



In the Matter of Manorial Waste, West Thorney,
West Wittering, Chidham and Bosham, West Sussex
(No.2)

DECISION

These disputes relate to the registration at Entry No 1 in the Ownership section of Register Unit No.CL.153 in the Register of Common Land maintained by the West Sussex County Council and are occasioned by Objection No.66 made by Mr G F D Feltham and noted in the Register on 28 April 1969 and Objection No. 167 made by Mr T Beaumont and noted in the Register on 12 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Chichester on 13 May 1980. The hearing was attended by Mr C R George, of Counsel, on behalf of Burhill Investments Ltd, the successors in title of the Earl of Iveagh, the applicant for the registration. Mr Feltham appeared in person. and I also heard Mr D H Durbin, the Deputy Clerk of the Chichester Harbour Conservancy. There was no appearance by or on behalf of Mr Beaumont, but Mr George informed me that it had been agreed that the land the subject of Mr Beaumont's Objection should be excluded from the Register Unit.

The land comprised in the Register Unit consists of Saltings and Mudflats together with adjoining land always covered with water. The land covered with water consists of half the Emsworth Channel on the West and half the Chichester Channel on the South, together with the whole of the Bosham Channel which runs from the North into the Chichester Channel. These channels are arms of the sea and form part of Chichester Harbour. The registration at Entry No 1 in the Ownership Section of the Register Unit is of the whole of this land. The grounds of Mr Feltham's Objection are as follows:-

"Ownership disputed, considered registered in error. Ownership must be either The Queen or Ministry of Defence perhaps another body, maybe the parish but certainly not the person who has registered this".

Although it is not apparent from the grounds of the Objection, it became clear at the hearing that the dispute was confined to the ownership of the beds of the channels below low-water mark.

Such rights as Burhill Investments Ltd have in relation to the land comprised in the Register Unit were acquired by a conveyance made 12 October 1976 between (1) Arthur Francis Benjamin Guinness Earl of Iveagh (2) Burwood Golf Club Co Ltd. The name of Burwood Golf Club Co. Ltd was changed to Burhill Investments Ltd on 6 January 1977.

In so far as material to these proceedings the parcels of the conveyance of 12 October 1976 are all the interest to which Lord Iveagh was then entitled in all that and those the Hundred of Bosham and the Manor of Bosham and also the mudlands, saltings, foreshores, and foreshore rights, including enclaves, moorings, wreckage, and other rights, royalties, jurisdictions, franchises, liberties, privileges, emoluments, rights, and advantages within belonging appurtenant to the said manor. The parcels also included the manor of Bosham Buckfold and the manor or lordship of Chedham otherwise Chidham. Bosham Buckfold is a manor of itself in the parish of Petworth, 10 miles from Bosham Church, but reputed a member of Bosham and, for reasons which will become apparent, neither it nor the manor or lordship of Chedham otherwise Chidham



is of any importance in the present context.

The Hundred of Bosham and the manor of Bosham were conveyed to Lord Iveagh by a conveyance made 12 March 1963 between (1) Rupert Edward Cecil Lee Earl of Iveagh (2) Arthur Francis Benjamin Viscount Elveden and to the late Lord Iveagh by an indenture made 27 April 1925 between (1) Albert Eadie (2) Rupert Edward Cecil Lee Guinness commonly called the Viscount Elveden. The premises were conveyed to Mr Eadie by an indenture made 20 April 1919 between (1) Edward Berkeley Baron Gifford (2) Seymour William Brooke Boothby and Ernest Bouchier Hawksley (2) Albert Eadie. In this indenture the premises were described as forming part of the "Berkeley Sussex Settled Estates".

Such is the modern conveyancing history. It is now convenient to consider the earlier history of the Hundred of Bosham and the manor of Bosham. The manor of Bosham is a manor of ancient demesne, i.e. a manor which at the date of the death of Edward the Confessor was a royal manor. About the reign of Henry II the Hundred and manor of Bosham were constituted "with great privileges and exemptions" (Dallaway's History of Western Sussex, i.87). The Hundred contains manors in the parishes of Bosham, Chidham, Funtington, West Stoke, and West Thorney. The lordship of the Hundred is appendant to the manor of Bosham, which is the paramount manor, the other manors having been created by sub-infeudation before that was prohibited by the statute of Quia Emptores in 1290. The process of sub-infeudation was somewhat complicated. For example, there is a paramount manor of Chidham, which is a member of the lordship of Bosham and has passed with it, but there is also a mesne manor of Chidham: see Dallaway's History of Western Sussex i.83. However, so far as these proceedings are concerned, it is necessary to consider particularly the paramount manor of Bosham with the appendant lordship of the Hundred of Bosham.

By a charter of 11 November 1189 Richard I granted Bosham with the Hundred and all its other appurtenances to John the Marshal, from whom it passed by descent to Roger Bigod, Earl of Norfolk, who surrendered it to Edward I. Edward I granted to his brother Thomas of Brotherton by a charter of 16 December 1312 all the property which had been surrendered by the Earl of Norfolk. The property then passed by descent until it was partitioned between the heirs of John, Duke of Norfolk, William, Marquess Berkeley and Thomas, Earl of Surrey. Under this partition, which was confirmed by the statute 12 Hen. VII. c.7 (private), the manor of Bosham with the appurtenances which had belonged to John, Duke of Norfolk passed to the Berkeleys and descended in that family.

As is not unusual in mediaeval conveyancing, the parcels in these documents are in very general terms and their precise definition has to be sought in other evidence. As is shown by the Quo Warranto Rolls of 1279 and the Close Roll of 1385, the lord of the manor of Bosham enjoyed the liberty of wreck of the sea throughout the whole Hundred. That liberty carried with it the ownership of the foreshore, since without that ownership the liberty could not be enjoyed. It follows that at the present day the lord of manor owns the foreshore alongside which the manor runs, and which is situate within the confines of the Harbour and Port of Chichester: see Iveagh v Martin [1961] 1 Q.B. 233 at pp. 235, 239 (1385 is misprinted as "1365" at p.235). This is borne out by the book of customs of the manor in the year 1619, where it is stated that the Chamberlain is bound to seize to the lord's use all wrecks of the sea "coming on the Lord's soyle".



While it is possible that the mesne manors had not been constituted by 1279, this possibility is immaterial. The mesne manors must have been constituted by 1385 (otherwise their constitution would have been in breach of the statute of Quia Emptores of 1290) and this can have had no effect on the right of the lord of the manor of Bosham to wreck of the sea throughout the whole Hundred, because the entry on the Close Roll for 1385 confirmed the liberties claimed by Roger le Bygod, Earl of Norfolk in 1279. Indeed, it would appear to have been legally impossible for any right in respect of wreck to have been parcel of any of the mesne manors, for the right to wreck is a franchise held by grant from the Crown and was not therefore capable of sub-infeudation. However this may have been the paramountcy of the manor of Bosham in this respect is demonstrated by two entries in Book A of the proceedings at the Hundred Court or Courts leat. At p.4 there is a presentment regarding wreck found east of Chidham "within the aforesaid manor (of Bosham)", and at p.50 there is a presentment regarding wreck found upon "the sea-shore of Thorney within the manor". Therefore the liberty of wreck extends to the whole of the coasts of the Hundred and the paramount manor of Bosham, which is co-terminous with the Hundred.

It is necessary to emphasise this matter of the paramountcy of the manor of Bosham, because Mr Feltham made the point that there is no evidence that Lord Iveagh held the lordship of the manor of West Thorney. This is so. In 1934 Mr A C Lundy was named as lord of the manor of West Thorney. That this was correct is indicated by a conveyance made 23 March 1935 between (1) Arthur Purcell Lay, Alfred Owen Williamson and Charles Augustus Lundy (2) C.A.Lundy (3) The President of the Air Council of Property which included the Manor House and a considerable of land known as the Thorney Manor Estate. The western boundary of this property marched with the eastern boundary of the land comprised in the Register Unit lying to the east of Emsworth Channel. If Mr Lundy was in fact the lord of the manor of West Thorney, this evidence dovetails with the other evidence that the manor of West Thorney is a member of the paramount manor of Bosham and that the foreshore adjoining the manor of West Thorney is in the ownership of the lord of the Hundred and manor of Bosham. [This leaves for consideration the question of the ownership of the remainder of the land comprised in the register unit, namely, the soil of the channels. Prima Facie arms of the sea or creeks belong to the Crown, but it is legally possible for them to belong to a subject, either by charter or prescription: see per Holroyd J in Blundell v Catterall (1821), 5 B. & Ald 268, at p.294. Parker, J said in Lord Fitz-Harding v Purcell. [1903] 2 Ch.139, at p.167 that there seems no good reason to suppose that the Crown's ownership of the bed of the sea and the beds of tidal navigable rivers is not a beneficial ownership capable of being granted to a subject in the same way that the Crown's ownership of the foreshore is beneficial ownership capable of being so granted.

That there is such a possibility in the present case was recognised by Parliament in S.27 of the Chichester Corporation Act 1938, which provided that nothing contained in or done under that Act should prejudice, alter or in any way affect any estate, right or interest of the land of that Hundred and manors of Bosham and the manors of Bosham Buckfold and Chidham in the foreshore, bed, or soil of Chichester Harbour, and S.97 of the Chichester Harbour Conservancy Act 1971 is in similar terms. Although the possibility has thus been recognised, it is still necessary to consider whether the lord has any such estate, right or interest.



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Since there are no express words relating to this matter in the charter of 11 November 1189, the meaning of the grant may be explained by evidence of modern usage: see per Parke, B in Duke of Beaufort v Mayor of Swansea (1849), 3 Eqn 413, at p. 425.

Mr Feltham drew my attention to evidence given by Lord Gifford in 1901 in the case of Lord Gifford v Mayor of Chichester, where he said regarding his right in the foreshore: "I claim as far as low spring tide and then as far as a man with a 10ft pole can then reach". That seems to be the only mention of this picturesque claim during the many centuries since the charter of 1189, and I find myself unable to attach much weight to it, having regard to the evidence of actual modern usage.

By a licence dated 30 April 1963 the Steward of the Hundred and manor granted to J D Foster Ltd a licence to maintain and use four moorings in the Emsworth Channel. By a lease made 30 April 1968 Lord Iveagh let to the Urban District Council of Havant and Waterloo the Western part of the land comprised in the Register Unit including the Emsworth Channel. On 22 May 1969 Lord Iveagh granted to the former Chichester Corporation a licence to control all moorings laid or to be laid in the future on the foreshore and bed of the land comprised in the Register Unit not subject to the lease of 30 April 1968, and on 29 October 1974 he granted a similar licence to the new Chichester Harbour Conservancy.

A 19th century account book records the sale of what is described as "a bit of the Sea". Rents have been collected for moorings in the channels, and these rents are at present collected by the Harbour Conservancy as agents. The account book for 1963 shows the receipts for mud berths and moorings separately, the former being on the foreshores and the latter in the channels.

On this evidence I am satisfied that the charter of 1189 included all the land comprised in the Register unit as parcel of the paramount manor of Bosham, which is co-terminous with the Hundred of Bosham. The manors of Bosham Buckfold, Chidham, and West Thorney, being but members of the paramount manor, do not include any of this land. The references to Bosham Buckfold and Chidham in S.27 of the Act of 1938 and S.97 of the Act of 1971 are therefore surplusage, and the omission of West Thorney from these sections and from Lord Iveagh's documents of title is immaterial.

For these reasons I confirm the registration. Mr George asked that I should make an order for costs, should I confirm the registration. Mr Feltham said that he had made his Objection in his capacity as Chairman of the West Thorney Parish Meeting, and that the reason for making it was to endeavour to prevent commercial exploitation of the land comprised in the Register Unit. Mr George said that the grounds of the Objection did not clearly set out Mr Feltham's case. This is so, but even had Mr Feltham disclosed before the hearing, that he was only concerned with the manor of West Thorney, it would still have been necessary to investigate the matter in depth. It does not appear to me that the costs were materially, if at all, increased by the imprecision of the wording of the grounds of the Objection. Since Mr Feltham had no personal interest in the matter and was acting, as he thought, in the public interest, I do not consider that this is a suitable case for making an order for costs.



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

19th

day of

June

1980

Chief Commons Commissioner