



In the Matter of Hollacombe Moor,
Winkleigh and Ashreigney, Devon

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL.17 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 claims to ownership of the land in question ("the Unit Land") were made by Mrs Helen Turrall and by Mr William Francis Stevens.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Exeter on 8 June 1986.

At the hearing Mrs Turrall was represented by her son, Major R.D Turrall, and Mr N D Ayre, solicitor, appeared on behalf of Mr Stevens.

(1) Major Turrall told me that the unit land was of approximately 130 acres, though earlier documents indicate that Hollacombe Moor was some 150 acres in area. His mother, the claimant, owned the manor of Hollacombe Parramore. He produced a copy (not certified) of an Abstract of Title from which it appeared that by a Conveyance dated 11 August 1911 there was conveyed to Charles F C Luxmoore the manor of Hollacombe Parramore in Winkleigh together with the rights, royalties and appurtenances thereto and the chief rents payable out of certain tenements. These tenements were set out in a Schedule and included Francis Stevens, his tenement being described as Hollacombe with a yearly chief rent of sixpence.

Following the death of Charles Luxmoore in 1933 there was, according to the Abstract, an assent by his legal personal representative in favour of his widow in respect of certain specified freehold properties and all other (if any) of the freehold property of the deceased. The specified properties did not include Hollacombe or any reference to the manor. Mrs Luxmoore died in 1955 and, again according to the Abstract, her Executors assented to the vesting in Mrs Turrall, a daughter of the deceased, of the manor of Hollacombe Parramore together with the rights, royalties, appurtenances and chief rents, payable to the manor.

Subject to further verification of the documents referred to in the Abstract of Title, it may well be that they show title in Mrs Turrall to the manor of Hollacombe Parramore. No evidence however has been produced to indicate that the Unit Land was land forming part of that manor or belonging to the owner of that manor. Mrs Turrall has made a statutory declaration dated 17 July 1986, which is mainly directed to the exercise of her father and mother, Mr and Mrs Luxmoore, of shooting rights over the moor, and by herself since her mother's death. It may also be observed that in a letter dated 18 June 1986



Major Turrall refers to his mother's claim "to control (not own) the land as Lady of the Manor of Hollacombe".

(2) Mr Ayre produced a Conveyance dated 25 February 1897 by John Wreford and Another (the Vendors) to Francis Stevens of premises known as Hollacombe Barton together with "the one equal undivided share of the Vendors in Hollacombe Moor containing 51 acres or thereabouts". By a mortgage dated 2 June 1905 the same premises and undivided share were mortgaged by Francis Stevens; he died in 1946 and his personal representatives by an Assent dated 25 November 1946 assented to the vesting in William Henry Stevens of the property known as "Hollacombe Barton Hollacombe Moor" and other lands. The monies owing on the mortgage were repaid in 1951, and the Statutory Receipt stated that the monies were paid by William Henry Stevens; he died in January 1965 and by an Assent dated 5 August 1965 his personal representative assented to the vesting in William Francis Stevens of the property comprised in the Assent of November 1946.

Mr Ayre also showed me an extract from a tithe assessment in 1876 showing "divisions of Hollacombe Moore containing 151 acres." The division is into seven, of which one, of one-third, is to Hollacombe; the other six vary, ranging from $\frac{1}{2}$ to $\frac{1}{130}$. A Rate Assessment of 1889 shows a Sporting Rate assessed on Hollacombe Moore and charged in respect of eight properties in differing fractions, one of the properties being Hollacombe Barton.

On this evidence I find that ownership was in a number of tenants in common in undivided shares, and the evidence does not support the claim by Mrs Turrall. If the ownership in undivided shares existed on 1 January 1926 the vesting of the legal ownership of the entirety of the unit land falls to be determined in accordance with Parts IV and V of the 1st Schedule to Law of Property Act of 1925. As to this, I find some difficulty, arising from the absence of evidence as to the undivided shares existing in 1925. If that number is four or less then para 1(2) of Part IV would apply; if more than four, para 1(4) would apply and vest the ownership of the unit land in the Public Trustee. Alternatively para 2 of Part V may be applicable so as again to vest the ownership in the Public Trustee; for this to apply, however, it must be a case where each owner has rights of access and user over the unit land, and here again the absence of evidence on the point leaves such rights uncertain.

On the evidence which has been produced, I find that in 1905 there were undivided shares in the unit land; the references to acreages of the shares, which contain no description of specific areas, are I think no more than a mathematical translation of each fractional share into the same share of the acreage (which in law would only result from an actual partition). The undivided shares were originally 7 or 8 in number, and in the absence of evidence to the contrary it seems to me a reasonable probability that undivided shares exceeding four in number continued to exist, so that under para 1(4) of Part IV legal ownership of the entirety vested in the Public Trustee. In any event the same result may well have ensued under para 2 of Part V.



Accordingly I shall direct the Devon County Council as Registration Authority to register the Public Trustee as the owner of the land under section 8(2) of the Act of 1965. It will be appreciated that the present owners, whoever they may be, of undivided shares will continue to be entitled to such shares, but not to legal ownership of the land itself.

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 13th day of February 1987

L. J. Morris Smith

Commons Commissioner