

IN THE COUNTY COURT OF CORNWALL

HOLDEN IN BODMIN

BETWEEN

RICHARD HICKS CHAPMAN, of Little
Trehudreth in the Parish of Blisland
In the County of Cornwall, farmer, Plaintiff

And

CLAUDIUS CLARENDON ROOSE, of Higher
Penstrode in the said Parish of
Blisland, farmer, Defendant

TRANSCRIPT OF SHORTHAND NOTES AT
HEARING ON
February 12, 1927.

MR SQUARE: May it please Your Honour, I take it Your Honour will wish me to call all my evidence first?

THE JUDGE: Yes. We got as far as here.

MR SQUARE: We called Mr Button, if you remember, sir.

THE JUDGE: Just wait one moment while I make quite sure. I have read through the shorthand note but I have not got any documents, and so I have some doubt as to whether I have exactly and entirely grasped the position. I think I have with regard to the title.

MR SQUARE: Yes, sir.

THE JUDGE: If you will correct me if I am wrong in any place, there is first of all a Deed of 1809. By this, Pentrode and Penstroda; that is to say, what is purple in the plan - - -

MR SQUARE: Will you take my plan, sir?

MR LASKEY: Here is a plan of the colours. It is the one referred to last time.

MR SQUARE: That seems all right, sir.

A plan was handed to the Judge.

THE JUDGE: Yes that is the one I had before.

MR LASKEY: I think this is the one, this larger one. It has got marks on.

THE JUDGE: That contains the colouring, does it?

MR LASKEY: It contains the colouring and the stones Your Honour marked.

THE JUDGE: Yes. Well then, by that Deed of 1809, Penstroda which was the purple in the plan was conveyed to, I think it was, Wallis.

MR SQUARE: Wallis, sir.

THE JUDGE: Also the Manor or reputed Manor of Trehudreth, also Rickard's Penstrode.

MR SQUARE: Rickard's Penstrode.

THE JUDGE: By estimation 51.78; part of the Manor of Barlendew - -

MR SQUARE: That is so, sir.

THE JUDGE: But the common of Trehudreth was not mentioned?

MR SQUARE: No.

THE JUDGE: Now, I have not seen the general words there. Can it be proved, or will it be proved, that the Common was part of the waste of the Manor or not?

MR SQUARE: No, sir. I am going to argue that Trehudreth Common was not conveyed by that Deed but became by a Deed which we have not got a separate entity.

THE JUDGE: Is there evidence that it was waste of the Manor? Is there any general wording in the Deed which would show it was passed as waste of the Manor?

MR SQUARE: That is a copy of the Deed, sir.

THE JUDGE: Yes. His Honour read part of the text of the Deed.

MR SQUARE: General words.

THE JUDGE: I suppose if it was waste of the Manor it would have been passed there, would it not?

MR LASKEY: It would, Your Honour. Those words would cover the Manor waste.

THE JUDGE: But I do not think we have any direct evidence whether it was. We find, of course, it being conveyed back to the Molesworths in 1876 - -

MR SQUARE: The Morsheads.

THE JUDGE: Yes. At the prset time we do not know that. At all events, it is not expressly mentioned.

MR SQUARE: I have it this way in Sir John Maclean's book. It was held by the family of Robartes until the middle of the 18th Century, when it was acquired by Sir John Treyes, and at the sale of Morshead's lands was acquired by Mr Wallis, by whom in 1871 it was sold to Sir John Gilbert. In 1847 it was purchased by William Molesworth. That is the local history.

THE JUDGE: Is that speaking of the Common.

MR SQUARE: That is not speaking of the Common. It is speaking of the Manor.

THE JUDGE: Yes.

MR SQUARE: But the Manor, as a matter of fact, was sold with the Common by Gilbert to Morshead in 1846.

THE JUDGE: Then the next thing was 1840, "sale to Hayward by Wallis, 80 acres or thereabouts, and 11 acres, part of the Common called Trehudreth Common - -"

MR SQUARE: Yes, sir. The 80 acres are the Greenbarrow Common up here, sir.

THE JUDGE: Well, then, did that Conveyance include Rickard's Penstrode?

MR SQUARE: No, sir.

THE JUDGE: I was not sure about it. Then we come to the Deed of March 26. Gilbert's sale, after having somehow or other got the Manor into his hands. The Common. It does not appear how he conveyed them back to Morshead.

MR SQUARE: Yes, sir.

THE JUDGE: Then December 25th, 1847, the purple portion was sold by Gilbert to Collins?

MR SQUARE: No, sir. That is not right. I wish it was. Gilbert to Collins in 1845.

MR LASKEY: 1847. December 25th.

MR SQUARE: Well that helps me very much.

THE JUDGE: Page 44 of the shorthand note.

MR SQUARE: Yes, sir. Well, I am very pleased.

THE JUDGE: That makes the purple to Collins. Then July 25th, 1853, the green, described as Pentrode, containing by estimation 35 acres, was sold by Molesworth to Collins?

MR SQUARE: Yes, sir.

THE JUDGE: Then in 1856 a little bit called Penstrode Green was conveyed to Collins?

MR SQUARE: By Morshead.

THE JUDGE: Yes, by Morshead, and described as being then part of Trehudreth Common, provided that no rights of common should be carried.

MR SQUARE: Apparently, the right had been disposed of by the Conveyance between the sale of 1847, and there were no rights of common then, and they were afraid of them being revived.

THE JUDGE: Then in 1847 the trustees again sold Rickards Penstrode?

MR SQUARE: Yes, sir.

THE JUDGE: That includes the two patches of red and the 12 acres?

MR SQUARE: Yes, sir.

THE JUDGE: And a good deal more which he sold back, or rather sold to his cousin the next day?

MR SQUARE: Yes, sir.

MR LASKEY: That was not the next after the 1877 Deed. Of course, that was the next day to the 1908 Deed.

THE JUDGE: Oh, yes.

MR LASKEY: That was to Collins, the 1877 Deed.

THE JUDGE: Yes. And then Collins sold to Defendant on March 23rd, 1908. Did that convey all those properties. I am not quite sure. There is some ambiguity. At the moment.

MR SQUARE: That is right, Sir. March 23rd, 1908, that was, and I have the Deed of March 24th, 1908, Roose conveyed back to his cousin Rickards Penstrode, with the exception of two fields on the Moor.

MR LASKEY: Your Honour, it is endorsed by a memorandum on the same Deed.

THE JUDGE: All those properties on page 39. All those properties he is dealing with, the properties coloured the different colours, and so on, were conveyed to Defendant, the purple, green and red, and, of course, also the 12 acres, in 1908, by the conveyance from E. W. Collins, dated March 23rd, 1908, of the parcels set out in the schedule. Then I find later, page 50, there was first a Conveyance of December 23rd, 1920, a re-conveyance - -

MR SQUARE: That is the conveyance to - -

MR LASKEY: That, I think is the Conveyance to the Blisland Clay Company.

MR SQUARE: December 24th, 1920.

THE JUDGE: It says the 23rd.

MR SQUARE: 1923 is the Conveyance back to Roose from the China Clay Company.

MR LASKEY: December 24th, 1920, Mr Roose to the Cornwall China Clay Company.

THE JUDGE: Yes, I have got that. Then that is the day before. What would that be, December 23rd, 1920?

MR SQUARE: I do not think there was one. I think that must be a mistake, sir.

MR LASKEY: December 23rd, 1920, a re-conveyance of mortgage.

THE JUDGE: Then there must be a mistake, I think, either a slip in evidence or the note. I find I have on page 59 of the shorthand note a note, a statement in the Conveyance of December 13th, 1914, including Rickards Penstroda. You say it does not?

MR SQUARE: I think it does sir.

THE JUDGE: Yes. And you say about the middle of the page Mr Laskey refers to a Deed of December 30th, 1840, and says, "does it include the Penstrodes at all?. It contains Rickards Penstrode, at any rate." That is a mistake, is it?

MR LASKEY: No, it does contain Rickards Penstrode. I have a copy of the Deed here.

MR SQUARE: Rickards Penstrode, part of the Manor of Barlendew, and part of Trehudreth Common, sold by Wallis to Hayward.

THE JUDGE: That is Rickards Penstrode, is it?

MR SQUARE: Yes, sir.

THE JUDGE: Then I think I have got that. I have got the title then?

MR SQUARE: Yes, sir.

THE JUDGE: Then, I was going to say, is the title material? I mean, these rights, of course, could be claimed as having been originally, somehow or other, been manorial rights attached to the different parts of the property, and so came down, conveyed with them, under every Conveyance.

MR SQUARE: Yes, sir.

THE JUDGE: All that may be relied upon simply and solely under prescription. If the title can in any way be brought to show that the different bits of property had attached to them rights of common, of course, it would be material to go into it, but unless the title can be used for that purpose it seems to me that we are rather beating the air by in going into it.

MR SQUARE: I think, perhaps, the title deeds . . . for defeating the claim.

THE JUDGE: I see. Very well.

MR SQUARE: Then, sir, I will call the witnesses.

MR CHARLES WELLINGTON was then sworn.

MR SQUARE: That is your full name, Mr Wellington?

MR WELLINGTON: Yes, sir.

MR SQUARE: And you live at a place called Pennytinny?

MR WELLINGTON: St Kew.

MR SQUARE: And you are a farmer?

MR WELLINGTON: A farmer.

MR SQUARE: How old are you?

MR WELLINGTON: 79, sir.

MR SQUARE: And how many years ago was it you were a tenant at West Penstroke?

MR WELLINGTON: My father was.

MR SQUARE: That is Rickards Penstroke, is it not?

MR WELLINGTON: That is West Penstroke. 49 years ago.

MR SQUARE: That would be about 1876?

MR WELLINGTON: Yes.

MR SQUARE: And that would be the farm Mr White is working now, would it?

MR WELLINGTON: I do not know. I have not been there since. I do not know.

MR SQUARE: Rickards Penstrode?

MR WELLINGTON: Rickards Penstrode. I was there 49 years ago, and I lived there 25 years.

MR SQUARE: Now at that time was there a portion of the unenclosed moor marked with stones?

MR WELLINGTON: Yes.

MR SQUARE: And what do you think was the acreage of it?

MR WELLINGTON: Well, my father rented 92 acres with West Penstrode.

MR SQUARE: From whom?

MR WELLINGTON: From the Haywards. 12 acres one side, 80 the other.

MR SQUARE: Would that be 12 acres close to the entrance to the downs?

MR WELLINGTON: Close to the farm, and then this Trehudreth would come in between the two.

MR SQUARE: And 80 acres would be out at Greenbarrow, would it?

MR WELLINGTON: That is right.

MR SQUARE: That is now belonging to Mr Parkin?

MR WELLINGTON: Perhaps so. I do not know.

MR SQUARE: Did you claim to have any right over Trehudreth Common itself?

MR WELLINGTON: Not on Morshead's part. On Hayward's part. It was all Trehudreth then.

MR SQUARE: No right on Morshead's part but only on Hayward's part?

MR WELLINGTON: Only on Hayward's part.

THE JUDGE: You rented that?

MR WELLINGTON: My father did, with West Penstrode, Your Honour, and no one else had got any right there.

MR SQUARE: And West Penstrode then was the property of Mr Hayward?

MR WELLINGTON: Yes that is right.

MR SQUARE: And you were his tenant?

MR WELLINGTON: My father.

MR SQUARE: I mean your father. It was all in the family, at any rate?

MR WELLINGTON: Yes.

MR SQUARE: Now, there was adjoining to West Penstrode, the small house of Lower Penstrode, in those days quite close?

MR WELLINGTON: Yes.

MR SQUARE: Who was the tenant of Lower Penstrode?

MR WELLINGTON: We were the tenants of West Penstrode. The Higher Penstrode was Mr Roose.

MR SQUARE: Was he occupying the old farmhouse then. The new farmhouse had not been built, you know.

MR WELLINGTON: No, there was a man lived in that house, called Cole, I think.

MR SQUARE: And Mr Roose himself lived down at a place - - -

MR WELLINGTON: Called Stokely.

MR SQUARE: And the old farmhouse was where Cole lived?

MR WELLINGTON: That is right, sir. They built a new house there since.

THE JUDGE: Does that stand on Rickards Penstrode?

MR SQUARE: No, sir. Rickards Penstrode and West Penstrode are the same.

THE JUDGE: But the old house is shown on the green.

MR SQUARE: Yes.

MR LASKEY: That is on Penstroda, Sir. Penstroda, or Penstradden.

THE JUDGE: We called the purple Penstoda or Penstradden and the other Molesworth's Penstrode, otherwise that is very confusing. Was he tenant of that?

MR SQUARE: You say Mr Roose occupied the farm to which that building belonged which was occupied by Cole? Now from your knowledge as neighbours, had the people living in that old farmhouse any right to put cattle on Trehudreth Down?

MR WELLINGTON: No, sir.

THE JUDGE: The people living in which house?

MR SQUARE: The old Molesworth's Penstrode, sir.

MR WELLINGTON: Not on our part, they had no right.

MR SQUARE: The people occupying the old farmhouse in respect of which turbary is claimed had no right to put cattle on the portion you rented from Mr Hayward or on the Trehudreth part?

MR WELLINGTON: No. Neither one, as far as my knowledge goes.

MR SQUARE: Now, whilst you were living at West Penstrode, who was it farming Great Trehudreth, that is, Trehudreth Barton?

MR WELLINGTON: Mr Coppin.

MR SQUARE: That is this side with the red. Trehudreth Barton is opposite to Little Trehudreth, sir.

MR WELLINGTON: He was the last one there.

MR SQUARE: And had he adjoining his farm and adjoining the lane a pound?

MR WELLINGTON: A pound?

MR SQUARE: Yes. Do you remember the pound on the lower side of the farm adjoining the lane?

MR WELLINGTON: I do not remember. It is a long time ago. I forget.

MR SQUARE: Now when he rented Trehudreth Barton, who rented Trehudreth Common?

MR WELLINGTON: Mr Coppin, with the farm, the same as we had the other. We two had that two rights and no one had got any right there as far as I am aware on those two parts. There are others have got a right round about and things would come in and about, the same as ours would go out and about. There was nothing to prevent them.

MR SQUARE: But that patch you looked upon as yours?

MR WELLINGTON: I looked upon those two parts as private parts, one belonged to Hayward and the other to Morshead, and we two tenants rented them.

THE JUDGE: That was Great Trehudreth, was it?

MR SQUARE: The tenant of Great Trehudreth also rented Trehudreth Common?

MR WELLINGTON: That is right.

MR SQUARE: And he had no right to put his cattle on your part?

MR WELLINGTON: No.

MR SQUARE: But, of course, they used to range?

MR WELLINGTON: There was nothing to stop them.

MR SQUARE: Have you ever known Mr Coppin to take any steps to prevent your cattle remaining on his land?

MR WELLINGTON: I have known him drive them off when we had too many there. He would drive them off. If he thought there was too much stock there, he would drive it off. We never claimed any right there.

THE JUDGE: If this witness's cattle, too large numbers, strayed off the 12 acres on to the adjoining moor - - -

MR SQUARE: They would be turned back. Now Mr Wellington, I believe you are very good friends with Mr Runnalls?

MR WELLINGTON: Yes, I believe so. I don't know otherwise.

MR SQUARE: Mr Roose gave some evidence here some months ago. Were you in Court?

MR WELLINGTON: No.

MR SQUARE: Do you remember some sheep coming on to the moor, or a flock of sheep, one Sunday?

MR WELLINGTON: Mr Runnalls was not there very long before I left. It was Mr Bate that used to farm that farm.

MR SQUARE: He had been there how long?

MR WELLINGTON: Perhaps 2 or 3 years. I cannot say, but not very long.

MR SQUARE: When Mr Coppin occupied Trehudreth Barton, used he to go away for holidays sometimes?

MR WELLINGTON: I do not know. I cannot say.

MR SQUARE: If he was away from Trehudreth Barton for any length of time, who used to look after his moor?

MR WELLINGTON: I cannot say.

MR SQUARE: Have you ever looked after his moor?

MR WELLINGTON: No.

MR SQUARE: I think Mr Runnalls told us in the shorthand note that he had put a flock of sheep on the moor one day and it was turned off.

MR LASKEY: Page 162, sir.

THE JUDGE: Runnalls, 157 to 163.

MR SQUARE: And then he comes in again 199. Page 162, "Mr Laskey; Did that continue?" referring to sheep being turned off. "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? - - - I cannot answer that, sir, but that was not all to it. There was a reason to it." Well now, Mr Wellington, when you were at West Penstrode, used anyone to poach turf. Did you ever go up and help anyone in with turf from the top?

MR WELLINGTON: Oh, yes. There was a man called Cole went up there and got some turf, and we helped him to carry it in.

MR SQUARE: When Mr Cole was there he cut some turf on the top and it was arranged - - -

MR WELLINGTON: And when it was dry I believe I carried it in.

MR SQUARE: What right did you have to do that?

MR WELLINGTON: I don't believe I had any right.

THE JUDGE: That is being an accessory after the fact.

MR WELLINGTON: This man cut them and I believe I helped him cart them in.

MR SQUARE: Where did you usually go to cut turf?

MR WELLINGTON: He used to go to a place called Menacrim.

MR SQUARE: Would you go past Shallow Water?

MR WELLINGTON: No, this side of Shallow Water.

MR SQUARE: A good two miles?

MR WELLINGTON: I should not think so.

MR SQUARE: That is where you used to go ordinarily?

MR WELLINGTON: That is where we used to get our turf.

MR SQUARE: Did you pay anything for it?

MR WELLINGTON: No, we claimed it a right for our farm. We claimed it for turf and pasture on that place.

MR SQUARE: And you paid rent for it to Hayward?

MR WELLINGTON: Yes.

MR SQUARE: And when you got turf for your house, you used to go to Hayward's turf ties at the other end of Greenbarrow?

MR WELLINGTON: Yes. We never cut any turf on Trehudreth Downs. We were never allowed to.

MR LASKEY: You say that you were not allowed to cut turf on Trehudreth Downs. The turf ties are on the Downs, are they not, the places where people have cut turf quite recently?

MR WELLINGTON: Yes, up on the top.

MR LASKEY: And that is on Trehudreth Common, is it not?

MR WELLINGTON: Yes, sir.

MR LASKEY: And that place where they have cut the turf is the old place where it was cut before? It has been cut on the old marks?

MR WELLINGTON: Yes, the old ties are on top there. I believe so.

MR LASKEY: So at any rate somebody had the right to cut the turf there?

MR WELLINGTON: That was not our farm.

MR LASKEY: At any rate, somebody had cut turf there?

MR WELLINGTON: Somebody had cut turf there sometime, yes.

MR LASKEY: And that was Cole, was it not?

MR WELLINGTON: No.

MR LASKEY: The place where he got it was up on the top?

MR WELLINGTON: Yes.

MR LASKEY: And he did that for quite a long time, didn't he?

MR WELLINGTON: Yes. He lived in the old farmhouse, yes. I believe he did.

MR LASKEY: Do you remember who lived in the other half of it? Somebody named Sanders was it?

MR WELLINGTON: I cannot say. It is so long ago.

MR LASKEY: Stevens was it? Do you remember a Mr Stevens?

MR WELLINGTON: I believe there was but I am not sure.

MR LASKEY: Now do you not remember that Mr Stevens used to get turf up on the top of the hill too?

MR WELLINGTON: No.

MR LASKEY: At any rate, nobody seems to have stopped them doing it, do they. You cannot remember anyone stopping them doing it?

MR WELLINGTON: I do not believe they asked for permission. I believe they went there without and did it.

MR LASKEY: And nobody stopped them?

MR WELLINGTON: I cannot tell you.

MR LASKEY: At any rate, you do not know that anybody stopped them?

MR WELLINGTON: I do not know that anybody did.

MR LASKEY: You actually went and carried turf for them from the top of the hill down to the house?

MR WELLINGTON: Yes, I believe so.

MR LASKEY: And nobody stopped you while you were helping them?

MR WELLINGTON: No.

MR LASKEY: You said you were not allowed to cut turf on Trehudreth Common?

MR WELLINGTON: No.

MR LASKEY: Who was it did allow you to cut turf?

MR WELLINGTON: I never knew anyone cut turf there besides this one man.

MR LASKEY: Who would not allow you to?

MR WELLINGTON: The landlord.

MR LASKEY: Do you say the landlord ever stopped you?

MR WELLINGTON: That was the condition. We were not to cut any turf there.

MR LASKEY: Now you were there in 1874 or thereabouts, was it not, you said?

MR WELLINGTON: I was there 49 years ago.

MR LASKEY: And that is about the time Mr Runnalls was there.

MR WELLINGTON: Mr Runnalls had not been there very long.

MR LASKEY: But he was there then, was he not, at Treswigga?

MR WELLINGTON: He was not there very long, I should say, not more than three or four years, before I came away.

MR LASKEY: You know Mr Roose's spade mark, the marking of this cattle? You used to know it then?

MR WELLINGTON: I cannot tell it now.

MR LASKEY: You knew he had a private mark, didn't you?

MR WELLINGTON: I dare say he did.

MR LASKEY: A spade mark?

MR WELLINGTON: Yes.

MR LASKEY: In those days, when you were there, didn't you see his cattle on the Common?

MR WELLINGTON: Mr Roose claimed the right on one part of the Common, not on those two parts I have mentioned, but on one part of the Common called Stokely.

MR LASKEY: You knew Mr Roose and his father were living at Stokely, were they not?

MR WELLINGTON: Yes, Mr Roose's father was farming there.

MR LASKEY: And he was farming Penstroda?

MR WELLINGTON: Farming them both.

MR LASKEY: He used to keep cattle at Penstroda in the buildings there?

MR WELLINGTON: Of course he did.

MR LASKEY: Don't you know that those cattle used to be sent up the road and on Trehudreth Common?

MR WELLINGTON: I don't think so. He used to farm Stokely and I do not think his farm had got any rights. There were other farms there none of them had got out rights to my knowledge.

MR LASKEY: The lane leading up from the old farmhouse where the cattle houses were at Penstrode would be quite close to Rickards Penstrode, West Penstrode, where you were living?

MR WELLINGTON: The road that leads out?

MR LASKEY: The road that leads up to the corner where the entry is on to the Common, you know. That is quite close to the house where you were living in 1874? I am asking you about the old farmhouse where Cole was living. That is within a very short distance of the farmhouse where you were living?

MR WELLINGTON: Very close.

MR LASKEY: And there were cattle sheds there where cattle used to be left?

MR WELLINGTON: Yes. Wintered there, and summered as well.

MR LASKEY: And when they wintered there, they used to be driven out on to the road, which leads up to the Common?

MR WELLINGTON: They used to winter a small lot of young cattle there and did not turn them out. Mr Roose had got some marsh ground and used to keep them in, and the cattle from Stokely he would turn out, and they would go up that lane. Not from Penstrode, mind, but from Stokely.

MR LASKEY: You say those cattle, kept in those sheds, within a short distance of your buildings, were not turned out on to that road?

MR WELLINGTON: No, not while I was there.

MR LASKEY: What was to stop them?

MR WELLINGTON: There was a parish road across that farm and gates, and those cattle used to get up in that parish road and it was a trouble to pass them.

MR LASKEY: The Stokely cattle used to be turned out there? They used to go out on the Manor of Blisland waste?

MR WELLINGTON: Yes.

MR LASKEY: I want you to be careful. I am not speaking about the Stokely cattle at all, you know, but about those cattle you remember being kept in the cattle sheds within a stone's throw of your house. Do you say they were taken right down this road to the turnpike?

MR WELLINGTON: No.

MR LASKEY: You remember, there were cattle sheds up here by the old farmhouse within a stone's throw of West Penstrode, were there not?

MR WELLINGTON: Yes.

MR LASKEY: You do not suggest that those cattle were taken down to the turnpike before they were turned loose?

MR WELLINGTON: Not from West Penstrode.

MR LASKEY: No, from the sheds near the old farmhouse. They were not taken down to the turnpike?

MR WELLINGTON: Oh, no.

MR SQUARE: He did not say so.

MR LASKEY: They were turned out, were they not? They were driven out from the cattle sheds and went up to the Common?

MR WELLINGTON: They were kept in, not turned out at all, because they were young cattle. That was when I was there.

MR LASKEY: Did you ever know Mr Elijah Roose?

MR WELLINGTON: Yes.

MR LASKEY: He lived at Stokely with his father?

MR WELLINGTON: I believe so. He was a big farmer.

MR LASKEY: He was there in your day, was he not?

MR WELLINGTON: Yes he was.

MR LASKEY: Do you really say it is sheer invitation when Mr Elijah Roose says that he lived at Stokely and used to go out with his father and send those cattle out up on to the Common?

MR WELLINGTON: Very likely.

MR LASKEY: That is all invented, is it?

MR SQUARE: You are asking him to adopt your words. He says very likely.

MR WELLINGTON: He may have gone up with his father, certainly, he may have.

MR LASKEY: The other brother, Albert Roose, you know? You remember him?

MR WELLINGTON: Yes that is the eldest.

MR LASKEY: They say they went up with their father and helped to drive the cattle out from those sheds on to this road and so on to the Common. You are not going to say that is untrue, are you?

MR WELLINGTON: They never used to drive cattle from there but from Stokely.

MR LASKEY: They say it was not from Stokely at all?

THE JUDGE: When did you leave Penstroke? You went there when you were five years old, you say?

MR WELLINGTON: When I came there, sir. I lived there 25 years, and been away 49 years.

MR SQUARE: You are now?

MR WELLINGTON: 79.

MR SQUARE: That would be when you were 30?

MR WELLINGTON: Yes.

MR SQUARE: I suppose during your young days you were all over the place like most boys and knew every bullock in the village?

MR WELLINGTON: I was about there for 25 years.

MR SQUARE: And you would know every bullock there was?

MR WELLINGTON: Very like.

MR SQUARE: Can you tell me what time of the day it was Mr Cole cut this turf?

MR WELLINGTON: No.

MR SQUARE: Do you know what time it was when he came back from cutting it?

MR WELLINGTON: No.

MR SQUARE: Or whether anybody saw him cutting it or taking it away?

MR WELLINGTON: No, I do not know anything about it. I took it away.

MR SQUARE: But no one say you?

MR WELLINGTON: Only he, as far as I know.

MR DIGGORY LANGFORD WAS THEN SWORN.

MR SQUARE: You live at St Tudy, do you?

MR LANGFORD: Yes.

MR SQUARE: And you are a farmer?

MR LANGFORD: No.

MR SQUARE: Retired. Made a fortune and retired?

MR LANGFORD: No, I have made no fortune.

THE JUDGE: You were a farmer?

MR LANGFORD: Yes, sir.

MR SQUARE: And you occupied Poldhu at one time?

MR LANGFORD: Yes.

MR SQUARE: That is this ringed portion, this red lying on the western side of the entrance to the Moors.

THE JUDGE: I see.

MR SQUARE: Well, now, when you were farming at Poldhu, when was that?

MR LANGFORD: I think I went there in 1887.

MR SQUARE: And how long did you stay there?

MR LANGFORD: I think it was about 15 years.

MR SQUARE: That would bring you up to 1902?

MR LANGFORD: Yes, as far as I know.

MR SQUARE: Were you the owner or the tenant?

MR LANGFORD: Tenant, sir.

MR SQUARE: Who was your landlord?

MR LANGFORD: Mr Lawry.

MR SQUARE: Now, during the time you were tenant of Poldhu, used you to graze cattle on Trehudreth Common?

MR LANGFORD: Yes.

MR SQUARE: Did you graze the cattle there free or did you pay for it?

MR LANGFORD: I had to pay the tenant of Big Trehudreth.

MR SQUARE: Who was that, Mr Cawse?

MR LANGFORD: It was Mr Sandercock at first. There were four tenants there during my time.

MR SQUARE: Then who after that?

MR LANGFORD: Mr Cottell.

MR SQUARE: And the other one? Mr Bunt?

MR LANGFORD: The other two Mr Bunts.

MR SQUARE: And how much did you used to pay them?

MR LANGFORD: At first it was £3.

MR SQUARE: And after that?

MR LANGFORD: The second was 50s.

MR SQUARE: And the third?

MR LANGFORD: That, I think, was £2, but I am not positive.

MR SQUARE: And how much did you finish up, 30s.?

MR LANGFORD: No, finished up on the £2.

MR SQUARE: Now, when Mr Sandercock was tenant of Great Trehudreth, did you ever have any request from him to do things with regard to the bullocks on the moor?

MR LANGFORD: Yes.

MR SQUARE: What used he to ask you to do, and what did you used to do?

MR LASKEY: Is this admissible?

MR SQUARE: I will put the question again. What used you to do when you saw bullocks on the moor?

MR LANGFORD: Well, I used to look after his cattle a bit and at certain times I would drive them back.

MR SQUARE: Cattle from which portion of the moor?

MR LANGFORD: From what I considered Trehudreth Moor.

THE JUDGE: What interest had he in that?

MR SQUARE: He was going to say what Mr Sandercock told him. Were you a friend of Mr Sandercocks?

MR LANGFORD: Yes.

MR SQUARE: Used Mr Sandercock to go away at any time?

MR LANGFORD: At certain times.

MR SQUARE: And whilst he was away, used you to look after the moor for him?

MR LANGFORD: In certain times, a few days in and out.

THE JUDGE: Who was Sandercock?

MR SQUARE: He was tenant of Trehudreth who used to charge for the use of the Common, and at his request, when he was away, you used to go up there and see what cattle were there?

MR LANGFORD: I would see my cattle and at certain times I would drive them back, if there were big lots.

MR SQUARE: If there were big lots trespassing you would turn them back, but you did not trouble about the small lots. Now are you a friend of Mr Runnalls?

MR LANGFORD: Yes.

MR SQUARE: Do you remember on one occasion Mr Sandercock being away for a short period, and your going up on the moor on a Sunday morning?

MR LANGFORD: no, I don't remember.

MR SQUARE: Do you remember ever finding some sheep on the Moor?

MR LANGFORD: Yes, at different times.

MR SQUARE: Whose sheep would those be?

MR LANGFORD: I cannot tell you. Different people used to go on the Moors.

MR SQUARE: And what used you to do if you found some sheep there?

MR LANGFORD: Drive them back a little way.

MR SQUARE: Now we are going, I think, to agree where the stones are, but at that time did you consider that Morshead's rights over Trehudreth Common ran from the end of Wallis's along by the stream and marsh here to a central stone?

MR LANGFORD: There are lots of stones there and I am not positive. I don't know exactly the marks or where they are. I cannot say. There are 200 acres, I understand, belonging to Morshead.

MR SQUARE: As a matter of fact, we have it in one of the leases, it was 206 acres?

MR LANGFORD: At the time I was there it was considered 200 acres.

MR SQUARE: And we shall have presently that this portion of Trehudreth Common was 194. At any rate, there were some stones there?

MR LANGFORD: There were boundary marks, and I remember on one occasion there was one stone taken away from there during my time. One mark was taken away up on the Down there.

MR SQUARE: Right up on the top?

MR LANGFORD: Yes.

MR LASKEY: I think what you have told us really is this. You knew these stones at that time. You saw them when you walked about the Downs?

MR LANGFORD: I saw them but cannot give much information about them.

MR LASKEY: Nobody really knew what they were, did they?

MR LANGFORD: There were marks.

MR LASKEY: You were there a good many years. During that time you got to know these cattle marks pretty well, didn't you?

MR LANGFORD: Yes, very well. His mark and mine were very much alike.

MR LASKEY: You used to see his cattle on the moor, didn't you?

MR LANGFORD: Yes, regularly.

MR LASKEY: And as long as there were not too many, you did not bother about them, I suppose?

MR LANGFORD: Unless there were certain big droves at a certain time I had a very good reason to drive back.

MR LASKEY: You know Mr Roose, the defendant here, don't you?

MR LANGFORD: Yes.

MR LASKEY: Have you ever talked to him about his cattle being on the moor?

MR LANGFORD: I don't remember.

THE JUDGE: What do you call big droves?

MR LANGFORD: Well, perhaps it might be 100 or 200 sheep or 30, 40 or 50 - - -

THE JUDGE: If you saw a dozen of Mr Roose's cattle upon there, would you interfere with them?

MR LANGFORD: No, sir.

MR SQUARE: Why not, Mr Langford?

MR LANGFORD: Well, sir, the reason why not, there was a right from Penstroda, that I considered he had a right there.

MR SQUARE: In other words, because he either owned or occupied about 12 acres of grazing there?

THE JUDGE: You mean the right he had because he had a bit of the Moor belonging to Penstroda?

MR LANGFORD: When I farmed Poldhu I was informed that place had no right and I understood that if I had had half an acre outside only, I should have a right to turn out on the Moor, and of course I understood there were 12 acres belonging to Penstroda and they had a right and no interference.

THE JUDGE: Because of those 12 acres?

MR LANGFORD: I understood, that was the understanding I had there. If you had a piece outside, you could turn out what you liked without interference.

THE JUDGE: That is not very sound law but it is the usual practice.

MR SQUARE: You felt that if they could go there properly they could range all over the place?

MR LANGFORD: I had no right to drive them off. He had a right there.

MR SQUARE: Unless there were too many?

MR LANGFORD: Oh, no. He had a right. I used to drive off those who had no right there, from Cardinham and other places.

MR SQUARE: I see.

MRS LAVINIA MARGARET BUNT WAS THEN SWORN.

MR SQUARE: You are the widow?

MRS BUNT: Yes.

MR SQUARE: Where do you live?

MRS BUNT: At 2, Emma Place, Bodmin.

MR SQUARE: Your husband's name was - - -

MRS BUNT: William Bunt.

MR SQUARE: And was he the tenant of Trehudreth in 1896?

MRS BUNT: No, 1892, I think it was.

MR SQUARE: Is that Little Trehudreth or Great Trehudreth?

MRS BUNT: Great Trehudreth.

MR SQUARE: And you have been summoned here to produce a document?

MRS BUNT: Yes, sir.

MR SQUARE: Have you got it?

MRS BUNT: I believe that is the document.

MR SQUARE: Is that the copy of the lease of Trehudreth and the moor, which was granted to you by the Molesworths, to your husband by the Molesworths, in 1896?

MRS BUNT: Yes, sir.

MR SQUARE: Now, I had to subpoena you here. I had to identify this as a copy. Have you the original?

MRS BUNT: No, sir.

MR SQUARE: It has been lost?

MRS BUNT: The only one I had I surrendered to Mr Peck.

MR SQUARE: It is the only one you have?

MRS BUNT: Yes.

MR SQUARE: Mr Peck identified it as a copy. I subpoenaed the lady to produce the original and she says she has not got it. And, Mrs Bunt, the parcels to that, "with all that farm, containing about 98 acres one rood 9 perches, also 206 acres of moor pasture adjoining," now can you tell His Honour what that 20 acres consisted of? Where was it?

MRS BUNT: On the top of the hill.

MR SQUARE: Would that be there where the stones are on the moor, right out over Newton Downs?

MRS BUNT: Yes, as far as I understand it.

MR SQUARE: And used your husband to collect from persons placing their cattle upon that?

MRS BUNT: Yes, sir.

MR SQUARE: Now at the time when you were occupying Great Trehudreth, did the Roose's put their cattle on the moor?

MRS BUNT: As far as I understand.

MR SQUARE: And you considered they had a right to put them there?

MRS BUNT: Well, on their own right. It was adjoining, of course.

MR SQUARE: Was that Cawse you were talking to just now?

MRS BUNT: Yes.

MR SQUARE: Where did she live?

MRS BUNT: At Little Trehudreth.

MR SQUARE: That is just across the road?

MRS BUNT: Yes.

MR SQUARE: What relation is she of yours?

MRS BUNT: My sister in law.

MR SQUARE: And I believe her people ran cattle on Trehudreth as well?

MRS BUNT: Yes.

MR SQUARE: And you did not charge them?

MRS BUNT: No, sir.

MR SQUARE: Can you tell us about the pound at Great Trehudreth? You know just below the gate leading into Great Trehudreth there is a round circular place?

MRS BUNT: Yes.

MR SQUARE: Is that the ancient pound?

MRS BUNT: I have always understood it was.

MR SQUARE: But as far as you were concerned you have never impounded anything?

MRS BUNT: No, sir.

MR SQUARE: Is there room in that pound for 100 sheep closely put?

MRS BUNT: They would be pretty close.

MR SQUARE: But it is a substantial pound in which cattle could be put?

MRS BUNT: Not now.

MR SQUARE: But in the old days?

MRS BUNT: Yes.

MR LASKEY: At any rate, you cannot tell us that it has ever been used, can you?

MRS BUNT: Oh, it was built up ever since I have known it.

MR LASKEY: You told us your husband used to ask people for payments for running cattle on the moor?

MRS BUNT: Yes.

MR LASKEY: He did not always get it, did he?

MRS BUNT: Well, Mr Langford paid, I believe.

MR LASKEY: Some did and some didn't?

MRS BUNT: Mr Greenaway, I believe.

MR LASKEY: He paid once and once only, didn't he?

MRS BUNT: No, more than once.

THE JUDGE: I thought he paid for some time until his landlord stopped him.

MR LASKEY: At any rate, you know, don't you, his landlord stopped him paying?

MRS BUNT: I don't know

MR LASKEY: At

MRS BUNT:

MR LASKEY: We agree. That means he did not pay. Do you remember Mr Thomas or Wallhouse?

MRS BUNT: Mr Greenaway lived at Wallhouse all the time I was there.

THE JUDGE: Thomas was Greenaway's landlord?

MRS BUNT: Yes.

MR LASKEY: Did you know Mr Thomas said your late husband had no right to charge these amounts?

MRS BUNT: Well, it was reported so, but I do not know what Mr Thomas said.

MR SQUARE: And you had collected the money beforehand?

MRS BUNT: Yes.

MR SQUARE: I will call Mr George Lean and then, sir, I have one witness to produce a book belonging to the late Mr Collins.

MR GEORGE LEAN WAS THEN SWORN.

MR SQUARE: Where do you live?

MR LEAN: Carwen, Blisland.

MR SQUARE: What are you?

MR LEAN: A farmer, sir.

MR SQUARE: And what is your father's name?

MR LEAN: John Theodore.

MR SQUARE: And you are one of the family of Lean who have always lived on the moor?

MR LEAN: Yes.

MR SQUARE: And do you produce particulars of an old sale by auction held at Bodmin on November 21st, 1808.

MR LEAN: I have one, sir.

MR SQUARE: And this is one you lent Mr Roose?

MR LEAN: Yes.

MR SQUARE: Have you brought with you the old leases under which your people hold the moor?

WITNESS PRODUCED A LEASE.

MR SQUARE: This is assigning Trehudreth Mills to the last Mr John Lean and a Conveyance of Trehudreth Mill from John Lean to Mr Thomas George, dated 1862. And now, sir, I have one more witness to call, a Miss Waters, a servant in the employ of Miss Collins, a daughter of the late Mr Collins, producing a book, and then I have no further evidence to call. I told her to come back at 2 o'clock. I did not know we should be finished so quickly.

THE JUDGE: Very well. How long to you want?

MR LASKEY: Your Honour, there is another document here which is of assistance and that is an ancient abstract of title. Would you like me to call a witness to prove that now, or shall we do it afterwards?

THE JUDGE: We will do it after Mr Square has finished. How long to you want.

MR SQUARE: I am in Your Honour's hands.

THE JUDGE: Very well. Two o'clock.

THE PROCEEDINGS WERE THEN ADJOURNED, AND WERE RESUMED AT 2 O'CLOCK.

MR SQUARE: I will call Miss Waters. Would you mind seeing if she is outside?

AN USHER: She is not there.

MR SQUARE: I am afraid the lady has not come, so with your permission I will address you, and with your permission and my friends I will just put that book in for what it is worth.

MR LASKEY: There is one document that with your permission Your Honour, which perhaps it would be convenient to do before my learned friend addresses you.

MR HEDLEY RICH WAS THEN SWORN.

MR LASKEY: Is that your full name?

MR RICH: Yes, sir.

MR LASKEY: You live at Coombe, Cardinham?

MR RICH: Yes.

MR LASKEY: And you are an agricultural surveyor?

MR RICH: Yes.

MR LASKEY: Do you produce this abstract of title of estates in the County of Cornwall, the property of the Morshead family, dated 1745, April 13th?

MR RICH: Yes.

MR LASKEY: Now that refers among a number of other properties, does it not, to all that the Manor or Lordship or reputed Lordship of Trehudreth with the rights members and appurtenances thereto lying and being in the several parishes of Blisland and Temple in the said County of Cornwall. There are two copies, Your Honour, if I may pass the second copy to Your Honour. The only difference between the copy Your Honour has and my own is that your copy has the front page missing.

THE JUDGE: And it has not a back sheet either.

MR LASKEY: The front page is headed, "Abstract of Title." The page I am referring to is page 16, "And also all that the Manor or Lordship or reputed Manor or Lordship of Trehudreth with the rights members and appurtenances thereto lying and being in the several parishes of Blisland and Temple in the said County of Cornwall, and all those several messuages or tenements, farms, mills, and hereiditaments, lying within and belonging to the said Manor or Lordship called or known by the several names and descriptions following:- Green Barrow, Penstraze, Trehudreth Mills, Sturbridges, Tenement, Wallis at Wallhouse, Penstradow, Trehudreth Baton, and Treswigger, "let to several persons on lease for years determinable on lives, amounting to a sum of £10 2s. 10d. And then it goes on to another matter.

THE JUDGE: The general words are put quite shortly, "together with all houses, etc., and if Trehudreth Common was part of the waste of the Manor of Trehudreth it wold pass by this deed.

MR LASKEY: It would, Your Honour, yes. Do you know in whose possession was this Abstract, Mr Rich?

MR RICH: In the possession of the Morshead family.

THE JUDGE: How does this gentleman get hold of it?

MR LASKEY: How does it come to you?

MR RICH: Through a member of the Morshead family.

MR SQUARE: I do not raise any question about that.

MR LASKEY: And the names I have referred to, Penstradow, is that an alternative name for Penstrode, do you know?

MR RICH: There were two or three names for those tenements.

MR LASKEY: Rickards Penstrode is referred to, is it not? Page 12, Your Honour. I do not think there is any dispute about this. Rickards Penstrode is part of the Manor of Barlendew?

THE JUDGE: Yes, that seems to be so. It is so described.

MR SQUARE: Yes, Your Honour.

MR LASKEY: Also all that the Manor or reputed Manor of Barlendew being in the several parishes of Blisland, Temple and St Kew. That shows that Rickards Penstrode, the part coloured red, was Barlendew.

MR SQUARE: All I want to ask you is about the first portion of your evidence. Which is the Penstrode to which it refers? Can you tell us?

MR RICH: To what refers?

MR SQUARE: The expression here Penstradow. Can you tell us where that is?

MR RICH: I take it that is the old tenement, the old farmhouse.

MR SQUARE: It does not apply to what we call the purple, which came from the Gilberts?

MR RICH: No.

MR SQUARE: It belongs to the green, which is the Molesworth's.

THE JUDGE: Oh, does it? Why do you say that?

MR SQUARE: I gather that the right of turbury is claimed on the Molesworth.

MR LASKEY: It is part of the green.

THE JUDGE: Yes.

MR SQUARE: When he says the old farmhouse, you mean - - - ?

MR RICH: The one in the court.

MR SQUARE: The one we saw today.

THE JUDGE: Why does he say Penstradow. Why does this refer to the Molesworth Penstrada rather than to the Penstradda or Penstradden which is purple?

MR RICH: Penstraze, I think it is, Your Honour, the other tenement is known by.

MR SQUARE: I want to know why you say - - - Rickards Penstrode is on the west. Then we have Penstroda or Penstradden. We called there today. They are known as Penstrodes, all of them. In the documents, of course, they vary, some of them. On the purple, there is a farmhouse?

MR RICH: Two farmhouses there were originally, one in the meadow adjoining the field at West Penstrode where the pump is now.

MR SQUARE: There are houses there on the Gilbert Penstrode, what we call Penstradda, Penstradden, the 20 acre?

MR LASKEY: Morshead's.

MR SQUARE: No, the 20 acre lot is this purple here?

MR RICH: I don't thin that tenement there adjoining West Penstrode would be known as either of them. That has another name, I think, that small tenement you have your finger on.

MR SQUARE: Well, I don't know. It is for you to tell me if you can. The red, green and purple on this map are all Penstrodes. One is known as Molesworth Penstrode, which is the green; another purple, which is from Gilbert and Collins; and another red, which came from Molesworth, Wallis, Hayward?

MR RICH: I cannot say anything about that.

THE JUDGE: Penstradda there, page 58, amongst a lot of parcels which belong to the Manor or Lordship of Trehudreth.

MR SQUARE: Yes, sir. Well, I cannot put that any further, sir.

THE JUDGE: The original Penstradda was part of that Manor, the purple, that is described in the Deed of 1809 as being part of the Manor of Trehudreth.

MR SQUARE: That is the 20 acres, sir.

THE JUDGE: Yes, that one is. Of course, there is not description of the green?

MR SQUARE: No, sir.

THE JUDGE: All that part called Penstraddow is described in the Deed. Of course, it may be.

MR LASKEY: May I put this forward as a suggestion to assist in solving the question of the Molesworth Penstrode, as to that being originally part of the Manor of Trehudreth?

THE JUDGE: What makes you think that is this?

MR LASKEY: This Deed refers to the messuages or tenements, bartons, farms, mills, lands or hereditaments belonging to the said manor or lordship called by these names. The dwelling house, the ancient dwelling house, we know stands on the Molesworth property and is the Molesworth farmhouse, and I suggest that this does show that the property - - -

MR SQUARE: I gather that the 20 acre piece, the purple, was undoubtedly Trehudreth.

THE JUDGE: It is so described in the 1809 Deed.

MR SQUARE: And the green is undoubtedly Molesworth.

THE JUDGE: Yes, but it may originally have been part of the Manor of Trehudreth.

MR SQUARE: It may have.

THE JUDGE: And Mr Laskey is trying to suggest it is, because he says this Penstraddow, which is one of the tenements which forms part of the 900, he suggests it is the green.

MR LASKEY: And Your Honour will notice that we have accounted for Rickards Penstrode at a different point in this Abstract. Here we have Penstraze and Penstraddow, which witnesses have said are both ancient names for Penstrode. That is to say there are three Penstrodes referred to besides Rickards Penstrode.

THE JUDGE: He cannot say that.

MR LASKEY: It is the best we can do.

THE JUDGE: This is a settlement.

MR LASKEY: It is the enumeration of properties brought into a settlement.

THE JUDGE: Then there is an item, I suppose, in limitation to Morshead himself. It is on his marriage.

MR LASKEY: Morshead and Treys. There were a very large number of properties settled. Now, sir, the difficulty there has been as to what Manor Molesworth Penstrode lay in. I am putting this forward as one more piece of evidence to show that at one time it had been part of the Manor of Trehudreth. In this particular passage we have got the names of two messuagees or tenements or hereditaments referred to, Penstraze or Penstraddow, of which one may be the 20 acres referred to. At least, it appears probable that the other would be Molesworth.

THE JUDGE: It is a big jump. I am not saying no. My view was that was the purple.

MR LASKEY: But you will remember that even that is slightly different from the name by which it is known at the present day. I do not think there is any suggestion that there is any adjoining property which is known by any name which is likely to have been derived from Penstraze or Penstraddow other than this property. I connect them up with the Deed of 1809 and Your Honour will remember there is a customary rent observed of about 12s. to the Manor of Trehudreth from the Molesworth property. It is referred to as being one of the rights passed by that Deed of 1809. Well in the absence of other evidence, it is proper inference that that does show that that property was at one time part of the Manor of Trehudreth. There is a watercourse referred to; there is a customary rent reserved for that, but this is a high or chief rent, reserved to the Manor of Trehudreth out of this Molesworth property. If you have no other evidence to put against that, I do suggest that that is evidence to show that was at one time part of the Manor of Trehudreth. There was a difference as to the reservation of the rights of common under the conditions of sale. That is a different matter.

THE JUDGE: They were reserved under the conditions of sale but not in the Conveyance.

MR LASKEY: But the Conveyance also mentions the high or chief rents reserved out of Molesworth property and payable to Morsheads. It is not conveyed in 1809, but in 1809 with the Manor which is then conveyed, there is conveyed the right.

THE JUDGE: It is the conveyance of part of the property.

MR LASKEY: There was a sale by auction at which a certain tract of lands were unsold, and were subsequently sold in bloc to Wallis for a sum. That included this property; that is, the 20 acres.

THE JUDGE: Yes.

MR LASKEY: And the Manor.

THE JUDGE: And possibly the Common.

MR LASKEY: And possibly the Common, but the Common would be in under the general

words. It was not specifically referred to. The Molesworth property was not included in the sale at all, but what was included was the right to receive a high or chief rent from that property.

MR SQUARE: Which lot is that?

MR LASKEY: It is the Manor of Trehudreth. I am reading from the 1809 Deed. It is the first Abstract from it I have before me. To that the Manor or Lordship or reputed Manor or Lordship of Trehudreth in the said parish of Blisland, in the parish of Temple in the said County of Cornwall, together with the special high and chief rents due and payable and heretofore accustomed to be paid to the said Manor, amounting in the hole to 5s. 6d. And the sum of 3s. yearly for a watercourse in the said parish of Blisland, payable by the heirs of Sir William Molesworth, Bart., and also the following high and chief rents. Hat was one of the rights conveyed at that time. I put this forward as being evidence to substantiate that.

MR SQUARE: My friend is very optimistic but I am afraid I cannot see it in that way. Can you tell us, if that is so, why there are Manor stones in this parish of Blisland outside this purple land?

MR RICH: I cannot, sir. I know there is quite a small piece there.

MR SQUARE: If that green or purple is not part of the Manor of Blisland, why should these few acres outside there be marked with the Manor mark. They cannot have been.

MR RICH: I cannot say anything about that.

THE JUDGE: I don't quite follow now. If the green were not part of the Manor?

MR SQUARE: If the purple were not part of the Manor of Blisland, the green, sir, why should these Manor marks be there? The Manor marks are there.

THE JUDGE: But how are they connected with the green?

MR SQUARE: The Manor marks are more connected with the purple, of course. They are the Blisland Manor marks which are directly outside the purple fields 173 and 1574.

THE JUDGE: That is the tithe map. What are they on the ordnance map?

MR SQUARE: They would be 1252 and 1253. Now, can you explain to us why there should be Manor marks outside that?

MR RICH: You see it often in small patches of the Manor of Blisland in that way. I cannot account for that.

THE JUDGE: Do you mean that as they lie close to 1252 and 1253 they must originally have been part of the Manor of Blisland?

MR SQUARE: I think they must.

THE JUDGE: But they are clearly described as being part of the Manor of Trehudreth.

MR SQUARE: I know, and that is the extraordinary part of it. There is the Manor mark there. We saw it today. There is a square patch of Common cut out from the rest, marked by four

stones with the Manor mark on the inside, the Molesworth mark on the Common side, and the Hayward mark on each of the other sides. In fact, that evidence my learned friend has put forward has made the case more confusing than ever.

MRS LOUISE WALTERS WAS THEN SWORN.

MR SQUARE: What is our Christian name, Mrs Walters?

MR WALTERS: Louisa.

MR SQUARE: And you are the servant to Miss Collins?

MRS WALTERS: Yes.

MR SQUARE: Of?

MRS WALTERS: St Gerrans, Bodmin.

MR SQUARE: And at her request you have attended here today to produce an ancient ledger kept by the late Mr J Bassett Collins?

MRS WALTERS: Yes.

MR SQUARE: And to produce this entry. "In Blisland, 1, William Harris, dwelling house, buildings, farm of Stokely, purchased of Davis Gilbert, Esq., Penstroda Farm, purchased of D. Gilbert, Esq., another Penstroda, purchased of the representatives of Sir William Molesworth, Penstroda Green, purchased of Capt. Morshead, and enclosed by me, on yearly Michaelmas, £116 per annum. Molesworth's Penstrode is held by Mrs Lean, of Warleggan, on life of Christopher Lean, of St Kew. I rent it to her at £30 a year, and that amount is included in Harris's rent to me. Sir William Molesworth's representatives pay me £22 10s. a year for the interest on the purchase money while the life lives." Below that is a later note in different ink, "Mrs Lean, life of above passed, 14th October, 1866, and the land came into hand." Now, sir, that is all the evidence I have to call before you.

THE JUDGE: This is entirely consistent with everything so far.

MR SQUARE: Yes. What I wanted to do was to get some date when the land fell into hand, because I could see that might have a very material bearing on the common rights. Now, sir, the difficulty has been in this case to know where to start. My learned friend and I have been considering how we could - - I do not say, out the case short, - - - but cut out the immaterial. The visit which Your Honour has paid to the Common today must, I think, have a great result in reducing the amount of evidence we shall have to discuss, as there can be no question at all, from what we saw today, that there is a boldly defined area of 12 acres outside this property on the moor which is allocated as Hayward's property.

THE JUDGE: It is, you say, round about 12 acres.

MR SQUARE: Yes. Well, it was suggested at first when this case was opened that these stones were placed on the Moor as play things, that they had no meaning in them, but when you have seen so plainly marked a piece of land as that - - the marking on one side is Hayward's property, and on the other Morshead's property - - and having as you have heard that these stones and other stones extend all over the Trehudreth Common and mark what are

believed to be the rights between representative owners of the freehold, we can only believe that they were put there by the owners from time to time to define their rights. And I am trying to fix a date when those stones were first put there. We have, sir, bordering upon the Derfold Common, a stone marked "W.P." and between the "W" and the "P" is stamped or cut out the letter "H", and as we know that the Haywards did not come into this property until about 1840 it appears to be obvious on the face of it that that stone was placed there first by Wallis to mark his rights, and Hayward taking it over, a letter "H" was put on it. We have also upon the edge of the 80 acres a stone which was obviously marked at one time "W.P", the "W" of which has been filled in with cement and an "H" cut over it, and that, I think, places the time when these stones were first commenced to be placed on the Moor as a time subsequent to the sale by Morshead in 1808. We find along these lines shown in the tithe map and right out through Newton Common, separating Newton Common from Derfold Common, stones which have on the one side the William Morshead mark, on the Newton side, and another mark on this side. Here we have the Morshead mark on the Derfold side to the west and the Gilbert mark on the Newton Common side. That is one up from the central stone.

THE JUDGE: That is at the top, is it?

MR SQUARE: At the very top of the map. The tithe map I am speaking of at the moment. You have a central stone there and from that central stone the four moors are divided up. On the Newton Common, where William Molesworth is shown to be owner, we have the "M.S" - - the "M" and the broad arrow and "P" - - ; on the Derfold side we have the "W" for Wallis; then, sir, we go along from that point down towards Wallhouse itself. We have the Morshead mark on the inside of all the stones, and the "W" on the outside.

THE JUDGE: That stone is marked on all the sides, is it?

MR SQUARE: The central stone is marked on three sides, the central stone you have there. On that stone, you have the "G" on one side - - -

THE JUDGE: And who is that?

MR SQUARE: Gilbert.

THE JUDGE: That was on the south side, was it not?

MR SQUARE: I think it is, sir.

THE JUDGE: And on the other side, is there an "R"?

MR SQUARE: You have an "H" on the Derfold side.

THE JUDGE: Which is the Derfold side, to the west?

MR SQUARE: The west, sir. And "G" on the Greenbarrow side, Gilbert.

THE JUDGE: What are those letters?

MR SQUARE: This property belonged in 1840, Newton Common to the Morsheads, Derfold to the Wallises, Greenbarrow to the Wallises, and Tredudreth to the Gilberts.

THE JUDGE: You say there is a "M" on the north side?

MR SQUARE: There is an "M" on the north side. There is an "H" on the western side, meaning Hayward.

THE JUDGE: I thought you said that was Wallis.

MR SQUARE: No, sir. Wallis is further up. It is "H" there and there is a "G" on the Greenbarrow side.

THE JUDGE: What does the "G" stand for?

MR SQUARE: Gilbert, sir.

THE JUDGE: That was Wallis, was it not?

MR SQUARE: That was Wallis in 1840. I mean that is the time after the Trehudreth sale of 1808. Now, following upon these stones here, you have "H" on the north-western side and the Morshead mark on the south-eastern side there on the central stone in the Wallis - -

THE JUDGE: Going down south-west?

MR SQUARE: Going down south-west, yes. You have "H.P" on the Derfold side and "M.P" on the Trehudreth side, and these stones finished up in an enclosure on Wallis itself.

THE JUDGE: "H.P" on the west?

MR SQUARE: On the north-west, and "M" broad-arrow "P" on the Trehudreth side, Morshead, and there is a final stone. Final stones are shown on the tithe map as now in an enclosed field, showing that the little bay at the end of the Wallis farm has been cut out of the moor, by a stone wall being erected there.

THE JUDGE: I am afraid I cannot follow it at all.

MR SQUARE: We take the central stone, sir - -

THE JUDGE: That is the one right up at the top on the ordnance survey?

MR SQUARE: It is this one here, sir.

THE JUDGE: It is the same one. I have got it marked on the ordnance; that is the one, the apex?

MR SQUARE: That is the one, just before you get that line on the ordnance, which looks like a dart with two points to it.

THE JUDGE: Yes, then I have got that marked wrong. I have got it marked "M" on the south side. Is there an "S" on - -

MR SQUARE: "O" OR "G", sir. There is no question about that. It is a "G".

THE JUDGE: That is on the north?

MR SQUARE: No, sir. That is on the east.

THE JUDGE: "G" on the east.

MR SQUARE: And "H" on the west, "H.P" on the west.

THE JUDGE: That, you say, is Morshead, Hayward, Gilbert?

MR SQUARE: Yes.

THE JUDGE: And then coming down south-west - -

MR SQUARE: All the stones shown there are four, as a matter of fact there are three - -

THE JUDGE: You see 110 to 179?

MR SQUARE: Yes.

THE JUDGE: Well, to the south-east of that?

MR SQUARE: I cannot say what the marking is on that. It is a private property. It is now cut off. That is cut out by that enclosure running down to the stream. That has been enclosed since the 1840 tithe map.

THE JUDGE: But where does the line of Trehudreth Common as framed by your client run from the central stone?

MR SQUARE: It runs from the central stone by the line of stones towards 1111. That is a straight line.

THE JUDGE: Well, there is no stone here on the ordnance map.

MR SQUARE: There is a central stone. One and a half inches to the south-west there is another stone.

THE JUDGE: Oh, right down here, just to the east of enclosure 1212. I have got no stone.

MR SQUARE: You have got a central stone.

THE JUDGE: Yes. I want to mark it on the ordnance, the outside boundary.

MR SQUARE: Of what we claim? Now, sir, one and half inches - - I wonder if you have taken the right central stone - - would you look at this?

THE JUDGE: Yes. I have got that right. Well. That does go to the stone there. You say that is enclosed?

MR SQUARE: No, sir. The last stone in that list is enclosed.

THE JUDGE: That is what I mean, the 1110.

MR SQUARE: That one outside is marked "H.P" and "M.P" but there is a stone in 1111 which is in enclosed land.

THE JUDGE: Oh, yes, here.

MR SQUARE: That is obviously a continuation of the other line of stones, but being in enclosed land - -

THE JUDGE: You do not go quite up to that enclosure, do you?

MR SQUARE: No, sir. None of these stones go right up. Then, sir, we claim to go right along close to the enclosure wall until we come down to the entrance to Trehudreth Lane. Now, there are no more stones after you leave that one at Wallis on that side of the moor.

THE JUDGE: Till you get down to Hayward's 12 acres?

MR SQUARE: Till we get down to where we want to go presently. Then you will see on the eastern side a stone running from the apex in a straight line down below the tumulus.

THE JUDGE: The first one I have got is from near Greenborrow, with "M" on the western side and "H.P" on the eastern side.

MR SQUARE: That is right, sir.

THE JUDGE: Then we come to another lower down marked in the same way; then we come down to the tumulus.

MR SQUARE: Yes, I don't think we need trouble about that side at all except to say all the stones are marked on the inside, the Trehudreth Down side, with "M" broad arrow "P" on the outside "H.P" or the Cardinham mark. Then, sir, we have stones strictly defining the land which has been conveyed to Mr Roose, and those stones are, I suggest, extremely clear. They show, I suggest, exactly where the line turns. The stones are in a direct line, one with the other, have marks distinctly on the inside and outside, and when they come to a place where the line turns they are turned out of their direct sequence to show there is a turn in the boundary. Now, sir, it cannot be suggested, I do not think my friend will attempt to argue to Your Honour what was suggested before that these stones came there by chance. They are put there for the practical purpose of defining the rights.

THE JUDGE: They have been used for the usual purpose as rubbing stones by cattle?

MR SQUARE: Yes, sir, possibly the cattle thought they were put up there for that purpose.

THE JUDGE: There are a large number of them in this County. A very sensible plan it is.

MR SQUARE: I found that yesterday, going around the Moor, some of these stones had been broken off, apparently by cattle rubbing, and had been replaced by unmarked stones. Now what can be the object of that, It meant that Morshead and Hayward went around the moor together and looked up what their rights were. I do not think it affects the question of common rights so much, but it affects the actual freehold land and ownership of the freehold land on that difficult moorland country. Now, sir, it is not suggested by my friend that his client own anything more than this 12 acres of unenclosed land, and I venture to suggest that these 12 acres, which were taken out of Trehudreth Common and sold by Gilbert to Collins in 1877, were taken out for

the purpose of defining the rights of the moor with regard to the land then conveyed to Mr Collins.

THE JUDGE: Wait one moment. That is part of Rickards Penstrode?

MR SQUARE: Yes. We are selling to your, they say, Rickards Penstrode, with these two fields. They came to Hayward in 1840 and were sold by Hayward to Collins in 1877, and at some time previous these 12 acres were distinctly defined as being acres of unenclosed land to accompany Rickards Penstrode, which I suggest had no rights of common as such on Trehudreth Common, it being part of the Manor of Barlendew. If that were so I venture to suggest it would define the right of common, the right of grazing, which would go with Rickards Penstrode. In other words, you have now got assigned to you 12 acres of a large common. Your right of going on that common is to that extent only and you can put upon that 12 acres such cattle as the 12 acres will bear and that shall be your right. Now, sir, you have heard what Mr Langford, I think, said. If he had half an acre or six feet of land of the open moor, he would have considered he had rights of common for as many cattle as he liked to put out.

THE JUDGE: You could turn out as many cattle as you liked?

MR SQUARE: And that is an idea, probably, that is prevalent throughout the whole district, and if it were not for that idea I think a lot of what was said today would have been left unsaid. My cattle roaming over there; you see Wallis's cattle coming up from there. The only right, so far as Rickards Penstrode is concerned is the right of grazing in those 12 acres, putting on those 12 acres the cattle those 12 acres can maintain - - -

THE JUDGE: That is out on the moor? To turn out on the moor.

MR SQUARE: And because it has taken out of the common -

THE JUDGE: It has been enclosed.

MR SQUARE: And having been taken out of the common, if it is common appurtenant it ceases, because there has been an apportionment of the Common.

THE JUDGE: Yes. Now you get that with Penstradden Green, don't you. It is definitely stated to be part of the Common and therefore anyone who got rights over the Common had rights or pasturage over that, so when that was acquired such rights - - -

MR SQUARE: Ceased, ipso facto.

THE JUDGE: Yes.

MR SQUARE: Now, Mr Roose having that impression in his mind, was very careful to preserve to himself the valuable rights he thought he might have over the Moor, because he sold to his cousin neither of these two fields which are marked in red as abutting on the Common, reserved them to himself, possibly because one of them had a gate on to these 12 acres, and expressly sold to Mr White three acres of this unenclosed land, but the Deed was so drawn that there is no particular three acres shown.

THE JUDGE: It is out of the 12 acres?

MR SQUARE: Yes, to Mr White. That is not - - -

THE JUDGE: It was his cousin. He sold it to E. J. Roose, his cousin, but it is now vested in Mr White. It was sold the day after he bought Rickards Penstrode.

MR SQUARE: That is right. Directly he bought the big lot he sold his cousin, E. J. Roose, Rickards Penstrode, with the exception of these two fields. He gave him three acres of the unenclosed land. He did not say what they were. I can only surmise what the object was in selling those three unspecified acres, and that is that if you have three acres of the Moor you can put as many cattle on the Moor as you like. So far as that is concerned, now, Mr Collins purchased in 1847 from the Gilberts, and in 1853 from the Molesworths. In 1856 he purchased from Mr Molesworth Penstroda Green. He was then the owner of these two farms. If those two farms had any right of common on Trehudreth Common, the purchase of Penstroda Green by Mr Collins dispersed and stopped all rights that he might have upon the Common itself.

THE JUDGE: It was bought from Morsheads?

MR SQUARE: Penstroda Green was purchased from Morsheads, yes. And Mr Collins then owned Gilbert's Penstrode and Molesworth Penstrode, and relying again on all these many posts which run from those very early days onwards, I say that those lands have lost, if they ever had, all common appurtenant.

THE JUDGE: That was before he bought. It was before the purchase of Rickards so he lost it before he bought Rickards Penstrode?

MR SQUARE: Yes.

THE JUDGE: After that he bought Rickards Penstrode.

MR SQUARE: With these 12 acres which, I say, again fortifies us in stating it was the intention of the Morsheads to destroy all rights of common on that Moor, if there ever were any. Now, sir, there is one thing I ought to draw Your Honour's attention to, and that is the apportionment in the tithe map. If this Common is of any value to anybody, it can only be of value in a person having exclusive rights of grazing or of picking up rents from other persons who can put their cattle upon the Common, and we find in 1840 Trehudreth Common, which is described as Penstrode in the parish of Blisland, David Gilbert, landowner, George Lander, lessee, George Lander, occupier, 1590, a common or waste, 3220 and 1591, common, 194 acres, 3s 11d. There you have George Lander, the occupier and lessee of the Gilberts. Now George Lander would never have rented Trehudreth Common, that 198 acres, if he could not get some profit out of it. If he had rights of common, either without stint or otherwise, he would not want to be a lessee of the owner of the land. He became lessee of that land for the purpose of profit to himself, the right to put cattle on it from his own holdings or the right to claim money from other people for putting cattle on it.

THE JUDGE: Part of it is common and part of it is waste?

MR SQUARE: Part of it is described as common and part of it as waste. The acreage is not shown on the tithe map or the ordnance map but we have it later on in Bunt's lease as being of 206 acres, which is very close to the field we have been discussing. Then, sir, we have the evidence that after Mr Morshead became the owner of that Common, Mr Sandercock, Coppin, and others, rented the Common in conjunction with their holdings at Trehudreth Barton, and charged people for the right to graze their cattle upon the land, and obviously evidence of acts which could not have been done if it had not been Mr Sandercock and his subsequent lessees

felt and believed they had a right to turn them off the Moor. We have Mrs Bunt giving her evidence and she states her husband collected rents in 1896 and onwards, and they never interfered with the Roose's because they realised the Roose's had some unenclosed land on the Moor, and they felt they could put their cattle on the land, and they could not be interfered with. With regard to this question of turbary, there is no question at all but that if Mr Roose, who was most anxious not to enter into litigation over this Moor, had not threatened proceedings against Mr Chapman, there would have been no question about taking the turf.

THE JUDGE: I want to know how far the objections with regard to the pasturage rights had got before Mr Roose made this belated cutting. How far had they got?

MR SQUARE: It is in the correspondence, I think, sir. He said in his evidence, "I went up there to cut the turf because Mr Chapman questioned me about my rights of common."

THE JUDGE: Then did he do that when the action was moving?

MR SQUARE: Oh, yes. Before the action was actually brought but when we were threatening.

THE JUDGE: But how far were the parties menacing each other at the time he went to cut the turf?

MR SQUARE: They were very close to each other at the time, sir. I think we had that in Mr Roose's evidence, sir.

THE JUDGE: It is not in the evidence because it is one of the things I made a note of, I wanted to ascertain.

MR SQUARE: Page 102, sir. "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 required turf, you have gone to Shallow Water for it." And I put it to him that Shallow Water was about three miles away and he agreed that was so.

THE JUDGE: I don't think you will find it in the evidence.

MR SQUARE: Page 101. "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 tht there has been a dispute." Then I say I gathered he said turf was last cut 14 or 15 years ago by Bate but he has not cut it since until the question of this dispute arose.

MR LASKEY: On March 1st, 1926. That was when Messrs Coulter Hancock and Thrall wrote to Mr Roose.

THE JUDGE: The first letter?

MR LASKEY: The first letter.

THE JUDGE: And how far had the correspondence - -

MR SQUARE: The summons was issued in June.

THE JUDGE: Yes but how far had the correspondence got to? What is passing in my mind is it is one thing for a person to say "I don't know, I believe I have got rights of turbary there, but I have not exercised them for a long time. I had better do it now to keep my rights alive." You do that with no suggestion of proceedings.

MR LASKEY: There was, of course, a letter. The first letter written is the letter about the trespass, not so much threatening proceedings, but there was correspondence about the question of the cattle. But on the other hand, no reference in the correspondence had been made throughout March to any question of cutting turves. They were getting antagonistic on an entirely different matter.

THE JUDGE: Oh yes. On the question of common rights a man can very well say, "I can see this is going to be a fight, and I might as well claim rights of turbary as well as other rights"

MR LASKEY: It does not appear on the note. My client said he got turf to protect his right.

THE JUDGE: To protect his right without having any prospect or suggestion of any legal proceedings. Of course, you have legal proceedings and set up the right because of those proceedings; that is another matter.

MR LASKEY: I will quite frankly admit there was a threat of proceedings before he cut the turf, and the first letter shows that on the question of trespass. (The first letter from Messrs Coulter Hancock and Thrall was read.) There are further letters and the summons is not actually issued until August.

MR SQUARE: No, June.

MR LASKEY: It was not served, at any rate, I am instructed.

MR SQUARE: One was issued on June 7th. There is another one issued August 7th. Now, sir, with regard to that right of turbary.

THE JUDGE: March 1st.

MR SQUARE: Yes, and the turf was cut obviously after that date.

THE JUDGE: It was cut in June.

MR SQUARE: Now with regard to the right, Roose's house has gone. He has erected another house in the place of it. He, of course, has no right of turbary in respect of his new house. That is quite clear. The question is whether he has a right of turbary at all, and if so whether it is in existence or whether it is dormant. If he had a right of turbary in respect of that farmhouse and the dwelling portion of the farmhouse is turned into a stable, the house could not be used for dwelling purposes, and I say that the right of turbary becomes dormant and cannot be exercised until the house again becomes a dwelling house. I know there are cases which say where there is a right of turbary or any other rights of common the question may arise whether the tenant is adversely affected by the exercise of any particular right but where there is a right of turbary in respect of any particular chimney, I venture to say that right of turbary must be in a dwelling house for dwelling house purposes, and I gather that the occasion when they nearly had a fire, shortly after the last time we were before Your Honour, they tried to scald a pig in the course of exercising what they call their right. I say if they are going to use turf in their customary chimneys for the purpose of heating water to scald their pigs, there common right of turbary

does not run to that extent. There is one case I know you will have in your mind where the question was discussed but never decided as to whether there could be a right of turbary for heating water for cattle as opposed to right of turbary for the ordinary domestic part of the house.

THE JUDGE: I don't remember. What was that case.

MR SQUARE: It was put forward by Counsel in argument. I can find no case where the chimneys of a dwelling house can be used for anything but dwelling house purposes. But, sir, what is the evidence that there ever had been a right of turbary exercised? It is true, when Mr Roose came here, he found on the top certain small patches of ground where the turf had been taken up and where pools had accumulated. Pieces of turf had been taken many years ago, but at the most the average length was a matter of 8 or 10 yards. Mr Chapman then exercised his right as owner of the Moor himself and dug and cut away turf for his own use. It was not good turf, but it saved him the trouble of going to Memacrim or Shallow Water and paying, as he would undoubtedly have had to pay, something to the Lord of the Manor for cutting from those turf ties. We have some evidence that Bate went up there 50 years ago, that Cole went there 50 years ago. Mr Wellington, who was tenant of Rickards Penstrode at that time, said "Yes" he know Cole went there on one occasion. He was doing what was wrong. "I knew he had no right but I helped him cart it down." In other words, Cole, living in this out-of-the-way cottage, poached turf off the Common rather than go to the place where he had been accustomed, where the owners of that property had been accustomed to get turf for many years past and had been cutting it for many years past. That is to say, Menacrim and Shallow Water. Because certain small charges were made there. I do not know, sir, that I want to say very much more than that. You have all the facts before you. I have gone at some extent into the history of this country here and I have found that in the reign of Charles II there was a very interesting action with regard to Lady Down, which was a portion of the more northern Blisland Moors, Emblems Down and Kersey Down, which was tried in this very building as far back as the 23rd year of Charles II. And there the owners of certain farms abutting on these particular downs were prosecuting an action to support their claim for grazing upon these moors, and it was there held by the jury and subsequently the right was upheld by the Court as being a sound one, that the tenants of the particular farms here affected had the absolute right of grazing upon these three commons and downs I have mentioned, to the exclusion of the Lord himself. It was argued by Counsel that such a custom could not possibly exist but the Court held it was good. Then we have, when we look into Sir John Maclean's history of the Blisland Moor, that there were customary tenants there in occupation of customary freeholds, who have the right of common without stint.

THE JUDGE: They cannot be.

MR SQUARE: Yes, sir. It was laid down in the reign of Queen Elizabeth that the customary tenants have the rights of grazing without stint and - - -

THE JUDGE: That is not a common right.

MR SQUARE: Customary tenants of the Manor.

THE JUDGE: They must have the sole pasturage granted them.

MR SQUARE: It is somewhat remarkable that Alexander Maynard should have omitted to notice the unusual custom that the customary tenants of the Manor have by custom the sole and several pasturage's to the exclusion of the Lord in these particular places.

THE JUDGE: Yes. But no such right as general common right without stint.

MR SQUARE: Only certain customary tenants have the right.

THE JUDGE: Certain individuals. It means, of course, the grant of sole pasturage.

MR SQUARE: It cannot be the grant of sole pasturage.

THE JUDGE: Yes. To certain individuals. It is quite possible.

MR SQUARE: And then they refer, sir.

THE JUDGE: In all common rights you must define - - the right must be relative to something, to the holding capacity of your farm, or with regard to the fuel relative to your wants.

MR SQUARE: They would be limited to their own particular holding in the ordinary way, but apparently, by the same decision, in Michaelmas of 23, Elizabeth, the Exchequer ordered that every tenant with a right of turbary there had to pay for his turf. Now it has been put forward that the Defendant has a right of common to the extent of those animals which are levant and couchant upon Penstroda. That is the claim. It does not say in respect of which particular portion of the farm which he holds, Molesworth Penstroda, Gilbert Penstroda, or Rickards Penstrode. He simply claims it generally and from his own evidence I suggest that apart from the question of whether he has lost all rights of common upon the Moor, he has obviously been keeping cattle in near Bodmin. He has been keeping cattle on the otherlands he has rented. He has been keeping cattle on the west of Penstroda Green, and driving them all up on to the Moor indiscriminately. You were asking him one or two questions with regard to the number of cattle he could keep on his land in the winter if he did not get his grazing outside, and he informed you that so far as 22 acres were concerned he could keep another number of cattle. I venture to suggest that coarse moorland farm it would be impossible for him to keep more than three bullocks to ten acres.

THE JUDGE: Mr Button said two.

MR SQUARE: I am told Mr Button said two.

THE JUDGE: Mr Button said Defendant's farm would keep one bullock to five acres all the year round. The Common would keep one to 10, but the whole 55 acres, that is the purple and green, I don't know why he did not take the whole farm. That is 62 acres, is it not?

MR SQUARE: With the 12 acres outside, I think it is 62 acres.

THE JUDGE: The whole 55 acres, the purple and green, would carry 32 bullocks in winter. The 35, that is the green, 20.

MR SQUARE: Yes. Well, Mr Button does not agree with that.

THE JUDGE: Mr Button would say one bullock to five acres.

MR SQUARE: Yes, 11 to the whole holding, because, of course, it is very rough land. In any case, from Mr Roose's own evidence, I venture to suggest these proceedings were justified in view of the fact he did so.

THE JUDGE: Supposing I come to the conclusion that the Plaintiff's right is justified, supposing I come to the conclusion the Defendant has a right for his cattle levant and couchant, how am I do deal with the action as an action?

MR SQUARE: The only question Your Honour has to decide in this action is whether there has been trespass.

THE JUDGE: But that is very unsatisfactory if I find he has got the right, because - -

MR SQUARE: You will make a nominal verdict for damages. If, for instance, you found he had a right of common in respect of Molesworth Penstroda, then Your Honour would find accordingly.

THE JUDGE: Yes, but it occurred to my mind whether it would be wise or convenient for Mr Laskey to counterclaim.

MR SQUARE: There has been no counterclaim. In fact, what I expected was a declaration, but there has been nothing like that.

THE JUDGE: Most probably, you could put your heads together and agree what the proper levant and couchant should be.

MR LASKEY: We have got very full evidence in the evidence taken at the last two days' hearing, as to what the number levant and couchant could be and what the numbers actually put on the land were.

MR SQUARE: What does levant and couchant actually mean?

THE JUDGE: He cannot say exactly how many beasts he kept there.

MR LASKEY: There was the evidence of Mr Roose himself and his son as to the number of beasts that were driven.

THE JUDGE: The question is the number his farm has actually held in any one year.

MR LASKEY: Levant and couchant, I understand, is the number that can be kept on the farm, quite apart from any grazing rights, during the winter, irrespective of any grazing rights.

THE JUDGE: The peculiar thing here is that they used the grazing rights more in winter than in summer.

MR SQUARE: Because they have no grass of their own.

THE JUDGE: Whereas the theory is that the beasts are kept in in the winter.

MR LASKEY: You will remember that the number that were grazed were only a part of the number that were kept on the farm in winter. It was only a comparatively small number that were sent on the Moor, because the others were too young to be sent out.

THE JUDGE: Yes. It was more than were turned out in the summer.

MR SQUARE: Yes, and I venture to point this out, that if they have a farm which can keep 40 beasts levant and couchant, and you have a piece of unenclosed land of your own without any right of common other than the right to go on to your own land to graze, you will not keep on that piece of land that 12 acres, more than one or two bullocks, if they are grazing there the whole year round, because they would eat the grass up. Your Honour has a copy of the correspondence, I think.

THE JUDGE: No, I have not.

MR SQUARE: You will have, sir. And you will have a copy of all the material documents, and I would point out that our date, the date when Roose became the owner of this land, was 1908, twenty years has not expired since 1908, before these proceedings are taken.

THE JUDGE: He need not put his own.

MR SQUARE: Oh, anything a predecessor has exercised. Of course, Mr Collins has exercised nothing at all except through his tenants. I think that is all I want to say to Your Honour at the moment.

THE JUDGE: On the question of prescription, do you want to say anything to me on the evidence as to that.

MR SQUARE: The evidence with regard to prescription is that Trehudreth Common passed to the Morsheads in 1846. At that time Hayward was in possession of Rickards Penstrode and Molesworth in possession of Molesworth Penstrode. The Common is sold by Gilbert in 1846 and no fresh rights of common could possibly have been created over Trehudreth without the consent of the owner of that Common, Mr Morshead.

THE JUDGE: Prescription, I mean.

MR SQUARE: The user. The user must be as a right against the interest of the true owner. Well, sir, with regard to that, the premises have been leaseholds for lives. The reversion vested in someone for many hundreds of years past, a yearly heriot, a yearly harvest due, a yearly best beast, in addition to a nominal rent, and at the expiration of the 99 years or the death of the life on which these premises were held, they reverted back to the landlord. If either of those happened to be the owners of Trehudreth Common and he reissued he would reissue for the term of the lease. The right to do certain things, he would reissue the land himself, and if he was himself at the moment the owner of the Common he would possibly put general words conveying to the tenant the right to graze. But I think there is no evidence of that here at all. The evidence we have got here which appears in the documents Your Honour will have is that the premises were always let to the tenant until the sale to Collins in 1847. Now any tenants who were exercising rights of common in 1845 would probably continue to exercise those rights until the lease fell in, and then when Mr Collins granted a fresh lease to a new tenant he would only be able to grant them a lease of the land which he owned, namely Rickards Penstrode, and the 12 acres of unoccupied land, and I venture to suggest that this Common has itself been leased shows that none of these persons had any rights of Common on the Common itself.

THE JUDGE: I do not quite follow. Every tenant who exercises a right is doing that, in effect, for the benefit of his landlord.

MR SQUARE: Yes, he has acquired a right possibly.

THE JUDGE: Which accrues for the benefit of his landlord.

MR SQUARE: Yes, but if in a case like this - -

THE JUDGE: You cannot show that the title of the Common was such that there could be no - -

MR SQUARE: No, I cannot show that, sir, but I have shown that the Common was leased to Lander, and if, for instance, Mr Roose and his ancestors had a right of going over that Common with the number of cattle he is going over it with today, 21 or 22 cattle, there would be no value in the Common itself to any lessee.

THE JUDGE: No, but I don't think you quite appreciate the point that if the property was - - there would be nobody who could make a grant of the pasturage rights.

MR SQUARE: Quite.

THE JUDGE: During the time it was leased, the rights would now accrue. Then, I forget for a moment, there is something in the Prescription Act with regard to leases, the time being extended - -

MR LASKEY: Persons under a disability.

MR SQUARE: You will have this in the documents. I think you will have everything in the documents with regard to that.

THE JUDGE: It is near the end of the Prescription Act, if you remember it.

MR SQUARE: I remember it, sir. I think it is after disability; it is 21 years.

MR LASKEY: There are two periods referred to, I think, a period of 30 years and a period of 60 years.

THE JUDGE: It does not matter a bit with regard to the origin. It was the purpose of the Act to show that 20 years was prima facie good enough, but 60 years is complete.

MR LASKEY: It comes under the Prescription Act, rights of common, continuous enjoyment as a right and without interruption for either 30 years or 60 years must be shown to have been exercised by occupiers or the tenant where the right is claimed, and where the latter period can be shown the right is absolute, unless it can be shown to have been enjoyed by consent or privilege.

MR SQUARE: I think we shall find all these properties were leased until the freeholders sold out to their tenants. I am almost sure in my mind it was 21 years.

MR LASKEY: I have a note here. It is the Prescription Act, 32, Section 7, which applies to the question of disability; and if there is enjoyment for a period of 30 years only shown while the land is held by a tenant for life, the claim cannot affect the reversion. There are two cases on that point, England against Wall, 1842 is one of them.

THE JUDGE: What about the leasehold?

MR LASKEY: I have no note about leasehold. My impression of it is this, that the period of 60 years is unaffected by the fact that there may be someone who is under a disability.

MR SQUARE: I suggest that the pig is not a commonable animal, as far as - - -

THE JUDGE: There is no evidence about pigs being turned out, is there?

MR SQUARE: No, sir, but with regard to the scalding of pigs, sir.

MR LASKEY: If, Your Honour pleases, I shall not detain Your Honour long, because of this fact, that I have full consciousness that I am but a child in these matters as regards tenure of land and titles, and I shall not attempt to go into the question of the effect of all these deeds which Your Honour will have before you. My own submission is this, that they do not affect the matter adversely to my client to any very considerable degree, and I do not myself consider that one can extract from those deeds any large amount of evidence in favour of my client's claim. I have already made my submission as to the effect of the Deed of 1809, coupled with the only other evidence that I can bring as to the Manor of which the Molesworth property formed a part. I quite realise this, that as regards the Morshead property it is quite clear that there was unity of title as to that 20 acres and the small piece of land called Penstroda Green which was actually incorporated later in that property, but which was sold as part of the Common or waste, and that consequently any right of common appurtenant would be extinguished. But, of course, that would not extinguish a right of common appendant, and if there was a right of common appendant which passed by one conveyance and another to the person in whose hands that land was held at any time then that part of the waste may have been sold and come into the same hands as the waste was in, then so far as the right of common appendant was concerned then that right was not extinguished. Now, I have said already that so far as there being a right of common appendant in these properties is concerned, I rely upon the deeds. There are general words in those deeds. I do not think that they amount to the words which were referred to in Hall and Byron in every case as recreating that right, but there are general words in those deeds purporting to pass rights of common if already existing.

THE JUDGE: They are incorporated now, but, of course, clerks used to keep drawers full of these common forms before 1881.

MR LASKEY: And, of course, as to the deed of 1808, you will remember the rather remarkable fact that in the conditions of sale which my learned friend had produced, the conditions of sale at the auction say that the rights of common were reserved, but on the other hand in the conveyance itself they are not reserved. Now, at the time, the Molesworth properties did not appear in that sale and did not form any part of the properties sold at that time and in my submission, although the Morshead properties are affected, or may be affected by the sale into the same ownership of a portion of the waste the Molesworth properties are in - - that is, the 35 acres, and my submission is that there is more than a possibility that the balance of the evidence is in favour of there being a right of common of pasture appendant in respect of those 35 acres.

THE JUDGE: If that was at one time part of the Manor of Blisland, and if several other things.

MR LASKEY: We have this fact, that the Deed of 1809 there is a high or chief rent reserved, and I think that in the case of Hall and Byron, that in that case there was an allusion to that question, and there was a reserved high or chief rent/

THE JUDGE: 4 Chancery Division.

MR LASKEY: 4 Chancery Division, 667. I believe in that case there was an exactly similar circumstance, that there was a high or chief rent reserved to a particular Manor, and that from that the inference was drawn that the lands out of which that rent was reserved had at some time formed part of the Manor; that could be the only reason why that rent was reserved. And that being so, if this were part of the franchised copyholds of the Manor, there would be the right of common still existing in the owner of these lands. So much for the right of common appendant. There is next the question of the right of common appurtenant, which is claimed in my pleadings. I think this is the more important and the more substantial part of my case, and that to which the greater part of the evidence is directed. It has been suggested that any right which existed was extinguished as to Morshead's property by the Penstroda Green conveyance. Of course, as right of common appurtenant existed in 1856 at the date when Penstroda Green came into the same ownership as the Morshead property, I agree. It would be extinguished. But the period we are dealing with is the period of 1866, ten years later after that conveyance is executed, and therefore in my submission it is irrelevant to consider whether we have or have not shown a right of prescription.

THE JUDGE: You are talking about prescription now?

MR LASKEY: Under the Prescription Act.

THE JUDGE: If you have got your right, you say, you go back 60 years. That would be 66? Then that would not affect - - it would not extinguish - - of course not - - -

MR LASKEY: The rights I am claiming are rights which have been created since that date, and of course we have no evidence that there was any right of common appurtenant before that date, and therefore in my submission that particular matter is irrelevant. If I am claiming a right of common before that date it is a right of common appendant. I cannot prove any right from user before that date, but on the other hand, as far as prescription is concerned, I do submit there can be no stronger or clearer evidence than that which has been given in this connection. It is quite remarkable that so many people should have been found - - many of them not connected with this family, tenants of farms around this neighbourhood - - that they all know the marks of these animals, they have all seen them on the common for very many years, and the evidence I have called goes back actually in the case of the eldest witness to a period of 61 years. That is Mr Albert Roose. Mr Elijah Roose goes back 60 years. They are really the longest periods one could possibly expect to get and if this evidence is not sufficient to prove prescription and the long exercise of this right, then in my submission one could hardly think of any circumstances in which prescription could be proved. In the evidence against me, two witnesses have been called today to deal with the matter. What do they prove? They prove this, that they have at times driven cattle off the Moors when there were large flocks of them, large droves of them, and I should think it is not put unreasonably when Mr Langford said he would say a large drove of sheep was about 200. That one would drive off so large a number as that, but on the other hand, as he said, small lots he did not bother. At any rate, in my submission that evidence is cogent, and the reason was, and, of course, it may have been quite a mistaken reason, but what Mr Langford said was that he fully believed that Mr Roose had the right to depasture his animals there, because he had a bit of land on the Common himself, and he thought he himself had not got a right because he had not got a bit of land on the Common. That may have been an entirely mistaken view of the law. I think, so far as there is any legal view of the question, it was mistaken, but that, in my submission does not matter. Persons may have abstained from driving those cattle off because they were mistaken about it but the real question when one is considering whether this right has been properly or improperly exercised is this: It has been exercised as a right to the full knowledge of everybody, and that right has not

been interfered with for this long period. That being so, my submission is that the prescription is for a period which is quite impervious to such questions as to whether any person is under a disability or whether any origin of the right immediately preceding can be shown - - the 60 years is impervious to any of those considerations, and actually 60 years is shown in this case. It is shown in the evidence of Mr Elijah Roose.

THE JUDGE: One of the brothers, the eldest one.

MR LASKEY: His evidence was most clear and convincing about it, because he said - - page 153 of the shorthand note - - he lived at Stokely. His memory went back for a period of 60 years. He went up there three times a week. Now it was suggested today - -

THE JUDGE: He did not say from what age, did he?

MR SQUARE: No, I do not think he did.

MR LASKEY: Page 162 of the note. He spoke of the period he could go back and said he was 67. He said he began work when he was 7 years old. My point in referring to his evidence was, I was referring to his evidence given by Mr Wellington today to this effect, that the animals that were kept out on the farm were kept at Stokely and not at Penstroda, and that they were let out on to the turnpike road and not this road.

MR SQUARE: One of the Rooses said so as well, I think.

MR LASKEY: It does not appear in the shorthand note.

MR SQUARE: I will see. I am sorry to interrupt you.

MR LASKEY: It is the point of this evidence as to having let the animals out from this particular place, from this cowhouse on that little road where you have been this morning. It is within 100 or 200 yards of the entrance to the Common. If I am speaking of the matter of period alone, I have, of course, a witness who goes back further than Elijah Roose, and that is Albert Roose, who goes back 61 years. That is page 142 and 143 of the shorthand note. And Mr Albert Roose, of course, confirms the question of numbers of cattle, but says, as his brother, the defendant, said in his evidence, that in winter time it was the older cattle only which were out on the Moor, because it was too rough for the young beasts. That is the witness, Mr Albert Roose, who knows over the longest period. I think I am justified with his evidence before Your Honour in saying we do cover the whole of the longest period of 60 years, and that consequently the rights we claim by prescription cannot be defeated by any of the considerations which can be advanced against the period of 30 years. Now after that, the next consideration which arises is as to the numbers of cattle we have turned out at various times, and as to the numbers which my client's holding can support, and of course as to those I would draw Your Honour's attention to this fact, that in considering these numbers one has to consider as an entire holding because this right he obtains by prescription is not limited by the Morshead's title or the Molesworth's title. It is obtained from the whole.

THE JUDGE: Wait a moment. I am not clear about the acreage. Page 48 - - -

MR LASKEY: It is a question of one or two fields, we say neither, but I think there is no doubt the correct number is somewhere about 63 plus 9 acres of moorland. Now, Your Honour, considering the quality of the land and very strenuous efforts have been made to represent this

land as very little better than moorland, and not able to support any but the smallest number of cattle. The price my client gave for it was £17 10s. an acre - -

MR SQUARE: When?

MR LASKEY: When he bought it. And that is hardly the price of land which is in the condition of moorland, and as my client tells you he has spent a large amount of money and had exhausted a very great deal of effort in improving this land. Your Honour saw it this morning and there can be no doubt about it, to compare it with the moorland, which lies on the other side of the hedge, is simply monstrous. It has been improved and been enclosed for a very long time.

THE JUDGE: What he said was the bullock bearing capacity of the whole farm. How about the sheep?

MR LASKEY: He said as regards the bullocks that the number would be 32.

THE JUDGE: But what about the sheep?

MR LASKEY: The sheep, of course, were turned out only in the summer time.

THE JUDGE: But still, these must count.

MR LASKEY: I quite agree these must count, but is it really to be said 32 bullocks on improved land amounting to somewhere about 63 acres? It that an undue number, because he said that 32 is the number that can be maintained on the whole farm of 60 odd acres. Now, the evidence is this and there is no contradiction of it, and that is that the highest number he has ever been driving out was 24, well within the number of bullocks.

THE JUDGE: And sheep.

MR LASKEY: But not at the same time.

THE JUDGE: That does not matter.

MR LASKEY: Surely, the position is this - - -

THE JUDGE: If he turned his sheep out during the year and kept his bullocks in - -

MR LASKEY: It does not follow that they were there at the same time, and his evidence was, I think, that they were not there at the same time.

THE JUDGE: Oh, I did not hear that. The allegation was that in June there were 20 cattle and later, besides that, four horses, and in the summer 50 sheep.

MR LASKEY: Pages 98 and 99 of the shorthand note. He said, "I put sheep on the Common always summer time, never winter." Then he asked about the end of that page, "What was about the number of animals you have driven on?" "From 12 to 15 bullocks. It might be a bullock or two more."

THE JUDGE: Yes.

MR LASKEY: And then on the next page I was asking him about the number that could be wintered on his farm and he said "I generally winter about 2 fat bullocks." Then we went into the question of how many could be kept on the Molesworth property; that I don't think is material at the moment. We are considering the whole property now.

THE JUDGE: You see the allegation was that these beasts were turned out. Did he deny that number was turned out? He gave a general idea.

MR LASKEY: He said the number he turned out was about 12 or 15 and sometimes one or two more.

THE JUDGE: There is a specific allegation made claiming damages to cover it, that a certain number were turned out. He has never said whether that was so.

MR LASKEY: He has said in several places that he has never turned out more than one or two over the 12 or 15. It is quite clear he does not admit the number which is suggested on behalf of the Plaintiff, and the evidence we have heard from people who have been called does show that the number which have been driven out would be somewhere about 15.

THE JUDGE: But there is a specific allegation that on a certain occasion he drove out a specific number of beasts.

MR LASKEY: He dealt with that and we have also general evidence as to the number he generally drove out. I do not think any date was given on which this particularly large number was alleged to have been driven out. I may be mistake.

MR SQUARE: Oh, yes, I think so.

MR LASKEY: Well, I have referred to the evidence of Mr Roose as to the numbers he drove on.

THE JUDGE: It affects my position when I consider this. I want to know whether a certain act was done which it is alleged was done which gave rise to an action for damages, and he has never said that that is not the case.

MR LASKEY: Well, Your Honour, I do not think it is admitted that if that number were on at that particular date that it necessarily follows that there is a right to damages.

THE JUDGE: That depends on what I think is the carrying capacity of the farm.

MR LASKEY: The date Your Honour refers to, January 1st to June 7th, 1926. Of course, it is alleging a number from 18 to 20 not on any particular date but over a general period. You will see it is stated that over a period of over five months, and it is not a special number - - it is some number from 18 to 20 - - I do say that that is far from being a specific allegation on a particular date. It is just on the same footing as my client's evidence in reply, that the numbers he has put on has been from 12 to 15 and sometimes one or two more. I have referred you to the evidence on pages 98 and 99, and there is further evidence of that on pages 110 to 111. In cross-examination Mr Roose was asked by my learned friend, when you worked on the land, in which was included Rickards Pentrode, how many bullocks you turned out. He said he put out about 30 then. At that time he had 112 to 115 acres. The evidence still goes on. There was a further reference to the Molesworth property and finally Your Honour asked him and got the whole matter, quite specifically, pages 125 to 126. "You only turn your animals out in winter?" And he said "I turn out some 15, 16 or 17 in winter, and in the summer I turn out from

10 to 12 weeks in the summer time I turn out sheep. And from 5 to 10 or 12 bullocks.” And in answer to Your Honour he said he looked upon it as a winter feeding place. Surely, that does turn on the question of what quantity of cattle the whole holding of somewhere about 63 to 70 acres would support, because if the evidence shows that one kind of cattle were put out in the summer and another kind in the winter, it was sheep in the summer and bullocks in winter and a smaller number of cattle in the summer. Besides that, we know he had some fields in Bodmin, and when he wanted to fatten cattle, he took them away from Penstrode and brought them into Bodmin, and on that I submit that he varied the animals he was grazing according to the season. That this was a good winter grazing place for well-grown animals but useless for younger ones, and for sheep it was only useful in the summer time. That is the evidence. Here we have 60 to 70 acres of improved land and the largest number of cattle that have been grazed, and that in winter time, has been somewhere about 15 to 18.

MR SQUARE: Average, 20.

MR LASKEY: Average, 20, is your evidence, but I am entitled to rely upon my client's evidence that the highest number has been about 18. Now the number that can be maintained on that land I submit is clearly in excess of that, but on the other hand, instead of that, there were sheep, a varying number, in summer. There would probably be few because they would be spending most of their time on the Moors, but on the other hand the number which could be kept on this land would be a number certainly which exceeded the number Mr Button suggested. I think he went so far as actually to say one could only have one bullock to five acres, which means to say that one of those fields - - in fact that it would take two of those fields to support one bullock all the year round. I suggest that is absolutely farcical - - an absurd figure. Was Mr Button a man upon whose word Your Honour could implicitly rely? Mr Button purports to tell Your Honour exactly what happened at an auction 16 years ago, when his business is to run auctions every day, and he definitely swore nobody ever asked him any questions about rights of common on this property, and he made no reply. In the face of the other evidence of the witnesses, I do ask Your Honour to pause before you accept his evidence on that point. This is not an action against us for keeping too many animals on this farm, for over-stocking; it is an action for trespass, that we have no right there, and that is Mr Chapman's case, that we have no right there, and that every animal we put on this Common is a trespasser on the Common. That is the claim for the injunction. It is against our putting any animals there. I do say that as regards that case we have most fully answered it. “It may be one or two more.” I would suggest this is strong evidence my client is telling the truth and giving an honest account of this when he does not pretend to be able to say within one or two what is the number of the beasts he has sent up on this Common. I am not going to refer to a great deal of what was put in cross-examination. The suggestion made against M Roose concerning his brother in law, suggesting that he had put other cattle than his own on the land. There has been no evidence produced to suggest that he had done so. It was merely a suggestion which he has repudiated and without any evidence in support. Now, as to the right of turbary he claims. I do suggest there that once again the evidence of Defendant's witnesses has been most singularly corroborated by one of the Plaintiff's witnesses, who says he himself not only Mr Cole cut turf 49 years ago but assisted him to take it back, and that nobody ever stopped him or spoke to him. I submit that is the most conclusive evidence that that right was exercised up to that time although it was not exercised since 1908, 15 years ago, until the parties came to conflict about quite a different matter, the common of pasture. That right was not being exercised but was there any evidence that it was abandoned? In a case quoted to you today (Reynolds) there was an instance where a house had been pulled down and another house erected, not on the same site but at a distance, but it was held that nevertheless the house had been erected in substitution for it. Here we have the house still existing and capable of being used for its original uses. Supposing, for instance, Defendant wanted to take two or three more hands into

his service he could change that house from its present day purposes. What changes have been made in it? It has a partition in the middle, a wooden floor has been removed, and a concrete floor put instead. The inner staircase has been removed and there is an outer stone staircase to the top of the house. There are still the hearths and fireplaces and it would be the expenditure of a comparatively small sum to render that house capable of occupation again as it was before. In fact, the evidence in the case shows it was the ancient farmhouse of this property, and it has been universally spoken of as the old farmhouse. Now, if Defendant had pulled that house down and built another one, under the case of Reynolds, he would be able to claim the right of turbary. But he does not pull it down. He leaves it standing and does not claim the right of turbary in respect of it for a time. That does not mean that he loses that right.

THE JUDGE: He cannot claim in excess of the burning capacity of the house.

MR LASKEY: I agree. We, of course, are not claiming in respect of the new house, but in respect of the old house, and there, I say, is the house still standing. There is no evidence that the right has actually been given up. I am not relying on my client taking men up and cutting turf last June, but I do say that within comparatively recent dates after having clearly been exercised for a long time up to a comparatively recent date, that right was exercised, and may be exercised again if Mr Roose should want to use more labourers and decide to use that house for that purpose. In my submission, the case is stronger than in that of Reynolds, in that the house is still existing. There is a paragraph in Halsbury which runs as follows:- "Turves must be expended on the premises to which the right is appurtenant." I do not suggest we can take turves and burn them in the new house, other than the quantity which applies to the old house, but on the other hand the fact remains we have the old house still in existence and that turves have been used actually within the last 15 years for the purpose of boiler water.

THE JUDGE: For scalding pigs?

MR SQUARE: A couple of months ago.

MR LASKEY: It was some time before we last met here.

MR SQUARE: Oh, no.

MR LASKEY: Well, it is in the evidence in the shorthand note. That is what he stated. The evidence was given at the last hearing that within the last 15 years water had been boiled at these chimneys.

THE JUDGE: Oh yes. But then you are relying upon prescription. But I do not think you can put your journey up to the Moor to get some turves to assert your rights to be a genuine exercise of your rights.

MR LASKEY: No. I recognise I cannot rely upon prescription as far as turbary is concerned, but I do submit the evidence shows that there has been user for a considerable time when this house was in occupation, and that these hearths can still be used for that purpose, because they still have been used for that purpose, although the house itself has not been used for human habitation, and that there is in fact no foundation for my learned friend's argument. At any rate, there is no decided case which supports his argument that the house must continue to be used as a human habitation to support these rights. All I would urge is that it must be capable of being used again for human habitation. That is all I want to say on that point, and I do not think I shall trouble Your Honour further. I submit that on the evidence which has been given, not only last time, but more particularly my learned friend's witnesses today, your

judgment should be in favour of the Defendant. There is also the question whether any declaration should be asked for.

THE JUDGE: I cannot do that, you see.

MR LASKEY: No, Your Honour, because it has not been asked for. I wonder, if you think it is necessary, if you will allow me to ask for that by amending my defence by asking that a declaration should be made.

THE JUDGE: Would it be more satisfactory to you to know what the numbers are?

MR SQUARE: I do not think my learned friend ought to be allowed to counter-claim for a declaration, because if he had we should have asked questions about what he was claiming for. All we are asking for are damages for trespass.

MR LASKEY: Then the whole question is one of damages.

THE JUDGE: Very well. Then what documents shall I want?

MR SQUARE: We will get up a list.

THE JUDGE: There is no question, is there, about the extent of Plaintiff's property in the Common?

MR LASKEY: I do not think I shall trouble Your Honour with any further questions about that. There is only one thing about that. You remember the Plaintiff's own evidence about his holding on the Common; it went down actually from the head of the lane.

MR SQUARE: I am not worrying about that, Sir. It does not come into this action at all. It is our property. It goes right down to Harper's farm.

THE JUDGE: Does it follow the boundary of the enclosed land?

MR SQUARE: Yes.

THE JUDGE: Right down to the entrance?

MR SQUARE: Yes.

MR LASKEY: And, of course, the cattle going up the lane would walk straight up that lane on to the Common.

MR SQUARE: Of course, my answer to that is that when we got that stone in the centre of the entrance to the Moor that the line is changed, and the line runs direct from there to the hedge.

THE JUDGE: The hedge on the south?

MR SQUARE: Yes.

THE JUDGE: Well, that little bit does not belong to you.

MR SQUARE: No, it belongs to Roose.

THE JUDGE: Coming down following the line of the enclosed land on the west of the Common, you have got your map with the green on it, where have you got your green?

MR SQUARE: In the ordnance we claim to own the whole of the Moor on the west of the Wallis's stone, and we say that the Hayward land goes from that stone direct across to the hedge adjoining the Rickards Penstrode corner field.

THE JUDGE: Somewhere between the red and the purple?

MR SQUARE: Yes.

THE JUDGE: Then you do own the entrance to the land?

MR SQUARE: Yes.

THE JUDGE: I see. Then where does it come across? Oh. I see.

MR LASKEY: It comes up the apex, a sort of point.

The hearing was then concluded.