



In the Matter of Lizard Downs and  
Clay Pits, Landewednack, Cornwall

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.211 in the Register of Common Land maintained by the Cornwall County Council. They are occasioned by Objection No. X269 made by Trewithen Estate and noted in the Register on 4 September 1970, and Objections Nos X.482 and X 487 made respectively by Mr E S Hancock and Viscount Falmouth and both noted in the Register on 16 November 1970.

A hearing for the purpose of inquiring into the disputes was held on 1 March 1979 but has been re-opened. I held this (the re-opened) hearing at Truro on 16 October 1985. At this hearing Mr J B G Holt, solicitor, appeared on behalf of Viscount Falmouth and Mr R G Winslade, solicitor of Kerrier District Council appeared on behalf of Kerrier District Council and of Landewednack Parish Council, the applicant for registration in the Land Section.

There are no rights of common registered. Viscount Falmouth and the Dowager Viscountess Falmouth are registered as joint owners of the whole of the land comprised in CL.211 ("the unit land").

Objections X269 and X 482 each relate to small areas of the unit land. Both objections were accepted by Mr Holt and Mr Winslade, and accordingly those areas will be excluded from the unit land. Viscount Falmouth's objection X 487 is to the registration of the whole of the unit land, the ground stated being that the land was not common land at the date of registration. The total area of the unit land is, I understand, some 200 acres.

There being no rights of common registered, whether the land qualified for registration as common land depends on the answer to the question "was it waste land of a manor?" This question has itself to be subdivided; (1) was it waste land? (2) if so, was it land of a manor?'

(A) Mr Winslade, contending for the view that it was common land, began by calling two witnesses.

(i) Arthur J Johns has lived in Lizard continuously since 1921. He is a landworker and quarryman of serpentine stone, and started this work about 1933. The stone came from several places in the unit land. Before 1933 he took the stone without any permission but after a short time royalties were paid to Lord Falmouth. Apart from the stone nothing was taken from the land, which otherwise was not used for anything except walking and horse riding. There is heather and grass which is of small growth and there is perhaps 2 to 3 inches of soil on top of clay; as a whole it is not useful soil. In cross-examination Mr Johns agreed that leases or licences for stone taking were granted but only since 1933-5. He had a licence up to 2 years ago; he did not know if any were granted before 1933.



Paul K Spencer B.A., Dip. T.P., is Assistant Planning Officer to Kerrier District Council. In his evidence he stated that the land is in a natural state relatively unaffected by man. It is fairly flat open and windswept with a wet soil having little potential for agriculture, and has been unused for a long time. It is within areas designated as of outstanding natural beauty and of special scientific interest, and also in areas defined on the County Structure and Countryside local plans as of great scientific value and great historical value: the landscape has been little changed from previous historical periods. In cross-examination Mr Spencer said he was not suggesting that the land would necessarily be damaged if not registered as common land: he accepted that as it now stands it is in a suitable state for all natural purposes, and no complaints had been made as to its treatment in the past.

(ii) The next part of the evidence adduced by Mr Winslade consisted of historical documents and records, evidently the product of considerable research and directed mainly to the question whether the unit land was land of a manor.

In "A History of the County of Cornwall" published in 1924, Part 8 contains a translation of the text of the Exeter Domesday. In Sections headed "The King's Demesne Lands in Cornwall" and "Lands of the Count of Mortain in Cornwall", the text states that the King has one manor called Winneton, in which were 15 hides; of these the King had 4 and the Count 11. The Count had (inter alia) one manor called Lisart wherein was 1 hide of land and Richard held this of the Count. In the translated text Lisart is identified as Lizard in Landewednack; in the introduction to the translated text the Editor of the History, in a discussion of the units of assessment to gold, conclude that it seems safe to assume that the hide, so far as it possessed an a real basis, was in Cornwall 768 acres. From this, Mr Winslade said, there emerges a picture of the King's demesne lands at Winneton, and one manor at Lizard held by Richard.

The next document was a copy of Particulars of sale dated 28 May 1799 of messuages and premises in the Parish of Landewednack, otherwise Lizard, in the possession of named individuals. The premises are stated to be let on leases and the tenants having a right of pasture and turbary on Lizard Downs, "which consists of 450 acres and is undivided between four lords."

In Lyson's Parochial History of Cornwall dated 1814, a passage dealing with Landewednack states that the Manor of Trethevas or Tretheves, Lucies and Rosswick, extending over this parish, is now (1814) the property of Sir Christopher Hawkins; in another work (Hall & Tonkin) also entitled the Parochial History of Cornwall and published in 1838 it is also stated that this Manor was purchased by the late Sir Christopher Hawkins.



In the Landwednack Tithe Apportionment of 1841 Lizard Downs appears as an area of 352 acres with no occupiers or apportioned rent charge and as in the ownership of Falmouth The Earl of, Agar Hon. Anna Maria, Hawkins Esq. Christopher Henry Thomas and Lyle Joseph Esq. It is one of the areas there listed under "co-parcenary".

An extract from the West Briton newspaper of 4 April 1878 notified the holding of the Courts Baron & Customary Courts of Viscount Falmouth for the payment by tenants of their rent and to perform their suits and services. The Notice has a list of the Manors and the venues of the Courts, but this contains no reference to the Lizard nor, so far as I can see, anything that points to a manor applicable to the Lizard. The notice also specifies the holding of the Spring Courts for the receipt of rack rents for four Districts (the Home District, the Mitchell District, The Eastern District, and the Western and Southern Districts) but again nothing to indicate the Lizard or a manor.

Mr Winslade produced a number of documents relating to proceedings for the enclosure of the Lizard Common. (These were (i) an extract from the West Briton Newspaper of 21 August 1879 (ii) an extract from the Royal Cornwall Gazette of 22 August 1879 reporting an inquiry into the proposed enclosure held by an Inclosure Commissioner (iii) an abstract of the Act 43 and 44 Vict. Ch. XC 1880 confirming provisional orders of Inclosure and Regulation). The orders confirmed provided for the inclosure of part of the then Common- the parts now forming the Unit Land- and for the regulation of a further part to the south west consisting of some 70 acres. Owing, apparently, to questions of expense these provisions were not carried into effect, and eventually the 70 acres to be regulated were sold to the National Trust.

The report of the Inquiry (( ii) above ) states that "the owners of the Common, it appeared, were four large lords, namely Mr Hawkins, Lord Falmouth, Lord Robartes, Miss Lyle, and four small owners, Josiah Main, Samuel Hill, William Mitchell and Hugh Lyne. The report also mentions that " the nature of the soil was described as a base of serpentine rock, a stratum of yellow clay, and then a thin peaty earth covered with grass, and the yellow clay was useless for cultivation unless drained".

(B) Mr Holt, for the Objector and contending for the view that the unit land was not waste land of a manor, produced a number of documents.

(i) A copy of an Application to the Inclosure Commissioners for a Provisional Order under the Inclosure Acts relating to the Lizard Common was signed by four persons representing at least one third in value of the interest in the land. The signatories on the copy are " Falmouth" and three sets of initials the first of which I cannot decipher, the second is " C H T H" and the third "G (?) L". Among the items of information furnished by the Applicant; in answer to the numbered questions are the following:- 8. To the



question whether the land or any part is waste land of a Manor, on which the tenants have rights of common, the answer is "No". 9 and 10. there are no rights of common or gated or stinted pasture. 30. it is not part of a manor. 31. there are four Owners or Lords as they are generally called, who own 9/10ths and upwards: 4 or 5 other parties consider themselves entitled to the remainder.

(ii) A copy of an (unidentified) newspaper report of the Inclosure Commissioners' Report, leading to the passing of the Confirmation Act 1880, in which it is stated that the soil is claimed by 8 persons in different proportions as tenants in common, of whom the 4 largest owners are known as the "four lords".

(iii) The Act of 1880.

(iv) (a) Copy of extracts from Statement of Facts (author and date not specified) which state (inter alia) that the land was held by the 4 great lords as tenants in common, in the proportions Lord Falmouth 50/199ths, Lord Robartes 35/199ths, Mr Hawkins 59/199ths, and Miss Lyle 55/199ths; that, after the passing of the Act of 1880, a Valuer was appointed and meetings of the claimants held before him, at which the small lords withdrew their claims to any portion of the Common to be enclosed on terms including payment of costs by the four lords; and that the Valuers determinations dated 21 March 1881 included the statement that the small lords had no claim to any portion of the common to be enclosed. It was also stated that the Valuer had gone so far as to enclose the commons with an outside hedge and to mark out on the plan the portions he proposed to allot to each lord.

(b) Copies of minutes of meeting on 11 October 1880 of persons interested, at which the Valuer was appointed.

(c) Copies of notices of withdrawal of claims by small lords.

(v) Copies of correspondence in 1884 showing payments to the Valuer of Lord Falmouth, Lord Robartes, Mr Hawkins, and Mr Lyle's respective proportions of the Valuer's expenses; and copies of bills for work done on the common addressed to "the lords of the Lizard Common".

(vi) A Deed of Appointment dated 22 October 1928 made between (i) G.H. Johnstone and Lord Falmouth (2) G H Johnstone, Lord Falmouth and Miss M L Lyle. This Deed recited that immediately before the passing of the Law of Property Act 1925 the land known as the Lizard Undivided Landewednack were vested as to 59/199ths in G H Johnstone, as to 55/199ths in Miss Lyle as to 50/199ths in Lord Falmouth and as to 35/199ths in Lord Clifden, and that by virtue of the Act the whole property became on 1 January 1926 vested in the Public Trustee. Then, pursuant to the Act, the Deed provided for the appointment as trustees, in place of the Public Trustee, of G H. Johnstone, Lord Falmouth and Miss Lyle. By a Conveyance dated 1 August 1935 these three Trustees conveyed to the National Trust the area of the Common which is now Register Unit CL.210.



(vii) A Deed of Appointment dated 9 December 1969 and made following the deaths of all the three trustees appointed in 1928, by virtue of which, new trustees were appointed viz: Dowager Viscountess Falmouth and the ninth Viscount Falmouth.

Mr Holt called two witnesses. Mr Michael Nicholls F.R.I.C.S is Lord Falmouth's Land Agent. He said that having examined the estate records he had found no evidence of Lord Falmouth being lord of the manor of the Lizard, nor anything to cast doubt on the statements in the Inclosure Application form to the effect that the land was not land of a manor. There are records of leases and licences to take stone from the common; he had found nothing to explain the reference in some of the documents produced, to four lords. As to the collection of rents from tenants of the estates, formal notice is given to tenants to attend to pay rents and the extract from the West Briton Newspaper of 1878 shows the practice. In cross-examination he said that he had found no other records than those already produced in regard to the Inclosure proceedings. On the ground there are remains of hedges which enable the boundary of the Unit Land to be determined; but there was no evidence of its being part of a manor.

Mr Holt's second witness was Mr D B Bradley Regional Land Agent for the Nature Conservancy Council; his region includes Cornwall and he has been concerned with Cornwall and the Unit Land for some 20 years. The Council had been negotiating for a lease of the Unit Land; the current ownership management of the land, he said, was reasonably good. In Cross-examination he agreed that to the Council its principal value is that the land has been left as it was.

#### CONCLUSIONS

Reverting to the question to be determined in this case, viz: was the unit land waste land of a manor, the judicial and authoritative definition of waste land is that it is open, uncultivated and unoccupied. On the evidence adduced in my opinion the unit land is and has for many years been waste land as so defined.

It is I think unnecessary to say more on this point since, after the evidence had been concluded, Mr Holt agreed that this was so, and accordingly the part of the question left for determination is whether it was and is land "of a manor". A recent judicial statement of the meaning of the whole phrase is that of Megarry V C in *Baxendale v Instow P C* 1982 Ch. 14 at p.18. namely that land "is waste land of a manor if it is open uncultivated and unoccupied land which forms part of the manor and does not constitute part of the lord's Demesne".

In Re: Box Hill Common 1980 Ch. 109 the Court of Appeal held that waste land formerly of a manor was no longer waste land of the manor and, accordingly, no longer common land, since it had ceased to be connected with the manor. The facts in that case, producing the result of loss of connection with the manor, were that the land had passed into the



ownership of one who was not, and did not become, owner of the lordship of the manor.

On the evidence adduced the legal ownership of the unit land (excepting the two small areas the subject of Objections X 269 and X 482) is, in my opinion, vested in Lord Falmouth and the Dowager Viscountess. Such legal ownership is vested in them as trustees, there being four tenants in common in undivided shares who are the beneficial owners. In 1928 (see the Deed of Appointment of 22 October 1928) those four tenants in common were G H Johnstone, Miss M L Lyle, the then Lord Falmouth, and Viscount Clifden, in the respective shares or proportions specified in the Deed. The earlier documents indicate that ownership in undivided shares existed in 1799, at the time of the Tithe Appointment (1841), and at the date of the Inclosure enquiry (1879) when there were four large and four small owners; that the four small owners withdrew their claims to the unit land, after which the four large owners concerned with the valuer in 1884 were Lord Falmouth, Lord Robartes, Mr Hawkins and Mr Lyle. The next evidence as to the identity of these four owners is in the recitals of the Deed of Appointment of 22 October 1928; The respective proportions there stated correspond to those in the Statement of Facts (see B iv (a) on p.4). viz. 59/199ths Hawkins, 55/199ths Lyle, 50/199ths Falmouth and 35/199ths Robartes. It appears therefore that the Lyle and Falmouth shares remained in the families the Hawkins share passed to G H Hawkins and the 35/199ths to Lord Clifden. Mr Holt told me that the 35/199ths Robartes share was now held by a company-consolidated Mine Company.

I now turn to the question whether the unit land was land of a manor. On the historical records, primarily the Domesday book extract and Lipson's History, in my view Mr Winslade made out a prima facie case that there was an extensive manor comprising (inter alia) Lizard Downs, which was acquired at some time after 1768 by Sir Christopher Hawkins; he, according to the passage in Hall and Tonkin, was no longer alive in 1838; this work in its statement concerning the manor is quoting from Lipson's History (1814), and in the documents to which I was referred there is no later reference to this or to any other relevant manor.

Mr Winslade relied on the reference in the Particulars of Sale (1799) to the premises being "undivided between four lords", as indicating that there were four successors to Sir C Hawkins as lords of the manor. I would accept that lordship of a manor may be shared by several owners (cf. S.23 Inclosure Act 1845 which refers to the case where there are several lords of a manor), but I am not persuaded that, in the somewhat scanty context of the Particulars of Sale, the reference to four lords is to be construed as a reference to four lords of the manor. The particulars concern the sale of lands and premises and contain no mention of a manor; it seems to me that the word 'lords' may well have been used in the sense of owners, a meaning still extant in the word 'landlords'. This is borne out by the newspaper report of the Enclosure Enquiry produced by Mr Winslade which refers to the four great or principal lords and to the four little or lesser lords, by the other report produced by Mr Holt where there are references to the four largest owners being known as the four lords, and by the reference in the Inclosure Application to the



"four owners or lords as they are generally called".

The only evidence adduced on the question of the existence of a manor in the period from 1814 (the date of Lipson's History) to the present day consists of: (1) the statement in the Inclosure Application by the four co-owners of the land that the land is not part of a manor.

(ii) Mr Nicholls's evidence as to the absence in the Falmouth estate records of any reference to lordship of a manor or to anything which casts doubt on the statements in the Inclosure.

No evidence was adduced as to lordship of a manor being owned or claimed by the other co-owners.

Mr Winslade further submitted that if the evidence fell short of establishing the continued existence of a manor, at least it was sufficient to show that there was a reputed manor. In the Box Hill Common case the Court of Appeal expressed the view that in the Commons Registration Act the expression waste land of a manor includes waste lands of a reputed manor; see also *Baxendale v Instow Parish Council* at pp. 27 - 8. In origin, at least, a reputed manor appears to have meant a manor which has ceased to be a manor by reason of some legal defect e.g. the reduction of the number of freeholders below two. Mr Winslade, as I understood him, was using the term to describe what by general belief is reputed to be a manor. But no sufficient evidence was adduced to indicate that there was a reputed manor in either sense; the most Mr Winslade could point to was the statement in Lipson's History (1814).

To summarise briefly: the positive evidence (Domesday book: & Lipson) as to the existence of a relevant manor is scanty and, in fact, does not clearly indicate the identity of such manor: the absence of evidence of manorial records or manorial courts proceedings or of other historical records, complied with the statements by the Inclosure Applicants, are factors of considerable significance in favour of the view that there was no existing manor at the date of the registration of the unit land as common. In the result I do not think that the onus of establishing that at that date the unit land was waste land of a manor has been discharged and accordingly I refuse to confirm the registration of the unit land. This decision equally applies to the two small areas in relation to which the Objections were withdrawn.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 17<sup>th</sup> day of March 1986.

*L. J. Morris Smith*  
COMMONS COMMISSIONER