, feeding and drinking, and make their way home at night.

THE JUDGE: Did you have to go round there sometimes? You say you were round there pretty often?

MR RUNNALLS: Not about the cattle. I had to go over Trehudreth Hill, there is a track, to come to Bodmin.

THE JUDGE: And going backwards and forwards to Bodmin, you were going there pretty often?

MR RUNNALLS: Yes.

MR LASKEY: Do you know Mr Roose's cattle mark?

MR RUNNALLS: Yes.

MR LASKEY: That was his father's before him?

MR RUNNALLS: That is right.

MR LASKEY: How long, can you tell us, have cattle with that mark have been on Trehudreth Common?

MR RUNNALLS: I can mind about the first year I came to Trehudreth?

THE JUDGE: When was that?

MR RUNNALLS: About 1874.

MR LASKEY: You have seen the cattle about on the Moors there?

MR RUNNALLS: Yes.

MR LASKEY: Do you know what the mark is?

MR RUNNALLS: Yes, a big space on the right ear.

MR SQUARE: Is that a moor mark or a farm mark?

MR RUNNALLS: A mark that they mark their cattle with.

MR SQUARE: Yes, but you have your Moor mark and your farm mark, have you not?

MR RUNNALLS: I don't know the difference.

MR SQUARE: Do you know anything about Dartmoor?

MR RUNNALLS: I have been there.

MR SQUARE: Well, on different moors they have different marks.

MR RUNNALLS: I think there was a bit of red tape in the Manor marks some years ago. But it has died out. We don't see anything of it now.

MR SQUARE: What I want to get from you is that any cattle which are put on to the Blisland Manor Moor and have a right of grazing, have a certain ear mark, so that if they stroll all over the place they can be ranged and sent back again?

MR RUNNALLS: There is no special mark that I know of.

MR SQUARE: What do you put on your bullocks?

MR RUNNALLS: Top in the near ear and slit in the further.

MR SQUARE: Does anyone else have the mark on the top in the near ear?

MR RUNNALLS: Yes, I think there is.

MR SQUARE: Would that be Newton Farm?

MR RUNNALLS: I don't know that mark. My son marks with the top in the near ear and slit in the further.

MR SQUARE: What farm?

MR RUNNALLS: Treswiga, he is living in now.

MR SQUARE: It would be a farm mark?

MR RUNNALLS: Our forefathers used it.

MR SQUARE: Yes, that is right, Have you any Moor mark?

MR RUNNALLS: No.

MR SQUARE: What you did was to turn your bullocks who might be grazing on your farm outside our farm gate?

MR RUNNALLS: On to Nailybarrow.

THE JUDGE: You turn out to the nearest point to your farm?

MR RUNNALLS: Right outside the gate.

MR SQUARE: And that is the Common just here. Do you put on to Metherin Common?

MR RUNNALLS: Well, about 300 yards up there is a stone at the corner and then the beasts run right up over the hill, out over the fields, through Newton marsh.

MR SQUARE: Are you talking about Metherin?

MR RUNNALLS: No, sir.

MR SQUARE: That is the Moor that is really attached to Trewiga?

MR RUNNALLS: Nailybarrow.

MR SQUARE: And that is your moor, marked by stones?

MR RUNNALLS: That is right, between Nailybarrow and the Manor there are stones.

MR SQUARE: What marking is there on the stones on the Nailybarrow Moor?



MR RUNNALLS: Oh, "H.P" I think.

MR SQUARE: And on this side there would be "M" with a cross?

MR RUNNALLS: That is right.

MR SQUARE: So this would be Blisland Moor and that would be Hayward's private property?

MR RUNNALLS: That is right.

MR SQUARE: And because you put out on Blisland Moor where you have a perfect right to do so, they range?

MR RUNNALLS: I believe Mr Parkin bought the Manor of Barlendew.

MR SQUARE: He bought the Manor of Barlendew, it is true, and the Lordship of Cassacorn, Newton and Treserret, but he did not get the Commons as well. He bought 80 acres and the persons who had rights of common were certain farmers. All you set up is that at Treswiga you used to keep cattle and you had a right to put on that particular Moor there?

MR RUNNALLS: They go out of the yard gate and go away and come back again at night.

MR SQUARE: And then because there are several moors closely attached to each other, no one interferes with your ranging?

MR RUNNALLS: There is no fence. They go where they like.

MR SQUARE: Do you remember having some words with a Mr Vicary Langford some years ago about some sheep?

MR RUNNALLS: I did, sir.

MR SQUARE: Tell me all about it. How many sheep do you keep?

MR RUNNALLS: Well, we had not been in the habit of bringing them back to Blisland Manor. They were at Lees in St Breward parish on Membland Common. They were brought back to Blisland and turned out on the Common and they strayed on to Trehudreth Downs and Mr Langford herded them back.

MR SQUARE: Did he not say to you, it was a Sunday morning, was it not?

MR RUNNALLS: I believe it was.

MR SQUARE: And he said you had no right whatever to put your cattle on Trehudreth Common, and he herded them back?

MR RUNNALLS; That was the sheep.

MR SQUARE: Now, was Mr Sandercock tenant of Great Trehudreth then?

MR RUNNALLS: No, sir.

MR SQUARE: Who was?

MR RUNNALLS: Mr William Bunt.

MR SQUARE: And Bunt rented the Moor as well as Trehudreth at that time from the Morsheads?

MR RUNNALLS: I did not understand that.

MR SQUARE: As a matter of fact, he did. I have a copy of the lease here. In 1896 he granted a lease of Trehudreth and the Moor to Bunt. Was it through Bunt's interposition that those sheep were turned off?

MR RUNNALLS: I cannot answer that, sir. But that was not all to it. There was a reason why the sheep was turned back.

MR SQUARE: Well, let us know all about it. Don't make any mystery about it.

MR RUNNALLS: I think it is better left alone, sir.

MR LASKEY: Did that continue? Did you do anything to stop your beasts running on to Trehudreth Moor?

MR RUNNALLS: No, sir. The sheep had just come back. Before, I had put them away for a change. I had not been in the habit of keeping sheep on Blisland parish. I kept sheep at Lees and they ran on the moor of St Breward parish.

MR LASKEY: There has not been any long continued objection?

MR RUNNALLS: No, that was the only time.

THE JUDGE: I suppose it is the practice, either good nature or otherwise, for your neighbours not to interfere with cattle if they do happen to stray?

MR RUNNALLS: That is the first time.

THE JUDGE: You never had any other complaint?

MR RUNNALLS: Oh, no.

THE JUDGE: I suppose you must have realised they were trespassing as far as the law goes?

MR RUNNALLS: I did not consider they were trespassing.

THE JUDGE: You had only got the right of the common nearest you, had you not?

MR RUNNALLS: I do not think we had, sir.

THE JUDGE: I though you said you had rights of common over Blisland and turned out by the gates?

MR RUNNALLS: Our gate opens on to the Moor.

THE JUDGE: You say you don't think you even had any rights to Blisland?

MR RUNNALLS: Well, to go into law, I don't know.

MR LASKEY: Is there any particular common where you do know you have rights or where you have always considered you have rights?

MR RUNNALLS: On the Manor or Blisland.

THE JUDGE: Then I suggested to him that his animals, even if he turned them on to the Downs or Moor where he has got legal right, if they strayed on to other moors, the fact that they were not interfered with looked like neighbourly understanding, although undoubtedly they must be trespassing.

MR LASKEY: The question of vicinage might arise.

THE JUDGE: This seems to be a sort of general laxity by which they turned out their cattle by the front door to the nearest point they could get to and let them go where they liked.

MR LASKEY: It would be exercised under much the same conditions as vicinage, except, of course, that vicinage would be between two.

MR WILLIAM HENRY ALFRED COLE WAS THEN SWORN.

MR LASKEY: Is that your full name?

MR COLE: That is right.

MR LASKEY: I think you live now at Lanhydrock, don't you?

MR COLE: I do.

MR LASKEY: How old are you, may I ask?

MR COLE: 59. I was born in 1867.

MR LASKEY: And I think you were born at East Penstrode, were you not?

MR COLE: Yes, that is so. Lower Penstrode, we used to call it.

MR LASKEY: That is, as distinct from Rickard's Penstrode, the farm building some distance away?

THE JUDGE: There is a lower and upper, and also Rickard's. There are three?

MR LASKEY: Were there three or two?

MR COLE: There are only two Penstrodes.

MR LASKEY: The other was Rickard's or West Penstrode?

MR COLE: West Penstrode. When I left there it was called Wellington.

THE JUDGE: The two are both connected?

MR LASKEY: How long did you live at East Penstrode?

MR COLE: From 1867, and I left there when I was 14 years of age.

MR LASKEY: That would be about 1881?

MR COLE: That is about it.

MR LASKEY: Did you go back there afterwards?

MR COLE: No.

MR LASKEY: Where did you go to then?

MR COLE: Trewordale. A short time I lived at Trethorn in the same parish.

MR LASKEY: Had you anything to do with cutting turves there?

MR COLE: My father did, on top of Trehudreth Hill.

MR LASKEY: When was that, before you left East Penstrode?

MR COLE: He got turves there from Trehudreth Hill from my earliest recollections.

THE JUDGE: Your father was living in a farmhouse, was he?

MR COLE: A cottage on the farm. He was a tenant under Mr John Bassett Collins.

THE JUDGE: He was a workman on the farm?

MR COLE: No, he was not a workman on the farm. He got his work where he could.

THE JUDGE: He was a tenant of one of the houses?

MR COLE: On Mr John Bassett Collin's property. It was a cottage separate from the farm buildings.

THE JUDGE: Is that cottage still standing?

MR COLE: No, Your Honour.

MR LASKEY: The same buildig is still in existence?

MR COLE: Yes.

MR LASKEY: Was that a new or an old cottage in your day?

MR COLE: An old cottage.

MR LASKEY: You have told us your father used to get turf from Trehudreth Common in your memory? Where was that turf used?

MR COLE: In the cottage.

MR LASKEY: And did you help in the getting of it?

MR COLE: I helped in the getting of it when I was old enough.

MR LASKEY: And did that go on after you left there? That was up to the time you have told us of, when you were 14 you left the cottage?

MR COLE: That is right.

MR LASKEY: Do you remember anyone else living in any other cottages?

MR COLE: There were two or three there. I can just remember them, but they used to cut the same as my father. They helped one another.

THE JUDGE: Where did they live?

MR COLE: This cottage was a double house. There were two cottages under one roof.

THE JUDGE: And the person living in the other half of the cottages used to do the same thing?

MR COLE: Yes.

MR LASKEY: Can you give us the name?

MR COLE: I remember the last. Here was one called Stevens, and there was another, a Captain Cundy. I was very young but I remember him very well. He used to cut turf there, and Stevens.

MR LASKEY: You remember Stevens cutting turf?

MR COLE: Oh, yes. I have helped him.

MR LASKEY: And that turf. Was that taken for his cottage?

MR COLE: Oh, yes.

MR LASKEY: Do you know the Defendant's cattle mark, the mark for his animals, or did you know it?

MR COLE: Yes. I could tell his cattle by appearance pretty well, but the mark, I think, was a spade on the off ear; on the bottom, of the off ear or further ear, as well as I remember. I may be wrong.

MR LASKEY: Do you remember on one occasion helping getting some sheep off the Moor?

MR COLE: Oh, yes. Very well. I can go back further than Roose. I can go back to Mr Charles Wellington.

MR LASKEY: When was that?

MR COLE: I was seven or eight years old then.

MR LASKEY: That would be 50 years ago. Was it something to do with the animals on the Moor you were going to tell us about?

MR COLE: All I know about that there was a heavy fall of snow and the sheep got snowed in, and I went down to assist in getting the sheep out.

MR LASKEY: Whose sheep was that?

MR COLE: That was Mr Wellington's and I also assisted Mr Roose on two occasions.

MR LASKEY: And whereabouts was it they got snowed in like this?

MR COLE: Leading up to the end of Trehudreth Lane, right up towards Peverell Cross. They had drifted away in front of the wind and there was a fence up towards the end of Trehudreth Lane.

MR LASKEY: And how far up did you find them?

MR COLE: There would be a few here and there on the way up to Peverell Cross.

THE JUDGE: Beginning where?

MR COLE: At the end of Penstroda lane.

MR LASKEY: That is where the lane leads out on to the Common. So it would be up by the 12 acres.

MR SQUARE: You saved all of Mr Wellington's; some of Mr Roose's?

MR COLE: No. When Mr Wellington lived there, Mr Roose was not there.

MR SQUARE: You found Mr Wellington's on a previous occasion, and Mr Roose's on a different occasion?

MR COLE: That is right.

MR SQUARE: And where you found them was the most sheltered spot they could find?

MR COLE: Yes, they were up by the hedge.

MR SQUARE: There is something after the type of a drain-way or a gutter-way running along by the side of the wall, where the water can run away?

MR COLE: I don't know anything about that.

MR SQUARE: Do I understand from you there are two houses which used to get peat off the Moor?

MR COLE: That is right.

MR SQUARE: Well, we have only got one in the particulars of claim.

THE JUDGE: They were cottages; not the farmhouse?

MR SQUARE: They were two cottages under one roof.

THE JUDGE: Were they near the farmhouse?

MR COLE: About 200 to 300 yards.

MR LASKEY: There is no other farmhouse on this property.

THE JUDGE: When you were there - - - this was in 1881?

MR COLE: This present house, the new house, had not been built?

MR COLE: Oh, no.

THE JUDGE: There was an old house which is now being used for farm buildings?

MR COLE: Yes.

THE JUDGE: Was the cottage a separate building from this old building?

MR COLE: Oh, no; nothing to do with the farmhouse.

THE JUDGE: At that time there was a farmhouse apart from them?

MR COLE: No, there was a farmhouse where Mr Wellington used to live, and Mr Roose did afterwards, about 200 or 300 yards away.

MR SQUARE: Mr Wellington occupied West Penstrode or Rickard's Penstrode.

THE JUDGE: What we have heard is that when Mr Roose bought the property, after about a year he moved into a new house, and the old house was turned into and is now used as farm buildings?

MR COLE: I cannot tell you anything about that.

MR SQUARE: Now, Mr Cole, do you follow a map?

MR COLE: No.

MR SQUARE: You are at Lanhydrock, are you not?

MR COLE: Yes.

MR SQUARE: I should have thought you could have followed a map?

MR COLE: I never had a big education.

MR SQUARE: Well, come and see what you can do.

After examining the map witness declared the he was living in the old farmhouse.

MR SQUARE: A half of the building at present looks as if it had been part of a dwelling house, and the remainder looks as if it had been a barn?

MR COLE: There are two chimneys left. I saw one at each end.

MR SQUARE: It seems to be in a pretty good state of repair?

MR COLE: For a cattle house I should say it was.



MR SQUARE: When you went there were two people living in the house, you and your father one side and somebody else on the other?

MR COLE: That is right.

MR SQUARE: Was any new hearth put in to make this farmhouse into a couple of cottages?

MR COLE: Not that I remember.

MR SQUARE: Did you burn peat in your cottage except on the open kitchen hearth?

MR COLE: No.

MR SQUARE: It would only be one hearth?

MR COLE: Yes.

MR SQUARE: And from your knowledge of this district, that would be the only place where peat would be burned in the open kitchen hearth?

MR COLE: I cannot say that.

MR SQUARE: Is not that your experience right through the county; they would not burn it in a bedroom, for instance?

MR COLE: In the hearth they would have to, of course, they could not burn it in stoves.

MR SQUARE: You could not burn it in a bedroom, could you?

MR COLE: Oh, yes. There is a lot of peat burnt in stoves now.

THE JUDGE: But in an open fireplace you would not burn it?

MR COLE: An open fireplace is the place for it.

MR SQUARE: The old kitchen hearth?

MR COLE: Yes.

MR SQUARE: And that is the only place when you were living there you burned your peat in?

MR COLE: Yes.

MR SQUARE: Now it was pretty poor peat on the top of Trehudreth, was it not?

MR COLE: Well, it was not best quality.

MR SQUARE: When you wanted anything extra special you went up to Shallow-water?

MR COLE: Not in my time. You see my father had to work for his living a full day's work and go up and cut his peat afterwards, after he had done a full day's work, and the nearest was where he used to go. And not only that, there was the expense of getting it home, the longer the cartage the more he had to pay.

MR SQUARE: You know you had not any right on that Moor; you were Molesworth property?

MR COLE: I did not know it.

MR SQUARE: I don't suppose anyone minded very much. Was Mr Wellington at West Penstroke then?

MR COLE: Yes. Part of the time. My earliest recollections are that he was there.

MR SQUARE: Did you get to this place when you were 7 years old or were you born there?

MR COLE: I was born at Penstroke.

THE JUDGE: I want quite clearly to understand about this. There were two cottages adjoining each other. Had they, as far as you can tell, had they always been used in that way or was it originally a farmhouse which had been split up into two cottages?

MR COLE: All the time I was there there were always two tenants.

THE JUDGE: But is spoken of always as the farmhouse belonging to this farm.

MR COLE: That is what I cannot understand, because the other Penstroke was a farmhouse, and that was what knocked me out for a moment.

MR LASKEY: It appears to have been farmed with Stokely for a great many years, and then with West Penstroke for a number of years.

THE JUDGE: Here is a house which is described as two cottages joined together, and I am trying to find out if it was a farmhouse which had been split up into two cottages?

MR LASKEY: As far as the evidence is concerned there is nothing to show it had ever been as a farmhouse.

THE JUDGE: When you were living there it was a house split up into two halves?

MR COLE: Yes.

MR ALFRED BATE WAS THEN SWORN.

MR LASKEY: Is that your full name?

MR BATE: Yes.

MR LASKEY: You now live at Millpool, Cardinham?

MR BATE: Yes.

MR LASKEY: And do you know the cottage that has been spoken of as Mr Collin's cottage?

MR BATE: Yes, I lived there one time.

MR LASKEY: Can you tell us between what times you lived there?

MR BATE: No, I cannot.

MR LASKEY: Up to how long ago were you there?

MR BATE: About 15 years ago.

THE JUDGE: How old were you when you first began to live there, do you remember?

MR BATE: No, I do not.

THE JUDGE: You lived in one of the cottages?

MR BATE: The lower one; the one that is turned into a barn now.

THE JUDGE: Were you quite a boy when you first commenced living there?

MR BATE: Oh, no. I was working for Mr Roose.

THE JUDGE: You were grown up before you went to the cottage?

MR BATE: Yes.

THE JUDGE: Were you 25?

MR BATE: I can hardly say.

THE JUDGE: Well, give us some idea.

MR BATE: I might have been 50.

THE JUDGE: Well, how old are you now?

MR BATE: I am over 60. I can hardly tell you. I am 65 or 66.

MR LASKEY: Can you give us any idea about how long you were living at the cottage; was it a very short time?

MR BATE: Yes, it was somewhere about three years.

MR LASKEY: Can you tell us whether it was the cottage Mr Cole had occupied or somebody else?

MR BATE: I think the Coles lived there at one time, as far as I know.

MR LASKEY: Now, do you know what the cottage had been before it had been a cottage?

MR BATE: No.

MR LASKEY: Who did you work for while you were there?

MR BATE: Mr Roose. And then other people. I cannot tell. Jobbing about from one place to another.

MR LASKEY: Now, while you were working there do you ever remember cutting any turf?

MR BATE: Yes.

MR LASKEY: Where did you go for it?

MR BATE: Right up on Trehudreth Down. Right up on the flat.

MR LASKEY: Is there a turf pit there?

MR BATE: There are ties.

MR LASKEY: Have you been up there since?

MR BATE: I was there some time ago. I have not had anything to do with cutting turves

MR LASKEY: Is it the same place?

MR BATE: Yes.

MR LASKEY: Can one still see the place where people cut turves?

MR BATE: Yes.

MR LASKEY: And how long did you go on cutting the turves?

MR BATE: All the time I was there.

MR LASKEY: Did anybody ever try to stop you?

MR BATE: Oh, no. Never denied.

MR LASKEY: Do you know about the beasts that were on the Common? You were on the Common sometimes, were you not?

MR BATE: Yes, but I cannot tell you much about that. I know people used to turn their cattle on the Moors.

MR LASKEY: Did you ever see any of Mr Roose's cattle on the Moors?

MR BATE: Yes, every day when I was living on the place.

MR SQUARE: When did you last see turf ties on the Moor?

MR BATE: Oh, about a month or two ago.

MR SQUARE: When Mr Peter asked you to go and have a look at it?

MR BATE: Yes.

MR SQUARE: And you all went up there; about 20 of you?

MR BATE: Oh, I cannot say that. I don't know how many there were.

MR SQUARE: And you had a look at this turf tie?

MR BATE: I did not want a good look. I had seen it before.

MR SQUARE: And with the exception of what Mr Roose had recently cut it had not been touched since you touched it last?

MR BATE: I cannot say that.

MR SQUARE: Are you accustomed to digging turf?

MR BATE: Yes.

MR SQUARE: And you know that the mark of the turf knife will remain on the edge for 15 years?

MR BATE: Sometimes it grows over.

MR SQUARE: Do you mean it gets green?

MR BATE: Certainly it does, and grass grows over.

MR SQUARE: On a peat tie?

MR BATE: On a peat tie.

MR SQUARE: You say grass grows over the marks of the knife in the peat tie?

MR BATE: Certainly.

THE JUDGE: How deep do you cut down?

MR BATE: Not very deep up there on the top of the hill. It is not like it is in a marsh.

THE JUDGE: How deep?

MR BATE: Perhaps a foot, 18 inches, or 15 inches. They are not very deep on top of the hills.

THE JUDGE: What would you do with the turf when you had cut it?

MR BATE: Oh, you spread it out on the land to dry.

THE JUDGE: What are they cut for?

MR BATE: To burn.

THE JUDGE: In due course you brought them home?

MR BATE: Yes.

MR SQUARE: You had one hearth in each of these two cottages?

MR BATE: Yes.

THE JUDGE: You say it is now turned into a barn?

MR BATE: Yes.

THE JUDGE: Did you look in?

MR BATE: I have seen it there.

THE JUDGE: And are the hearths still there, the hearths on which you used to burn turves, are they still there in the old place?

MR BATE: It is turned into a cattle building now.

THE JUDGE: They have removed the hearths, or are the hearths still there?

MR BATE: I cannot say.

THE JUDGE: It is rather unfortunate, because that is rather an important part of the case?

MR BATE: I dare say that was done away with then they turned it into a cattle house.

MR SQUARE: Defendant said he got some hot water on those for his cattle.

THE JUDGE: He obviously has not done it for - - -

MR SQUARE: 15 years.

THE JUDGE: He says he got peat there for themselves.

MR LASKEY: He said he burnt it in this building.

MR SQUARE: That was not true because he said he did not get any for 15 years.

THE JUDGE: He is only entitles to fuel.

MR LASKEY: But on the question of whether the hearth still exists. I want to remind you he has said he had burnt it there.

THE JUDGE: Somewhere, but not on the hearth.

MR SQUARE: He said he had got no turf for 15 years.

THE JUDGE: Yes, I know, but I do not know that non-use for 15 years is necessarily - - -

MR SQUARE: The question is intention. What did he get that turf for from the Moor?

MR LASKEY: I think my learned friend is suggesting I should not be allowed to recall the Defendant on that point.

MR SQUARE: I am not suggesting anything of the kind.

THE JUDGE: If you have got an independent witness who has been down there it would be very much better.

MR SQUARE: Mr Bate, do you know Mr Wellington at all?

MR BATE: I know the gentleman but I don't know anything about him, you know.

MR SQUARE: He was down at Trehudreth before you came to live at Penstrode?

MR BATE: Yes, a good many years.

MR SQUARE: And had left before you got there?

MR BATE: Yes.

MR SQUARE: Did you know a Mr John Coppin?

MR BATE: Yes.

MR SQUARE: Did he know you were taking turf off the Moor?

MR BATE: I don't know.

MR SQUARE: Did anyone see you take the turf off the Moor?

MR BATE: I don't know anything about that.

MR LASKEY: Did you ever try to conceal the fact from anybody you had taken turf?

MR BATE: Never.

MR LASKEY: When the turf was taken, what was done with it; is it left to dry?

MR BATE: Certainly.

MR LASKEY: Is it stacked or piled on the Moor for any time?

MR BATE: Some people do no the Moors but not around there.

MR LASKEY: Where is the turf actually dried?

MR BATE: Out on the dry ground, and spread.

MR LASKEY: Is that on the Common or down at the farm?

MR BATE: On the Common.

MR LASKEY: How long is it left like that on the Common?

MR BATE: That all depends on the weather.



MR LASKEY: We will take an average. Sometimes it is left a shorter time than others?

MR BATE: Well, the drier the weather the quicker they can - - -

MR LASKEY: What is about the quickest?

MR BATE: I can hardly tell you that.

MR LASKEY: Well, about?

MR BATE: The same as I told you, it all depends on the weather.

THE JUDGE: Supposing you got some dry weather, how soon could you bring it home?

MR BATE: Oh, about three weeks.

MR LASKEY: It would be lying out there for anybody to see for as long as that?

MR BATE: Certainly.

MR LASKEY: Is this the kind of peat that is called skim?

MR BATE: Oh, no.

MR LASKEY: Was it not?

MR BATE: This is just like marsh only shorter. Skim is only a little under the grass, dig up, and turn over.

MR LASKEY: Is it better stuff than skim peak?

MR BATE: Yes.

MR LASKEY: I suppose it is not quite as good as some peat which comes from marshy ground?

MR BATE: That is the best.

MR WILLIAM HARPER WAS THEN SWORN.

MR LASKEY: Is that your full name?

MR HARPER: Yes, sir.

MR LASKEY: You are the tenant of Greenbarrow, are you not?

MR HARPER: Yes.

MR LASKEY: That is in the Manor of Blilsland, is it?

MR HARPER: Yes.

THE JUDGE: You are a farmer?

MR HARPER: Yes.

MR LASKEY: That is Mr Parkin's land, is it?

MR HARPER: Yes, Mr Parkin's land.

MR LASKEY: I think you are about 60 years of age?

MR HARPER: 60.

MR LASKEY: And how long have you known Trehudreth Common?

MR HARPER: I have been there four years.

MR LASKEY: You have been at Greenbarrow four years?

MR HARPER: Yes.

MR LASKEY: Where were you before that?

MR HARPER: I was not farming before then.

MR LASKEY: Where were you living?

MR HARPER: At Metherin, Temple.

MR LASKEY: That is close by, is it not?

MR HARPER: Yes.

MR LASKEY: Well, you knew the Common before that?

MR HARPER: I did not farm on it.

MR LASKEY: Can you tell us before this time you have told us of, did you never farm there before then?

MR HARPER: My father farmed there before then, a great number of years.

MR LASKEY: Did you work with him?

MR HARPER: I served with him a part of the time.

MR LASKEY: Can you tell us about sending cattle on to the Moor during any of that time?

MR HARPER: They were always turned from Greenbarrow on to the Moors.

THE JUDGE: What is Greenbarrow, a farm, or Greenbarrow Downs?

MR LASKEY: You have a farm at Greenbarrow, have you not?

MR HARPER: Yes.

THE JUDGE: Greenbarrow downs are in your tenancy agreement, are they?

MR HARPER: Yes.

MR LASKEY: How many acres do you farm, Mr Harper, altogether?

MR HARPER: I think it is 80 acres enclosed.

THE JUDGE: Then you say your cattle always went somewhere?

MR HARPER: The cattle grazed on the Moor.

MR LASKEY: Where did the cattle graze?

MR HARPER: On Trehudreth Hill.

THE JUDGE: Was your father farming Greenbarrow farm?

MR HARPER: Yes, sir.

MR LASKEY: From about how long ago is it, you can remember working with your father when he was farming there?

MR HARPER: I was born there.

MR LASKEY: Some 60 years ago?

MR HARPER: Yes.

MR LASKEY: And how old were you when you began to work there?

MR HARPER: Ten years old, I should think.

MR LASKEY: You have a lot of cattle going on Trehudreth Common. Did anybody ever raise any objection until recently?

MR HARPER: Not a bit.

MR LASKEY: You, yourself, were pretty often up on the Common, were you not?

MR HARPER: Pretty often.

MR LASKEY: Do you know the Defendant's cattle mark?

MR HARPER: Yes, sir.

MR LASKEY: Have you ever seen his cattle up there?

MR HARPER: I have seen his cattle on the Moor.

MR LASKEY: That is Trehudreth Common you are speaking of when you say the Moors?

THE JUDGE: What do you mean by the Moors? Do you mean all that range of downs, not only Trehudreth but Greenbarrow, Newton, Blisland? Do you mean you have seen them there?

MR HARPER: It is a large piece of Trehudreth Hill belonging to Greenbarrow as an out-right. When my cattle are grazing on that hill there is nothing to keep them from going on Trehudreth Hill through the roads leading to Greenbarrow.

THE JUDGE: But you would not want any roads for your cattle to graze on Greenbarrow, because that is part of the Common. You say you are tenant of Greenbarrow Downs now. That is included in your tenancy?

MR HARPER: There is always some outside the ring fence.

THE JUDGE: And the bit outside next to you is Greenbarrow?

MR HARPER: Greenbarrow Farm.

THE JUDGE: And your farm includes what is now called Greenbarrow Downs?

MR HARPER: Perhaps, it does.

MR LASKEY: As a matter of fact, Trehudreth Downs is rather a big area, is it not?

MR HARPER: Yes.

MR LASKEY: People speak of Trehudreth Downs as including land right up to you?

MR HARPER: Yes.

MR LASKEY: And your animals are turned out and they go up on to the Common?

MR HARPER: Yes, through the winter.

MR LASKEY: And you have told us you know the Defendant's mark, and you have seen his animals up on the Common too?

MR HARPER: I have seen them on the Common.

MR LASKEY: You have said that up to recently nobody has raised any objection. Has anybody raised an objection to the animals being up there recently?

MR HARPER: No, sir.

MR LASKEY: Do you know Mr Chapman?

MR HARPER: I know Mr Chapman.

MR LASKEY: Has he ever spoken to your about it?

MR HARPER: I cannot remember he has.

MR LASKEY: Did he speak to you about any other matter?

MR HARPER: We have talked about other matters but not about the grazing rights.

MR LASKEY: What was it he spoke to you about?

MR HARPER: He referred to the last conversation, I think. Something referring to taking up a lease a great number of years ago.

MR LASKEY: Was there anything else; anything about turf. Do you remember what subject?

MR HARPER: No.

MR SQUARE: As a matter of fact, your forebears in 1828 had a lease granted them for 99 years of certain land enclosed from the Common?

MR HARPER: Yes.

MR SQUARE: Provided certain persons lived who have since died, I suppose. Now we have down here Greenbarrow Farm, a little wedge-shaped piece of land here like that, with the new turnpike road running through it, and outside that is Greenbarrow Common, comprising 80 acres, that is quite unenclosed?

MR HARPER: Yes.

MR SQUARE: So you have a right as the tenant of Greenbarrow to put your cattle on the Greenbarrow Down?

MR HARPER: Yes.

MR SQUARE: In fact, when Mr Parkin bought, he bought subject to the rights of common on the downs of the tenants of the respective manors, and in particular the owners and occupiers of certain farms, including Greenbarrow. And you say you have always had a right to put cattle on that part of Great Trehudreth, as undoubtedly you have, and if your cattle range you have no objection, and as a neighbour no-one else has. But you don't put more cattle on Trehudreth Down than Greenbarrow will hold. How many bullocks do you consider could graze on the Common to the acre?

MR HARPER: I turn out about 10 to graze on the Common.

MR SQUARE: On a Common of 80 acres. For how long?

MR HARPER: I turn them out, not altogether; just as they require a change from inside to out. Two weeks out and two weeks in.

MR SQUARE: 80 acres would not stand constant grazing day in and day out by 12 bullocks?

MR HARPER: Oh, yes.

MR SQUARE: You think it would?

MR HARPER: Yes, it would keep 12 bullocks.

THE JUDGE: All through the year?

MR HARPER: It would not in the winter unless they came to the house to get some hay.

THE JUDGE: You would have them turned out during the day in winter, and during the day and night in the summer?

MR HARPER: Yes.

THE JUDGE: I understand that Greenbarrow, apparently, he leases Greenbarrow now includes both the farm and the Common?

MR SQUARE: He leases the farm with the right of grazing on the Common. Is not that so?

MR HARPER: Yes.

THE JUDGE: Oh, I see. He does not lease the Common. There is attached to the farm a right of turning out animals?

MR HARPER: Yes.

THE JUDGE: Are you restricted to the number at all?

MR HARPER: No.

THE JUDGE: But nobody else has a right to turn out on the Common, have they?

MR HARPER: I think Mr Bennett or Derfold has a right to turn out.

THE JUDGE: How many animals has he a right to turn out?

MR HARPER: I don't know.

THE JUDGE: Do you ever see other people's animals on Greenbarrow?

MR HARPER: I expect they wander there occasionally. There is nothing to keep them off.

THE JUDGE: You have seen Defendant's animals over all that long stretch of Downs?

MR HARPER: Yes, they wander about.

THE JUDGE: Just where they like?

MR HARPER: Yes.

MR WILLIAM GREENAWAY WAS THEN SWORN.

MR LASKEY: Your full name is William Greenaway?

MR GREENAWAY: Yes, sir.

MR LASKEY: You are the tenant of Wallhouse Farm, are you not?

MR GREENAWAY: Yes.

MR LASKEY: That is Blisland Manor, is it not?

MR GREENAWAY: Yes.

MR LASKEY: How long have you known this neighbourhood?

MR GREENAWAY: 35 years.

MR LASKEY: And is that the time you have been at Wallhouse?

MR GREENAWAY: Yes.

MR LASKEY: And during that time where have you put your cattle to graze?

MR GREENAWAY: On Trehudreth Hill.

MR LASKEY: It is the common sloping up from the direction of Penstrode and also from Greenbarrow. Whereabouts is it highest? The middle or somewhere else? Do you yourself often go on the Common?

MR GREENAWAY: Yes.

MR LASKEY: Do you know Mr Roose's cattle mark?

MR GREENAWAY: Yes.

MR LASKEY: Can you tell us whether you have seen his cattle on the Common?

MR GREENAWAY: I have seen them there because I go there every day to see my own.

MR LASKEY: And for about how long have you seen his cattle?

THE JUDGE: How many years since you - - -

MR GREENAWAY: Oh, the whole time, 35 years.

MR LASKEY: Have you worked for Mr Roose at one time?

MR GREENAWAY: Yes.

MR LASKEY: When was that, was that before you came to Wallhouse?

MR GREENAWAY: Since I came to Wallhouse.

MR LASKEY: For how long have you worked for him?

MR GREENAWAY: Oh, for 20 years, to and fro.

MR LASKEY: Off and on?

MR GREENAWAY: Yes, sir.

MR LASKEY: Can you say from working for him where he has put his cattle on the Common?

MR GREENAWAY: Well I have seen them on the Common once.

MR LASKEY: Did you ever turn them out yourself?



MR GREENAWAY: No, I don't know that ever I did.

MR LASKEY: You have seen them up there?

MR GREENAWAY: I have seen them there.

MR LASKEY: You told me you yourself turned your own cattle on the Common from Wallhouse?

MR GREENAWAY: Yes.

MR LASKEY: Has anybody asked you to pay for doing that?

MR GREENAWAY: Yes.

MR LASKEY: When was that and who asked you to pay?

MR GREENAWAY: Well, that was, I suppose, about 30 years ago. I cannot say to a year.

MR LASKEY: Who was it asked you to pay?

MR GREENAWAY: Mr William Bunt; he is dead now.

MR LASKEY: Did you?

MR GREENAWAY: Yes.

MR LASKEY: For how long?

MR GREENAWAY: I paid him for nearly 20 years.

MR LASKEY: Did anybody else ask you to pay after that?

MR GREENAWAY: Yes.

MR LASKEY: Who was that?

MR GREENAWAY: Mr Chapman.

MR LASKEY: And did you pay him?

MR GREENAWAY: No. I never paid him anything.

MR LASKEY: Just answer this, yes or no. Did you go and see Mr Thomas, your landlord?

MR GREENAWAY: Oh, my landlord does not know I was paying anything. I paid for several years. He does not know it, and I said nothing to him about it, and one night when he knew I was paying - - -

MR LASKEY: You must not, tell us what you said to him.

THE JUDGE: When you told him he was not very pleased?

MR GREENAWAY: When I told him he told me I was not to pay anything more. He was going to see about it.

MR LASKEY: After that, did you pay Mr Chapman anything?

MR GREENAWAY: I never paid Mr Chapman anything.

MR SQUARE: Have you got a lease of your farm, Mr Greenaway?

MR GREENAWAY: No, I am a yearly tenant.

MR SQUARE: No agreement?

MR GREENAWAY: No.

MR SQUARE: Anything in writing at all?

MR GREENAWAY: No.

MR SQUARE: And 30 years ago when you took the farm Mr Bunt told you he was the lessee of Trehudreth Moor?

MR GREENAWAY: He told me I had got no right to turn out.

MR SQUARE: Did he tell you he was the lessee of Trehudreth Moor; that the Moor had been let to him the solicitors?

MR GREENAWAY: Oh, yes.

MR SQUARE: Did he say that no one a right to graze on the Moor unless they paid him?

MR GREENAWAY: That is what he told me, but that was not right.

MR SQUARE: And you paid him regularly?

MR GREENAWAY: Well, about once a year I paid him.

MR SQUARE: And did you ever meet any of your neighbours?

MR GREENAWAY: He was a neighbour of mine.

MR SQUARE: Did you meet any of the neighbours at that time, people of Newton, of Poldhu, and all round there? Did you used to meet in the local "pub." You know what a public house is?

MR GREENAWAY: Yes.

MR SQUARE: Did you meet your friends at Blisland "pub" or anywhere like that?

MR GREENAWAY: Oh, no. I don't go to the "pub." I don't belong to that tribe.

MR SQUARE: Used you to meet your friends from Poldhu?

MR GREENAWAY: Yes.

MR SQUARE: Did they pay too?

MR GREENAWAY: Yes.

MR SQUARE: How much did you pay? £3 a year?

MR GREENAWAY: £1 a year.

MR SQUARE: And how much did they pay at Poldhu?

MR GREENAWAY: I cannot say.

MR SQUARE: 30s.

MR GREENAWAY: Something like that; I cannot say.

MR SQUARE: And what about Newton; did they pay?

MR GREENAWAY: No.

MR SQUARE: They did not because they had their own Moor?

MR GREENAWAY: Yes.

MR SQUARE: As a matter of fact, did not everybody who had not got Moors of their own attached to their farms pay for the grazing?

MR GREENAWAY: I do not think anybody ever paid anything except me and Langford.

MR SQUARE: If they could get out of it. What about when you cut turf? Do you know mr Lander of Wallhouse?

MR GREENAWAY: I knew him and that is just all.

MR SQUARE: Did you know he used to get turf up in Blisland? Wallhouse is a Molesworth house, is it not?

MR GREENAWAY: I cannot say.

MR SQUARE: At any rate, we are very much obliged to you for coming an to know you have paid for grazing, even if you won't pay the foreigner who has come o live amongst you.

THE JUDGE: When you saw Mr Roose's animals on the Moor also, did you ask whether he paid anything or not?

MR GREENAWAY: No.

MR RICHARD THOMAS WAS THEN SWORN

MR LASKEY: Your name is Richard Thomas?

MR THOMAS: Yes, sir.

MR LASKEY: You live at Cardinham?

MR THOMAS: Yes, sir.

MR LASKEY: And have you owned Wallhouse for some years past?

MR THOMAS: For some 20 odd years.

MR LASKEY: And Mr Greenaway is your tenant?

MR THOMAS: Yes, sir.

THE JUDGE: You are he owner of Wallhouse?

MR THOMAS: I am, sir.

THE JUDGE: You have been long?

MR THOMAS: For 20 odd years.

MR LASKEY: Do you know if a former owner before you was Mr Collins?

MR THOMAS: I think so. That was the name.

THE JUDGE: You bought from him?

MR THOMAS: No, I bought it from the mortgagees, and the freehold.

MR LASKEY: Did you have some conversation with Mr Chapman about rights on Trehudreth Common?

MR THOMAS: Mr Chapman asked me if I had any rights, and I told him as far as I knew I had.

MR LASKEY: Did you know whether, that right had actually been used; that people had grazed on the Common?

MR THOMAS: Not more than my tenant always made use of it.

MR LASKEY: Did you have a meeting later with Mr Chapman?

MR THOMAS: Yes, I had an interview with Mr Chapman.

MR LASKEY: And was that an interview in Bodmin?

MR THOMAS: Yes, at Bodmin, at one time. Twice at Bodmin.

MR LASKEY: Did he make any further objection to your stocking after the last interview?

MR THOMAS: He never said anything to me about stocking because I don't stock.

MR LASKEY: Did he say you had no right to stock?

MR THOMAS: He as good as told me so.

MR LASKEY: Have you seen any of Mr Roose's cattle on the Common?

MR THOMAS: I don't know that I have. I never go on the Common, not once in two years.

MR LASKEY: Do you know anything about Mr Bunt having collected rent from your tenant?

MR THOMAS: I never heard anything until Mr Chapman demanded it from my tenant, and then I told him that as far as I knew he had a perfect right there and was not to pay.

MR LASKEY: I want to ask you one question with regard to the amount claimed for the keep of an animal. What is about a fair amount to pay a week for the keep of a bullock on a Common like this?

MR THOMAS: Well, I used to pay 4d. a week years ago.

THE JUDGE: How many years ago is that?

MR THOMAS: About 7 years ago. I retired 7 years ago.

THE JUDGE: Was that a full-grown bullock?

MR THOMAS: Yes, sir. Two years old and over.

MR LASKEY: That was just after the war. That was seven years back in 1919. And were prices high then? Have they gone up or gone down since then, the prices generally for grazing?

MR THOMAS: As far as I know it is about the same.

MR SQUARE: In fact, Mr Thomas, the persons who allow cattle to graze on their Moors are about the only people who have not put their prices up?

MR THOMAS: Where I put cattle, that were their own private property, and they could charge what they liked.

MR SQUARE: You say, so far as you know about - - - on Trehudreth?

MR THOMAS: Yes, sir.

MR SQUARE: Do you know you have no rights there at all?

MR THOMAS: No, sir, I do not. I always thought I had a right there and I do now.

MR SQUARE: Do you know that this property was sold years ago when the right to the common was reserved to the vendor?

MR THOMAS: I did not know. I bought it blindly.

MR SQUARE: Who did you buy it from?

MR THOMAS: A man named Littleton. He got it from a man named Lawrie. He got it from Collins.

MR SQUARE: And when Collins bought the right of common was reserved to the vendor. Did you ever farm this land yourself?

MR THOMAS: No, sir.

MR SQUARE: It was not good enough for you?

MR THOMAS: No, sir. I bought it for speculation.

MR SQUARE: It is pretty poor stuff, is it?

MR THOMAS: About the same as the rest of the stuff around there.

MR SQUARE: Moorland farms are not very much good?

MR THOMAS: Oh, no. They are not good enough for me.

MR SQUARE: When you are grazing cattle on the farms there, how many could you keep in, say, a 20 acres field?

MR THOMAS: It would all depend if I was on the Moors or on my own land.

MR SQUARE: In your own land?

MR THOMAS: In my own land. On good land like I used to have, 20 bullocks.

MR SQUARE: Is Wallhouse good land?

MR THOMAS: No, sir. You cannot do that in Wallhouse.

MR SQUARE: I am suggesting a bullock to three acres there?

MR THOMAS: That is about right.

MR SQUARE: And Penstrode is about the same as Wallhouse?

MR THOMAS: Well, it varies.

MR SQUARE: But on the Common itself one to 10 is about as much as you could put on?

MR THOMAS: I would not like to say. I have never had any experience.

MR SQUARE: Then you say you did not even know your tenant was paying Mr Bunt?

MR THOMAS: Not until Mr Chapman purchased.

MR SQUARE: And then, I suppose, they thought they had a pigeon to pluck and would not pay the rents?

MR THOMAS: I cannot say. They never said anything to me.

MR SQUARE: They came and told you Mr Chapman wanted them to pay him the same as they had paid Mr Bunt, and you said they should not pay because you understood they had a right there?

MR THOMAS: Yes.

MR SQUARE: Do you know that Mr Bunt used to rent the Common with Trehudreth Barton?

MR THOMAS: I cannot say.

MR LASKEY: You have seen Penstrode recently?

MR THOMAS: Yes, sir.

MR LASKEY: Is there any ground for suggesting it is little better than rough moorland, the enclosed part of the farm itself?

MR THOMAS: It is a little better.

MR LASKEY: It has been improved, has it not?

MR THOMAS: I should say it has.

MR SQUARE: It is a little better.

MR THOMAS: Yes. Some, considerably. Some has not been worked for a number of years and he has improved it.

MR LASKEY: You said your own land would support one bullock per acre?

MR THOMAS: That would be about it.

MR LASKEY: Now about the price of grazing a bullock, would that include anything beyond the actual food?

MR THOMAS: We used to have them looked after.

MR LASKEY: That is all in the 4d, is it?

MR THOMAS: Yes that is all in the 4d.

THE JUDGE: You say you told your tenant not to pay because you thought you had a right there. What made you think you had a right there?

MR THOMAS: An Old Conveyance that I had.

THE JUDGE: What Conveyance was that?

MR THOMAS: It said I had turbary and pasture. I am not claiming any right outside there.

THE JUDGE: Your old Deed said something about common rights?

MR THOMAS: Yes, sir.

MR SQUARE: You have not got that here?

MR THOMAS: No, sir.

MR THOMAS HENRY PHILP WAS THEN SWORN.

MR LASKEY: Thomas Henry Philp, is that your full name?



MR PHILP: Yes, sir.

MR LASKEY: Are you farming now?

MR PHILP: Yes.

MR LASKEY: At Penant?

MR PHILP: Yes.

MR LASKEY: That is Blisland, is it not?

MR PHILP: Yes.

MR LASKEY: Before that, I think you lived at Carblagget, didn't you?

MR PHILP: Yes.

MR LASKEY: How long was that?

MR PHILP: About 10 years.

MR SQUARE: Carblagget is adjoining Treswiga.

MR LASKEY: When was that?

MR PHILP: About 43 years ago.

MR LASKEY: And since then you have been at Penant, have you?

MR PHILP: Yes, sir.

MR LASKEY: Is Penant near by the Trehudreth Common?

MR PHILP: About a mile.

MR LASKEY: Penant is some distance from Stokely, is it not?

MR PHILP: Yes.

MR LASKEY: Well, now, while you were at Carblagget, where were your animals stocked? Where did you put your animals to graze?

MR PHILP: They used to go round to different places then.

MR LASKEY: Can you tell us anything about Trehudreth Common?

MR PHILP: I know a bit about it.

MR LASKEY: Do you know anything about the animals going there?

MR PHILP: Yes, cattle go there.

MR LASKEY: Where from?

MR PHILP: All round.

MR LASKEY: Did you yourself at the time you were at Carblagget to on to Trehudreth at all?

MR PHILP: We have been there on the Downs.

MR LASKEY: Do you know the Defendant's cattle mark?

MR PHILP: Yes.

MR LASKEY: Have you seen his cattle there?

MR PHILP: Yes, many a time.

MR LASKEY: Now, you were at Carblagget when you were quite a boy?

MR PHILP: We were all boys then.

MR LASKEY: Was your father farming there then?

MR PHILP: Yes.

MR LASKEY: And did you work for him?

MR PHILP: Yes.

MR LASKEY: About how old were you when you began working for him?

MR PHILP: Since I could get about.

MR LASKEY: You started pretty young, did you?

MR PHILP: yes.

MR LASKEY: Now did you yourself ever drive his cattle to any particular place to graze?

MR PHILP: Only just turned them out and they would go where they had a mind to.

MR LASKEY: They would go off on their own?

MR PHILP: Yes.

THE JUDGE: You left them to go where they liked?

MR PHILP: There is nothing to stop them.

MR SQUARE: You turned them out on this Moor at Treswiga?

MR PHILP: From Carblagget.

MR SQUARE: That Moor is a private enclosed Moor, which was formerly part of Newton Common?

MR PHILP: Yes.

MR SQUARE: Which is really a part of Blisland?

MR PHILP: Yes.

MR SQUARE: Nothing to do with the Morsheads. It was Molesworth property?

MR PHILP: Yes.

MR SQUARE: Then all you say is when you once got them on the Moor you let them go where they liked, and they came in when it got dark, and you did not mind whose Moors they strolled over?

MR PHILP: Not particularly.

THE JUDGE: What was the part you turned them on to?

MR SQUARE: It was a Moor I did not catch the name of? What was the name of that Moor?

MR PHILP: Naillybarrow.

MR SQUARE: And your rights to it; that was given you by your lease?

THE JUDGE: And you had a right under your lease to turn out there?

MR PHILP: Yes.

MR SQUARE: As tenants of Blisland Manor?

MR PHILP: Yes.

MR SQUARE: It was the Molesworth property?

MR PHILP: Yes.

MR SQUARE: You have been about in this district a good deal, have you?

MR PHILP: All my lifetime, I believe.

MR SQUARE: And you know that the Morsheads did destroy all rights over Trehudreth Common, the lower part of it, down towards Trehudreth Mill and Trehudreth Barton? Do you remember that?

MR PHILP: I don't remember any of that.

MR SQUARE: Do you know they used to charge for grazing down there?

MR PHILP: I have never been charged, sir.

MR SQUARE: Oh, no, you would have a right to roam, but other people would have to pay?

MR PHILP: I don't know anything about that.

MR SQUARE: Oh, yes, you do. You know Mr Greenaway had to pay.

MR PHILP: No, I don't.

MR SQUARE: Yes, you do. You have heard it in the past week.

MR PHILP: I have not heard it.

MR SQUARE: Who have you not heard it from?

MR PHILP: Nobody, sir.

MR SQUARE: How could you have heard it, then?

MR PHILP: I have not heard it.

MR SQUARE: Did you hear it from Mr Cox?

MR PHILP: I don't know Mr Cox. He does not belong out there now.

MR SQUARE: Does he pay it now?

MR PHILP: I cannot tell you.

MR SQUARE: Why cannot you tell me? You don't want to be mixed up in this at all, do you?

MR PHILP: No.

MR LASKEY: Is there anything to separate Naillybarrow Common from the other commons at the side, for instance, Newton Common?

MR PHILP: Not very much, sir. A little bit of water.

MR LASKEY: Anything to separate it from Greenbarrow?

MR PHILP: No, sir, they could go right over to Greenbarrow.

MR LASKEY: Open land?

MR PHILP: Yes.

THE JUDGE: They may have been trespassing from the very first. They might have got grazing rights over their own particular Moors and beyond that have been trespassing.

MR LASKEY: Of course, all these witnesses confirm the fact that for a very long time - - -

THE JUDGE: Oh, there is no question about that. These cattle have been scattered all over the place, but the only question is whether you have got a right to take them on the Moors. Once you have got them there it is perfectly obvious there is nothing to prevent them going everywhere. That does not give a right of trespass.

MR LASKEY: No, of course, as regards other commons they went on to apart from the Common they had a right on to, it was a trespass, as it cannot be a question of vicinage.

THE JUDGE: As it was a question of trespassing, I suppose they found it better to say nothing and take their chances of it.

MR LASKEY: Of course. Still, the fact remains that the witnesses all speak of the part of the Common that is nearest my client's holding. That is the part I am concentrating on.

MR ROBERT GREENAWAY WAS THEN SWORN.

MR LASKEY: Mr Greenaway, you live now at Blisland?

MR GREENAWAY: Yes.

MR LASKEY: Do you know Trehudreth Moor?

MR GREENAWAY: Yes.

MR LASKEY: Do you know the Defendant's cattle mark?

MR GREENAWAY: No, sir. I know nothing about the marks.

MR LASKEY: Do you know anything about these cattle; where they graze; Mr Roose's cattle?

MR GREENAWAY: Oh, they graze on it certain times.

MR LASKEY: Have you seen them there?

MR GREENAWAY: Yes.

MR LASKEY: Was there a time when you used to cross the Common often?

MR GREENAWAY: Yes.

MR LASKEY: How long ago?

MR GREENAWAY: That would be 35 years ago. It was when I was an apprentice. I used to cross the Common every day for tow or three years>

MR LASKEY: Can you tell us whether Mr Roose's or his father's cattle were there then?

MR GREENAWAY: I saw the father's there; I don't know about the son. I think they were all together, but I saw the father's cattle - - a big flock - - over it different times and in different places. They used to go out and go there mornings and evenings. That would be in the winter-time we generally used to see them. In the winter we used to see them flocking out and going home.

MR LASKEY: Would there be more in winter than in summer or what would the numbers be?

MR GREENAWAY: I should say the number would be about 40.

THE JUDGE: You say there would be a larger number in the winter?

MR GREENAWAY: Well, as a rule there would be, because in the summer some would be in the fields; the smaller ones; but there would be a decent flock all the year round.

MR LASKEY: Are yearlings sent out in the winter?

MR GREENAWAY: They are sent out smaller in the winter as a rule than they are in the summer.

MR SQUARE: No questions, sir.

THE JUDGE: Which way did your journey across the Moor take you?

MR GREENAWAY: We lived at Bradford, Blisland. We had to go straight across the Common when it was fine weather, and when it was rough we used to take the roadway.

THE JUDGE: You used to go northwards, did you?

MR GREENAWAY: Yes.

THE JUDGE: You went across Newton as well as Trehudreth Downs, did you?

MR GREENAWAY: We used to go in Cardinham then, sir.

THE JUDGE: You went across all the Moors that way, did you?

MR GREENAWAY: Yes, straight across the Moors, across the turnpike and in above Cardinham.

THE JUDGE: Did you see Mr Roose's cattle on the Moors, beside Trehudreth?

MR GREENAWAY: Yes, sir. I have seen them at different times outside the walls there. Of course, they would be on the outside. Sometimes they would come up and go on the Commons. You would not see them always.

MR ARCHIE HOSKING RUNNALLS WAS THEN SWORN.

MR LASKEY: Archie Hosking Runnalls, is that your full name? Where are you living now?

MR RUNNALLS: Treswiga.

MR LASKEY: That is with your father?

MR RUNNALLS: No; where my father lived.

MR LASKEY: Tell me, do you know anything about the various cattle on the Common, Trehudreth Common?

MR RUNNALLS: I know different people have had cattle there and I have seen different people's cattle there.

MR LASKEY: For how long?

MR RUNNALLS: Since I have been at Treswiga, and before then.

MR LASKEY: How long is that?

MR RUNNALLS: 16 or 17 years.

MR LASKEY: Do you know, Mr Runnalls, whether Mr Roose has had any there?

MR RUNNALLS: Yes, I have seen his there. I go across that Common practically on every occasion I ride to Bodmin.

MR LASKEY: There is one other thing I wanted to ask you about, and that is this: Do you know anything about what are now the two cottages up at Penstrode; at East or Lower Penstrode?

MR RUNNALLS: The old cottages at Lower Penstrode?

MR LASKEY: Yes, about the hearths there. Can you tell us anything about that?

MR RUNNALLS: Well, I noticed that the chimney pots were there when I was there the other day.

THE JUDGE: Did you go into the house?

MR RUNNALLS: Yes.

THE JUDGE: Was the hearth there?

MR RUNNALLS: I did not take any notice at all, more than it was an old farmhouse.

MR LASKEY: You did not notice if there was any fireplace in existence?

MR RUNNALLS: No, I did not take any notice of them.

MR LASKEY: The chimneys you saw from the outside?

MR RUNNALLS: Yes.

MR SQUARE: All this evidence about cattle on the Moor with Mr Roose's markings is rather indefinite. Have you ever seen more cattle of Mr Roose on the Moor than there are today?

MR RUNNALLS: Well, I cannot say I have seen more of Mr Roose's cattle, but I have seen more cattle on Trehudreth Moor than there are there today.

MR SQUARE: You cannot tell us whether Mr Roose is turning more cattle on the Moor now than he was a year ago?

MR RUNNALLS: No; I cannot say that.

MR SQUARE: Or more than he was 20 years ago?

MR RUNNALLS: No.

MR SQUARE: All you can say is you have seen his cattle on the Moor and you know he has got a chimney to his house?

MR RUNNALLS: Yes.



MR ROGER BUNT WAS THEN SWORN.

MR LASKEY: Mr Roger Bunt, is that your full name?

MR BUNT: Yes.

MR LASKEY: You are at Cardinham, are you not?

MR BUNT: Yes.

MR LASKEY: Did you attend the auction sale in 1919 when Trehudreth Common was sold?

MR BUNT: I did.

MR LASKEY: Was Mr Chapman there?

MR BUNT: I think so.

MR LASKEY: And Mr Roose, too? Did you ask any question at the time that the sale was going on?

MR BUNT: I did.

MR LASKEY: What was that?

MR BUNT: I asked Mr Button if, when this piece of land - - -

THE JUDGE: This is the auctioneer?

MR LASKEY: The auctioneer, Mr Button.

THE JUDGE: Is he authorised? Was he agent of the vendor?

MR LASKEY: He signed the contract certainly. I tender in evidence that the auctioneer was the agent of the vendor and would be authorised to answer questions.

THE JUDGE: Is he authorised by him to make any answer out of his own head binding the vendor?

MR LASKEY: I have no direct proof of any particular form of authority, but I do say that the auctioneer had general authority to act in all ways necessary for the vendor in connection with the purposes of the sale. You and the Plaintiff were present. It was a statement made in his presence and was admissible in that way.

MR SQUARE: And you will remember that Mr Peck was present as solicitor, and the auctioneer's credit would therefore be done away with immediately.

MR LASKEY: You asked Mr Button that?

MR BUNT: I asked when Trehudreth Commons were to be sold if anybody else had a right.

MR LASKEY: What right did you say?

MR BUNT: If anybody else had a right, common right, or a right, on that piece.

MR LASKEY: What did Mr Button say?

MR BUNT: He said there were certain people that had a right there.

MR LASKEY: Did he say anything about what the vendor was selling?

MR BUNT: He said if was to be sold and the purchaser could enjoy the same right as Lady Morshead did.

THE JUDGE: It was a rather cautious answer on the part of the auctioneer.

MR SQUARE: He has found out it was a law action.

MR LASKEY: Now you have lived close to Trehudreth Moor for a long time, have you?

MR BUNT: Well, almost all my lifetime.

MR LASKEY: How long can you speak to; the period you have known the Moor?

MR BUNT: Well, I can honestly say 35 years.

MR LASKEY: Can you tell us about whether you have seen Mr Roose's cattle there?

MR BUNT: All the time I have been going over the Moors.

MR LASKEY: Just one other thing. Your cattle, I suppose, are on Cardinham Moor?

MR BUNT: Yes.

MR LASKEY: And do they stay there or do they go on to other Moors?

MR BUNT: Often they have strayed and I have had to fetch them back.

MR SQUARE: Have they been to Blisland sometimes?

MR BUNT: Yes.

MR SQUARE: In fact, if the weather is at all tricky, they will go miles?

MR BUNT: There is no dependence on them.

MR SQUARE: But you would not claim a right of common on other places your bullocks happened to roam on?

MR BUNT: I should not think I would.

MR SQUARE: You are a relation of Mr William Bunt?

MR BUNT: A brother.

MR SQUARE: And do you know he rented Trehudreth Moor from Lady Morshead?

MR BUNT: I know he rented Great Trehudreth.

MR SQUARE: And also Trehudreth Common?

MR BUNT: I did not know he rented it. He collected money from certain people.

MR SQUARE: I have here a lease I shall put in presently. It states that he was a tenant of all that farm called Trehudreth, containing 98 acres, also 206 acres of moor pasture, and known as Trehudreth Common. You say you know he used to collect moneys from adjoining farmers?

MR BUNT: Yes.

MR SQUARE: Was Mr Greenaway one?

MR BUNT: I think so.

MR SQUARE: Mr Cox, another?

MR BUNT: I cannot say that.

MR SQUARE: Who was Mr Cox?

MR BUNT: A farmer at Poldhu, I suppose you mean.

MR SQUARE: He was there before the tenant who has given evidence today?

MR BUNT: Yes, I should think.

MR SQUARE: And who else?

MR BUNT: What do you mean, who else?

MR SQUARE: You say you knew your brother-collected money from various persons?

MR BUNT: Well, Mr Green.

MR SQUARE: Who was Mr Green?

MR BUNT: He is here in Court.

MR SQUARE: Do you mean Mr Greenaway?

MR BUNT: We always call him Green.

MR SQUARE: That is one. Who is the second?

MR BUNT: I don't know anybody else, more than Mr Langford. I think he collected from Mr Langford.

MR SQUARE: What farm was he on?

MR BUNT: That was Poldhu.

MR LASKEY: That is my last witness, but I am afraid I shall have to be allowed to recall the Defendant to get information on the hearths. I had hoped to get that from Mr Runnalls, but apparently he does not know.

THE DEFENDANT WAS THEN RECALLED.

MR LASKEY: You have been sworn. I want to ask you to tell us about these two cottages. The one where Mr Cole used to live and the other witness. Have you been in them recently? The ones that are now houses for cattle?

MR ROOSE: I have never lived in them.

MR LASKEY: Have you been in them?

MR ROOSE: Yes, every day.

MR LASKEY: When they were put to the use of housing cattle was anything done to the inside of them; any alteration made?

MR ROOSE: The house was divided with a wooden partition.

MR LASKEY: To make stalls, was it?

MR ROOSE: This side was Cole's house and the other was Steven's house.

THE JUDGE: A wooden partition?

MR ROOSE: Yes; and now we have turned it into a cattle house and you have still the two chimneys so you can have fires there; do anything there.

THE JUDGE: Was there a fireplace at each end?

MR ROOSE: Yes, and they are there now at the present time.

THE JUDGE: They were at each end of the cottage, as far away from each other as they could be?

MR ROOSE: That is right.

THE JUDGE: They are still there?

MR ROOSE: Still there.

THE JUDGE: Have you pulled out the partition now?

MR ROOSE: Took out the partition.

MR LASKEY: The chimneys outside. Do they come out at the same point in the roof or at different places?

MR ROOSE: Come out just, like chimneys would in a house.

MR LASKEY: Do they come out together or separate?

MR ROOSE: Separate, one at each end.

MR SQUARE: This was an old farmhouse?

MR ROOSE: Yes, or an old cottage. And why I did not go down there to live was it was down in a pit, and my wife was not very well, and I built a new house at the top.

MR SQUARE: This was the old farmhouse originally?

MR ROOSE: I can never remember. It is an old farmhouse.

MR SQUARE: It was before your time? When was the house divided into two parts?

MR ROOSE: I cannot remember. All I can remember was when Mr Stevens lived there and Mr Cole, one at each end.

MR SQUARE: Was one side the old kitchen of the farmhouse, and the other side the old dining room?

MR ROOSE: I cannot say because the floor is all the same. One class flooring, blue slate.

MR SQUARE: Where would the dairy be?

MR ROOSE: It has not got a dairy there.

MR SQUARE: It might be, of course, that the room on one side was the dairy, and the other was the kitchen?

MR ROOSE: I never lived in it. I don't know anything about it.

THE JUDGE: What else was done to the house when it was turned into a cattle house? Is the roof still on?

MR ROOSE: The roof is still on.

THE JUDGE: And are they simply turned in there loose?

MR ROOSE: No; I have got bullocks tethered along. I can tie 13 bullocks in that house; six one side and seven the other.

THE JUDGE: You have made some sort of stalls, have you?

MR ROOSE: That is right.

THE JUDGE: Mangers put in?

MR ROOSE: No mangers. Bullocks tethered. We tie our cattle up.

THE JUDGE: You give them food in there? Where is that put?

MR ROOSE: In front of them.

THE JUDGE: In baskets or on the ground?

MR ROOSE: On the ground.

THE JUDGE: Then you said every now and then you wanted to heat some water there?

MR ROOSE: I do summer times, and if we are killing pigs at any time. I left the chimneys open in case we should want to go down there killing pigs, because there is water close by. I have got a big tank close by.

THE JUDGE: How often do you kill pigs?

MR ROOSE: Two or three times a year.

THE JUDGE: What do you do when you are going to kill pigs? You make a fire on one of the hearths, made partly of peat and partly of wood, and nothing else, and put a large cauldron over it to heat water?

MR ROOSE: There are iron bars across the chimney and I hitch up a boiler.

THE JUDGE: You only use one for that purpose, I suppose?

MR ROOSE: Yes.

THE JUDGE: You don't use the other?

MR ROOSE: We have not, as yet.

THE JUDGE: In your own house, how many rooms have you there?

MR ROOSE: A 9-roomed house.

THE JUDGE: That is abandoned is it, the claim for the new house?

MR LASKEY: The Defendant's house is, of course, a new house.

THE JUDGE: There is no claim for that?

MR LASKEY: No.

MR SQUARE: Well, sir, I would like if I can to call Mr Button, the auctioneer. I think we should get through with him in 10 minutes. He is a very short witness.

THE JUDGE: Oh, yes. Now, what do you propose to do?

MR SQUARE: Well, sir, it looks as if we shall have to adjourn.

THE JUDGE: You have got through your evidence.

MR SQUARE: Oh, no. I have got five witnesses to call.

THE JUDGE: Oh, rebutting evidence?

MR SQUARE: Yes. We might arrange for the other witnesses to come up to Plymouth and give evidence there.

MR LASKEY: I should be very glad if that could be done.

MR SAMUEL THOMAS BUTTON WAS THEN SWORN.

MR SQUARE: Mr Button, what is your full Christian name?

MR BUTTON: Samuel Thomas.

MR SQUARE: And you are an auctioneer carrying on the business at St Tudy, Cornwall?

MR BUTTON: Yes.

MR SQUARE: And you have been at it all your life?

MR BUTTON: About 30 years.

MR SQUARE: And you know something about auctioneering and also about country farms?

MR BUTTON: A little.

MR SQUARE: In 1919 were you instructed by Messrs Goldsmith and Peck to put up for sale by auction among other properties Trehudreth Common?

MR BUTTON: Yes.

MR SQUARE: I have mentioned to you today that a statement had been made in Court or would be made that certain questions had been put to you at that sale. Do you remember any questions being put to you as to whether there were any rights of common on Trehudreth Common?

MR BUTTON: No, I do not.

MR SQUARE: I had better put to you what Mr Roger Bunt has said here in evidence.

THE JUDGE: Mr Peck said there were three.

MR SQUARE: I think Mr Peck was mistaken for the simple reason that the three were not read together. Mr Bunt said he asked you, Mr Button, whether anyone else had a right on the common except the purchaser, and that you replied certain people have rights there but the buyer will have the same right as Lady Morshead?

MR BUTTON: I don't remember anything being said about it. I don't remember the question being put at all, and I don't remember answering it, simply because, as a rule, a question of the description is for the lawyer to answer. That is what I answer.

MR SQUARE: You have had experience of these moorland farms, have you?

MR BUTTON: Oh, yes.

MR SQUARE: And do you happen to know very much about Penstrode Farm?

MR BUTTON: Yes, certainly.

MR SQUARE: What kind of grazing is it there?

MR BUTTON: Oh, like ordinary moor farms.



MR SQUARE: That is to say, not very good? Poorish land? Cheap?

MR BUTTON: I remember that Mr Chapman bought this Common.

MR LASKEY: You have looked it up since in your books?

MR BUTTON: I need not look it up. I have got it in my memory.

MR LASKEY: What day of the week was it?

MR BUTTON: I don't know.

MR LASKEY: What kind of weather?

MR BUTTON: I cannot say that.

MR LASKEY: If there were farms with grazing rights you might have said that and said it correctly. You might have been instructed to say that?

MR BUTTON: Simply because I was uncertain about it I left it to the lawyer.

MR LASKEY: It would not be anything unusual to say that the buyer would get what the vendor had got?

MR BUTTON: Exactly.

THE JUDGE: And now, what are we going to do about the next hearing.

MR SQUARE: As far as I am concerned we ought to get through it in a couple of hours.

THE HEARING WAS ADJOURNED UNTIL DECEMBER 11<sup>TH</sup>.