



In the Matter of Lustleigh Cleave,  
Lustleigh

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DECISION

This reference relates to the question of the ownership of the land above mentioned being the land comprised in the Land Section of Register Unit No. CL 57 in the Register of Common Land maintained by the Devon County Council of which no person is registered under Section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference four claims to be the owner of an undivided share in the land were received and two other persons claimed to have information as to the ownership of the land.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Exeter on 28 July 1982.

Colonel F H Pellew appeared on behalf of the Trustees of Holland House Estates, Mr B Wake of Messrs Punch Robson, Solicitors of Middlesborough as agents for Messrs Withers, Solicitors of London, Solicitors for Mr and Mrs C G D Evans, Mr T Coleman of Messrs Michelmores, Solicitors of Exeter appeared for Mr G C Wyndham and Mr M Robertson appeared for himself and his wife. Mr V A M Hunt C.B.E. (Clerk) appeared for Lustleigh Cleave Commoners Association and Mr W R Bond and Captain S Bullock-Webster appeared in person as registered applicants in the Rights Section. Mr H W Peskett who is employed as Senior Genealogist by Debrett's Peerage Limited and in such capacity is retained as an expert witness in Peerage Claims and who has known Lustleigh Cleave and Lustleigh Parish for more than 30 years, had sworn an affidavit giving the results of his extensive researches to assist the claimants.

The Manor of Lustleigh was in the ownership of the Wadham family until the death without issue of Nicholas Wadham in 1609. At his death the manor included the advowson of the parish of Lustleigh and Lustleigh Cleave also known as Bovycombe Cliff. A deed of 1603 established that Nicholas Wadham was then the owner in fee simple of the Common.

As a result of the death of Nicholas Warren his real estate including Lustleigh Cleave devolved in his three sisters in equal undivided one-third shares.

I accept Mr Peskett's account of the devolution of those shares and I am satisfied that at the date of the hearing

- (i) Mr and Mrs C G D Evans as the owners of Foxworthy owned a 1/12th undivided share
- (ii) Mr and Mrs Robertson as the owners of Higher Combe owned a 3/12ths such share
- (iii) Messrs P Pleydell-Bouverie, J L Lowther and M P Wyndham who were referred to the Holland House Trustees held a 4/12ths such share. Upon the trusts referred to in paragraph 2 of an Assent made on 13th December 1967 by the said P Pleydell-Bouverie
- (iv) As to the remaining 4/12ths such share this was claimed by Mr G C Wyndham who has died since the hearing but so far no one has produced



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any modern document which supports his claim or sheds any light on whether his interest is absolute or a lesser interest.

As I explained at the hearing the transitional provisions relating to undivided shares in land contained in Part IV of the first Schedule to the Law of Property Act 1925 and the definition of ownership in S.22(2) of the Commons Registration Act, 1965 make present beneficial ownership a secondary consideration in determining who should be the owner or owners for the purposes of the Act. In order to find out who is the owner of the legal estate for the purposes of registration it is necessary to apply the provisions of the sub-paragraphs of paragraph 1 of Part IV of the 1st Schedule to the Law of Property Act. In this way I come to the conclusion that by virtue of sub-paragraph (4) the legal estate in the entirety of the register unit became vested in the Public Trustee on 1 January 1926 and has remained there ever since. I have received a written submission from Mr Hunt, the Secretary of the Commons Association giving reasons why such a conclusion would not be in the best interests of his members. This may be true in the short term but the sub-paragraph contains provisions which (i) prevent the Public Trustee from acting in the trust unless so requested by the holders of more than 50% of the beneficial interest and (ii) provides those holders with power to appoint trustees in the place of the Public Trustee.

For these reasons I am of opinion that the Public Trustee is the owner of the land comprised in this register unit and I shall direct the Devon County Council as registration authority, to register him as owner thereof pursuant to Section 8(2) of the Commons Registration Act, 1965.

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

27<sup>th</sup>

day of

January

1983

*George Hermet*

Commons Commissioner