COMMONS REGISTRATION ACT 1965

Reference Nos. 209/D/43-44
209/D/46-48
209/D/88

In the Matter of Coombe Down,
Hookney Down, and Hartland Warren,
North Bovey, Devon (No. 2)

DECISION

These disputes relate to the registration at Entry Nos. 1 to 42 in the Rights section of Register Unit No. CL.148 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 9 made by Dr D B Fraser and noted in the Register on 4th March 1969, Objection No. 795 made by Mr H G Godsall, Clerk of the former Devon County Council, and noted in the Register on 25th January 1971, Objection Nos. 195 and 453 made by H.R.H. Charles, Prince of Wales, Duke of Cornwall and noted in the Register on 6th January 1971 and 9th February 1974 respectively, and Objection No. 1140 made by Mr C V Lucas, Clerk of the former Devon County Council, and noted in the Register on 11th September 1972. After the making of the Objections Entry No. 33 was replaced by Entry Nos. 44 and 45, which therefore now fall within the ambit of this reference. Entry No. 43 is but a technicality recording the replacement of Entry No. 33 and therefore is not the subject of any dispute.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 2nd July 1975 and 15th, 16th and 17th December 1975. The hearing was attended by Mr M G Brabin, solicitor, on behalf of Mr R J H Osborne, the applicant for the registration at Entry No. 2, and also on behalf of Dr Fraser, who was also the applicant for the registration at Entry No. 5; Vice-Admiral Sir Guy and Lady Sayer, the applicants for the registration at Entry No. 3; Mr D M Scott, the applicant for the registrations at Entry Nos. 4 and 13; Mr A Williamson, solicitor, on behalf of Mr E Clark and Mrs D P Clark, the applicants for the registration at Entry No. 7; and Mr P AJBrowne, solicitor, on behalf of the County Council. The Duchy of Cornwall was represented by Mr R G Clinton, solicitor, on the first day and by Mr J. Sher, of counsel, at the resumed hearing. There was no appearance by or on behalf of the other applicants for registrations, but Mr Scott produced statements signed by the applicants for the registrations at Entry Nos. 12, 14-16, 18, 19, 22-24, 27, 28 and 32 stating that they agreed to be bound by my decision on Mr Scott's registrations. Mr Sher stated that the Duchy of Cornwall also agreed that my decision on Mr Scott's registrations should be followed in respect of the registrations at Entry Nos. 12, 14-16, 18, 19, 22-24, 27, 28 and 32. Mr J G Kellock, solicitor, applied for leave to appear on behalf of the Dartmoor Commoners Association. Mr Scott opposed this application, and I refused it. Mr H H Whitley, the Chairman of the Association, was, however, called as a witness by Mr Sher. Objection No. 9 related to the rights registered at Entry Nos. 1-42 over part only of the land comprised in the Register Unit, which part has been excluded by my decision in In the Matter of Coombe Down, Hookney Down, and Headland Warren, North Bovey (No. 1) (1976), Ref. Nos. 209/D/42 and 209/D/45.

Objection No. 195 related to the rights at Entry Nos. 1-42 over another part of the land comprised in the Register Unit and to some extent duplicated Objection No. 453, which related to some of the rights over the whole of the land comprised in the Register Unit. Since Mr Clinton stated that he was instructed that the rights over the part of the land referred to in Objection No. 195 had been properly included in the Register Unit, it is not necessary for me to give further consideration to that Objection.

Objection No. 9 and Objection No. 195 were the only Objections relating to the rights registered at Entry Nos. 1, 2, 5, 6, 8-11 (inclusive), 30, 31, 33 (replaced by 44 and 45), 34-36 (inclusive) and 39-42 (inclusive).

So it therefore follows that those registrations are now unopposed.

Mr Williamson and Mr Browne informed me that their respective clients were agreed that the registration at Entry No. 7 should be modified by substituting for the words "In gross" in column 5 the words "Higher Westcombe Farm", followed by the Ordnance Survey numbers of the parcels of land comprised in that property. There is no other unresolved Objection relating to this registration.

Mr Scott took a preliminary point on Objection No. 795 and Objection No. 1140. Each of the Objectors described himself as Clerk of the Devon County Council, and Mr Scott contended, and Mr Browne accepted, that in each case the Objector was acting as agent for the County Council, which must be regarded as the real Objector. Mr Scott argued that since H.R.H. the Prince of Wales was registered as the owner of all the land now comprised in the Register Unit when these Objections were made, the Objections of the County Council are invalid in so far as they relate to this land. There is, of course, no question of the Objections being wholly invalid, since at the times when they were made the Register Unit included the land the subject of Objection No. 9, of which no person was registered as the owner.

Mr Scott based his argument on section 5(3) of the Commons Registration Act 1965, which provides that:-

"Where any land or rights over land are registered under section 4 of this Act but "no person is so registered as the owner of the land-the registration authority may, "if it thinks fit, make an objection to the registration notwithstanding that it "has no interest in the land".

This, so Mr Scott argued, shows that if some person is registered as the owner of land, the registration authority (in this case the County Council) can only make an objection to the registration of the land or rights over such land if it has some interest in the land. Mr Browne argued that the only effect of the sub-section was to prevent a registration authority from making an objection to protect the interests of the owner of the land, but left unimpaired the general right of the registration authority to act in the interests of its ratepayers. I find myself unable to accept that a registration authority had any such general right which was to some extent curtailed by section 5(3) of the Act of 1965 when some person was registered as the owner of the land in question. Section 5(3) is not a curtailing provision, but an enabling one. In my view it empowered a registration authority to make an objection in certain circumstances in which it would have had no power to do so because it had no interest in the land. It seems to me that a registration authority could make an objection in any case in which it had an interest in the land, but that if it had no such interest it could only make an objection if no person was registered as the owner. I therefore hold that Objection No. 795 and Objection No. 1140 were invalid in so far as they related to the only land now comprised in the Register Unit. Objection No. 1140 is the only Objection relating

to the registrations at Entry Nos. 37 and 38, so it therefore follows that those registrations are now unopposed.

I am therefore left to consider only Objection No. 453, which relates to Registration Nos. 3, 4, 12 to 29 (inclusive) and 32.

The land now comprised in the Register Unit is one of a series of areas known collectively sometimes as the "Common of Devon" and sometimes as the "Commons of Devon. Purely as a matter of convenience, I hereafter use the latter expression. These areas lie in a number of parishes and consist of the parts of those parishes lying adjacent to the large area known as the Forest of Dartmoor, together forming a continuous ring around the Forest. The Forest and the Commons were registered by the registration authority without application as a number of separate Register Units, the Forest being one Register Unit and the part of the Commons in each parish surrounding it being one Register Unit.

As a matter of convenience I first heard the case relating to Registrations Nos. 4 and 13 applied for by Mr Scott. Mr Scott made composite applications for the registrations of rights over the land in each of the Register Units covering the Forest and the Commons, the rights which he claimed being common of pasture for 52 bullocks or ponies and 208 sheep, common of turbary, common of estovers, and common in the soil to dig stone and sand attached to his land at the Village Farm, Holne, and common of turbary, common of estovers, and common in the soil to dig stone and sand attached to his land at Waterpark, Holne. Among the Register Units to which Mr Scott's applications related was Holne Moor (CL 153), which comprised the part of the Commons situate in the parish of Holne. There was no objection to Mr Scott's registration in respect of CL 153, which therefore became final by virtue of section 7 of the Act of 1965. It therefore follows by virtue of section 10 of that Act that this registration is conclusive evidence that the rights referred in Mr Scott's application were, as at the date of the registration (28th June 1968), appurtenant to his land at the Village Farm and at Waterpark, Holne. Mr Scott's case is that rights exercisable over any part of the Commons of Devon are exercisable over the whole of those Commons and that therefore the registrations at Entry Nos.4 and 13 are valid.

The basis of Mr Scott's case is that he is what is known as a "venville tenant", and that such a tenant has rights of common over Dartmoor and over the whole of the Commons of Devon, which are in law but one large common. Mr Sher admits that Mr Scott is a venville tenant and that as such he has a right of common over Dartmoor. but contends that he has no right over the Commons of Devon by virtue of being a venville tenant, though as a commoner he has rights over Holne Moor (CL153), with a right for his animals to stray onto the commons adjoining Holne Moor.

The case of Sir Guy and Lady Sayer is the same as that of Mr Scott, mutatis mutandis they having a registration of rights which has become final in respect of Spitchwick Common in the parish of Widecombe-in-the-Moor (CL33).

The only difference between the two cases is in the wording of the documents of title. Mr Scott's property was conveyed to him on 14th February 1936 together with a right of common of pasture on Holne Moor and with benefit of venville rights over Dartmoor Forest. Sir Guy and Lady Sayer's title is derived under an indenture dated 22nd April 1875, which included rights of common in Spitchwick Common and "all other rights of common on Spitchwick or Dartmoor venville rights...". There being no commas anywhere in the indenture, there was some discussion as to whether the words relevant to this case should be read as "Dartmoor venville rights" or Dartmoor, venville rights". While it seems to me that the latter reading fits the

context better, the conclusion at which I have arrived is not affected by this point. The documentary evidence upon which my conclusion is founded is of much greater antiquity than either of these specimens of modern conveyancing.

Before turning to the documentary evidence I ought to mention the judgment of Judge Edge in the case of Reddicliffe v Hill and Hill in the Tavistock County Court on 20th November 1897. At the beginning of his judgment the learned Judge said:-

"The Plaintiff is a farmer and occupies a farm called 'Wapsworthy' which adjoins "the Commons surrounding the Forest of Dartmoor known as the Commons of Devon. "As such occupier he is entitled to have at all times of the year common of "pasture on such last mentioned Commons for all his commonable cattle levant and "couchant upon his messuage and land".

At first sight this case appears to be a decision upon the point in issue in these proceedings. Although it is not binding upon me, I should, of course, hesitate before deciding not to follow it. However, when the judgment is read as a whole it becomes apparent that the issue in the case was entirely different from that which I have to decide. The defence was that the defendants had been in exclusive occupation of a certain area of land for a long period and that the plaintiff had thereby lost his right of common over that area. The case was conducted on the assumption that that was the only possible reason why the plaintiff was not entitled to his right over the disputed area. The defendants were unsuccessful, but the case is no authority for the proposition that the plaintiff was entitled to a right of common over the whole of the Commons of Devon.

I now turn to the evidence in this case.

Mr Scott relied heavily on a volume entitled A Short History of the Rights of Common upon the Forest of Dartmoor and the Commons of Devon, printed for private circulation by the Dartmoor Preservation Association in 1890. This contains an introduction by Sir Frederick Pollock, a paper read by Mr Percival Birkett at the Athenaeum, Plymouth in 1885, and a report by Mr Stuart Moore to the Committee, with an appendix of documents. Mr Moore was in his day a well-known member of the Bar. He specialised in cases involving the consideration of ancient documents, and he was the author of some standard legal text-books. His report on Dartmoor cannot, however, in my view, be regarded as a work of authority by a deceased author. It was more in the nature of an opinion written for a client, and its real value lies in the bringing together in a convenient form copies of most, though not all, of the relevant documents. I regard it as my duty to consider the matter de novo and to arrive at my own conclusion uninfluenced by the views of Mr Birkett and Mr Moore.

The legal status of Dartmoor as a forest, that is to say an area subject to the forest laws, is of great antiquity, but its origin is unknown. All that can be said with certainty is that Dartmoor and Exmoor were forests in the time of Henry I. This appears from a charter of King John, dated 13th May 1204. It also appears from this charter that at some intervening time the whole of the rest of Devon (including the Commons of Devon) was afforested. The purpose of the charter was to disafforest this additional area and to reinstate the boundaries of the Forest to what they had been in the time of Henry I, the disafforested area becoming in law a purlieu of the Forest. After the words effecting this purpose the charter proceeds (in translation):-

"We will also and do grant that the aforesaid men of Devon and their heirs shall "have the customs within the regards of those Moors as they were accustomed in "the time of the aforesaid King Henry doing therefor the customs which they then "used and ought to do therefor and that it shall lawful to those who will outside "the aforesaid bounds to assart, make parks, take all manner of venison, to have "dogs, bows and arrows, and all other kinds of arm, and to make deer leaps, except "in the bounds of the aforesaid Moors, where they shall not be able to make deer leaps or hedges".

Mr Moore said:- "This charter may be looked upon as the foundation of the rights of common claimed by the men of Devon upon Dartmoor". I find myself unable to concur with this statement. Disafforestation did not create rights of common. It was legally possible for rights of common to be exercisable in a forest (see Manwood on Forest Laws, cap. xiv), and if there were any such rights in the Forest of Devon, they would have remained in existence after the charter of 1204, both over the disafforested purlieu and over the area remaining subject to the forest laws. However, despite the use of the words "we will also and do grant"(volimus et concedemus in the original text), I am satisfied that this charter granted no new rights,but had the effect of securing the continuance of the pre-existing customs. It may well be that the "customs" referred to in the charter were or included rights of common, though there is no direct evidence of the existence of such rights at this early period.

It is necessary to consider the charter of 1204 at some length because it provides the historical background for the later documentary evidence. It is in itself no evidence for the existence of any rights over the Commons of Devon, nor does it throw any light on venville rights.

In 1204 Dartmoor was Crown property. By a charter dated 10th October 1239 Henry III granted it to his brother Richard, Earl of Cornwall, and from him it passed to his son Edmund. After this grant Dartmoor technically ceased to be a forest and became a chase, but it has continued to be commonly known as the Forest, and it will be convenient to continue to use that nomenclature. The first mention of venville so far found occurs in a minister's account of Earl Edmund for the year 1296-7. Under the heading of "Issues of the Forest" occurs the sum of £4.1s.8d. de finibus villarum pro pastura averiorum habenda. The expression fines villarum came to be anglicized (one can hardly say translated) as "venville". Later accounts show that the venville payments were in some cases paid in respect of whole parishes and in others in respect of townships, hamlets and farms forming parts of parishes.

Mr J V Somers Cocks, a local historian, who gave evidence on behalf of Sir Guy and Lady Sayer, drew my attention to an ancient map of Dartmoor which has on the back in a hand of the first half of the sixteenth century transcripts of a number of documents relating to Dartmoor. One of these is a memorandum of a charter of King John, given at York in the 7th year of his reign (May 1205-May 1206), whereby he granted to Hubert Vaus, Lord of Ugborough, "common and liberty in the Forest, and to all his tenants in Ugborough, with all kinds of animals turned out in the Forest, that is to say in wood, in meadow, in turves, in coals, in new-broken land, and in heath", for his service of 5d. paid annually to the King. In the lists of venville payments there appear sums of 5d. in respect of the township of Ugborough, and Mr Somers Cocks suggested that this charter was a grant of venville rights, and that there were probably other similar charters which are not now known.

If this charter was a grant of venville rights and there were similar grants to other lords of manors, they were fairly soon forgotten, for in the account for the year 1300-01 the venville payments are described as customary (de consuetudine). In an

extent dated 22nd March 1345 they are described as ancient, and in an inquisition taken on 19th June 1382 the jurors said that they had been paid from the time memory was not. Therefore the venville payments must be deemed as a matter of law to have originated before the time of legal memory, i.e. the beginning of the reign of Richard I on 3rd September 1189, and it would appear not unlikely that they were in fact of such antiquity. If the 1205-6 charter was in fact a grant of venville rights to Ugborough, it does not follow that the other venville rights originated in the same way. There could well have been venville rights which were then of long standing, the charter operating to confer similar rights on Ugborough. It is not necessary for the purposes of this case to determine how venville rights originated. It is sufficient that such rights existed before the time of legal memory.

It is clear from the wording of the 1296-7 account that the venville payments were made in respect of pasture in the Forest. Later documents amplify this bald statement. The earliest of these later documents is an extent dated 22nd March 1345. Unfortunately the part of the extent relating to the venville payments is almost wholly defaced, but enough remains to show that they were in respect of pasture for cattle levant and couchant, limited to pasture by day and not by night. It appears from the inquisition of 19th June 1382 already mentioned that, in addition to pasture by day, the venville tenants had coals, turf, heath, furze and stones for their own use. There is also mention of an additional payment called grazewait, for leaving animals in the Forest overnight. Such additional payment for having animals in the Forest at night is mentioned, though not named, as early as the account for the year 1354-5.

It is next necessary to consider the nature of the venville payments. In a report made in 1621 William Hockmore, the Auditor of the Duchy of Cornwall, said:-

> "There are divers Townes abutting upon the Forest and within the Purlieu
> "thereof who because their Cattle did daily Escape into the Forrest were
> "at a certain Fine which being turned into a Rent was called Finis Villarum
> "and those which dwelt within those Liberties are called at this Day
> "Venvill Men".

Although stated so confidently, this account of the origin of the venville payments does not appear to be supported by any documentary evidence. Indeed, such evidence as there is points in the opposite direction. Although described simply as fines villarum in the 1296-7 minister's account, they appear in the account for 1342-3 as "redd'sive fin'ville". For the year 1347-8 there is an account of John Dabernon, Receiver of the monies arising from a certain rent called fines ville, and there is an undated account of the time of Richard II of the rents certain, called fines villarum. As Sir Frederick Pollock pointed out in his introduction to Mr Moore's Report (p.x), the use of "rent" as a synonym of "fine" rules out Mr Auditor Hockmore's theory that the fines villarum originated as payments for damages for trespass. It therefore follows that the venville men were not mere trespassers in the Forest, but were exercising there rights for which they paid their venville rents.

Mr Auditor Hockmore's report is also at variance with the other evidence in that it states that "those which dwell within those Liberties are called at this day "Venvill Men". The records show that venville rents are payable in respect of identifiable areas of land, in some cases hamlets, in some townships, and in some whole parishes, but not by inhabitants as such. The venville men are the occupiers for the time being of the land in respect of which the venville rents are payable. It is the payment of the rents and not mere inhabitancy which identifies the venville men.

This point is of some importance because, as Mr Sher correctly submitted, a fluctuating class of persons cannot claim by prescription. In my view, however, the claim of the venville men is not a personal claim made on a class basis, but is based on the land in respect of which the venville rents are payable. A man is a venville man because venville rent is payable in respect of his property: the rent is not something which is paid by the members of a class of persons known as venville men.

Somewhat inconsistently,in my view, Mr Sher admits that the venville men are entitled to rights in the Forest. The question to be decided is whether the payment of the venville rents entitles them to rights in the Commons of Devon as well as in the Forest.

Mr Scott and Sir Guy and Lady Sayer are unquestionably entitled to rights of common on parts of the Commons of Devonshire, but Mr Sher argues that these rights extend only to what may be termed their "home" commons, with a limited right for their animals to stray onto the immediately adjoining commons, and that these rights are manorial or parochial rights, being entirely unrelated to the payment of venville rents,which give rights in the Forest alone. Such a state of affairs would fall neatly within the general law relating to rights of common and would also be in accordance with the practice followed during the time of living memory. Lady Sayer has occasionally dug peat on parts of the Commons other than her "home" common, purporting thereby to exercise her venville rights, but it appears from the evidence of a number of farmers called by Mr Sher that she was acting unusually in doing this. However, I find this evidence of little assistance. The Forest is over 50 miles in circumference,and it would be remarkable if anybody were to take animals to some distant part of the Commons or to take the trouble to go so far for estovers. Even if there were a right to go far afield, one would not expect it to be exercised either frequently or to the full. It is, however, argued that the Commons of Devon are, despite their manorial and parochial divisions, all one large common, so that every commoner has rights over the whole common, the extent to which he exercises them being dependent solely upon his own convenience.

Although it is not at all a usual occurrence, there is no reason in law why a single common should not comprise portions of a number of manors or parishes. This was accepted by Sir George Jessel, M.R. in Commissioners of Sewers v Glasse (1874), L.R.19 Eq.134, despite the fact to which he referred at p.157 that, as a rule, people turned out their cattle near their own homes.

In order to discover whether this is another such unusual case it is necessary to consider the evidence relating to the Commons of Devon and the exercise of rights over them. This evidence is somewhat meagre, for the documents which have been referred to are mostly Duchy documents primarily relating to the Forest. Indeed, it is somewhat surprising that there should be any mention at all of the Commons of Devon in such documents.

Matters relating to the Forest are entered in the courtrolls of the manor of Lydford. These rolls extend in a fairly continuous series from 1376 to 1634, and a selection of extracts from them were included in Mr Moore's Report, though it appears that he did not examine all the rolls. The roll for 8 Edward IV (1468-9) records the summoning of Reginald Cole and others to answer for enclosing 200 ac. of land of the common pasture of Devon at Sedliburgh Hill and Dertstream Hill between Erm and Arm. Ten years later the Vicar of Walkhampton was attached to answer for that he was a common disturber and vexer of the tenants of the Prince in the Spiritual Courts for tithes of cattle and beasts pasturing in the Common of Devon next and around the Forest contrary to the custom of the liberty of the Common. On 21st

September 1588 there were presentments for unlawfully agisting animals on the commons of Holl More, South Brent, and Cornwood and on 21st September 1608 Henry Toll was presented for turning out animals on the common called the Common of Devon.

These entries show that the court which had jurisdiction over the Forest also had some jurisdiction over the surrounding area, which is described comprehensively as the Common of Devon, though individual parts of it were identifiable by separate names. This is an anomalous state of affairs and shows that the Common or Commons of Devon cannot be regarded as wholly unconnected in law with the Forest.

It is now necessary to consider the two documents most strongly relied on by Mr.Scott and Sir Guy and Lady Sayer. What they contend to be the rights of the venville tenants are explicitly set out in a copy of the record of a Court of Survey held at Oakhampton on 16th August 1608 before Sir William Strode, Richard Connocke, the Auditor of the Duchy, and two other commissioners. The jurors presented that the venville tenants had the rights in the Forest previously mentioned and then went on to present that the venville tenants also has common of pasture for their beasts, sheep and cattle in and upon all the moors, wastes and commons, usually called the Common of Devonshire,and also turves, vaggs, heath, stone, coal and other things according to their customs, paying nothing therefor. In addition to this statement of the rights of the venville tenants the jury made two other presentments of some interest in the present context. In one they stated that an area of land called Blacktorrebeare was partly in the Forest and partly in venville, the expression "in venville" apparently meaning in the Commons of Devon. In the other they presented that certain waste grounds, moors and commons lying to the west of the bounds of the Forest between the Forest and the cornditches had been unlawfully enclosed.

The other document is less explicit about the rights of the venville tenants outside the Forest than the first, though it is not inconsistent with it. It is entitled (in modern spelling): "Instructions for my Lord Prince to the King's Most Honourable Council concerning my said Lord Prince's Forest of Dartmoor in the County of Devonshire and in the Moors and Wastes of the same belonging". Internal evidence shows that it was composed between 25th June 1540 and the accession of Edward, Prince of Wales to the Throne on 28th January 1547. It starts by setting out the rights of the venville men in the Forest in the same terms as the other documents. Then it is stated every man of Devonshire may common with cattle in the moor and waste between the Forest and the cornditches, called the Commons of Devonshire, and pay nothing, and that venville tenants were to present all the faults belonging or appertaining to the Forest and the waste at the court of Lydford and to attend there as often as they should be summoned. There is also a diagrammatic circular map, showing the Forest in the centre, surrounded by a ring described as "the Mast Which lyeth from the Forrest unto the Cornedychys and hit ys callyd the Comyns of Devonshire". Outside this ring is another, said to betoken "the Vyndefede men the whiche be the Kyngs and my Lorde Prynce is tenants". This last ring is in its turn surrounded by a ring said to betoken "the hole shire of Devonshire".

If these two documents are to be implicitly accepted, they show that the venville tenants had the rights over the Commons of Devon which are now claimed. Mr Sher, however, contended that they ought not to be so accepted. While not objecting to their admissibility, Mr Sher argued that they have little or no probative value. It is therefore necessary to consider both documents in some detail.

The full text of the record of the Court of Survey is now known only from the first edition of Rowe's Perambulation of Dartmoor (pp 276-80), where it is stated to have been printed from a copy certified by the Keeper of the Records at the Duchy of Cornwall Office in or before 1848. It is not now to be found in the Duchy Office, but there is no doubt that it once existed. It is mentioned in a survey of the Forest made in 1786 by William Simpson, the Duchy Surveyor. It was still in existence in 1876, for in the brief delivered to counsel by the Duchy Solicitor in the case of Newcombe v Fewins in that year, it is stated to have been in a collection of papers in the Duchy Office and is described as a paper written apparently in the early part of the seventeenth century, but not signed. There then follow extracts from the document (including the part relied on in this case) which agree exactly with the text printed in Rowe's book.

This document is not to be regarded as a mere private document, for the documents of the Duchy of Cornwall are documents affecting the interests of the public and are therefore receivable in evidence as public records: see per Lord Tenterden, C.J. in Rowe v Brenton (1828), 8 B. & C.737, at p.744. That, however, does not mean that its reliability cannot be inquired into. The document seems to have been viewed with some suspicion by some Duchy officers, partly because neither the original presentment nor the commission under which it was made could be found, and partly because the perambulation contained in it appears to be mistaken as to the situation of a place called Grymesgrave. It must, however, be borne in mind, as Bayley, J.. pointed out in Rowe v Brenton, supra, at p.749 that it would have been a breach of duty in the person having the custody of the Duchy records to have admitted a survey not duly taken. Like Bayley J., I think that I must, at this distance of time, presume that it was made, as it is stated to have been made, under competent authority. Furthermore, I am not prepared to reject the whole document because it appeared to a nineteenth century Duchy officer to contain a topographical inexactitude in the perambulation.

The Duchy Solicitor in 1876 appears to have accepted the document as genuine and as consistent with the then current practice, which he described in the following terms:-

"At the present day the Commoners appear to turn out their stock without stint and "entirely at their own pleasure paying only their Venville rent and in some cases a "grass-wait. They more generally perhaps where the Common of Devon extends into "their parish turn out upon such Common as being nearer and more convenient but there "is nothing to prevent the stock from going on to any other part of the Common of "Devon in other parishes or on to any part of the unenclosed lands within the Forest " and they do constantly go on to the same though the stock of each Commoner will "generally return at night to a particular spot called their 'lear' or lair. The "forest cattle as they are called, i.e. the cattle taken in to graze by the Renters "under the Duchy of the agistment of the Forest, also have the choice of grazing "either upon the Forest or the Common of Devon".

The Duchy Solicitor again accepted the document as genuine in 1879, when in a set of instructions to the Attorney-General of the Duchy he described it as "the earliest document which seems with any particularity to describe the Venville rights".

The present Clerk of the Duchy Records, Mr Graham Haslam, takes the view that the wording of the document indicated that it is to be accepted as a contemporary or near contemporary copy. Mr Haslam, however, points out that the members of the jury were local men and were quite likely to have been Duchy tenants who could hardly be described as unbiassed and might have exaggerated claims concerning their own tenures

in order to exploit their position. While this may have been so, it must be borne in mind that the jurors made their presentment on oath, and in my view it would be wrong to assume that any bias which they may have had would have caused them to commit perjury when there is no evidence that they did so.

The other document is not so easy to evaluate, but it has the advantage that it is still in existence in the Public Record Office. It is at present in Class S.C.12, but that is a modern artificially made class of portfolios of rentals and surveys which have been brought together from various sources, including the Augmentation Office. Mr Moore's Report shows that in 1890 the "Instructions" were still among the records of the Court of Augmentations, as were the court rolls from which he made extracts. The Court of Augmentations was dissolved in January 1554 and its jurisdiction transferred to the Court of Exchequer: see recital in section 15 of the statute 1 Eliz.I,c.4. After the records of the Court of Augmentations had passed into the custody of the Exchequer there were added to them some records relating to the Duchy of Cornwall. Why this was done is not clear, for some of the documents came into existence long after the dissolution of the Court of Augmentations.

The document now in question does not fall into any recognised category of record. Indeed, it is not easy to see what was its precise purpose. It appears to be in some way connected with a dispute between the Duchy and Sir Thomas Dennys, who had purchased the manor of Buckfastleigh after the dissolution of Buckfast Abbey. Mr Haslam suggests that it is possible that the document was generated by or for Dennys and that it was a statement by an interested party rather than the findings of an impartial body appointed under Crown authority. The heading seems to preclude that suggestion, appearing to indicate that the document was a report by some Duchy officer to the Prince of Wales (or more probably the Duchy Council, since the Prince was but a boy at the time) upon which to base a submission to the Privy Council, before which the matter was pending. The most that can be said of it is that it represents the view of some anonymous Duchy officer, who regarded the Commons of Devonshire as a single entity over which the venville men, together with the rest of the men of Devon, had rights of common.

It seems to me that a guide to the reliability of both documents is to be found in their statements as to the rights of the venville men in the Forest. Both these statements are substantially the same as the statements on this topic in documents of unquestioned authenticity. The silence of the other documents as to the rights of the venville men in the Commons of Devonshire is explicable by the fact that the documents were concerned only with the rights in the Forest. The court rolls, however, show that the jurisdiction of the court was not confined to the Forest as it was after the disafforestation of the Commons of Devonshire, but for some not clearly defined purposes extended to the Commons as a whole. The two disputed documents make good the gaps in our knowledge in a manner which is consistent with the rest of the evidence. The evidence looked at as a whole indicates that before 1204 the land within the cornditches constituted one undifferentiated whole subject to venville rights and that the disafforestation divided it into two parts, but that each part still remained subject to the pre-existing venville rights.

I have therefore come to the conclusion that the Commons of Devonshire are as a whole subject to venville rights which have existed from time immemorial.

For these reasons I confirm the registrations at Entry Nos. 1-16 (inclusive),18, 19, 22-24 (inclusive), 27, 28, 30-32 (inclusive), 34, 35, 37-42 (inclusive), 44 and 45 with the following modification, namely the substitution in column 5 of Entry No. 7

for the words "In gross" the words "Higher Westcombe Farm, O.S. Nos 1232, 1228 (pt), 1231, 1195, 1194, 1190, 1191, 1192, 1188, 1189, 1177, 1176, 1178, 1179 and 1187".

In the absence of any evidence, I refuse to confirm the registrations at Entry Nos. 17, 20, 21, 25, 26, 29 and 36.

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 17th day of February 1976

Chief Commons Commissioner