

COMMONS REGISTRATION ACT 1965



Reference Nos. 206/D/540-542

In the Matter of Lizard Downs and Clay Pits,
Landewednack, Cornwall (No. 1)

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 and are occasioned by Objection No. X269 made by Trewithen Estate and noted in the Register on 4 September 1970, and Objection No. X482 made by Mr E S Hancock and Objection No. X487 made by George Hugh, Viscount Falmouth and both noted in the Register on 16 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Truro on 1 March 1979. The hearing was attended by Mr P Deane, a member of the Landewednack Parish Council, the applicant for the registration, and by Mr J B G Holt, Solicitor, on behalf of Viscount Falmouth. There was no appearance by or on behalf of the Trewithen Estate or Mr Hancock, but the Clerk of the Commons Commissioners was informed by a letter dated 11 July 1978 that the Parish Council agreed to the exclusion from the Register Unit of the land the subject of Objection Nos. X269 and X482.

There being no entry in the Rights Section of the Register Unit, the land comprised in the Register Unit can only fall within the definition of "Common Land" in Section 22 (1) of the Commons Registration Act 1965 if it is waste land of a manor. It is certainly waste land in the technical sense of the expression. The question for me to determine is whether it is waste land of a manor.

The earliest piece of evidence which Mr Deane was able to produce was a printed notice dated 28 May 1799 of certain freehold property in the locality, in which it was stated that the property was let on leases, and "the tenants have a right of pasture and turbarry on Lizard Downs, which consists of 450 acres, and is undivided between four lords".

By the Inclosure and Regulation (Lizard Common) Provisional Orders Confirmation Act 1880 (43 & 44 Vict. cxc) there was confirmed a provisional order for the inclosure of the land comprised in the Register Unit, but in view of the expense of completing the arrangements for the partition and enclosure this was never done.

While it is not stated in the notice of 1799 that the "four lords" were the lords of ~~the~~ some manor, it appears that in 1896 the parish council thought that the lords of a manor were concerned in the matter, for on 13 June 1896 the chairman of the Parish Council wrote to the President of the Board of Agriculture a letter asking for information "whether the rights to the Lizard Downs has been transferred to the lords of the manor, and if so under what conditions". The reply did not deal with this matter specifically, but merely recapitulated the provisions of the Act of 1880.

It appears from a deed of appointment made 22 October 1928 between (1) George Horace Johnstone and Evelyn Hugh John, Viscount Falmouth (2) G H Johnstone, E H J Viscount Falmouth, and Mary Lucy Lyle that immediately before the passing of the Law of Property Act 1925 the land was held in 199 undivided shares by Mr Johnstone (59 shares), Miss Lyle (55 shares), Viscount Falmouth (50 Shares) and Thomas Charles, Viscount Clifden (35 shares), so that by virtue of the transitional provisions of the Act of 1925 the land became vested in the Public Trustee on 1 January 1926. The Public Trustee not having been requested to act in the statutory trusts and Mr Johnstone and Lord Falmouth being



interested in more than one equal moiety of the shares of the land, Mr Johnstone and Lord Falmouth appointed themselves and Miss Lyle by the deed of appointment to be the trustees of "all those lands known as The Lizard Undivided situate in the parish of Landewednack in the said County of Cornwall and all other (if any) the hereditaments situate in the Parish of Landewednack aforesaid which on the coming into operation of the Law of Property Act 1925 were held by" Mr Johnstone, Miss Lyle, Lord Falmouth and Lord Clifden "in the same undivided shares as they held the said lands" in place of the Public Trustee.

Miss Lyle died on 22 May 1949, Mr Johnstone died on 29 January 1960, and Lord Falmouth, the last surviving trustee, died on 11 February 1962, having by his will appointed his widow and his eldest son to be his executors.

By a deed of appointment made 9 December 1969 Lord Falmouth's executors appointed themselves to be trustees for the purposes of the deed of appointment made 2 October 1928 and the statutory trusts as defined by the Act of 1925 of the property described in the schedule to the 1928 deed.


This evidence indicates that the trust comprised not only the land but also any manor held with the land, for a manor is an incorporeal hereditament: see Law of Property Act 1925, S.205 (1) (1X).

It is not very satisfactory to have to decide this matter on the basis of such inconclusive evidence, but looking at the evidence as a whole it appears to me on the balance of probabilities that this land was in 1799 waste land of some unidentified manor held by four lords in undivided shares, and that it remained with the lordship of the manor in the successors in title of the four lords and so became vested with the lordship of the manor in the Public Trustee on 1 January 1926. The land is therefore waste land of the manor.

For these reasons I confirm the registration with the following modification, namely, the exclusion of the land the subject of objections Nos. X269 and X482.

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 27th day of January 1982


Chief Commons Commissioner