The Manorial Society of Great Britain

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The Land Registration Act (2002): Implications for Lords of the Manor in England and Wales

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Annual Conference
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Oxford

Mr Robert Smith (Chairman of the Society): Four members of the Governing Council who are present today—Lord Sudeley, Gerald Rand, Cecil Humphery-Smith, and Denis Woodfield—were in Oxford with me 23 years ago when we held the first Manorial Society Annual Conference at Oriel College. It was a particularly nostalgic weekend for me as one of the speakers was Robin Storey.

Robin, as I can now call him, was the tutor who interviewed me in the autumn of 1965, I think, for a place on the history undergraduate course at Nottingham University. I had not seen him since graduating in 1969 and, by 1982, he was professor and head of department. His period was—and, indeed, I am happy to report, still is—the 15th century for which, in history circles, he was justly renowned as a published author on the long civil war that we call the Wars of the Roses.

It was particularly gratifying for me—and for Robin, as he told me afterwards—to lecture to him on the Christchurch Estate under Prior Eastry at the beginning of the 14th century. I can still see him sitting at the back of the room, nodding away and occasionally making audible sounds in accord with what I was saying; and I remember thinking, 'What a pity you weren't so appreciative when it was my turn to read an essay at a tutorial!'

But that was education then. Its purpose was to teach people how to learn and then to use the facts that they had learned. While Robin led the initial assault on undergraduates whose turn it was to read their essays, their peers polled in and tore them to bits—usually just for the hell of it. That helped us undergraduates to defend our position; it put us on our mettle and we gave as good as we got. But, quite often, we went away thinking, 'Actually, they may have a point', although, of course, undergraduates never admitted that to anyone else.

By my mid-30s in 1982, Robin felt able to say of my lecture, 'Pretty good', which *was* pretty good coming from him. He confided to me about tutorials that the young should never be congratulated over-much, because they did not know how to deal with approbation and they might think that he had nothing left to teach them.

As we grow older, however, one of the things that most of us learn is that the older we become, the less we know, which must mean that we know something. Approbation can, therefore, be granted in limited doses as we mature. On the whole, that seems the right policy and I shall say no more about it. I shall certainly not make any comparisons with education today.

Also in 1982, one of our number was someone who was to become my very good friend and a great mentor to the Society: Sir Colin Cole, Garter Principal King of Arms, Chief Herald of England, so to speak. He held a small court in his Oriel suite in 1982 where he dispensed various libations in cut crystal glasses from a tantallus and, on Sunday mornings, held forth on the armorial stained glass in the College's great hall.

A couple of years later, we both attended the Bailiff's Dinner for the Court of the Manor of Bromsgrove, taking libations of vintage amontillado in the back of the car on the way there. The late Norman Fisher, a member of the Governing Council, was Bailiff for the year and saw to it that every glass was full throughout a dinner of truly medieval proportions—a dinner of such elegance and quantity that it almost caused me to turn into a Socialist. A 4 o'clock the next morning, the driver and I disembarked with Colin outside the College of Arms. He had lost his keys to the gate, so we manhandled him over the black and gilt wrought iron railings, white tie, tails, knee breeches, Knight's star of the Royal Victorian Order, World War Two medals and all: he served in a tank regiment on the Normandy beaches in 1944.

The following year, at a dinner in London for the then Home Secretary, Willie Whitelaw—actually after the dinner when the port was circulating particularly agreeably—Willie reminded Lord McLean, who was present, that the three of them—with Robert Runcie, who was not present—were commanding four tanks that drove side by side up the beach, a sort of terrace of tanks. It occurred to me that one stray shell would have deprived us of a future Garter King of Arms, a Home Secretary, Deputy Prime Minister, and a Viscount, a Lord Chamberlain, and an Archbishop of Canterbury. I met the Archbishop soon after, when he joined the National Committee for the 900th Anniversary of Domesday Book, which I chaired, when I reminded him, not that his recollection was in any way dimmed, of course. He won the Military Cross a little later.

Those were grand days, it seems on reflection. The Queen was in her palace, Mrs Thatcher was in Downing Street, hereditary peers sat in the House of Lords. We were all much younger and everything seemed right with the world.

The poignancy of getting older is hearing of the death of people whom we knew. Somehow, we had thought that they were immortal. I spend increasing time writing letters of most inadequate consolation. I am thinking tonight of one or two people, whose spouses are here: Ken Hobday, the Lord of Ruislip, an utterly lovely man who bore with such fortitude a long illness after a stroke. Ken and Wendy lived at the Old Work House in Ruslip, a greatly renovated house today. However, there was a charming irony perhaps in the Lord of the Manor living at the work house. Ken was anything but indigent or workshy and it is hard to believe now that work houses only formally shut their doors to the purpose for which they were intended in 1946.

Gerald Rand's wife, Clarissa, is also no longer with us. She put me up a number of times at Lynford Hall in Norfolk, a vast house which the then Prince of Wales wanted to buy in the 1870s, but had to settle for Sandringham when Lynford was not for sale. During Domesday Year, Gerald and Clarissa supported me throughout Eastern England when I had to do radio and television. I did a show with Gerald in Hull, but the

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funny thing is that Hull is not even in Domesday Book. Clarissa watched from the ops room, on the other side of the glass. I remember her very fondly.

Two of the longest-serving conferees here tonight are Arnold and Seena Davis from Scarsdale, New York—1985, I think. They are about to celebrate their Diamond Wedding and, at dinner in London the other night, it was made translucently clear to Arnold that Diamond meant diamonds, so you are all now witnesses.

Towards the last, but certainly not the least, is Denis Woodfield, the US Chairman, who has attended these conferences as long as Cecil and I have. In fact, I think that Denis was at the first conference that Cecil organized at Allington Castle in 1981. Denis was Treasury Services Director of Johnson & Johnson, is a doctor of philosophy from this university. He loves the conferences, I dare to believe, as much as anything because he can revisit and stay at Lincoln, his old college. The subject of this conference was his idea and our exchanges of faxes during the past 12 months has been of utmost value to me—and, therefore, to all of us. I am very grateful.

I am very pleased to report that Cecil Humphery-Smith has recently been appointed an Officer in the Most Excellent Order of the British Empire for services to family history. That description of what Cecil has accomplished formally during the past 44 years goes nowhere close to describing his contribution to local genealogy and its partner heraldry. I think that I am right in saying that he founded the Institute of Heraldic and Genealogical Studies at Canterbury in 1961. More than anyone else since then, he has very nearly single-handedly raised the profile of family history and sustains it while others have played around the edges. He has maintained the IHGS family history quarterly without interruption for more than 40 years and, as someone who also does a bit of publishing, I can tell you how hard it is to keep such a series going, not only begging, borrowing and stealing contributions, but paying for it. It is a remarkable feat and the OBE is, I hope, only the start of royal recognition.

However, IHGS does much more than its quarterly, with its mainstream books, family research, study days, conference, and armorial bearings. The Institute is affiliated with the University of Kent at Canterbury, and Cecil is no stranger to conferences like this throughout the world and on television. We are very lucky to have him and he is here this weekend with his wife, Alice, without whom, I venture to say, there would be no Cecil as we know him.

It is an odd thing, is it not, that at the beginning of the 21st century we are holding a two-day conference about manorial rights? To foreigners not of our fraternity, it must be a mystery that such an esoteric subject still warrants space in important legislation, the Land Registration Act 2002.

William the Conqueror, who is credited or blamed—depending on one's standpoint—with giving us the feudal system, would have been astonished even to have heard the expression 'feudal system'. It is an 18th century term, a century full of men mostly—*pace* Mary Woolstoncraft and a handful of other women—trying to define and categorize everything from the universe that they could see part of on a clear night to organisms in the sea.

The feudal system was being modified even before it got 'started', but a rough guide to the history of the world goes something like this: in the early 11th century, certain ecclesiastics—unwitting precursors of functionalist society, perhaps—propounded the theory that human society was divided into three orders: the *oratores, bellatores,* and *laboratores*, those who protected society with their prayers, those who protected it with their swords, and those who tilled the soil to maintain the other two castes.

The nub of the matter was the Manor to which all men were tied, the Lord—almost always a great man living in a castle or monastery—granting the *laboratores* their land in return for a variety of services. But even by Domesday Book, 20 years after Hastings, some Manors had been enfranchised; on others, men had bought their freedom and that process rolled along until about the beginning of the 16th century when, to most intents and purposes, people held their land or their tenement, as land was described, more or less as an inheritance, subject to small payments to the Lord. Furthermore, people were no longer tied to the land through the Manor, although someone here tonight will probably tell me that there was an example of that in about 1598 or some such date. History is like that.

Some land in England and Wales—mainly in the countryside—was still held feudally until the 1920s, when the Law of Property Acts abolished the feudal system, leaving the title and a bundle of rights over and under land which the Lord may or may not own.

A digression: when I hear or read journalists describing countries, such as Saudi Arabia, as feudal monarchies, I become irritated. They may be authoritarian or they may be tribal, but they are not feudal because they are not based on the ownership of land in the formal way that feudalism worked in Europe—the holding of land in exchange for services, requiring a complex body of property law to regulate and eventually to end the dependence.

Since 1925, a Manor is held in gross and may enjoy rights in land, which are now modern rights even though they may have a long history. After all, freehold is hardly a modern concept. It was known, although not called 'freehold', in Anglo-Saxon times. The Land Registration Act enables us in a modern way to make application to register ancient rights to land as the Lord of the Manor. However, Scotland only abolished its feudal system of land tenure in 2001, something that we shall consider on Sunday morning. The island of Ireland retains aspects of rights, originally derived from feudalism, under different names from mainland Britain but, like England, Wales and Scotland, retains the words 'manor', 'lordship', 'honour' or 'barony'.

I must not go on or my old friend, John Moore, will start getting ratty with me. After all, he knows far more about this than I do and is quite capable of reviving some manorial castigation if I transgress further on his demesne lands.

Mr John S. Moore BA FRHistS (formerly Bristol University): I begin in 1066, not because the previous six centuries of English history are unimportant, but

because the Norman Conquest introduced some radical changes into England—and, subsequently, into Wales, Scotland, and Ireland—which particularly affected the ownership and control of land.

First, we must ask ourselves why land was so important to contemporaries. In the pre-industrial period in England, until the 18th century, land was the ultimate source of wealth, political power, and social prestige. For the peasantry—the bulk of the population—access to land determined whether one had food. Without land, or paid work on it, one starved.

In 1086, Domesday Book primarily assessed the capacity of Lords' and peasants' land by the number of ploughteams: how much land could be ploughed and how much corn it could produce. The clergy's income was also partly derived from land—parochial glebes, episcopal and monastic Manors—and partly from tithes on agricultural produce. Land supplied the Lords with food from their demesnes—home farms—rents and labour services on those demesnes from their peasants and, not least, men: military manpower ranging from knightly sub-tenants to household knights, archers, men-at-arms, and skilled craftsmen to build castles, to make and service arms and armour, and to care for horses.

On the quantum of noble power depended social prestige and access to the ultimate source of honour, the Crown. Not all of that changed or appeared suddenly after 1066. As George Orwell observed, the division of society into high, middle, and low was as old as recorded history. The Godwineson earls in 1065 were richer and more powerful than all but a handful of the Norman barons in 1086.

What changed after 1066 were the relationships between freemen and the Crown, and between their land and the Crown. In the Anglo-Saxon realm, the basic relationship between monarch and people was one of King and subject. Only the tenants of Crown land and those who had chosen to 'commend' themselves to the King had an additional nexus binding them directly to him. Other freemen might be independent or tenants of, or commended to, another Lord. The plentiful slaves were simply property owned by their Lords. Land that was not part of the royal estate was independent of Crown control.

As Domesday Book sometimes put it, such land was held as 'an alod'—in absolute freehold—by men 'who could go with their land where they would'. The only powers that old English Kings had over their subjects' land fell into three categories, all of which depended on the royal prerogative. First, they could assess taxes on all land—the 'geld'. Secondly, they could order land to be forfeit for certain serious crimes. Thirdly, they could convert 'folkland' held according to local custom—the later custom of the Manor—into 'bookland': land held by charter which could be bequeathed by will, given or sold away from one's heirs or kin, particularly to the Church.

By 1086, the revolutionaries of 1066 might have remarked, as their successors of 1789 did, *nous changerons tout cela*. The King was the only independent freeholder—the apex of the feudal pyramid and the ultimate Lord—from whom every other Lord held his land either directly of the Crown as a 'tenant-in-chief' or as a tenant from the tenants-in-chief or as their sub- (sub-sub) tenants. At the lowest level, all peasants held their land from a Lord of one of the Manors into which Domesday Book famously divided all of England.

In addition, modes of succession to land had radically changed. The normal inheritance pattern before 1066 was partible tenure—'in parage' (equally). So, Domesday frequently records land held by brothers in 1066. Thereafter, partible tenure at higher social levels was confined to the least important members of society—women. At lower levels it survived among the peasantry in Kent and Wales. All land at manorial level or above descended on death to the eldest son alone. We call such a system primogeniture or impartible tenure. The only exception to that rule, which was confined to the Crown and its tenants-in-chief and lasted from 1066 to the final loss of Normandy in 1204, was that the patrimony descended to the eldest son, and the acquired lands to the next younger son.

Lords, ranging from the King down to the local Lord of a Manor, exercised considerable control over their tenants' land dealings. If tenants wished to give, transfer or sell part of their land to someone else or to the Church, they had to obtain their Lord's permission—normally on payment of money—for what later became a 'licence to alienate'. On death their heirs had to pay a 'heriot', commonly the 'best beast', as well as a graduated money payment, which was called a relief, when they succeeded if they were already aged 21. If they bought or were given land, they had to pay their Lord an entry-fine to succeed to it. If the heir, or the co-heiresses, if there was no male heir, was under 21, their persons and estates were in 'wardship' to their Lord, who could run the estates for his own benefit during the heir's minority or who could give or sell the wardship to another.

If the minor heir or heiresses were unmarried, their marriage and that of their widowed mother could be controlled or sold by the Lord. The only check on that was the legal convention of *nulle disparagement*, whereby a woman could not be forced to marry a man of lower social rank since, as a woman, her status naturally depended on that of her husband. Women did not matter in the feudal age. They were merely the means through which land passed to their heirs. Even their ancestral land belonged to their husbands during marriage. The freedom to buy, sell, give, and bequeath land enjoyed by the Anglo Saxon freewoman was regained by her descendents only after the married women's property Acts in the later 19th century.

To provide for widows, the system of 'dower' was introduced whereby a husband, on marriage, nominated a third of his land to be held by a widow for her lifetime. To compensate for that, a wife on marriage brought to her husband a dowry in land or cash. Similar arrangements obtained at sub-manorial level. Tenants could only transfer, receive or inherit land in the manorial court before the Lord's steward.

As the medieval period progressed, the Norman rule of inheritance by the eldest son increasingly prevailed over gavelkind—partible inheritance—and 'borough English', which was inheritance by the youngest son. From the 13th century onwards, Kentish Lords obtained royal licences to disgavel their lands so that their eldest sons alone would succeed them. By the

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17th century, primogeniture had triumphed as the customary mode or inheritance in most manorial courts, as it had among all the tenants' Lords.

The importance of primogeniture as the standard form of inheritance was emphasised by an important evolutionary development in English feudalism. Originally, in France and Germany, the grant of a fief or knight's fee—*beneficium* or *feudum* in medieval Latin—was precarious; it was a grant for a lifetime only. By the time feudalism arrived in England, the grant of a knight's fee was hereditary. Henry I (1100–35) was the last English King to interfere with what was already becoming the natural inheritance; he directed that Geoffrey de Mandeville's Barony of Marshwood in Dorset should pass to his son Ralph by his second wife rather than to his son Robert by his first wife because the King considered Ralph to be the better knight.

Ladies present will perceive that the Normans were the original sexist beasts, but there was a rationale behind the discrimination. The *sine qua non* of the feudal structure was personal military service as knights, which clearly women could not perform. That did not prevent women from being, on occasion, notable generals or from commanding besieged castles with success. For example, Empress Matilda and Stephen's Queen Matilda commanded armies in the mid-12th century civil war, and Nichola de la Hay was hereditary castellan of Lincoln in King John's reign. In addition, women were not the only victims of feudal service. The system, which emphasized personal military service, also penalized male weakness. A man who was too young, ill, weak, feeble-minded or old to perform such a service was in the same position as a woman.

By the reign of Henry I, personal service was supplemented by a cash payment in lieu—scutage. From the time of Henry II (1154–89), the Crown often preferred to take the scutage and hire mercenary troops to do the fighting. Although the feudal structure had a logic to it based on the render of military service for land which reinforced the unity of estates, hence primogeniture, the system necessarily incurred costs that many members of the lordly class found increasingly unacceptable.

As a result, the history of the law of property from the 12th to the 20th century is one of increasing attempts to modify the original stringency of the system created in the aftermath of the Norman Conquest to meet human problems that had not been envisaged or properly thought through by government. The situation was due partly to an historical accident: the transfer to King William of the royal lands and the estates of the Godwinesons and of most of the English thegnly class was the largest shift in landed power in England until the dissolution of the monasteries in the 1530s. It gave the Crown a commanding position in the landed economy, as well as permitting the creation of a new, almost entirely foreign landed aristocracy, which was a situation never to be repeated in English history.

Thereafter, Crown and nobility had to adjust their inheritance to take account of changing circumstances, not least the changing attitude of the Western Church to marriage. Just as Mr Blair's Government is moving to outlaw forced marriage among the south Asian minority, so the Church's view on marriage was changing. The post-Roman Church had tolerated divorce and remarriage, particularly for monarchs and nobles, precisely because of the importance of succession by male heirs. The Western Church decisively turned against both; marriage was to be indissoluble except by death, unless the Papacy decided that a particular marriage was invalid.

There was an important corollary to that decision: the essential basis for marriage was declared to be the free consent of both parties. That drove a potential horse and cart through the feudal institution of 'wardship and marriage', because refusal of consent by either party automatically invalidated a marriage. Wardship and marriage continued in England and Wales until the Crown's feudal rights were abrogated by the Civil War in the 1640s, but such arranged marriages after the 1150s had to take account of the wishes of grooms and brides. By the end of the 12th century, aristocratic widows in England were paying the Crown 'not to be married or remarried against their will'.

As time went on, new circumstances produced new problems that required new solutions. Kings and nobles wished to be able to reward men of talent. That required either the grant of a portion of the existing estate as a new holding—the lawyers called that 'subinfeudation'—or the grant of the marriage of an heiress with her land. Thus, even by 1086, much of the holdings of tenants-in-chief had been granted to sub-tenants, and the process of subinfeudation continued for another two centuries until it was prohibited by the statute *Quia emptores* in 1290. By then, feudal service had been so fragmented that it could no longer be demanded with any hope of success. How could one render or demand the service from one-fortieth of a knight's fee?

After 1290, land could still be transferred by outright sale, gift or trust, but the transfer would not create a new feudal sub-tenancy. Lawyers thus held that no new Manor could be created after 1290—there could only be 'reputed Manors'—but legal doctrine did not always align with territorial fact. By the 1270s, the Crown and nobility were also getting seriously worried about the amount of land in the 'dead hand' of the Church as the result of previous generations' piety. Such land could not be transferred back into lay ownership, although it could, and was, leased into it. In consequence the Statute of Mortmain in 1279 prevented further transfers of land to the Church unless a fee was paid to the Crown. Because of the statute and the increasing shortage of land caused first by continued population growth until the mid-14th century and secondly by the continued growth of the size of large estates as their number fell, much less land was given—certainly in larger amounts—to the Church between 1300 and 1530.

Again to avoid dissipating landed patrimonies, the use of heiresses' marriages to reward new men became increasingly common. The classic instance of that is Isabella de Clare, the daughter of Earl Richard 'Strongbow', who died in 1176. She was given in marriage by Richard the Lionheart to the notable soldier William Marshal in 1189. He thereupon succeeded in right of his wife to his father-in-law's vast estates in England, Wales, and Ireland, and to his title as Earl of Pembroke. There were two reasons why that strategy became increasingly popular. The first was that it was relatively painless to the arranger, because the

estates covered by the marriage were not his by right, but were only a temporary addition to his lands. The second was the biological probability that at least one in five of all families at any social level will fail in the male line within a century. That meant that there would inevitably be a continuing supply of marriageable heiresses with their lands to be disposed of by feudal superiors.

In certain circumstances, the percentage could be higher. If it became the custom to marry heiresses in order to acquire their share of their family lands, which was the case in medieval England; as the size of the nobility fell, the genetic combination predisposing the female rather than male births will be passed onto future generations, thus explaining successive failures in the male line. I will give two examples. After the death in 1107 of Robert Fitz Hamon, who had conquered Netherwent in south-east Wales in the reign of William Rufus, Henry I gave Robert's daughter Maud in marriage to one of his own bastard sons, Robert de Caen, who was created Earl of Gloucester in 1122 and died in 1147. When his son, Earl William, died in 1183, his heirs were his three daughters, Mabel, Isabel, and Amice—two female successions inside a century! That was hardly exceptional.

Robert Fitz Hamon's neighbour to the north was Bernard of Neufmarché, who died in 1125 after conquering Brychan and Brycheiniog in east Wales. His heir was his daughter Sybil, whom Henry I gave in marriage in 1121 to his constable and household steward, Miles of Gloucester, who was created Earl of Hereford in 1141. By 1166, Earl Miles' four sons had died childless, leaving their three sisters, Margaret, Bertha and Lucy as heirs. In this case, we are talking about two female successions in 40 years. Margaret's third descended to the Bohuns and Lucy's third to the Fitzherberts, but Bertha's share was further divided in 1230 between her four de Braose great-granddaughters, Maud, Isabel, Eleanor, and Eve—three female successions in 110 years. Numerous other examples could be given from Sanders' *English Baronies* and the serried green volumes of *Complete Peerage*.

I mention two medieval statutes, *Quia emptores* and Mortmain. Such statutes originated in the process of consultation between the King and his barons in the Great Council, which had led to *Magna Carta* in 1215 and which continued in the reigns of Henry III and Edward I, widening to include representatives of the great towns—'burgesses'—and of the counties—'knights of the shires'—which coalesced as the House of Commons. The Great Council broadened to include all landed nobles, not just great tenants-in-chief, in the future House of Lords.

The evolution of Parliament was slow, haphazard, and often faltering, crises such as the Barons' War in the 1260s, the revolt of the 'contrariants' in the 1320s, the struggles of the Appellants under Richard II, and the Wars of the Roses in the 1450s and 1460s temporarily disrupting good relations between Crown, nobility, and Commons. However, the evolution embodied the developing political consciousness of upper and middling orders as articulate parts of national society, so that law ceased to be—if it ever had been—simply the will of a King who had not consulted his natural advisers. *Magna Carta* was the outcome of bargaining between King John and his rebellious barons which, although mainly dealing with aristocratic concerns, also guaranteed to all freemen liberty from arbitrary arrest and imprisonment and to all countrymen immunity from confiscation of their ploughteams (their lands and livelihoods).

Henceforth, the making of law—above all, land law—reflected the desires of the landed aristocracy as much as those of the Crown. Rising population during the 13th century put great pressure on land that was either uncultivated or on which there were restrictions on cultivation. In the first category came common land: the Statute of Merton in 1235 directed that commons could be enclosed only with the consent of all Lords and freemen who had rights of commonage. Thereafter, the growing numbers of Acts passed by medieval and later Parliaments—'stacks of statutes', according to a 16th century lawyer—usually reflected the consensus agreed by the various sectional interests in Parliament that had become an essential part of government under Henry VIII's reign. (See *The House of Lords and The House of Commons*, edited by Robert Smith and myself).

Consensus and co-operation between the landed nobility and the lower orders had become apparent in another aspect in the reigns of King John and his son Henry III. By 1199, about a quarter of the area of England was subject to 'forest law'. Regardless of who held the land, the King's forest officials controlled the hunting of the beasts of the chase, notably red deer and wild boar. They forbade the use of dogs with unclipped—'unlawed'—claws that could be used to bring down deer. They prevented the breaking up of new ground—'assarting'—and the erection of mills and other buildings—'purprestures'—that might injure the beasts of the chase. They prohibited the cutting of timber that sheltered them—offences against 'vert'—and opposed all unauthorized hunting—offences against 'venison'.

The end result was to sterilize hundreds of thousands of acres that could be used productively. But the Crown's need for money and the nobility's desire to lead the local population, most of whom were its tenants and dependants, led between 1200 and 1272 to widespread disafforestation, in the legal sense. Entire counties such as Devon, and large parts of others, such as Gloucestershire east of the River Severn, were taken 'out of the forest' and made available for expanding agriculture, a movement led by the local landholders such as the 'knights and free men of the seven hundreds of Grumbalds Ash', who procured the freeing of South Gloucestershire in 1228. Without the radical reduction in the royal forest, the agricultural expansion of the 13th century would have been curtailed considerably.

Besides female succession, other human circumstances created problems that were impossible to solve under strict feudal law. Very few families in England at any social level in the past tried to limit the number of children born because nature was more than capable of doing the job itself. Infant and child mortality levels were high in all social groups until the 19th century. Usually, in addition to the eldest son, there would be younger sons and daughters, all of whom needed to be brought up and suitably provided for. Clever or clearly unmilitary sons could be directed towards the Church, but that increasingly required education if one was aiming higher than a parson for a

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local parish church. Gerald of Wales, for example, spent at least 10 years in the 'schools' of France before becoming an archdeacon in Wales. Even if the evolving secular 'common law' or the expanding royal bureaucracy were seen as good avenues for advancement, which they often were, that again necessitated expensive training and the judicious greasing of palms.

Younger sons, even if fit for military service, required lengthy training and equipping with arms, armour, and horses, the cost of which rose continuously between the 12th and 16th centuries. Moreover, war was a chancy business. Success could bring ransoms and booty sufficient to found a new landed family. Failure could mean ruinous ransoms, bringing families to the brink of bankruptcy. Increasingly, and hardly surprisingly, many of the gentry preferred to keep out of war and become local magistrates, administrators and estate owners. If younger sons were a problem, daughters were even worse. If they were not to suffer 'disparagement', be forced into a mésalliance with a lawyer or merchant or be consigned to a nunnery, a sufficient 'jointure' or 'portion' had to be found to attract the right class of future husband who would respond with an appropriate dower. Physically or temperamentally unattractive daughters would require correspondingly higher dowries.

A landed family, therefore, always needed some available hard cash; yet from the 13th to 19th century an average landed estate was thought to be doing well if it yielded a net return of 5 per cent. It was perfectly possible for a landed family to be rich on parchment and yet have little liquid cash available. Much of its regular landed income went on maintaining the noble household and its estates, hospitality, and necessary display. A fortunate marriage to an heiress could radically alter the situation though it could have long-term dangers, as we have just seen.

Equally, a series of widows in succeeding generations or long-lived spinsters could be disastrous—two thirds left after one widow and four ninths left after two widows. In the short run, recourse would be necessary to the Jews—until they were expelled from England in 1290—or to English or foreign bankers, but since such loans could not formally be secured on land until the later medieval and early modern period, the interest rate, however disguised, would be high. In default of all else, land sales would be necessary.

Later, medieval lawyers sought means to alleviate such crises, in particular by creating the device known as the 'use'. That was essentially a trust created by agents—lawyers, estate officials or relatives—to assume control of certain lands as free tenants in place of the estate owner for the benefit of stated purposes—uses—dictated by the estate owner. Such uses often took the form of entails to specified groups of people: heirs male; heirs female; or heirs general. The problem with the use was that the feudal superior was likely to lose out by the creation of a long-running use—there would be no reliefs, no heriots, no entry fines and no licences to alienate—unless he was suitable placated. Of course, the biggest loser was the largest feudal superior, the Crown itself. Once the Crown had recovered from its weakness in the 15th century, the Statute of Uses in 1536 severely restricted the application of the use and the utilization of the conveyance that set it up—the 'bargain and sale'—and both fell into disfavour as a result.

A further problem arose from the coexistence of Church and State with two separate law codes: the secular 'common law' and the ecclesiastical 'canon law'. While land and 'real property'—rights attached to land such as minerals, growing crops and timber, common rights, fairs and markets and ecclesiastical patronage—came under the former, 'moveable property' such as goods and chattels, leasehold rights, debts and probate were under the purview of canon law administered by Church courts, whose powers were curtailed only in the 1850s. There were two obvious areas where clashes could occur: tithes were subject in practice to both legal systems, often competing against each other; and wills, though administered by church courts, nevertheless usually contained the testator's directions regarding disposal of his land and other real property. Again, the medieval nobility was trying to get back to the situation of freedom of bequest enjoyed by its Anglo-Saxon predecessors and frequently uses were being employed to set up post-mortem trusts.

Finally, in 1540 the Statute of Wills recognized the right of testators to bequeath 'socage' land—land not held by military service—together with two thirds of land held by knight service. The Crown's potential losses were offset by the creation in the same year of a Court of Wards and Liveries designed to maximize the Crown's 'feudal' income, a project that succeeded in the short term, but at the cost of alienating many members of the landed classes in the run up to the Civil War in the 1640s.

The 16th century also saw a radical diminution in the types of tenure: petty sergeantry had already largely disappeared during the 13th century and grand sergeantry was an honorific survival of little significance. Frankalmoign—free alms—tenure, on which much, though not all, monastic land had been held in the Middle Ages, was largely attenuated by the Dissolution of the Monasteries between 1536 and 1540, but was to survive for the lands of bishops and cathedral chapters until the 19th century and for local parish glebe lands until the 20th century.

What remained after 1540 was knight service in an entirely nominal form, socage tenure—free tenure, sometimes with ground rent—and copyhold tenure within Manors, which had been recognized by the royal courts at Westminster in the later 15th century. Knight service lasted until the Civil War because of its financial value to the Crown which, increasingly short of money in a period of inflation, evermore vigorously exploited its rights of wardship and marriage in a programme dubbed 'fiscal feudalism' by historians. That, because it relied on the royal prerogative, was abrogated during the Civil War and was formally abolished by the Restoration Parliament in 1660. Land held by knight service was merged with socage tenure; copyhold was the only other heritable tenure, frankalmoign—what was left of it— being restricted to official successors in post.

Meanwhile, the rise of the common lawyer produced changes in the procedure of the land law itself. English law had never favoured perpetual entails and the later medieval 'use' could be broken by a fictitious suit utilizing 'fine and recovery'. Mortgages had been

introduced by 1500, but were short-term—six to 12 months—involving the entire debt and accrued interest that had to be repaid and renegotiated. If there was any default in repayment, however small, the entire property held as security was forfeited to the lenders. Not surprisingly, most borrowers preferred to rely on family, friends or unsecured loans.

By 1600, however, conveyancing lawyers had evolved the doctrine of the 'equity of redemption', so that borrowers were liable only for an outstanding debt with any accrued interest, but retained the surplus amount between the sale value of the land on which the loan had been secured and the debt owed. Mortgages became much safer and more popular, even more so as interest rates on secured loans fell in the late 17th century and remained at low levels until World War Two. London goldsmiths evolved into bankers and stockbrokers willing to lend on security and, given rates of about 5 per cent, it made economic sense for landlords to borrow to finance not only exceptional family expenditure, but estate improvement on a growing scale.

The burgeoning agricultural revolution facilitated the digging of canals and river-navigation schemes, land drainage and diversification into industrial enterprises, especially mining coal and iron, and the construction of ports. However, despite the simplification of land law, with socage and former knight service land becoming absolute freehold, some causes of family insecurity still remained to be addressed. In particular, even if a landowner no longer had to cope with capricious and grasping feudal superiors, how did he guard against capricious, lazy, incompetent or uncaring successors? How could he ensure the transmission of his estate as a functioning unity to his posterity?

The answer to that question was produced by a great conveyancing lawyer, Sir Orlando Bridgeman, during the years of the Cromwellian Protectorate. Effectively, he revived the medieval use and entail in a new form, the strict settlement, which was to dominate the administration of English landed estates until World War One. The landowner created a trust usually comprising himself, his eldest son if of age and of good character, other family members as necessary, the estate lawyer, the estate steward, often his banker, and such others as he chose, who were to hold specified lands on specified trusts with specified powers. That usually included the raising of loans on mortgage, expenditure on specified matters, such as estate administration and improvement, the payment of dower to daughters and widows, and the education of younger sons.

By the 18th century, trustees usually had powers to invest in Bank of England or East India stock. Such a settlement would usually remain in being until the death of the last 'remainder-man' or 'remainder-woman', when it would be wound up by consent of the surviving trustees. It was fairly rare and not thought advisable for a settlement to cover a whole estate. Usually, there would be more than one settlement in being at any one time, raised on different parts of an estate usually with beneficiaries of different generations, even if the general purposes were the same.

By the end of the 18th century, it was thought that two thirds of England's land was 'under settlement' at any one time. It was good practice to have some 'unsettled' land available to meet sudden, unforeseen emergencies or, indeed, unexpected opportunities. Certainly, the system minimized risk and a properly drawn settlement could not usually be broken during its period of operation except by a private Act of Parliament. Since most settlements made alternative arrangements in lieu of the customary dower or 'thirds', dower in its original form became obsolete and was abolished by statute in 1833.

Furthermore, Lord Brougham's Act that year abolished the 'final concords', which had existed since Henry II's reign, and the 'recoveries', which had evolved in the later medieval period to arrange and to abolish simple entails, substituting simpler disentailing deeds. Historians believe that the adoption of the strict settlement system was an important factor in re-establishing the ascendancy of the landed aristocracy after the Civil War and ensuring the continuance of the great landed estates during the next two and a half centuries.

Sir Orlando Bridgeman's innovation was fortunate in the timing of its appearance: feudal superiority had been in abeyance in England and Wales since the start of the Civil War in 1642 and was, as we have already seen, formally abolished by the Restoration Parliament in 1660. Provided the settlement was within the common law, no superior power could intervene except, as we have noted, Parliament—and then only exceptionally. A new type of conveyance was employed, the 'lease and release', which avoided the restrictions placed on the 'bargain and sale' by the Statute of Uses.

We have all, I suppose, met peers who are selfish, bloody minded, ill-mannered, and antisocial although, in my experience, they are a small minority. I shall not pretend that the actions of the landed aristocracy in the past were never actuated by naked class interest, when they sometimes clearly were. The most obvious example of 'class' legislation were the measures designed to protect private hunting preserves in the 17th and 18th centuries. Until the recent prohibition of fox hunting, the arrogant disregard too often shown by hunters for other people's property rights—such as following foxes on to private land, destroying fences, damaging crops and livestock in areas where they had no legal right to be—was a flashpoint in rural social relations, even where hunting as such was approved or at least tolerated.

However, in general, the law of property was accepted by most people, propertied or unpropertied, because it was the law. It had been enacted by their representatives in Parliament, and it benefited all. The same law of property was part of a law that protected dukes and dustmen. As William Pitt the Elder stated in a debate in 1763, 'The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the rain may enter—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.' The law, including the law of property, that protected the landed aristocracy against Stuart absolutism, also guarded the poor against arbitrary interference by their so-called betters.

As we have seen, the abolition of feudal tenure in 1660 left absolute freehold as the only system of permanent land law for the upper and middle classes in England and Wales. Leasehold continued, but as a necessarily time-limited form of tenure. The freedoms to settle land and to bequeath land meant that

[Mr John S. Moore BA FRHistS]

primogeniture no longer needed to be a necessary rule of descent: its function to ensure the passing of landed estates as intact units could be attained by other means. Equally, means were then available to meet the problems posed by those who had been excluded by primogeniture, especially younger sons and daughters.

At lower social levels, however, copyhold tenure remained and was administered in the thousands of manorial courts that still survived. Despite its antique language, tenure 'at the will of the Lord', for example, in the last resort was protected by royal courts as it had been since the later 15th century. Effectively, it was freehold in all but name. Copyhold land could be bought, sold, given, bequeathed or held in trust. It was subject to the payment of rent—at levels fixed mostly in the 13th century and not capable of being increased—to heriots on death, and to reliefs on succession or entry fines on purchase or bequest, again at levels long fixed by custom. Other services, apart from serving on manorial juries, had withered away. Its main disadvantage was that any transfer of tenure usually had to take place in a manorial court, which effectively acted as a local land registration system, although even that requirement could be circumvented.

Finally, after an incomplete Act in 1922, the Law of Property Act 1925 arranged for copyhold tenure to be enfranchised, compensation being paid to manorial Lords for the ending of money rents over time. Because of the onset of World War Two, copyhold was finally extinguished in 1950. Nine centuries after the Norman Conquest, the revolution of 1066, the legal wheel had turned full circle: absolute freehold was again the rule. *(Applause)*

Conference adjourned.

Conference resumed.

Mr Moore: Good morning, Ladies and Gentlemen. I am glad to see you are all up and ready to listen contributions. Last night, we considered the past, so it is appropriate that all this mainly concerns the present. I am pleased to introduce Mike Westcott-Rudd.

Mr Mike Westcott-Rudd (Senior Corporate Lawyer, HM Land Registry, London): I last attended a seminar of the Society in November 2002. On that occasion I, Christopher Jessel, who is well known to you, and Charles Harpum the architect of the Land Registration Act 2002 shared a platform. The purpose then was to draw your attention to what were then the important forthcoming changes in the existing land registration legislation which were to be made by the pending implementation of the 2002 Act.

By way of introduction, I should say that breakfast this morning took me back to happy days at the other place. I am delighted to have the opportunity to be back, if it is even in Oxford, and to tell you how the legislation has been working out in practice.

I have spoken to Edward Cousins, the Adjudicator to HM Land Registry and Chief Commons Commissioner, who is due to speak later today and I shall refer to him and to his office. There will be some areas of overlap in what we will be saying and I apologize for that, but there is only so much legislation to go round. I am happy to field questions and to open the batting, but, like all opening batsmen, I will be hoping not to receive tricky ones from Shane Warne types to try to catch me out.

The first part of my talk is a quick canter through early English land law. The Crown is the only absolute owner of land. All other owners hold an estate in land. The practical effect of the Crown's position may be seen when, for example, someone is left heirless, as the land will then revert to the Crown.

Estates, which derive from feudal forms of tenure, originally took many such forms, but in 1925 were reduced to two: an estate in fee simple absolute in possession—'freehold'—and an estate for a term of years absolute—'leasehold'. Copyhold tenure was abolished by the Law of Property Act 1922 and as from 1 January 1926, any remaining copyhold land not previously enfranchised at common law or by a 19th century Copyhold Act was enfranchised.

Apart from an estate, land may have the benefit of, or be subject to a number of interests, which are rights and obligations relating to the land, belonging either to the owner or to a third party or to groups of third parties, such as rights of common. When the Government takes away any rights, it tries to compensate those affected. For example, the 1922 Law of Property Act gave to the Lord of the Manor a limited right to claim compensation for the extinguishment of certain manorial incidents and preserved a specific class of other such rights.

Much of this talk will focus on those preserved rights. But first I shall focus upon examination of title. Before the advent of registration of title, and still for those properties which remain unregistered, investigation of title can be a highly technical matter because there is usually only one way to establish the seller's right to sell a property. Unlike anything else people buy and sell, people cannot physically deliver land to the buyer; so proof of title, which is not necessarily true ownership, derives from documents. Each time a property is bought and sold, a conveyance is prepared, and so the older the property and the more often land is bought and sold, the more documents there are. At law, traditionally, people had to examine the deeds back for at least 30 years.

Furthermore, in the 19th century, clerks were paid by the word, which is why we get huge long deeds that recite and mimic the previous deeds word for word so the deeds themselves were often unnecessarily long. In 1970, the period of examination of title was reduced to 15 years, so a buyer only needs to go back 15 years to check the title, but in practice there may be many good reasons why the lawyer may still need to go back much further. Apart from the deeds, there are often also undisclosed obligations, including the manorial incidents I have already mentioned. Rights to shoot or fish on land and to extract minerals are not always mentioned and may have been forgotten between 1900 and 1930s. The rights might now be more valuable than the land itself, for example fishing rights on the River Tweed. Although they are now valuable, many were virtually given away in the 1930s. Manorial waste is another example of land which became forgotten or abandoned in the first part of the 20th century.

Now let us look at the registered position. At the moment, although the whole of England and Wales is subject to compulsory registration, this is only triggered

if a particular event happens—the main ones being transfer of title, for example by sale or on death, and on legal first mortgage. We estimate that there are currently about 24 million possible titles in England and Wales. That does take into account some short term demographic projection. Out of that number, approximately 20 million are registered, but only a little over 50 per cent of possible land is registered. This is mainly in urban conurbations.

Question from the Floor: What about the land that did not get bought and sold, for example churches and landed estates?

Mr Westcott-Rudd: These are good examples of land which remains unregistered. Another is old universities and charity land.

By contrast to the examination of title just described with unregistered conveyancing, in registered conveyancing there is a single statement of title as it stands at any given time. In addition, people can check any current activity by looking at the day list, which is the Land Registry's 'pending index', if I may put it that way, of current activity. Registered land is therefore far more dynamic as a title. The register is public and readily available in electronic form. That is important in a digital age. It is in nobody's interests say, to have the benefits of a right, but for that information not to be available to anyone else with a potential interest. As it is now held in electronic form, there no longer needs to be a title deed to prove ownership. Ownership is held in electronic, paperless form, and while people can obtain official paper copies, it is the electronic register itself that is the proof of ownership. The electronic register is an important milestone on the road to electronic conveyancing. It is also very cheap to access. One can go online today to the Land Registry and find information about it. That will cost the princely sum of £2 per title.

Question from the Floor: Why it is not free?

Mr Westcott-Rudd: We are a Government Department and are required to cover our running costs out of our own fee income. That is accountancy at its most rudimentary. We recently cut the cost to £2 for electronic delivery. Paper delivery is £4. There may be more economies and certainly more efficiencies as we get further into the e-conveyancing programmes. Another thing is if a property has been bought since April 2000, the price paid will appear on the register. Of course at the time of Domesday Book, all land holding information was public anyway—or at least it was if one could read Norman-English.

You may ask why the publicly available property information of which I have just spoken is not contrary to the Data Protection Act. It is because we have a statutory obligation to make the information public. That only occurred after parliamentary debate and legislation.

Our jurisdiction covers the whole of England and Wales. There are separate registries for Scotland, Northern Ireland, the Isle of Man, and the individual Channel Islands. We have 24 offices with about 350 staff, each dealing with different parts of the country. Any queries relating to any particular applications, or prior to lodging applications, should be raised with the local office with geographical responsibility; details can be obtained by ringing the number that appears in any telephone directory.

What of our resources? We have been going since 1862 and have, for example, comprehensive OS mapping information. That might be helpful if members are dealing with boundary queries; Ordnance Survey does work on our behalf. Members can also search our index map, which will show whether a particular part of land is registered or not.

We also have about 180 lawyers and many other legal staff with technical knowledge, and those resources are regularly put at the disposal of enquirers. If we can give people useful information that prevents them from misunderstanding our role, it is often cheaper for us in the long run. Prevention is better than cure.

I will now take a quick canter through the 2002 Act. The 1925 Act was feeling its age by the end of the 20th century. For example, in 1925, most property owners were single, usually male, well-to-do people. There was little co-habitation, in the legal sense at least. The new Act is designed to encourage registration. On many estates the landlord is often absent. The British Waterways Authority is a good example. As well as owning, say, a particular canal, it may, for example, own an extra 15 feet of the canal side which may on a cursory inspection of the property appear to be in the occupation and ownership of the canal-fronting property. It clearly needs this additional 15 foot strip for access and maintenance, but it may find that the adjoining property owner has taken possession of the land. It is now more difficult to acquire a squatter's title on registered land. The new Act now requires that notice has to be served in all cases on the registered owner for the future. So, in the example I just gave, the canal company would now receive a notice and would be given two years to regain possession before it lost its title to the land. The Act also paves the way for electronic conveyancing. We hope to run the first pilot of what that scheme will look like in 2007, but that would be the subject of a seminar for a different day.

I shall now turn to another area altogether. There are sometimes difficulties for property owners in cases where they are in dispute with one another. There may, for example, be a 'boundary dispute'. We have always had a judicial role, no different in legal terms from a County Court. Cases including property matters can be heard and determined in much the same way within the Land Registry. Judicial findings are binding, subject only, as with the County Court, to appeal to the High Court. Before the Land Registration Act 2002, some of our own specialist staff conducted the hearings. But that was open to the criticism that the hearings could be considered not truly transparent. What, for example if the Land Registry had contributed by error to the dispute? Should it be standing in judgment, as it were, in such cases? So the office of the Independent Adjudicator to HM Land Registry was created; Edward Cousins, the first appointed adjudicator, is to address you later today.

I will now talk about Manors. I have put out Land Registry leaflets, which provide guidance on various matters for members to take. I will discuss three issues and will deal with them in ascending order of importance.

[Mr Westcott-Rudd]

The first is the actual Lordship title. That is the title by which the Lord of the Manor is known. There may be no rights or land associated with the title, for it is possible to split—or, in legal terms, 'sever'—the Lordship title from any remaining landholding and any remaining rights. However, members should be aware of the working of section 62(3) of the Law of Property Act 1925, which operates in the absence of contrary evidence to convey not only the lordship title, but also any land and existing rights attached. If one is buying a title, one can usually ensure that there are no limitations put on such remaining land holding and rights.

Question from the Floor: As the title is not land, why should it be registered at the Land Registry?

Mr Westcott-Rudd: This is a convenient question and raises the precise point I was coming to. The 2002 Act abolished the right to register the Lordship title, so members are no longer able to do this. There was a modest rush in the late summer and early autumn of 2003, before the Act came into force, to register such Lordship titles. But there was never any real need nor compulsion to do so.

Members can search the Land Registry's registered manorial title record by using form SIF1. Such titles as exist are indexed administratively. But the register is less than satisfactory given its incomplete state. There are, of course, thousands of unregistered manorial titles and less than 200 registered ones. Registration confers no privileges or rights and the fact that people can no longer register a manorial title is no disadvantage whatever to the owner.

The second issue that I want to discuss is manorial land, by which I mean any physical land remaining within a particular Manor. We want comprehensive registration. We have a target to achieve this by 2012. But these manorial land cases are often complex. Land may not have been bought or sold, so there may be no prior deduction of title between a seller and purchaser, and therefore no conveyance and no defining plan. There may be perhaps a complete absence of deeds and no test of adequacy of documentary title by lawyers. I will give some examples how title may still be proved in such circumstances—although I would stress that each case will be treated strictly on its merits.

Some clear form of evidence is, of course, still required in any case. The best is some form of deed; for example it could be a deed in relation to common grazing of, say, sheep on the land in question. The deed may recite the identity of the owner as the then Lord of the Manor. Such deeds might exist in the local county records office. Of course, there may be later deeds that alter this. If one is buying a manorial title, then it may be worth getting a declaration from the owner that the terms of such a deed have not been rescinded.

Question from the Floor: What about negative evidence, for example waste land adjacent to the property that has been used for other purposes?

Mr Westcott-Rudd: That is the Shane Warne question, difficult to answer, of the sort that I mentioned at the start of the talk. Negative evidence on its own is unlikely ever to be sufficient. But there may be, even in these cases, useful alternative lines of enquiry. In the 1920s and 1930s, there was often substantial incursion on to such land by travellers. Councils were given statutory powers to deal with this. Records of their meetings may give positive evidence. A specialist archivist might be able to help in these matters.

Question from the Floor: What about the principle *ad medium filae*?

Mr Westcott-Rudd: It is the principle that the owner of land owns up to the middle of an adjoining road co-extensive with his property, but even in some rare cases, the land may still be owned by the Lord of the Manor. The Commons Registration Act 1965 is often vital to such matters. It was an attempt to index and publicize all common land and rights of common in England and Wales. Authority for keeping and maintaining the registers created under the Act is the responsibility of the relevant county council. The register is in three parts. The first register identifies the location and extent of the commonable land. The second contains a list of those who have rights over it. The rights are associated with the ownership of a particular property and not with the name of the owner. The third is the ownership register, which records who owns the common. However, the ownership section is often not completed and so it may in some cases be presumed to be owned by the Lord of the Manor in this regard. This is the sort of unhelpful negative evidence that I discussed earlier. In any event, the ownership register is never conclusive. It is not in itself proof of ownership. Only Land Registry registers give definitive information about ownership.

We have a procedure when we are registering land that is registered as common: we notify the appropriate commons registration authority and ask it to remove its record of ownership details which might otherwise conflict with ours. That is because there is no real provision for amending the ownership register at the commons registration authority. Title investigation conducted in relation to commons inquiries seems to have been often extremely cursory. Edwards Cousins, whom I mentioned, is also Chief Commons Commissioner, so he may be able to provide further information. However, a commons registration search should invariably be carried out if the registration application relates to common land.

It has often been my own experience in the past that where the common is no longer isolated, the Land Registry would serve notice of the application in the local press. That step was taken because there may be a good deal of local interest and some local knowledge which might be relevant in the Land Registry's consideration of the application. In any event, the commons registers are often a useful source of evidence in compiling applications to register manorial land.

I turn now to the third issue—namely, manorial rights. Various copyhold rights were preserved by the Law of Property Act 1922 as I mentioned at the start of my talk. These include: the Lord's sporting rights; the Lord or tenant's rights to mines and minerals; the Lord's right to hold markets and fairs; and the Lord's or tenant's liability to build and maintain dykes, ditches, canals and so on. The Land Registration Act

2002 requires that these must be protected on the register sometime in the next eight years if they are to continue to bind the land.

This can be done under section 32 of the 2002 Act. The extent of the land affected must be defined. One must also obtain what might almost be called 'similar fact evidence': this is because the rights of the Manor are normally based on custom. If those customs are recorded, that is good enough. Reliance can be placed on section 45(6) of the Law of Property Act, which provides that statements recorded in deeds and documents more than 20 years old are presumed to be sufficient evidence of the facts recorded in those deeds.

Question from the Floor: We have tried to register market rights, but we are only able to do so within an area. What should we do in that situation?

Mr Westcott-Rudd: It is true that markets and fairs are different. These are a class of franchise. The 2002 Act for the first time allowed such franchises to be registered with their own title. They are generally franchises granted by the Crown. From our limited experience so far, almost none of these appear to records the right to hold a market in a particular place. The royal grant just says that a market or fair may be held. The grant often takes the form of a charter or letters patent, but it can also be claimed by prescription.

Franchises do not carry with them, ownership of any physical land. The most common franchise is the right to hold a market, usually weekly, together with the right to hold an annual fair, usually by reference to a particular Saint's day. We are about to register separate franchises for Baldock, Ripon, and Knaresborough. The latter is a franchise for a weekly market and an accompanying fair based on a medieval charter granted to the infamous Piers Gaveston in the reign of Edward II.

If members are thinking of registering a particular franchise, beware of the Fairs Act 1871 which gave authority to abolish fairs. Many have been abolished. Members should always consult the National Archives' website to gain information about whether a particular fair has been abolished. If anyone would like further information I can provide them with further details after the talk.

The 2002 Act also allowed profits *à prendre* in gross, which are frequently valuable, to be registered with their own separate title. Many valuable shooting and fishing rights have been sold to specialist sporting companies. They can be either freeholds to leaseholds and the ones I have seen vary in value from £5,000 to £1 million.

Question from the Floor: Surely from the fact that the royal charter gives permission to hold a fair, it is clear that this would be held on the Manor?

Mr Westcott-Rudd: The royal grant often says when but not where. The king would not reasonably know where—in Baldock, for example—the fair would be held.

Question from the Floor: Who has eligibility to register?

Mr Westcott-Rudd: This is open to anybody; one does not have to be a UK national. Large areas of land are owned by non-UK nationals or companies. A UK address however may be helpful for serving notice.

Question from the Floor: Mines and minerals can be registered. Why are there limitations on that?

Mr Westcott-Rudd: That is a complicated question—the flipper, if I may continue the cricketing analogy. We are about to take Counsel's opinion on that. It could be argued for example that mines and minerals are really more in the nature of profits 'in gross', but there are plausible arguments against this view. We take a relaxed view on this. We will circulate chapter and verse on that when we have it.

Mr Martin Hopkins (BBW Solicitors): This can be rather a large subject, and I do not propose to cover everything. I shall begin rather than finish by summarizing the main point. Do consult someone who is legally qualified: buying and selling Manors is not to be treated lightly. As I am a solicitor, members will probably be thinking that I am bound to say that, so the object of this talk is to clarify what happens on the legal side and what could happen were things to go wrong. Members should not think that they can do it themselves. There are hidden pitfalls for the uninitiated. Basically, what are members getting for their legal fee?

Manors are treated in the same way as land when it comes to buying and selling, and the reason for that is historical. A Manor originally comprised identifiable land, and the Lord of the Manor had a number of rights, some of which related directly to the land, for example sporting rights, and some which came from his being the Lord, for example the right to hold courts. The Manor had developed out of the feudal system, and the Lord held his freehold manor from the Crown. Land was held within the Manor from the Lord, who kept the records of the land holding in the Manor. That land became known as copyhold and the tenants were known as copyholders. The details of the land and the owner/occupier, known as a tenant, were copied into the manorial records.

The powers of the Lord declined over centuries. No longer was there a requirement to provide labour for the Lord's fields or soldiers for an army. Local courts were run by the magistracy and there was a demand for land reform. Therefore, copyholders acquired their unfettered freeholds and eventually copyhold tenure was abolished, finally disappearing under the Law of Property Acts 1922 and 1925. Those are some of the great Acts that modernized the whole of English land law and gave foundation to our property-owning democracy.

Parliament, however, did not abolish the legal status of Manors which were specifically preserved. It was felt that, with the reform of land law, it was likely that Manors would die out, especially as it was thought that the historic rights could well gradually disappear and no longer be capable of enforcement as Manors gradually lost the land that belonged to them, as gradually the tenants enfranchised and became unrestricted freeholders. However, that did not happen, and with the recent interest in our history and heritage, interest in Manors and their assorted rights has increased over the past 30 years.

Under the 1925 Act, Manors are treated as land, even though they might not comprise actual physical land. In practice, they are treated as a bundle of rights—theoretical or actual—that affect land. The legal rules for buying and selling land were retained for Manors, and that is why conveyancers nowadays follow the same procedures and act for a buyer of a Manor as if that buyer were purchasing a house or a piece of land. One

[Mr Martin Hopkins]

would not normally dream of buying a house or land without legal advice and the same should go for Manors.

There is now one major difference between buying a Manor and buying physical land. The 1925 property legislation had included the Land Registration Act 1925, which had the intention of eventually ensuring that all property in England and Wales was centrally documented and registered. Compulsory registration on all new purchases of land was gradually introduced. Manors were not excluded from registration, but registration was not compulsory. Because of the practical difficulty of establishing the physical boundaries of Manors and the expense, few buyers of Manors bothered to register when they bought. As members have heard, since 2003 it is no longer possible even voluntarily to register a Manor substantively.

Once a Manor became registered, the owner received a land certificate in pretty much the same form as a householder would. Bound up within it were details of the Manor and proprietor's or owner's name. Oddly enough, there was no plan. Since 2003, land certificates have been abolished and all one receives is a piece of paper with the details, which is not much. By the way, if you buy a registered Manor and receive a land certificate from the seller, do not send it to the Land Registry with your application to be registered as the owner as you will never see it again!

In practice, it is rare to come across a Manor registered at the Land Registry. Therefore, the majority of Manors remain unregistered. Certain less-than-honest dealers in Manors are aware of that and it has been known for Manors to be offered for sale that have dubious title or even which have been offered for sale more than once. Without going through the proper legal checks, someone could buy a Manor and hand over the moneys and discover afterwards that the seller was not in a position to sell to him. If the title has been acquired from an internet salesman, the buyer could even find himself out of pocket and with no redress—the moral being: always take legal advice from someone who knows about Manors.

What does the lawyer do? When acting for a buyer, the first thing a conveyancer does is to establish that the seller actually has a title to the Manor he is selling: that he has produced sufficient evidence at law to show that he has the right to sell. The same rules apply to actual land that has not yet been registered at the Land Registry. The seller must show by documentary evidence that he has owned the Manor for at least 15 years. Title originally had to be shown for 60 years, but the length of time was gradually brought down from 30 years to 15 years in 1970. The seller should be able to provide evidence of a document at least 15 years old that properly identifies the Manor, normally referring to it by name. The document should normally be one that was made for value: a conveyance on the sale. We call that the 'root of title'. If the document was not direct to the seller, he will have to show further documentary evidence explaining how he acquired the Manor from the person shown as the owner in the root of title, for example by further conveyances or by inheritance on death.

The seller's conveyancer would usually produce photocopies of the relevant documents in one complete bundle. We call that an 'epitome of title'. Before the advent of photocopiers some poor clerk would have to produce a version of all the relevant documents typed or written up in legal shorthand as an abstract of title. Because there is usually no actual physical land involved in a Manor and therefore the seller cannot demonstrate ownership by actual physical occupation, it is important that the documentation of ownership is clear.

After the 1925 land legislation, many owners thought that Manors had become irrelevant or had no value, and failed to document properly changes of ownership. Many Manors had been comprised in old family estates settled in the 18th and 19th centuries in complicated family trusts. When the property laws were reformed in the 1920s, legislation was passed to reform those old settled estates. As a result, a document was often drawn up to vest a family's settled estates into nominated trustees in the late 1920s. Estates that had been properly documented produced a vesting assent, which specifically listed all the various Manors. Often that document is used as the definitive root of title. However, either the Manors were inadvertently omitted many times from the list of the estate's properties or the document contains sweeping-up clauses referring to all other properties and/or Manors that were owned by the family and which should have been included in the document by name.

How do we get round the problem of the Manor not being identified in the document that we wish to use in the root of title? We have to look at secondary evidence. Manors were sometimes listed in the Inland Revenue valuation returns in the 1920s together with the Lord and Steward, if there was one. Another useful source is Kelly's Directory, which in the 1930s usually listed, together with the principal residents of a village the Lord of the Manor. Local histories can also be useful in identifying the Lord of the Manor.

There is also often a problem in documents being lost. Sometimes it is possible to obtain copies, but at other times it is impossible.

So, in order to supplement and clarify the legal title, it is prudent to obtain a statutory declaration, either from the owner or from an expert in the field who has the knowledge to complete the gaps in the title. It would have copies of the secondary evidence attached. Sometimes it is necessary to obtain two declarations—one from the seller and one from the expert. Again, it is vitally important to have the declarations drawn up and vetted by somebody legally qualified. The declarations have to be watertight, and will be relied on in the event of a future sale. Any document that does not look—or feel—right may be challenged by a future buyer's legal representative.

I have here an example of a good statutory declaration. It was good enough to satisfy the Land Registry on registration. It involves one of the Shrewsbury Manors and is quite an interesting example.

On receipt of the epitome or abstract from the seller's representative, the buyer's conveyancer has to trace the title through the documents once he is satisfied that the root of title is adequate. He may require further evidence of title, for example copies of a death certificate or probate in the event of death, evidence that a trust has

come to an end, or copies of a marriage certificate if there has been a change of surname. We list any queries and send them to the seller's conveyancer. They are called requisitions. The sellers then have to supply the information requested or satisfy the buyer by some other means—perhaps secondary evidence backed by a statutory declaration. Only when the lawyer is satisfied will he or she advise the client to proceed.

The buyer or his representative has normally to prepare the document transferring the title, which is usually a conveyance. Again, that is exactly the same as with unregistered land—the documentation is different from land as the document there must follow Land Registry rules, as all land has to be registered. The conveyance is the document that one ends up with. It has been signed by the seller and it is the evidence when in a sale that one owns the title. Conveyances are technical documents and have to contain certain things. I have an example here of a standard form of conveyance. First, it must contain the names of buyer and seller. The name of the seller must be consistent with the name shown on the previous documents. If there is a discrepancy, such as a spelling error in a prior document, that should be mentioned. Full names should be given. Secondly, it must contain the proper price. That is because the document operates as a receipt for the money paid. Also, until recently, conveyances were subject to stamp duty and any duty was leviable on the price shown on the document. Since the recent changes in stamp duty, Manors are not subject to it. In any case, Manors were normally not conveyed at prices in excess of the stamp duty threshold.

Thirdly, the form of conveyance must correctly identify the Manor. Normally that is described as 'the Lordship or reputed Lordship of "x" in the county of "y"'. Fourthly, it should include the rights transferred. Section 62(3) of the Law of Property Act is useful. It automatically transfers all relevant manorial rights in a conveyance without their having to be mentioned. That includes mines and minerals, fishing, manorial courts, franchises and commons. However, there might be specific rights that are known and exercised. They should be identified and included in the document, for example a specific market or right of wreck. If the right is mentioned specifically, there would be no subsequent argument about whether it was included in the automatic transfer of rights under the Law of Property Act.

Fifthly, the form should mention any rights that are excluded and retained by the seller. Often the seller wants to retain mineral rights or rights of common, especially if he owns land in the Manor. Sixthly, it should refer to any obligations there might be or covenants being imposed. That might be relevant if actual land is included. Seventhly, it has to contain the word 'convey' legally to transfer the Manor and refer to the title being 'fee simple'—the legal jargon for freehold. That is to show that it is not being leased. Eighthly, it should contain an obligation for the seller to produce on request any documents of title that are not being handed over by the seller, for example if they relate to other property not forming part of the sale. Finally, the form must be signed by the seller as a deed, and dated. It is not an uncomplicated document!

Sometimes a conveyance contains the words 'convey with full title guarantee'. What does that mean? Title guarantee was introduced in 1995 to replace the old rules relating to implied covenants given when transferring a property. Briefly, full title guarantee means that the seller covenants that he has the right to sell the property and will at his own cost do everything to ensure that the title is being transferred without liabilities about which the buyer has not been made aware.

Sometimes Manors are conveyed without title guarantee, especially if the seller has very limited knowledge about the Manor and only wants to convey whatever rights, if any, he or she might have in it. However, if the seller knows about the Manor and has, for example, been exercising the rights, there should be no reason why full title guarantee should not be given. Occasionally one sees the words 'limited title guarantee'. They are usually used by executors or trustees when selling and are to ensure that no personal liability attaches to the executors or sellers.

I should mention searches. What are they and what is their purpose? As there usually is no land involved, why do we need them? Unlike registered land, the searches are carried out against the seller and his predecessors as estate owners rather than against the land. They will reveal certain financial charges that could affect a Manor and will also reveal any pending bankruptcy proceedings against a seller which would means that any sale could be set aside by a trustee in bankruptcy. Selling Manors can be a way of raising money quickly for someone in financial difficulties and such entries are not uncommon. They may also reveal whether someone has entered into an option agreement to sell that has not been disclosed. Carrying out searches to find out whether any unforeseen nasties might arise is important.

I will not deal specifically with manorial rights at the moment, other than again to emphasize that if it is thought that such rights are involved, we should ensure that they are properly investigated before one is committed, otherwise we could find ourselves having manorial rights in theory but not in practice. We can have theoretical rights to mines and minerals, but unless we own land on the surface, we cannot exploit them without the agreement of the freeholder, any more than the freeholder can dig into the Lord's minerals without consent.

If we buy a Manor at auction, it must be borne in mind that we are committed to the purchase once the hammer drops. We should have the title examined and investigated beforehand, because once the auction is over whatever is in, or not in, that Manor will have been bought. That is a big 'do'; do get a professional to examine the situation, even if that means just looking at the title and the rights.

I have gone through matters reasonably quickly to give people an opportunity to come back on any points that they might want to make. Geoffrey might add some things.

Mr Geoffrey Barrett (Blakemores Solicitors): This part of the conference is an opportunity for people to ask Martin and me questions. We are practising solicitors, not academics, and we are happy to do our best to answer them. Members will have heard what has been said in two previous lectures. In the lectures to come there will be quite a bit of overlapping, so I will try to bear in mind what Martin has already said. One or two things may be of interest.

[Mr Geoffrey Barrett]

As people may know, when Manors first came on the scene about a thousand years ago—although many were in place in Saxon times—there were about 14,000 Manors in this country. That brings us that number of opportunities to buy and sell; as Martin says, there is a lively market. It is a quiet market, but at the same time it is lively, and that is not a contradiction. Nearly all of the Manors were owned by large aristocratic-type families and as a matter of tradition they were passed down from father to son. Of course, in the early days most people could not even write. Later on they could—or they could get people to do so for them—and they made wills, leaving their estate, including their Manors. The process was totally linked to their eldest son, if they had one.

Changing social conditions in the 18th century brought about the granting of probates or executorships. Initially, they were all granted by the Church; people had to go there to be granted probate to someone's estate. That followed the making of a will and it is still the practice today. It is one of the few things that has not been relegated to the town hall or to some Government Department. It is granted by the High Court, although it is only in complicated cases that people need to go along to argue something. Generally speaking, matters are dealt with through the post and are comparatively easy. It is certainly easier now than when I started practising in the 1960s.

Martin and I often deal with aristocrats' titles. We cannot just assume passage from father to son in the last 150 years; we have to see whether there was a will and, more importantly, whether there was a probate which passed the title of the deceased owner's estate to the executors, who, bidden by the will, passed it on generally to the eldest son. However, they did not do so always. Sometimes it went to the widow—latterly, that has been more often the case—or others. Such details need to be checked out very carefully and can cause all sorts of problems. As Martin says, 15 years' title is the minimum that is required. Generally speaking we are talking about suburban houses, but it applies to everything. We would look for a much longer title than that, if we were able, for Manors.

Registration is interesting. Stamp duty has gone; it is now called Land Tax. Martin has talked about that. There is an awful 10-page form to fill in, but I think most solicitors like Martin and I take the view that it does not have any application to manorial titles. There could still be an occasion when people have to pay stamp duty if they were lucky enough to sell a Manor for more than £120,000—but there are not many of those.

The Land Registration Act 2002 succinctly said that, from October 2003, there would be no more registration of Lordships of the Manor, which, as Martin has informed us, were regarded as 'land'. That was certainly so under the Law of Property Act 1925.That resulted in a tremendous rush of people wanting to register their titles, probably because we all have to go to the Government for everything. We will soon have to go to them for ID cards and pay for them. People were desperate to register their titles in the intervening period. October 2003 then came and went, and the situation was forgotten. As Martin says, a few titles are registered; a flimsy piece of paper is given, which has very little on it. Unlike the title to one's property, one does not get a map of the Lordship.

We will hear later from Stephen about mapping, which is an important part of the buying and selling of Lordships of the Manor, and Martin and I always try to get a map whenever we can. They are not always very accurate. At worst, I go to the district council for a parish map, which is often a good start. People can do that and generally they are given one for nothing. So, my advice to a person who wants to buy a Manor is to go the district council for a parish map.

If a person thinks that there is some waste or common land—land that is used in common with the Lord of the Manor and fellow citizens—it must be registered. Registration of land, as we know, is compulsory in this country. Nevertheless, unregistered land goes reasonably happily alongside registered land, although that causes problems. For example—I know that Robert circulated something to everyone about this—the Land Registration Act means that if one has rights, they must be registered within 10 years. Rights that overreach are entered on a registered title of some land.

It is important that people seek to register rights. The Land Registry is iffy about giving registration of waste or common land. It always asks about boundaries, hedges and fences and how it can be sure of the exact area. The matter is very difficult, although some people have succeeded in registering waste and common land, which has some value and is bought and sold. I have seen that happen and I dare say that Martin has as well. He has told us to carry out research.

The Lordship of the Manor is like an everlasting jigsaw puzzle: one can never stop finding out things about it. It is possible that Kelly's Directory will say who the Lord of the Manor is and will give people a few clues, but I advise people to go the county record office for such details. The people there are generally helpful; in my county of Warwickshire they are only too pleased to direct me to books and all sorts of other manuscripts, all for no charge. They will let people copy things, for which they will charge. Of course, however, they will not let people copy very old documents that might suffer as a result.

Practitioners such as myself consider the question of the rights. Delegates might not know the sort of rights that I have in mind, but they include the right to hold a market and fair. In Warwickshire, one Lord of the Manor had the right to hold a market in a village which at that time had a busy main road. The police accepted that they might have to stop the traffic on the road if the Lord of the Manor insisted on holding a fair, and although that was not put to the test it was an interesting situation. Other rights are those in respect of waste and common land, and minerals.

I was interested to hear about the *droit de seigneur*, which applied abroad more than in this country, and I doubt whether it was ever really exercised in the previous thousand years. However, it was an opportunity for the Lord of the Manor to extract some money. He could say who his vassals were to marry in some circumstances and, like so many of these manorial

incidents, the *droit de seigneur* was used as an opportunity to extract money from the impoverished underclass.

The Chairman: Taking a bride on her wedding night is a foreign sort of thing anyway—*[Laughter.]*

Mr Barrett: As British people, we can say that, can't we?

I will continue with my list. The rights to mines and minerals are often excluded in conveyances, but can be valuable. Piscary—or fishing—rights can be valuable and can be fought over with the people who own the land. There is a notional half of the river that we own if we own land abutting a river unless there is something to the contrary in the documents. River beds tended to belong to the Lord. Do they belong to you in your Manor? The rights of free warren do not just relate to rabbits. We shall hear something about those rights tomorrow from a learned barrister. We must also bear in mind the rights of hunting, timber rights; and the various types of rights over the foreshore when the Lordship is by the coast.

All those rights need to be examined. Often the seller thinks, 'Crikey, I do not want to say that there all these rights and then be proved wrong', and will say that there are no rights, so far as he is aware. That happens all the time. It is easy to say that people have to find out about the rights, but to do so they need to do research at the county record office and other historical sources. Otherwise, such rights should be regarded as a bonus.

It is important that people ensure that there are no liabilities; chancel repair—the chancel being the eastern part of a church—is rare, although there was often a liability to maintain churches that went with land. It does not usually go with a Lordship of the Manor, but if a Lord of the Manor finds that he has some waste or common land, it is possible that matters could be twigged in such a way that he could find himself dropped with a liability. That is extremely unlikely now. Again, the leading case was in Warwickshire, and it involved Aston Cantlow. The House of Lords eventually said that the family had to pay for the repairs to the church, but I think that since then the matter has been resolved.

The Chairman: Ten years ago we acted for one of our members and got the liability released for a capital sum paid to the diocese. It cost £1,250 and that was the end of it. It was written into the sale documents of the Manor and before offering it for sale a deal was done with the diocese.

Mr Barrett: Yes. In a similar vein, but on the other side of the fence, is the fact that people have often thought that if they have a Lordship of the Manor that owned common land, they could extract money from all the frontages around it. I have been to commons throughout the country with Lords of the Manor and looked into that question. The Countryside and Rights of Way Act 2000—when Parliament saw the possibility of exploitation, and I shall say no more than that—said, 'Well if there is any liability in that respect it would be for a finite sum.' There is a means of calculating it. Often people were found to have a right by long user.

There are lots of do's and don'ts. The more time that people can put into looking into their Manor, the better. They should go there if it is some way from where they live and talk to others. Local conditions alter so much. I hear all sorts of stories—I am sure Robert knows far more about this—and I remember a Lord of the Manor who bought a lordship in the north of England, went there and got involved in everything. He opened fêtes and everything else in the end, had a road named after him. It was quite incredible. He adopted the village and they adopted him.

The Chairman: Ladies and Gentlemen, well done those of you who have made it back after lunch. No one will snooze during the next lecture because it will be given by Edward Cousins, someone who is well known to the Society. He has attended our seminars a number of times. Indeed, as a practising barrister he has dealt with numerous cases involving markets. After my careless remarks this morning, Edward said that the clauses in the Deregulation and Contracting Out Act 1994 ending the monopolistic rights of certain Lords of the Manor to markets were dropped. Edward is Chief Commons Commissioner. He is a successor to a famous Commons Commissioner, George Squibb QC, whom I am sure he will emulate. Edward is also Adjudicator to HM Land Registry. Without further ado, I welcome Edward to the floor.

Edward Cousins (Chief Commons Commissioner and Adjudicator to HM Land Registry): Thank you very much. It is very nice to be here, Ladies and Gentlemen. I was last in Oxford about two or three years ago, at the previous conference. I wish to talk about two different jurisdictions and the inter-relationship between them in respect of registration. I play a part in both. As Robert said, for some years I have been the Chief Commons Commissioner. That is a grandiose term. I do not do very much work; it is a part-time post. It is supposed to be winding down, but several disputes are still floating through the system, despite the fact that the Commons Registration Act 1965 was supposed to be a once-and-for-all piece of legislation that got rid of all registration issues within three or four years after its enactment. I propose to speak a little about the commons registration system, in particular in relation to the Commons Bill that is trundling its way through Parliament at present and that legislation's possible effects on commons registration.

As Robert said, I am also Adjudicator to HM Land Registry. It is a full-time post, so I gave up practice as a barrister almost exactly two years ago. I had been a practising barrister for 30-odd years. I gave it up to take up this full-time post as a judge dealing with disputes in the land registration system—that is the land registration system as established under the Land Registration Act 2002. As one of the architects of that Act stated, it created a sea change in land registration law in this country.

I do not want to go into too much detail in the first instance. We can always deal with certain matters in the question-and-answer session. The area is complex, so I propose to deal first with general aspects of the land registration system as it stands, after which I shall turn to commons registration, which is a completely different registration system. Just to confuse people, we have two registers—the commons registration register and the land title register that is held by HM Land Registry at various district offices. It is controlled by the head office at Lincoln's Inn Fields.

[Edward Cousins]

The 2002 Act came into force on 13 October 2003, together with some comprehensives rules that are known as the Land Registration Rules 2003. Those rules govern any registration issue post-13 October 2003 and the creation of my office as the independent Adjudicator to HM Land Registry dealing with disputes that are fed through the system. The 2002 Act repealed and replaced all existing legislation covering land registration, including the old Act—the Land Registration Act 1925, which proved to be fairly defective over the decades and which has been amended by subsequent Acts of Parliament. The 2002 Act did not merely update the old law: it was a complete rethink.

The Act was driven by the logic of title registration. We have a system of title by registration, rather than the previous system that was the registration of title. I accept that that might sound a little semantic, but the motive behind it was e-conveyancing and a computerized system whereby everything on the computer network is online—and intended to be online. In effect, it reflects modern technology. Almost nothing under the new Act is the same as it was under the old Act. The precedents for the previous law do not provide any form of reliable guide to the interpretation of the new law. I shall not go into the detail of how such matters came about, but there was a joint project between the Law Commission and HM Land Registry. A couple of rather immense reports were produced, the result of which is the Land Registration Act 2002.

The 2002 Act has created the framework for electronic conveyancing for the coming years. There is no power under the Act to make electronic conveyancing compulsory, but it requires dispositions of registered land to be registered simultaneously so that there is no gap in the registration system. Land may be transferred under the old system, but it might take a few weeks for that action to be registered at HM Land Registry. Until a person is registered as the title owner, that person is not the owner of the land in law.

Under the new electronic conveyancing system, as it will develop over the years, there will be instantaneous registration, so it is hoped that that will limit the amount of gazumping between the time when someone makes an offer on a property and the time when he manages to obtain it. It certainly will not eliminate such practice, but it will limit it. The new Act makes an effective fundamental change to the way in which third party rights are dealt with. The only means of protecting rights and interest in registered land under the new system is by notice or restriction. The old cautions and inhibitions have been abolished.

The fundamental changes to overriding interests have been considerably restricted. The thinking behind the Act is to make the register as conclusive as possible by getting rid of some of the old overriding interests. Another fundamental change has been made to adverse possession. Many of the disputes that I deal with as Adjudicator to HM Land Registry are adverse possession claims. Hitherto, it has been relatively easy for someone to acquire part or a whole of someone else's land by arguing that it has been in their possession for 12 years—it is evidential, of course. The person puts forward the framework of evidence that he has erected fences, mowed the grass or whatever. After 12 years, the landowner might not know that part of his estate had been acquired in that way.

Under the new system, it will become much more difficult for the adverse possessor to make a valid claim to someone else's land. He will not be able to steal it, as happened before. The 2002 Act has created an early warning system by which the registered proprietor and others, including mortgagees and chargees, are warned about applications to be registered by persons who claim to have been in adverse possession of the property for at least 10 years—it has been reduced by two years. The proprietor can then object to the application, and only in limited circumstances can that objection not be upheld.

In other words, the squatter will not be able to obtain the title if that objection is made. There will be a notice and counter-notice, after which the adverse possessor will usually lose his claim to adverse possession. When there is an objection to the application for registration, the proprietor has two years to remove the squatter or otherwise terminate the adverse possession. That is the procedure under the Act. That is one of the most important aspects of the Act. There is also an ability to alter the land register.

I now wish to turn to the adjudication system in more detail. It has been established under the Act and involves me and 12 part-time deputies hearing disputes that are referred from district land registries throughout the country. When the proposals were put forward concerning the Act, it was thought that, to take up the disputes resolution system from the Land Registry, such matters should be put into a separate court body called the Adjudicator. The reason was that in light of the perceived problems under Article 6 of the European Convention on Human Rights, whereby the existing system was dealt with by the Land Registry and the solicitor and his deputies would hear the dispute. However, the solicitor and his deputies are employees of the Land Registry and someone in the Land Registry would possibly end by paying compensation as a result of the decision made by a solicitor who was employed by the Land Registry. Therefore, the system was not transparent; it was not separated out from the adjudication process in respect of the Land Registry.

A body—our office—was then set up to ensure a fair and public hearing by an independent and impartial tribunal established by law. If there is a dispute in one of the Land Registry offices in respect of registration of title, rights or the like, that dispute is referred to us. It is called a reference case. Such disputes are referred because the Land Registry, for example, has someone who wants to register a title and someone else says that that cannot happen because he has been in possession of the land as an adverse possessor for a minimum of 12 years.

The Land Registry then has to refer the case to us to resolve the dispute. We have a full-scale court hearing after the statements of the case and the discovery of documents; the usual process is similar to what happens in relation to court hearings. We must undertake that process first, after which there is a hearing whereby resolution of the case occurs. The matter then goes back to the Land Registry, after which an order is made and the title validated—or not, as the case may be, depending on our decision.

We hear an enormous number of cases. There are well over 2,000 a year, which is larger than many other jurisdictions. They are references from the 24 district land registries. Many of them are not contested actions, but we must go through the process as if they were contested actions in the County Court or High Court. Of those 2,000 cases, at least half are what we loosely refer to as 'beneficial interest cases'. Such cases involve unmarried partners who have been living together, one of whom is the registered proprietor of the property, while the other is not. The couples break up. The other party says, 'I contributed towards the purchase of the property, I built the patio and so forth'. Such cases are referred to us because the registered proprietor says that that other person is lying and that he or she has made no contribution or that it was irrelevant. We deal with old English trust principles, in effect, under the relevant trust and land legislation. The system is based on contributions made by one party to the other.

We often send such cases to court; we have the power to refer cases to court. They go either to the County Court or the High Court. We do not decide which court it should be; the parties themselves decide. We refer the beneficial interest cases to court, because we do not have the powers to deal with the sort of relief that is wanted. For example, we cannot make orders for sale of the property, which would be the result of the breakdown of trust principles. We have no such power under trust of land legislation to make an order for the sale of the property. All that we can do is to say to the person, 'Yes, you have an interest in the property,' or, 'No, you haven't.' Although the dispute might concern 15 per cent, 20 per cent or 50 per cent of the equitable interest of the property, as we have no powers to do anything other than make an observation or a direction about whether the application for the entry restriction should be granted, we send the case to court in the first instance.

A lot of unhappy people tell us that they do not want to be sent to court because, if they go to court, they have to pay court fees. Our jurisdiction is free, but those who go to court will probably have to employ lawyers. As often as not, such people prefer to stay with us, although they do not understand why we are sending such matters to court. The case had been referred to us by the Land Registry and people do not understand the process because they think that we are part of the Land Registry. We are not. We are a completely impartial tribunal that is well away from the Land Registry. We have much difficulty with people who telephone us or send us emails. They shout at members of staff saying that they do not understand why they have to go through such a process.

The other main area of work is that of adverse possession claims. Enormous numbers of people claim chunks of other people's land, whether it be a bit of their back garden or a chunk of woodland half a mile down on the estate. They say that they have been in possession for 'x' number of years. Indeed, we had an interesting case recently which concerned a person who claimed adverse possession of part of a common in the London Borough of Bromley, which he reckons is part of his back garden.

Of course, under Countryside and Rights of Way Act 2000, the public have access to all registered common land unless it is exempted for one reason or another, a matter to which I shall return in a moment. There will be some difficulty with the person if he does pursue his case, given that, in effect, he is claiming adverse possession to a bit of the common, because the London Borough of Bromley could presumably say that he must remove fences because his land still remains part of the common. Just because he has ownership of the soil does not mean that the land is still not part of the common. The person may face difficulties in future, but that depends on how the case will go and whether he has sufficient evidence in support of his claim.

Boundary disputes is another wonderful area in respect of the English law of territory. Arguments are advanced about fences being erected in the wrong place or hedges planted in the wrong position. All sorts of difficulties arise when developers have built estates, but had not followed the estate plan properly as a result of which the fences are a few feet out. Such matters must be resolved as they cause a lot of difficulty. Disputes occur over easements, piracy of mortgages and charges, charging orders, liquidators, trustees, bankruptcies, contracts for the sale of land. Occasionally, allegations of forgery occur when someone says that a document was signed by a person who was not the proper person. Delegates will know the general idea of what happens. We have a wide-ranging jurisdiction that involves a whole gamut of England land law. The appeal from us goes to the judge of the Chancery Division and then to the Court of Appeal.

We also have an original jurisdiction, which is the jurisdiction to deal with the rectification of legal documents. We have the same powers as a High Court judge whereby we can alter documents—for example, when someone has bought a leasehold flat and the flat is called a ground floor flat, and the lease refers to the ground floor flat as having a garden, but the lease plan omits the garden. That would a rectification case, whereby we have the power to put the garden back into the lease plan.

The downside of our jurisdiction is that we have a huge amount of work. This month we are advertizing for full-time deputy adjudicators to supplement me and my 12 part-timers. Moreover, we have no real case-management powers. The civil procedure rules that apply in the County Court and High Court do not apply to our jurisdiction. We have what is called grandiosely 'an overriding objective', but it is an overriding objective without any teeth. We cannot strike out bum applications or make orders for summary judgment. If cases come to us, we must hear them or use penal sanctions if people do not send in their documents on time or produce statements of case. We are in some difficulty in respect of such matters because we do not have real power. It is hoped that the rules will be changed in future so that we will strike out and kick into touch many bogus cases. Many cases are bogus and, unfortunately, HM Land Registry cannot kick them into touch because it must refer them to us if there were a dispute. However unmeritorious a dispute might seem to be, it must still be referred to us.

We send cases to court under section 110 of the Land Registration Act. We encourage participants with beneficial interest claims to go to court voluntarily rather than having us order them to do so. However, that is what we do if we consider that we do not have sufficient powers to deal with a matter. That is all that I

[Edward Cousins]

need to say about land registration. If anyone wants to know about matters in more detail, I shall try to answer questions in due course.

I now come to commons jurisdiction. I find the figures to which I am about to refer rather staggering. About 3 per cent of the total land area of England—in other words, 374,000 hectares—is registered common land. That does not include the New Forest, Epping Forest and certain other commons because they have been exempted from registration under the Commons Registration Act 1965. There are 175,000 hectares of registered common land in Wales and that represents 8.4 per cent of the total land area, which is pretty enormous.

Vast tracts of mountain areas in Mid and West Wales are common land. Nearly 55 per cent of the registered common land in England and Wales are designated sites of special scientific interest—or SSSIs, as they are known. They receive special consideration because of the plants that are grown or particular types of bog that exist. Of the total in England and Wales, 47 per cent are National Parks; 30 per cent. of the total in England and Wales lie in areas of outstanding natural beauty; 51.3 per cent. of all registered common land in England and Wales are less than 1 hectare, so commons in England and Wales could be the size of this room or three times the size of the room, but certainly less than a hectare, which is two and a half acres.

Only 1.3 per cent., or 89, of the commons in England and Wales are more than 1,000 hectares. Over half of England's common land is in Cumbria and North Yorkshire. Those figures give us some idea of our commons. Before 1965, there were far more commons in England and Wales. Many were not registered under the Commons Registration Act 1965, so a lot of them were lost. However, many commons had been lost previously because of enclosures in the 17th, 18th and 19th centuries. I do not want to bore members with statistics, but of the total number of commons—in England, there are 7,039—1,900 have no known owner. They are either registered with the local authority or some such organization that deals with ownership and management.

The 1965 Act was supposed to outline a once-and-for-all registration system. It developed commons registers. They are not held centrally at HM Land Registry, as they should be. They are held by the local registration authority, which is usually the county council. Many commons registers are still paper registers. I am not sure whether delegates have seen many registers, but they are contained in big books. Each registered unit is divided effectively into three: the registered land, rights and ownership. The ownership register deals with the person who is thought to be the owner.

One of the reasons why we cannot marry up the two other systems is that the ownership register is not conclusive. We cannot marry up registered title at HM Land Registry—it is obviously conclusive when the title guarantee applies, and there is compensation if people in the Land Registry get it wrong—with a system that is not conclusive, and which says that the owner of a piece of common land is Joe Bloggs just because Joe Bloggs says that he is the owner of it. Unfortunately, we shall continue to have two separate registration systems. That makes matters complicated because when people have bought and sold property, their solicitors have carried out commons searches on the property that people wish to buy. That separate search is carried out to find out whether a particular piece of land or part of it is a registered common.

Because of the sanctity of the registered title, the ownership title in the commons registration system is not sufficient and will not be married up. There was an opportunity under the Commons Bill and those who drafted the policy said that they had considered matters briefly. Indeed, reports have said that the two should be married up into one conclusive register. Unfortunately, however, that cannot be done. Over recent years, there have been several reports on how to deal with common land in this country and how to remedy the defects under the Commons Registration Act 1965, which was notoriously badly drafted. The opportunity existed and the reports, including the common land policy statement in July 2002, make a wide range of recommendations of what should happen in relation to common land in this country, but the opportunity to do something has not been taken up.

The Commons Bill runs to 57 clauses, 55 of which are substantive. It was rushed into Parliament at the beginning of this year. Parliamentary time was found for the Bill at very short notice. That meant that the drafters of the Bill had the most horrific task to perform in the space of time, not only to develop their policy papers but to send them to the parliamentary draftsman in order to get the Bill up and running. The Bill had its First Reading in the House of Lords in July. It was presented to Parliament on 28 June. It is at an early stage. It will go into Committee stage at the House of Lords in October and it is hoped that it will be enacted in May next year.

However, not everything has been put into the Bill itself; there has been no time to do that and it has not been properly considered. Therefore, it is proposed that a mass of regulations will be drafted, produced and made—whatever is done with regulations—after the Bill has become law. We do not know what the regulations will contain because no one has got round to thinking what they should contain. All the deficiencies that have not been picked up so far, and that should have been dealt with under the draft Bill, will be covered by the regulations.

If the Bill becomes law in May next year, I have been told reliably by policy people at the Department of Environment, Food and Rural Affairs that the regulations cannot possibly be made until 12 or 18 months after that. Therefore, we will have a hiatus in relation to the enactment of the new Commons Bill, which will repeal the whole of Commons Registration Act 1965 and which means that my office as Chief Commons Commissioner will be abolished, too. Obviously, I am not happy about that because I enjoy the work. However, it will not be abolished for some time because, at the rate things are happening, the regulations will not come into force for many years.

The thinking behind the abolition of the Commons Commissioners system and the disputes in relation to commons registration issues is unclear. It looks as though the Government are determined to proceed with getting rid of the Commons Commissioners because they regard the office as a central Government expense

and they want local authorities to deal with disputes and commons registration in future; but they will not say that publicly.

That is most unsatisfactory. The local authorities that run the registration system are overworked. They have dedicated individuals in all the county councils who deal with commons registration issues, but usually that is one person who is also dealing with something else at the same time. In the main, the person will not have had legal training. Such people are usually those who undertake other jobs or are land charges officers. They have to get their heads round this arcane area of law that deals with commons registration. The Government are now expecting them to deal with the dispute resolution system because the registration authority is the legal body to undertake such work under existing legislation and under the new legislation.

I attended a conference on Tuesday that was peopled in the main by registration officers, chairmen of commons associations and others. No one, not least the registration officers, wanted to see his responsibilities heightened as a result of the new legislation. Several votes were taken during the day and the Minister, someone called Jim Knight, turned up and said that he was in listening mode. He said that several times during the day, but that usually means that such people are not listening at all and have no intention of listening!

Jim Knight said that he was in listening mode, but I do not know what will happen to the new commons registration system. I do not know whether any members here today have been involved in town and village inquiries, but at present there are an enormous number of such issues because the Church of England, or whoever, have fields to sell to developers for house building. There are then people in the village who say that they have used the common for 20 years; that they have been flying their kites there, exercising their dogs or picking blackberries. The local authority—the registration authority—must reach a determination about whether the common land is a town or village green or whether it is an ordinary field where planning permission has been obtained for the building of houses.

A number of such cases have gone to the House of Lords, and because there is no existing system to deal with disputes concerning village green inquiries, which have developed greatly in the past 10 years and which were not envisaged by the 1965 Act, the local authority is required to resolve them. It does so in one of three ways. It can go to counsel and receive an opinion saying whether such land should be considered to be a town or village green. The local authority can also set up a special committee to deal with such matters and hear evidence.

However, the most common route that authorities take is to set up a non-statutory inquiry. It is called 'non-statutory' because there is no statutory basis for it. It pays for expensive barristers to chair the inquiry for what could be several days. The inquiry is held on a formal basis but there are no rules governing it. The rules are, in effect, created for the purpose of the hearing by the barrister concerned. He then reaches a determination, which is a recommendation to the registration authority, which then must act on it.

That is an unsatisfactory route, but that is what is envisaged under the new system when it comes into effect. Local authorities will be encouraged to use the non-statutory inquiry route even more, but at huge expense. We can imagine how much it will cost to employ a barrister from London to come down to chair an inquiry for five days at about £1,000 or £2,000 a day, plus all the fees that are involved with counsel. I and others were pressing for the non-statutory inquiries route of town and village green inquiries to be dealt with by the Commons Commissioners because it is an independent, transparent body with no local interest and it can deal with such cases as it deals with other disputes.

However, Defra and the Government have gone into reverse mode and are, indeed, abolishing the Commons Commissioners completely. Even more disputes will have to be resolved in the way I have outlined under the new Commons Bill. The whole matter is highly unsatisfactory. Where it will end, I do not know. As I said, the registration officers do not want anything to do with further enhanced powers; they have enough problems already. They have to deal with horrific matters. Swansea has hundreds of disputes from the 1960s that have not been resolved. They are still provisional registrations. For example, in the Gower Peninsula, people's back gardens have been registered as common land.

One of the proposals under the Bill is that there will be a much easier deregistration system. That is a good thing. It also proposes enhanced management powers and the setting up of commons associations for which the Minister, Jim Knight, said that the Government will provide money. The Bill also proposes an Association of Commons Registration Officers, which does not exist at present. None of the registration officers really talk to each other; some people in registration authorities do not know much about commons, yet they are asked to deal with complex questions.

We have only to consider another parallel system, the rights of way officers, who are usually very good. The Rights of Way Officers Association, a professional body, helps to support officers in the cases they have to deal with. I am not sure what will happen, but members will guess from what I am saying that I am not totally supportive of the proposals that are being put forward under the Commons Bill.

Defra and its policy makers have recognized that the Commons Bill is fraught with difficulties, so they are proposing to bring the Bill into effect on a pilot basis. In other words, it will not be national. The current thinking is that it will come into effect in one area—probably Cumbria, which has a lot of commons—and apply to the rest of Britain on a progressive basis to see how it works. That is ridiculous. I cannot believe that such a system could work properly. But anyway, there it is. The Government have been caught on the hop and have had to act quickly in respect of the Bill.

No one has the figures of how many commons registration disputes are still awaiting resolution. Local authorities are unable to say how many. Defra does not know. There could be thousands. I know that several hundred disputes in Gower have been around for about 20 or 30 years.

The Chairman: Ladies and Gentlemen, just one final reminder to meet at 6.45 pm outside the Great Hall, so we can gather round the steps, be photographed and have a memento of this occasion.

[Edward Cousins]

I am very pleased—perhaps more pleased than anyone—to introduce Steve today. He started with us eight or nine years ago and has now become an expert in historical research into manors, their rights, and how to map them in such a way that Her Majesty's Land Registry can rely on them.

Mr Stephen Johnson MA: Today's talk will be in two parts. First, I will talk about how to map a Manor and how we try to find the manorial extent, because that is needed to register one's Manor. Afterwards, I want to talk about manorial rights and identifying potential manorial rights using the historical documentary record. In many ways, the two things overlap. The same sorts of records can be used to discover the extent of a Manor and to look for potential manorial rights.

Mapping Manors seems a very abstract activity these days, since most of the land in Manors has disappeared and does not belong to the Manor any more. But in mapping a Manor, we are reuniting the land that formerly physically belonged to the Lord of the Manor with the title. In a way, it brings the land back full circle to the Manor.

What are we mapping when we try to map a Manor? We are trying to find as much of the manorial boundaries and extent as we can, because within that will be found things like manorial waste, common land or instances of rights and franchises. We try to use the historical record to deduce as much about the boundaries as we can. We use two sorts of evidence. Previous speakers today have talked a little bit about the evidence that can be used, so I will recap.

The main body of evidence is found in primary documentary sources. The majority of the evidence is located in public record offices, whether county record offices or the National Archive, but such records can also be found in other places. We are looking for manorial documents—actual documents that provide details about the Manor, the land that may have been in the Manor, and records that give us an idea who the Lord of the Manor was. We can also look at estate records, which are not necessarily about a Manor but about landed estates in which Manors were contained. A good example is the parish of Dunton in Buckinghamshire, which was also the Manor of Dunton. We are looking at Lord Carrington's estate plan. In fact, the Carringtons are still the Lords of the Manor and own the entire parish—every single stone and rock.

Secondary written information can also be used to give an idea of where a Manor was; we need to know where it was before we can map it. On the second page of the booklet that I have distributed is a little history of the Manor of Cranley, or Cranley Hall, which is taken from Coppinger's *History of the Manors of Suffolk*. Such sources are essential when mapping a Manor, because we need to know who owned it. In many instances, when a client says, 'I want to map my Manor', he only knows that he owns it and that the previous owner did so, too.

Books like these are good ways to find out who owned the Manor historically. The extract from Domesday Book shows that the Manor in question is a Domesday Manor and gives us a chronological breakdown of who owned the Manor, right up until 1805, when it became the property of the Marquis of Cornwallis—and it remained in that family until some time afterwards.

Secondary evidence is important to locate the owners of Manors and what parish they were in. However, there are other useful secondary sources, such as Victoria County History, which is a continuing series of histories of all the counties in England. The volumes are broken down into parochial histories, and within those are histories of Manors in parishes. Those are useful.

We can also use the directories, as Geoffrey Barrett mentioned earlier, such as Kelly's or White's. One of my favourite secondary sources is the little local history, of the 'I remember when it was all fields round here' variety. Although those are usually overly sentimental, they are very useful, especially if they were written by someone who was a labourer—or whose father was a labourer—in the Manor, because they often describe areas of manorial land within a parish. So do not dismiss them out of hand.

We use primary and secondary evidence to try to reconstruct the Domesday extent of a Manor—if it was a Domesday Manor.

I should like to clear up a slight misconception about Manors and parishes. These are obviously linked, and in most county record offices records are divided along parochial lines, but there seems to be a misconception that Manors and parishes are the same thing and that the manorial and parochial boundaries are one and the same. I shall immediately contradict myself by saying that in the instance I have given they are one and the same, but in many cases they are not. There may be more than one Manor in a parish; there may be two or three. Someone working in Suffolk, might find 15. When mapping a Manor it is important, first of all, to find out where it is, what parish it is in and whether it is one of a number of Manors. In some cases it seems obvious that the parish and the Manor are one and the same, but the documentary evidence and the historical records do not always support that. There is not always enough proof to say categorically that that is the case.

Next is the Manor of Little Neston in the Wirral. The orange land in the example is land that we can prove lay within the extent of the Manor. Members can see by the shape of the Manor that it almost conforms to the parochial boundary, but there is not enough evidence to match the two boundaries. It is important to remember, when looking at parochial and manorial documents, that we are trying to show as much of the land that we can prove lay within the extent; it does not mean that that parish and manorial boundaries are one and the same. The example in Newport Pagnell shows a Manor in a parish, rather than a parish and a Manor that are one and the same.

There are regional differences in the number and extent of Manors in parishes, although in all historical research there is no fixed rule, and it seems that each case I come across immediately contradicts everything that has gone before. As a general rule—or field of force, as E. P. Thompson called it—the further East and South you go in England, the more likely it is that the Manor will be small and one of a number in a parish, rather than being the whole parish. The further North we go, the more likely it is that the Manor is coexistent with the

parochial boundary, or is larger. That is the general rule, or rule of thumb, which almost everyone could break instantly.

What evidence are we looking for in the record office that might help us to discover the extent? The first port of call is manorial documents. We can find out where manorial documents are by going to the record office, but before visiting we can look at the A2A website, which was mentioned earlier, which gives us a good idea of what each record office holds.

Ideally, we are looking for maps; if we can find one of those, we will save a great deal of time and effort, because we just transfer the extent of the Manor to an Ordnance Survey map to show the boundary. However, in most cases there is no map, whether of the Manor or estate, so we have to resort to using other manorial records. In the absence of a map, the best record that we can find is a survey. On the first page of the booklet is an extract from a Manor in Hampshire. I have not included the whole survey, because there are about 50 pages and we would get pretty bogged down. The main survey gives us a breakdown of the land that lay within the Manor.

Other manorial documents can be used, including rentals—these are similar to surveys, but do not always give us the land; they sometimes just give details of the tenants—court books, leases, deeds and perambulations, whereby manorial officials walked the boundaries of the Manor and wrote the details down. We can also look for other sorts of evidence, such as steward's papers. Stewards played an important role in most Manors: they handled the day-to-day administration of the Manor and often wrote letters to solicitors, game keepers, or the Lord and Lady. Often small items of information can be gleaned from steward's papers that can be used to help with the extent. Sale particulars are also useful.

In the late 19th and early 20th centuries, a vast number of estates were sold off by the aristocracy and a lot of those were sold at public auction, where sale particulars were needed. Those particulars almost always contained high quality maps and plans of the areas of lands that were being sold. The example in the booklet shows Morris Farm—the manor of Morris, or Morries—in Suffolk. From the sale particulars in 1920 we can work out roughly the manorial extent.

We can also look at parish records. Parochial minutes are often quite useful, especially when considering issues of common land. Previous speakers have touched on this. Parishes were often given the responsibility of looking after common land, but they did not always know who the owner was. I have seen instances where poor parochial officials were desperately trying to find out who the owners of the commons were—nailing signs up on walls every 10 years—mostly to no avail, unfortunately. There are other useful parish records, including parochial maps, which were produced mainly in the early 19th century, enclosures and tithe maps, which I will talk about later.

The records are found mainly in the county record offices, in the county town, although people can also go to the National Archive at Kew, which has a lot of records—but those tend to be pre-18th century and older. We may find records in private muniment rooms in some of the great houses. I was recently doing some work at Houghton Hall in Norfolk, which has a tremendous muniment room. However, the problem with such records is that they are not always catalogued. The archivist at Houghton was pulling his hair out after finding two enormous crates of manorial documents in a cellar, which no one realized were there and which were mouldering away. He had been given the job of indexing them.

If people have a Manor and want to investigate it, they should have a look at their own papers, which they received when the Manor came into their possession. Interesting and important information is quite often contained among those details. For example, there may be copies of leases or surveys. It is always a good idea to check one's papers.

Maps are the most important and valuable documentary evidence we can use in finding out exactly where our Manor is. We might find a map of a Manor at the local record office. The example we are looking at now is a rather nice early 18th century map of the Manor of East Woodford in Dorset, which clearly shows the manorial boundary, the lands of the Lord of the Manor's farm, and a common land area at the bottom. If we can find a map like that, it will save a lot of time and effort, because it already shows the manorial boundary. I also show an estate map, which is similar, although not quite as beautiful.

The next example, from the early 19th century, shows the manor of Walton Lea in Surrey. This map contains a tremendous amount of detail about the Manor: it shows the manorial boundary and all the roads, and all the land is numbered, with a referenced description below. There is all the information that we could possibly need to realize the manorial extent.

What does one do without a map? That is where things start to get a little bit tricky. Without a map, we would have to look through the manorial documents to try to find written evidence of what land may have made up that Manor. The most useful piece of evidence is the survey, which I have already mentioned. A survey of the Manor gives an indication of individual field-plots, tenants, size of the fields and field use, and, most importantly for the Lord of the Manor, how much rent was paid on that land. If we have a survey, at least we have an idea of which fields, plots and cottages form part of the manor. Surveys are often detailed and include copyholders, demesne land and enfranchised land—providing a written boundary, more or less. We then need to transfer that information to a map.

I shall talk about the tithe map, which is a kind of Rosetta Stone for me. If I find that there is no tithe map relating to a Manor, I start pulling out my hair. Unfortunately, try as I may, I could not prise a tithe map from any record office; they would not let me bring one to the conference—I did try—so we will have to make do with a tracing that I made.

Tithe maps were drawn in the late-1830s and 1840s after the Tithe Commutation Act 1836, which regularized the payment of tithes. I have no interest in tithes. Tithes are a thing of the past. However, we are left with a fantastic map legacy for a great many parishes in England. The tithe map provides us with a complete breakdown of a parish; every single piece of land and each cottage is given a number that is referenced to the tithe apportionment book, a copy of which is shown in the booklet.

[Mr Stephen Johnson MA]

If the landowner is the Lord of the Manor, as found in secondary sources, one can be fairly confident that the land shown on the tithe map is manorial land. Tithe maps also show occupiers, a number reference on the map, names of fields, field usage, the tithe and the tithe payment. Tithe maps are so useful because royal or parochial surveys were often used in surveying parishes. So quite often the field names on a tithe map are exactly the same as the field names in a survey. The farms in surveys are sometimes reproduced completely. We are now looking at Imberhorne Manor Farm, so this is another clue that it must lie within the Manor.

From tithe maps and the tithe apportionment we find what must be manorial land because it belongs to the Lord of the Manor. We then translate from the tithe map to the first series Ordnance Survey map, although it does not come out very well. We can just about see the tithe apportionment for Imberhorne in Sussex reproduced on the first series Ordnance Survey map. The Lord of the Manor of Imberhorne owned that manor in the parish of East Grinstead. He did not own the Manor of East Grinstead. The three farms shown comprise his holdings in Imberhorne. It can be said with some authority that they form part of the Manor of Imberhorne.

Once the extent is transferred to the first series Ordnance Survey map, it can be reproduced on a modern Ordnance Survey map. I shall show you an example, which has been rolled up in my loft for a little while. This is the sort of map that I present with my written report—a Landplan 1:10,000 map—which shows the extent of the land that we have been able to prove must have lain in the Manor. This goes to the Land Registry. Unless Mr Westcott-Rudd contradicts me, I do not think that any of my reports have been rejected so far.

Enfranchisements are another valuable and useful source, since we know that by their very nature that they must be copyhold land. All enfranchisements at the National Archive are kept in the ministry with responsibility for agriculture and fisheries files and are not too difficult to locate. They are very useful, because the enfranchisement describes the copyhold land that has been enfranchised.

In a lot of cases, the awards—great, long documents that they are—describe enfranchisements of a cottage or garden. In one instance I found one for a patch of ground measuring 6 ft by 4 ft. We can see why they abolished copyhold in the first place; it was an administrative burden.

When I was trying to find some information on Imberhorne Manor at the National Archive I stumbled across some enfranchisements, which were unusual because they were quite large—about 300 or 400 acres. What was even more fabulous about these enfranchisements awards was that the tithe map numbers were included in the description. One did not need to be Poirot to find out where the extents were.

The enfranchisements of some 400 acres of land were in the parish of West Hoathly, quite a distance away from East Grinstead. That brings me on to another matter. Manors were not always homogenous lumps. I have shown a couple of maps with a nice boundary round the Manor, but Manors were often divided and had outlying areas—especially copyhold land, which was often in different parishes and miles away from the centre of the Manor. It is important to use the manorial records to try to identify areas of manorial land that might lie in other parishes.

Each colour on the present example represent a different enfranchisement: we reviewed the tithe map then transferred the details to the first series Ordnance Survey map and on to the map that I showed earlier.

Another source of manorial boundaries is perambulation, which is a written description of the boundary of a Manor that developed out of a parochial custom known as 'beating the bounds', where parochial officials would walk round the boundaries of a parish and describe them in written form. That custom was also used in Manors.

I have an example of a perambulation of the Manor of Witley in Surrey, which is immense—of some 8 miles from top to toe. Fortunately, when I was asked to map it, the owner found a map of three quarters of the Manor in his sale papers; however, the other quarter was not mapped, so I had to use the perambulation. I shall read a part of it. There is no grammar and there are no sentences in perambulations, certainly not in this one, so stop me when you start nodding off.

> Beginning at the stone in the wall of Mr. Othen's House at Ockford by the wayside turn up the ditch on the left hand to the lane that leads to Eashing leaving the road at Godalming to the corner of the paling on the left of the Gate leading to Mr Frankland's house then over the paling by a small elm tree turn down by the hedge by the Park pales then close by the pales to the other end of them following the straight hedge on the right side across a field.

And on and on it goes.

Perambulations are useful because they give an exact description of the boundaries of the Manor. The drawback is that most of them were made 150 years ago and many of the trees and fences described are not there. It would be difficult to go to Mr. Othen's house, which is not there any longer either, and try to follow the description. Some perambulations are a lot simpler, and give clearer descriptions of where a manorial boundary is. However, caution is advised when dealing with perambulations, because sometimes what one thinks is an obvious boundary marker may not be.

I managed to do the perambulation on a map of Witley and I will show members. This is the quarter of Witley I was talking about. Mr Othen's is here. We know it is there because I looked at a parochial map, again using the tithe map. Mr. Othen was shown as the owner of this house. So, we know that that is where the perambulation will start. We can use the pieces of the perambulation, along with other evidence to work out the remaining quarter of the extent. Members might not be able to see all this, but there are two mill ponds and a stream. They are well described in the perambulation.

Another sort of map is found in enclosure awards. They are useful because they often identify the Lord of the Manor and give information about the land that he owned, but they are also useful for mapping purposes. This is possibly the most useful one I have ever found; it is an enclosure map of the types of land in Nottinghamshire. The parishes are divided between the Manor and other things. We can see that the three

Manors in the parish are clearly mapped in the enclosure awards. Also, an added bonus, it gives us the names of the next-door Lordships. As members can see, this is a fine example.

There is a story attached to the map. When one is looking at documentary evidence, one needs lateral thinking. It was extraordinary to map this Manor. I could find no manorial documents in existence—there was no map, tithe map or parochial map. I knew there was a parochial map but I could not find it. I met the Lord of the Manor in the church. We looked at various tombs and other things in the church and we came across the church box. The chaplain to the Lord of the Manor was very insistent that a villager opened the box so that we could see inside. We looked in. Lo and behold, there was the enclosure map, all rolled up. The villager explained that the previous vicar was so keen on history that he decided not to relinquish any of the papers to the local record office and kept them. He put them in the church box and forgot about them. I learnt a lesson there: now whenever I map a Manor I immediately phone the vicar and say, 'Have you got any manorial documents in your church box?'

Those are some of the records we can use to try to locate our Manor: to show where it was and what the boundaries might have been. It is within those boundaries that we will be able to identify any particular rights, especially if we want to identify waste land. We need to know where the Manor was and what its contents were. Once we have located our Manor—we know where it is, we have a boundary or an extent—we can start to home in on what rights might be associated with it. Again, we use the same sort of records that we used to map the boundaries of the Manor to locate potential sources of rights.

Obviously, there are a number of different manorial rights, which have been mentioned today—rights over waste and common land; mineral rights, which I know Mr Ackroyd will discuss tomorrow; rights to the foreshore; river rights; sporting rights; market rights and franchises; and individual rights. Some Manors have such rights attached which are located in historical records. I am thinking of one example in particular.

Recently I have been to work on a Manor in Dorset. I was looking at the leases of the Manor and I came across a lease of a house. It was a lease from the Manor to the tenant. With the house came the right to ferry passengers across Poole harbour. I do not know whether that right can be reactivated; I am not a lawyer. However, I am now looking for evidence that the ferry was run. I want to know who was running it, and whether that was done as a franchise of the Manor. When examining manorial documents such as this one finds potential rights.

Possibly the most important right is the right to waste land. Without a map one will not find any waste land. With a map, we can start homing in on possible areas of manorial waste.

I am currently working on a project for a member who has a Manor in Gloucestershire. I will not name him. When his father bought it in 1943 he was told that it came with waste and common land within the Manor. He did some research and found that the black marks in the middle are verges. This is the area of common land or waste land. We have good evidence to show that that is his manorial waste. Not only do we have evidence of his father's conveyance, but we can look at the tithe map, which includes all the little areas of waste land here and describes them as such; no owner or occupier is listed. We know that they must be waste land. It is exactly the same extent on the tithe map as it is here. In addition, the same extent is shown in the first series Ordnance Survey map, which was drawn in the 1870s.

That is the sort of thing that we look for in a manorial extent. Often, we have to go with the map to the Manor and walk around. How else will we recognize what is potentially waste land and what is not? We can identify land, such as roadside verges, that might look to be manorial waste and note it on our map. That is the only way to locate it. I remember spending an unpleasant January morning in Ainsbury in Lincolnshire trudging up and down lanes desperately looking for manorial waste. I suggest that if a person is to do that, it is best to do it in summer.

There are other rights that we can try to identify—mineral, sporting, and fishing rights—where we use the historical records to pinpoint whether such rights have been recorded. The problem with some manorial records, especially manorial court books, is that manorial rights are not often noted; they were customary rights. Everyone knew what they were, so why write them down? Although court books are quite useful for locating copyhold land, they are not always so good for trying to find manorial rights. Probably the most useful sources to do that are leases, sale particulars, family papers, settlement papers, mortgage papers or indentures, because they often they include instances of rights. I find instances of mineral rights being leased out by Lords of the Manor, where there is a schedule of land to which those rights belong.Similarly, I find instances of leases of sporting rights from the Manor; and the same sort of thing applies to fishing rights, although they do not seem to be so common. Fishing rights, in the parlance of my father, are 'a bit of a bugger'.

It is important to examine a range of manorial documents to pinpoint whether rights are identified, such as the ferrying right across Poole harbour, which was one of 50 leases in a bundle. When we go to the record office, fill in the order slip, and order the leases, they come in a thick bundle. I think that it was Geoffrey who mentioned that lawyers' clerks are paid by the word. There are a lot of words in them. Amid all the legal jargon there will often be a written note or identification of potential manorial rights, and it will leap out at us.

Waste land, by its nature, has unfortunately produced little by way of paper record. It has never been bought or sold. It has not produced sale papers or leases. We can look at larger tithe maps and enclosure wards to try to identify possible areas of waste, but such land has not produced the paper chain that other land has.

Markets and other franchises are often noted in secondary histories of the Manor, especially in places such as the Victoria County History, because Manors are often identified by historians because of the franchises that have been granted to them; that is how they know that the Manor existed and how they can trace descent. What is useful to historians is also useful to us. Secondary material can flag up a grant or charter, giving it a date. We can then use that information to go

[Mr Stephen Johnson MA]

to the indexes of the patent roll, which is an excellent tool for manorial historians. Medieval grants are physically on rolls, and people can go to the national archive and get them out. They are like a type of carpet. All the grants and franchises are squeezed on to the roll in almost completely undecipherable Latin.

The Victorians decided to translate and to index most of them. Most big libraries—certainly most university libraries—and many record offices have copies of patent roll indexes. Ploughing through the indexes to try to locate instances of franchises being granted is fairly laborious because there are about 80 thick volumes, but it can be done. If one also has secondary information, the index can be quite easily located. That can then be used to order the original document from the National Archive, which can then be translated. If we are particularly studious, we can do that ourselves.

The patent roll indexes are a good source for trying to locate franchises. They are also an interesting source for trying to locate individual rights that are attached to Manors. Many Manors have rather unusual rights attached—feudal rights of service. I know that Robert published a book a few years ago on unusual Manors—

The Chairman: 'Jocular Tenures'.

Mr Johnson: The name escaped me for a moment there. It is a terrific book and I heartily recommend that members get a copy. It gives a marvellous list of all the Manors that have unusual feudal services.

I was ploughing through the patent rolls a few weeks ago for a Manor in North Yorkshire—I am desperately trying to produce a report on it. I shall read an extract from the index. It is from the patent-roll of Edward III in 1342. It states that on 8 April of that year

it is found by inquisition taken by the escheator that Nicholas de Menyll, at his death, held in his demesne as of fee the manors of Wherleton, Hoton, near Rudby, Semer, Middleton and Aldewerk ... pertaining to those manors, in co. York, of the archbishop of Canterbury.

Nicholas held those Manors

by homage and scutage and by the service of serving the archbishop on the day of his consecration with a cup from which he should drink on the same day, receiving the fees which pertain to that office.

The Archbishop was the Overlord of the Manor and Nicholas held those Manors by dint of service to the archbishop—by physically attending to him on his day of consecration. It is possible that that is a medieval right, but it might be possible to reactivate it. It might be quite nice to serve the new Archbishop of Canterbury on his day of consecration. It is unlikely, but it might be. I know that there are instances: I think that the Manor of Worksop in Nottinghamshire holds the right to support the monarch's right arm during the coronation service. I believe that that right was taken up until the coronation of James II.

The Chairman: The right has been served at every coronation since the Dukes of Newcastle, or their representatives, in right of the Manor of Worksop up to the last coronation in 1953.

Mr Johnson: Even better.

The patent rolls are a good source for finding information on unusual rights that might pertain to one's Manor. Do not discount them.

I want to mention reversionary rights, which are self-explanatory. Many Lords of the Manor granted out land from the Manor for the erection of schools or other public buildings. Grants were often made with the provision that such buildings should always be used for the purpose for which they were granted and if a building ceased to be used for that purpose, then in some instances it may revert back to the Lord of the Manor. It is always useful to look for a school or a former school on the map of a Manor, because there might be a reversionary right. It is unlikely, but it is worth a look.

To sum up, if people want to register or find out about rights on their Manor, it is essential to undertake research. They must go to the county record office to see what details they have. As my grandfather used to say, 'If you don't ask, you don't get'. *(Applause)*

Conference adjourned.

SUNDAY 18 SEPTEMBER

The Chairman: Ladies and Gentlemen, we are fortunate to have Alistair Rennie here this morning. He was former Deputy Keeper of the Register of Scotland, a post that is roughly equivalent to the Deputy of the Land Register. He is now Custodian of the Scottish Barony Register.

Mr Alistair Rennie (former Keeper of the Register of Scotland, now Custodian of the Scottish Barony Register): Manorial Lords, Ladies and Gentlemen, I am happy that so many people survived the wassailing last night! I am honoured to be here to talk about the impact of the abolition of the feudal system in Scotland on Barony titles in Scotland, particularly the concept of the baronial dignity. Getting rid of something that has existed for 800 years in one fell swoop is bound to have effects. Many things still have to be worked through, but the problems of the baronial dignity were evident even before the Bill got itself into the Scottish Parliament.

I shall explain what happened and what steps we have taken to suss out the worst effects of the legislation. However, I feel that I should first devote a little time to the feudal system in Scotland, and to the position of the Barony within it. With some justification, the Scots can claim to have invented or discovered a few important things, but the feudal system is not one of them. It was imported from England during the reign of David I in the 12th century; he was Earl of Huntingdon and a vassal of the English king. He was obviously familiar with the feudal concept, so he brought it with him.

I could debate for hours precisely when the feudal system started, but delegates would probably be asleep by about 9.50 if I did so. However, for our purposes we can accept that it was a system of land tenure that started presumably in the Frankish kingdom before the end of the first millennium and spread to most of Western Europe, including England and Scotland by the 12th century. It is generally accepted that the whole system depended on the concept that no one could own land absolutely apart from the Crown and that others could only acquire an interest in land subject to certain conditions.

The system was carried to almost ridiculous heights in Scotland, because it continued to allow subinfeudation—the principle that the owner of a feu could feu bits of it and so on. That was allowed in Scotland, when every other country had abandoned the idea. Prior to the abolition of the feudal system, any number of people could have an interest in any one piece of land. Apart from the Crown at the top of the heap, as it were, everyone else's interests were subject to various conditions, obligations and duties.

To describe the feudal system as a system of land tenure does not do it justice. It was far more than that. It was essentially a way in which to organize society, through which relationships were created by the ownership of interests in land, and on which could be a built an almost complete governmental system that covered key areas of finance, defence, and the judiciary. When describing it traditionally to laymen in Scotland, we tend to concentrate on the military side, emphasizing the element of bringing men to form an army for the King in times of national crisis or war. In the early days of the system's creation in Western Europe, given the pressures from the south, east and north, the ability to form an army quickly must have been of significant relevance to the feudal system.

However, there is a tendency to ignore the other key elements. The feudal system facilitated the organization of what amounted to a local court system that enabled jurisdiction to be passed down from the centre into the hands of the local magnates, who could administer and enforce civil and criminal justice in their own areas. That was a useful way in which to hold the social structure together. From the sovereign's point of view, another benefit was that land was the basis of wealth and, under the feudal system, the sovereign was the ultimate owner. He was superior to all. The feudal theory in the early days was that the sovereign raised taxes not because he was the sovereign, but because he was superior. His right to raise taxes was dependent on the fact that he was the ultimate owner of the land. I doubt if that made much difference to those at the bottom of the food chain; they would simply have to pay. They would not be concerned about philosophical justification.

Before I launch into how the system worked, I had better give the Society a health warning: I want to talk about how it operated in Scotland. There have been differences in other countries. For example, in England by statute of *Quia emptores* in 1290 subinfeudation was forbidden and land had to be transferred outright. The practice of subinfeudation continued in Scotland until 2004, so the feudal system developed in a slightly different way. We are very slow to change in Scotland.

However, the starting principles were pretty much the same. The system began with the sovereign, who held the territory of his state directly from God. That was the theory. A little piece of poetry in Scotland reads:

> The earth belongs unto the Lord
> And all that it contains
> Except the Western Isles alone
> And they are all McBraynes.

The sovereign could be king, emperor, even a pope or a bishop. The important thing was that he was the supreme ruler in his particular state. To facilitate the control and management of his estate, he would allocate tracts of land to his strongest and most powerful supporters. They were the original Feudal Barons and the sovereign's tenants-in-chief. They would swear fealty to him. It was a personal contractual relationship whereby they undertook to support him in exchange for their being given control over their particular tract of land. A highly personal relationship existed between the sovereign and his man or, in feudal terms, the superior and vassal.

The grant of land carried with it a grant of jurisdiction—the ability to hold civil and criminal courts. The extent of the jurisdiction would be set out in the royal charter that erected the lands into a Barony. Criminal jurisdiction extended as far as the right to execute malefactors—the power of pit and gallows. I have seen that expressed quaintly as 'the right to hang men and drown women'. I am sure that there must have been a reason for the difference, but I shall not speculate on it now!

In exchange for the grant of land, the Baron had a duty to administer it on behalf of the Crown and to provide military service when required. That was essential to the maintenance of power and public order. There was no standing army in Scotland, so the sovereign was dependent on what manpower he could raise from his own lands and the land that he had given to his loyal supporters. He needed that in order to maintain peace and to repel invaders. That form of land tenure was known as a wardholding. It was essentially military and was thus the chief feudal tenure. One of the conditions of the grant was that the Baron—or vassal—owed the Crown or superior a return in exchange for the land. The return was called 'hunting and hosting'. It is described in Bell's Conveyancing Lectures as

> obligations to attend the Superior in time of the King's wars and of trouble and insurrection in the country; to ride or go with him—in help and defence of himself and his friends, their honour, life, lands, goods and gear and to appear with him in good equipage on local state occasions, in other words, in wars and commotions and frays and followings.

It sounds absolutely marvellous.

How ironic that, from the time of the Wars of Independence in Scotland to the Union of the Crowns in 1603, the supposed strength of the feudal system was a serious weakness for Scotland. Some of the Barons were so powerful that they could field many more men than the king himself. As a result, there were periods—especially during a royal minority—when the Barons controlled the king rather than the other way round.

Naturally, a Baron was an important man in the kingdom. It is not without reason that Scottish institutional writers, who enshrined and codified the Scots law, referred to the Barony as the 'noble feu'. The status of a Barony can be gauged from the fact that, when a Barony was created in Scotland, the term used to describe it was that the land was 'erected into a Barony'. The charter was called the charter of erection. That testified to the fact that the Barony and the Baron were raised or exalted above the commonplace. Any person who held the land under a grant of free Barony in Scotland, *in liberam baronium*, was entitled—and, in the early days, expected—to attend Parliament and assist in the governance of the realm. Later on, minor Barons with smaller, less valuable estates were excused from attending.

A second layer in society was created under the sovereign: the Barons with their territories, rights of jurisdiction, and precedence. According to another

[Mr Alistair Rennie]

Scottish institutional writer, Craig, in his *Jus Feudale*, those three elements defined and distinguished the noble feu, namely the lands held directly of an independent sovereign, with rights of jurisdiction and precedence. Such Barons were Barons by Tenure. The right to be a Baron depended on continuing ownership of the land. If the Baron lost or sold the land, he lost the other elements that went with it. If a Baron broke his oath of allegiance to the Crown, the sovereign could annul the grant and put another person in his place who then became the Baron. When a Baron died, his eldest son would usually be the heir, but he would have to be confirmed as Baron by a charter of confirmation from the sovereign and he would have to swear an oath of fealty.

In much the same way as the sovereign made grants of his territory to Barons to facilitate the administration of it, they could parcel out their territory to the most faithful of their retainers under the principle of subinfeudation. The Baron would grant charters or a charter of part of his lands in favour of one of his supporters, thus becoming that supporter's Superior and the supporter becoming his vassal. That extended down the line and formed what we call in Scotland 'the Feudal chain'. It was not like the chains in English house buying, which continue and lengthen over time. Or perhaps it is the same after all; I do not know!

By the time the feudal system was abolished, it was not uncommon for there to be half a dozen people in the chain. The Crown at the top was the ultimate Superior while the person who occupied the ground at the bottom was the ultimate vassal and, in between, were four or five mid-Superiors whose rights sprang from some grant of a subfeu in the past. It was a nightmare system for a land registrar to administer. He had to know who had rights to enforce conditions and so on. People would pop out of the woodwork with the charter of 1752 and say, 'I can stop you doing that.'

Barons, not being sovereigns themselves, could not create Barons. They could feu part of their land to their supporters, but no matter how powerful the supporters became they could not themselves be true Barons because they did not hold the land directly of the sovereign. Their own Superior was in the chain between them. The only way in which supporters could become Barons in their own right was if their Baron actually resigned the land intended for his supporters back to the Crown. The Crown could then erect it into a new Barony with the supporter as the new Baron. Such matters could be important today when considering claims of who has the right to the dignity of a Barony.

It is worth mentioning that the grant of the Charter alone was not enough. There had to be what was known as symbolic delivery. If a person was receiving ownership of something that was moveable, it can be handed over physically. However, that cannot be done with land. In Scotland, a ceremony known as Sasine was held at which the land was delivered symbolically by the Superior to the vassal; the intention was to publicize the grant. It was done in front of witnesses. The person making the feudal grant—the Superior—would go with the person receiving the grant—the vassal—to the land that would be the subject of the grant known as the feu. They would take several witnesses with them. At the site, the Superior would hand the vassal some earth and stone as a symbol of the land that was being delivered.

It is interesting to note that the old spelling of 'sasine' in Norman-French is 'seisin'. The similarity with the modern word 'seize' is not an accident. By taking hold of the earth and stone, the vassal was, in effect, seizing the land. The witnesses were there to testify that such action had taken place because in an age when the skill of writing was far from universal, it was handy to have some people around who could testify that the ceremony had taken place. When Sasine was taken in respect of a Barony, it was held at the place of the principal messuage or *Caput Baroniam*. That would usually be the place at which the new Baron intended to reside and work from for most of the time. Some people say that the *caput* was usually the hearthstone of the castle's main fireplace. I mention that because it could have a bearing on the decision about who is entitled to the dignity of a Barony if there were a dispute.

Given the personal relationship between the Superior and the vassal, feudal theory in the early days meant that the vassal could not dispose of his lands outright to someone else without the consent of the Superior. If someone wanted to do that, or if the vassal died and his heir succeeded, the land had to be resigned into the hands of the Superior or the king who would then—if he were prepared to accept the new vassal—draw up a charter of confirmation and give Sasine to the new vassal. That practice was known as taking entry with the Superior. That rule applied to Barony titles, too. Any transfer of the Barony to a different individual required the consent of the Crown by way of resignation of the land by the old Baron to the Crown, and confirmation by the Crown of a new Baron with a fresh grant, as it were.

It became common practice to record the giving of Sasine in a deed, which became known as an instrument of Sasine. The instrument provided written evidence of the symbolic delivery. It could be useful at a time when witnesses could die or be easily suborned. There were a number of cases when all the witnesses disappeared. It was difficult to prove who was the original Baron or if the entry had been taken. After a while, Superiors stopped attended the ceremony of giving Sasine, and appointed bailies to go in their places. The bailie was issued with a precept of Sasine that instructed and authorized him to grant the Sasine. It even came to the point at which the vassal himself sent someone else to stand in for him, so the ceremony became something of a farce. There is a lovely description of two bailies turning up at a site. They waited about the streets and found a road-sweeper and a coal merchant to stand in for the Superior and the vassal at the ceremony, and recorded what happened in a written instrument.

Within the feudal system in Scotland, the territorial Baron—the holder of the noble feu—held the land directly from the sovereign. The Barons had powers of civil and criminal jurisdiction over the populace. They had considerable precedence and status in the kingdom. They would have taken Sasine of the land from the sovereign and, when he died or chose to transfer the land to another, that had to be done by way of a resignation of the lands back to the sovereign and acceptance of the new Baron by the sovereign under the charter of resignation and a fresh grant in confirmation by the sovereign.

The need for the charters of resignation and confirmation continued until the conveyancing reforms of the latter half of the 19th century, culminating in the Conveyancing (Scotland) Act 1874. Under those reforms, the new forms of deeds being used were deemed to be the equivalent or to contain a charter of resignation and a precept for Sasine on a charter of confirmation. Registration of a deed in the General Register of Sasines thus became the equivalent of entry with the Superior.

What then was the position of the medieval Baron and his latter-day successor immediately before the abolition of the feudal system on 28 November 2004? As I have already said, the minor Barons were allowed to absent themselves from attending the king's Parliament under an Act of the Scottish Parliament in 1587. None the less, they still retained their right to the territorial designation and could continue to call themselves by the name of the Barony. For example, if I owned the Barony of Boghall, I would have called myself Alastair Rennie of Boghall or Baron of Boghall—or, more likely, Rennie of Boghall!

I shall digress to explain that the house that I live in was built on what used to be known as the lands of Boghall. The local builder obviously decided that the name 'Boghall' was not sufficiently euphonious to attract the discerning housebuyer! Doubtless seeking to cash in on the fact that Linlithgow Palace, birthplace of Mary Queen of Scots, was only quarter of a mile away, he christened the estate Baronshill. Was he unusually prescient or was it just a happy coincidence that the first Custodian of the Scottish Barony Register lives in Baronshill?

The first big dent in the three great requirements of the noble feu was the virtual abolition of the jurisdictional aspect. That happened in 1746 and was a direct result of the Second Jacobite Rebellion under Bonnie Prince Charlie; It was one of the measures intended to reduce the power of the Highland Barons, whose control over the manpower in their estates was facilitated by their ability to hold courts.

The Heritable Jurisdiction (Scotland) Act 1746 severely limited the civil and criminal jurisdiction to Barons to cases of a minor nature. The criminal jurisdiction was restricted to cases of assault, battery and smaller crimes. The powers of punishment were limited to a fine of up to £1—probably reasonably significant to the local minor malefactors in 1746—or confinement in the stocks for up to three hours during the day. Civil jurisdiction was limited to cases with a value of up to £2 and cases for the recovery of rents or other similar dues. Those minor and civil jurisdictions probably fell into disuse fairly quickly. Indeed, there was a debate in the 1990s about whether the jurisdictions of the Barony still survived at all.

Just in case some delegates are thinking that the powers to place a local yobbo in the stocks for three hours would be a more powerful deterrent than an anti-social behaviour order, I must disappoint them. It seems clear to me that Feudal Abolition (Scotland) Act 2000 definitely abolished the civil and criminal jurisdictions of the Baron.

What about the territorial aspect? We must remember that in respect of a feudal Barony, the right to the title of Baron depended on the possession of the Barony lands. As I have said, the practice of subinfeudation was allowed to continue in Scotland so, if a Baron feued part of his Barony, he still retained an interest in those parts by virtue of his office of Superior. That presented no problem because the Superiority interest was still within the ambit of the Barony title and the Baron continued to possess it, although he did not physically occupy the land. That would hold true even if the Baron feued the whole of the Barony and was left with nothing but his Superiority interest.

What was the position if the Baron sold bits of his land outright, if he conveyed them away by disposition instead of by feu, and totally alienated them from the Barony? It is recognized that the sale of any part of a Barony to be held of the Crown—in other words, a sale by way of disposition rather than feu—has the effect that the part disponed ceases to be part of the Barony, while the part remaining would retain its character as the Barony. That is supported by Bankton, another Scottish institutional writer, who said:

> A disjunction of any part of the lands from the Barony, by an alienation, to hold the parts disponed of the Crown, does not prejudice the right of the Barony as the remainder: because the privilege of Barony belongs to the whole: hence, what is retained is still a Barony, but the parts disponed have not the privilege without a new erection: however, they are independent of the Barony, which is restricted to what remains still with the Baron.

That is just an extremely long-winded way of saying that the extent of the Barony today—if less than the extent of the Barony at the time of erection—does not prejudice the existence of the Barony, which can be encompassed in a smaller area of land than that of the original erection.

Thus, in theory, each conveyance of a part of the Barony takes it out of the Barony and the Barony remains with the last piece of the Baronial land. Even if all that is left is the Superiority of some parts feued, that would still hold good and the right to the Barony would, prior to the abolition of the feudal system, have remained with the person who owned those Superiorities.

Delegates will remember that I mentioned the importance of the *caput*, the place appointed by the Crown at which Sasine for the Barony required to be taken. As in old Feudal theory and, in some cases, in practice, if people could not take Sasine, they could obtain a real right to the Barony. It would seem logical that if the area that includes the *caput* is sold and alienated away from the rest of the Barony, the right to the Barony would go with the *caput*, the place that Sasine would have to be taken, unless proper conveyancing steps were taken to move the *caput* to part of the land that was being retained. For that reason, I would counsel anyone who contemplated buying a Barony for the purpose of acquiring the title of Baron to employ a solicitor to undertake a full examination of Title to make sure that the part of the Barony that he or she was being offered actually carried the right to the Dignity of the Baron with it.

It is the right to the title and dignity that gives the Baronies the values they have over and above the actual value of the land itself. Often immediately pre-feudal abolition, the Barony was attached to a small piece of land with little or no intrinsic value. It is the right to call oneself 'Baron of such and such a place' and the right to have Baronial Additaments added to one's Coat of Arms that provides the valuable and noble element.

[Mr Alistair Rennie]

My knowledge of the arcane mysteries of heraldry is severely limited. It is virtually restricted to what I gleaned while reading Arthur Conan Doyle's 'Sir Nigel' and 'The White Company', when I was a boy! It is my understanding, however, that the Baronial Additaments to a Coat of Arms are usually the Chapeau, Feudo Baronial Robes, a Standard, and a Tournament Helm. The Chapeau or Cap of Maintenance is demonstrative of the jurisdictional element of the Baron's Court. As delegates are probably well aware, it is red, lined with ermine, and turned up to form a brim with two tails at the back.

In Scotland, a feudal Baron is entitled to be officially recognized by the Lord Lyon by the name that he uses, such as Joe Bloggs of Boghall, Baron of Boghall; he will normally give Additaments of the Baronial Chapeau above the shield of the Coat of Arms, the Feudo Baronial robe behind the shield, a Baronial helmet and will also grant the Baron a badge depicted on a Standard. There can be no doubt that that will add considerable lustre to a Coat of Arms.

When the Scottish Law Commission was considering the abolition of the feudal system, it had to give serious consideration to what should be done about Barony titles. One school of thought suggested that if the whole feudal system was to be swept away as being archaic and not suitable for a modern democracy, the concept of Barony could not be left behind given that it was the highest estate in the Feudal system below the Crown from which everything else stemmed. The Commission recognized, however, that the considerable commercial value of Baronies meant that to abolish the noble element in them could give rise to substantial claims for compensation. It concluded that there was no need to do that. The Commission decided to sever the noble element, the social, ceremonial and armorial aspects, from land ownership. Baronies would become non-territorial Dignities. That is exactly what happened.

Section 63(2) of the Abolition of Feudal Tenure (Scotland) Act 2000 provides that, when an estate held in Barony ceases to exist as a feudal estate, the Dignity of Baron, though retained, should not attach to the land, and on and after the appointed date—the day on which the Act came into force—any such Dignity shall be, and shall be transferable only as incorporeal heritable property. Under subsection (4), Dignity is defined as including any quality or precedence associated with and any heraldic privilege incidental to a Dignity. The appointed day was 28 November 2004.

Two of the three elements of the noble feu have gone: the land and the jurisdiction. All that remains is the precedence and the outward symbols thereof. To make it absolutely clear that the Lord Lyon King of Arms, Scotland's supreme arbiter in matters heraldic, retained his jurisdiction in such matters with regard to Baronies, the Act provides that nothing it contains shall be taken to supersede or impair the jurisdiction of prerogative of the Lord Lyon.

Severing the Dignity of the Barony from the actual lands was not enough for the Scottish Parliament. Despite providing for the Dignity to be transferable as incorporeal heritable property, the Act went on in effect to provide that any transfer of it could not be registered in either the Scottish Land Register or the Register of Sasines. Those and the two main public land registers in Scotland and properties are moving gradually from the Register of Sasines to the Land Register. While that was entirely logical, given that the dignity was detached from the land, it created an interesting problem. To explain it, I shall take delegates back to the early 17th century and to one of the jewels in Scotland's legislative crown—the Registration Act 1617. The preamble to the Act is significant, given what we are talking about. I have translated it into more modern language to make it reasonably comprehensible. The Act states:

> Considering the great hurt sustained by His Majesty's Lieges by the fraudulent dealing of parties who have alienated their land and received great sums of money therefore and by their unjust concealment of some private right formerly made by them render the subsequent alienation done for great sums of money altogether unprofitable which cannot be avoided unless the said private rights be public and patent to His Majesty's Lieges.

Apparently, fraudulent land dealing was something of a national sport in the 16th and 17th centuries in Scotland. People would sell or borrow money on the security of land two or three times over from different people and disappear with the cash—to the Highlands or over the border to England—leaving the various purchasers to lenders to argue over who had the better right to the land. The situation was so bad that the Scottish Parliament said that a cure had to be found. It decided to create a public register in which all land transactions had to be recorded if they were to be enforceable against third parties.

In other words, the deed of sale—or disposition—was an enforceable, personal contract between the buyer and the seller. However, it was only by recording it in the Sasine Register, set up by the 1617 Act, that the buyer could ensure that it was enforceable in a dispute with a third party. That was one of the jewels in Scotland's Crown. It was probably the first national register ever to be set up for the protection of the public rather than as a means of identifying who owned land so that they could be taxed.

The guiding principle of the Sasine Register was publicity. Registration of a deed did not give it any more validity than it possessed already. It merely made its existence public. It did not guarantee that the deed was unchallengeable. Anyone seeking to rely on it had to satisfy himself that it was indeed valid, by examining the chain of titles revealed by a search of the register. That principle of publicity still applies to the Sasine Register and the Land Register of Scotland that is replacing it. A search in the registers is the lynchpin of every land conveyancing transaction in Scotland. A search is instructed to make sure that the person who is selling the land has title to sell and has not already sold it to someone else. In the days when the Dignity of a Barony was attached to and ran with the Barony lands, that held good. Let us suppose that someone was buying the land and the Dignity from the same person. If the would-be buyer's search showed that the other person was proprietor of the lands and that it carried the Dignity, he could happily proceed. At the appointed day, the situation changed.

As I have said, the abolition of the legislation meant that the transfer of the Dignity of a Barony could not be registered in the Land Register of Scotland or in the Sasine Register. As no other register was established for recording or registering the transfers of dignity, those

dignities on the appointed day entered into what amounted to 'a black hole', in searching terms. While it remained possible to ascertain who owned the land to which the dignity was attached at the appointed day, it became impossible to tell from either of the registers the position of the dignity thereafter. If the owner of the land at the appointed day transferred the land to someone else and that fact was recorded in the property registers, it would not be clear if the dignity was also transferred. The registers do not mention that aspect. Conversely, if the land were not sold, we cannot assume that the absence of an entry in the registers meant that the owner had not transferred the dignity in the interim. The two factors are now separate.

I ask delegates to cast back their minds to what I said about the 1617 Act and the reasons for establishing the Sasine Register. It was to prevent people from selling the same land two or three times over to different people. Does that strike a chord? The legislation has actually made fraudulent sales possible in respect of Baronial dignities. Pre the appointed day, there was a small but thriving trade in Barony titles. Obviously, those involved in it were keen for it to continue, but they recognized that the lack of any public source of information about ownership opened up possibilities for fraud. Recognizing that that would inevitably affect confidence in the market, key players began to consider options for avoiding that.

The idea that commended itself was that, in the absence of an official register, a privately operated register should be established. By a happy coincidence, I had recently retired as Deputy Keeper of the Registers of Scotland with 40 years' experience of creating and maintaining registers and I was asked to consider how such a register might be established. We worked out a scheme and sought counsel's opinion about it, with favourable results. The opinions of several practising solicitors experienced in the matter of Barony titles were also sought and as their response was generally positive, it was decided to proceed and the Scottish Barony Register was born.

The register was established as a company limited by guarantee, as it is run on a not-for-profit basis and to provide a service. It operates on the same principles as the General Register of Sasines, as a Register of Deeds giving evidence of title in which anyone purchasing or acquiring the entitlement to the dignity of a Baron can record an assignation or other deed narrating that fact. As with the Sasine Register, registration in the Scottish Barony Register is a method of publicizing the claim. The act of registration does not confer additional validity on the claim. The register is structured in the same way as the Sasine Register in order to facilitate searching. Thus, it is possible to ascertain if a claim to the entitlement of the dignity of a Barony has been registered in the Scottish Barony Register post-appointed day and to order a copy of the assignation or other deed that will identity the titles on which it relies. Anyone considering purchasing the entitlement to a dignity would still have to examine those titles to satisfy himself as to the overall validity.

As the register is privately run, there is no official compulsitor register any transfer of a dignity post-appointed day. If a person acquires one and does not register it, it does not make that person's acquisition any less valid. However, if the person registers a transfer and there is an attempt thereafter to sell the entitlement to the same dignity again, any prospective purchaser who searched the register would note that person's claim of entitlement and be warned off. Registration can therefore stop later competition in title from a future fraudulent transaction.

Although the register does not guarantee the validity of a claim, we seek to discourage speculative or manifestly false claims. Several requirements have been set for registration and they are intended to ensure that the register provides a repository where claims to the dignity of a Barony and the evidence used to support those claims can be identified. The applicant must demonstrate that the evidence that supports the claim actually exists. The application will usually be based on an assignation of the entitlement to the dignity from the previous owner. That assignation will narrate the transfer and given the name of the Barony and its parish. It will narrate the Crown charter, which erected the lands into the Barony, or a charter by progress, which confirmed the acceptance by the court of a later incumbent of the dignity in the manner that I have set out before. That is intended to confirm that the Barony exists historically and is not a fabrication or a figment of someone's imagination.

The assignation must also narrate the deed or land certificate on which the assignor's right to the Dignity rests, and incorporate a sworn statement by the assignor to the effect that, at the appointed day, he or someone from whom he derived right, was entitled to the Dignity of the Baron, and that he had not since then transferred that entitlement and knows of no other claimant to the entitlement. That latter requirement is in place to provide some evidence that nothing untoward has happened between the appointed day and the date of the transfer.

If a previous holder of the dignity has applied to the Lord Lyon King of Arms for a Coat of Arms with Baronial Additaments and the Lord Lyon has granted the same, that fact is also narrated. If there were a chain of links in title between that individual and the current assignor, we would want to know about that, too. We want to make sure that any evidence that confirms the claim is made public on the register. That could be useful in a future dispute over who was entitled to the dignity. The Lord Lyon runs an heraldic court and, while his decision in that court is not binding on the judges in any other court, it is highly persuasive. Thus, if the Lord Lyon had decided that a certain title carried the dignity of a Barony in the past, the weight attached to that would be considerable.

The assignation must also have attached to it an inventory of writs that lists all the deeds and documents on which the claim is based. That will include the Crown charter, and any deeds that support it in which the assignor's rights rest. It will list a progress of title for the prescriptive period—the deeds for a set number of years leading up to the deed—that will give support to its validity. Those deeds or official extracts—or official office copies of them—must be submitted with the application. We want to see that the deeds exist and are genuine. We are not interested in fabrications to further a fraud. We want to see genuine deeds that have been registered genuinely in the past so we know that they have not been mocked up to enable a person to carry out a fraudulent sale. If the deeds are not produced, we will not accept the application.

[Mr Alistair Rennie]

A further requirement is a search in the Sasine Register or a Land Register report from the date of the assignor's title to the date of the current assignation. That is to testify that nothing untoward happened on the official register between those dates. Insisting on proof that such a package of evidence exists, the register seeks to ensure that only genuine claims can actually enter the register by discouraging speculative and manifestly false claims. As a further safeguard, we will only accept applications for registration from a solicitor with a current Scottish practising certificate. The application must be made on the register's official application form, which the solicitor must sign. That form includes a statement that he or she has examined the title deeds and is satisfied that they are sufficient to support the claim to the entitlement. In other words, we are seeking to ensure that anyone intending to purchase the entitlement to the dignity of a Barony in Scotland does so only after receiving proper legal advice from a qualified person. We are trying to cut out back-street dealing.

If a solicitor is unwilling to sign the application form with the statement on it, the application will not be accepted for registration. I assure members that that has already happened in one case. When we are satisfied that all the evidence exists, all the necessary documentation has been produced, the application form has been duly signed and the appropriate fee of £250 has been paid, the application is accepted and the necessary register entries are prepared. In cases when some evidence is missing, but can be supplied later, we do not reject the application out of hand. We hold it pending production of the other evidence. As a discouragement from making claims for which the necessary evidence cannot be produced, when the application is rejected the registration fee is retained by the register to cover the cost of work undertaken in reaching the point of rejection.

When we are satisfied that the application can be accepted, the registration process can be completed. The register is divided into two segments. There is a record volume in which the assignation or other writ, complete with the inventory, is copied. Those volumes run in chronological order and are based on the date of receipt of the application. The individual writs are identified by the volume and the relative folio numbers on which the copy commences. The key to the record volume is the minute book, which is a chronological record of précis or minutes of the registered applications. It is a short-form memorandum that describes the assignation, the parties and the Barony. It is maintained on a yearly basis. Indexes of the names of applicants and Baronies are maintained to make it easy to identify the particular minutes that refer to specific Baronies, and there is the record volume in which a copy of the assignation or other writ is kept. At the end of the process, the assignation—duly impressed with the register's seal on each page and also stamped with the date of registration along with the volume and folio number and the other deeds are returned to the applicant for safe keeping and exhibition to interested parties if required at a future date.

By searching the minute book and indexes, it is possible to ascertain if the claim to the dignity of a particular Barony has been registered since the appointed day and, if so, to identify the volume and folio number of the record volume in which a copy is kept. A copy of the assignation can then be acquired, which will reveal the documentation that supports the claim to the dignity.

We anticipate that people who become active in the market for the dignity of Baronies will appreciate the fact that the register offers a measure of comfort, even though it cannot guarantee the validity of a claim registered therein. It is hoped that, in future, anyone seeking to buy the entitlement to the dignity of a Barony will make it a condition of the sale that the purchase price will not be paid over until the application is accepted on the Scottish Barony Register. We have already received one request from a solicitor acting for the seller of the dignity of a Barony for notification of when the processing of the application by the purchaser has been completed. That can only be because the purchaser has said that the seller would not receive the money until such matters are on the register. The price is retained until such time that we are satisfied that everything required had been received.

As we anticipated, the market has been pretty quiet since the appointed day. We thought that there would be an element of caution until Lord Lyon's policy with regard to new acquisitions of Baronial dignities became clear. We are still awaiting clarification about that. Nonetheless, in the first few months of the register's existence, five applications have been registered so we believe that the market will pick up. The register will not be enormous; a strictly limited number of Baronies exist. We operate it on a not-for-profit basis and, even if we did seek to make a profit, it would not make anyone a millionaire. The register is being run as a service to the market.

I hope that I have given delegates some flavour of the background to Barony titles in Scotland, the changes that were introduced by the abolition of the feudal system, and what steps we have taken to avoid potential difficulties raised by the legislation. We hope that this will help to retain confidence in the market so that people who appreciate the historic significance of the title of feudal Baron maintain the concept.

Thank you for your attention. I shall be happy to answer any questions if I am able to do so. *(Applause)*

The Chairman: Ladies and gentlemen, there is a scurrilous rumour going round that members have to clear their rooms by 10 o'clock. This is news to me—members can do so when they are ready.

We have three papers to get through this morning and I can do no better than to invite Jeffrey Littman to tell us about bunnies and boundaries.

Jeffrey Littman (Barrister): First, I apologize for the fact that although there is a page with some topics on it, there are not enough to go round. So, if anyone is really keen to know which topics I think I am going to cover in the time available, I must ask them to be so kind as to share. A copy can always be sent through the post afterwards.

The reason this talk is called 'Bunnies and Boundaries' is that I had a case earlier this year involving someone who has the right appurtenant to his

Manor of free warren; and the question arose of what use that was today. I hope to cover that in the course of this necessarily brief talk. I say 'necessarily brief' because, first, almost all the relevant legal material that I wanted to bring in was covered by Geoffrey Barrett and Stephen Johnson yesterday, and I cannot do better than those two.

Secondly, as I realized from some of the questions that were asked after a talk yesterday, I am addressing a sophisticated bunch of people who are way ahead of me on many of the topics of interest. The best thing I can do is to mention one or two matters connected with the topics on the paper before members and to illustrate them or fill them out a little with some stories from my experience involving the Lord of two closely connected Manors in Worcestershire—Sagebury and Obden—because it is interesting to find out what someone in a similar position has done and what can be done.

I start with an astonishingly contentious pronouncement by Lord Templeman, Lord of Appeal in Ordinary, in the case of Hampshire County Council *v* Milburn in 1991 that 'for all practical purposes, after 1926 the Lordship of the Manor was an empty title.'

Let me assure you that that is not a statement of law, whatever it might sound like; it is what is called an *obiter dictum*, which literally means something said by the way. He was on his way to delivering something that would be called a judgment if it was not in the House of Lords, but which, as it was in the House of Lords, is called a speech. He was describing a case in which Sir Anthony Milburn, who did not like the idea of some of his land being registered in the commons register, sold off the right to the soil separately from two Lordships of the Manor and then said that they had to be deregistered. Of course, the only reason he had registered them was that they were waste land of the Manor, but they are not waste land of the manor any more because they do not belong to the Manor.

The matter went all the way up to the House of Lords and, as people might guess—is Sir Anthony here today?—it cost him a lot of money to find out that he had lost. During the case, besides being contentious on one occasion, Lord Templeman also gave a masterly and concise history of manorial legal rights. I would imagine that everyone here is interested in the extent to which those rights have, as he called it, practical purposes, so I shall try to cover that.

To be scrupulously fair to Lord Templeman, I shall not say that he was wrong. Members of the Bar never say that Lords of Appeal in Ordinary are wrong. They are not wrong; they are simply emphatic in the statement of a certain view or angle. Putting the whole of Lord Templeman's speech in context, he was probably trying to say that after the Law of Property Act 1922 came into force—as England is not a country that likes to do things quickly, that was in 1926, immediately before the Law of Property Act 1925 came into force—everything in law that previously had to be accomplished by some kind of manorial legal transaction was no longer necessary because simple ownership of property rights of one sort or another could do the job instead. That was a somewhat frightening way of stating the law, but I think that that was the point he was trying to make.

Interestingly enough, even that could be argued in the courts and I very much hope that one day it will be. It is a strange thing to say that, because the 1922 Act abolished copyhold and the 1925 Act permitted—or, indeed, caused—all manorial rights to pass unless otherwise provided with a conveyance of the Manor. Generally, that was the end of anything manorial as such. One has only to consider how copyhold was abolished to see that there is something doubtful about that statement, because sporting and mineral rights of the Lord were reserved and continued to exist after 1926.

As a result of what I have just said, people might have some grandiose ideas about getting a pick and a shovel and mining their way through some former copyhold or franchised copyhold freeholder's land and taking the minerals. That cannot be done because it would be a trespass and that would not impress Lord Templeman particularly. However, that is not the end of the matter, because people have the rights but just cannot get at them. The supposed freeholder cannot touch the minerals either, and if he tried to do so an injunction could be got to prevent him. However difficult a right is to enforce by means of action—by injunction, and sending the breaker of the injunction to prison for contempt of court—I do not call that right something that has no practical consequence whatever. Indeed, one might even say that such a right was valuable as a sort of ransom. The same goes for sporting rights.

Another striking feature of manorial rights that continued to exist after 1926 and can be thought of only in a manorial context is franchises, which Stephen Johnson discussed yesterday afternoon. Some of them were abolished by the Wild Creatures and Forest Laws Act 1971, which I shall talk about later if we have time. An Act of Parliament abolishing something that has no purpose and does not have any real existence is a bit of anomaly, but there was a reason for doing that. It is difficult to understand that reason and I shall probably refer to it later.

These franchises included such things as fairs and markets, and the right of free fishery, free chase, free warren, park, forest, and so on. Stephen Johnson came up with an interesting example yesterday of someone with a franchise appurtenent to his Manor giving him the monopoly right to run a ferry across Poole harbour, which he then sub-franchised to somebody else. Franchises can take many forms, but the examples I have given are the usual ones. Free warren was abolished in 1971.

Incidentally, are people aware of what a warren is in etymological and real terms? It does not apply only to rabbits; there are birds and beasts of warren. The word is one of many that come from the root for guarding or warding things, and which the Normans managed to corrupt into "warren". It does not necessarily have anything to do with digging holes in the ground, but as a rabbit warren is such an impressive feature and of considerable topographical effect, the word "warren" has become associated with rabbits.

The leading case on what is or is not a bird or beast of warren is the Duke of Devonshire *v* Lodge, and members might like to hear a bit about it. On 23 June 1827, the full court of King's Bench had to convene to hear whether or not grouse were birds of warren. The Duke of Devonshire had—and still has—a lot of moors north of Chesterfield and south of Sheffield. Poor Mr Lodge—we may perhaps think of him as a little poacher with a bag—was accused of breaking and entering the Duke's parks and warrens and taking his

[Jeffrey Littman]

deer, rabbits, grouse and heaven knows what other animals of chase. As is the way with litigation today, but even more so in 1827, when the matter came to trial before a jury (even though it was a civil trespass case), Mr Lodge was found only to have taken some grouse.

The question therefore arose—the lawyers took this point—were grouse to be equated with rabbits and other animals of warren? The case went all the way to London for a full court of the King's justices sitting in King's Bench to determine the point. What this must have cost is mind-boggling. There was no legal aid in those days and the Duke of Devonshire was represented by the Attorney General, the Solicitor General and Henry Brougham, who was later to become Lord Chancellor.

Not to be outdone, Mr Lodge's leader was someone called Mr Williams, whose name does not ring a bell with me, and his juniors were Mr Alderson and Mr Parke, who went on to become Barons in Chancery and the greatest chancery judges of the 19th century, whose judgments are still with us. How all this was paid for I have no idea, but when I mentioned it to someone last night he said that in 1827 there was no television and no cinema, and the newspapers did not have much to write about that did not cause them to be closed down for criminal libel, so it was probably the biggest entertainment in town.

There was much argument and the case turned on the Attorney General's concession that in the early cases, and among the early writers of law, there is no mention of grouse, and that that was probably because there was great difficulty in taking them. Netting was impracticable on the moors and the ground made hawking difficult and dangerous.

As people can guess, the day was won by poor Mr Lodge, thanks, no doubt, to Alderson and Parke who gave a masterly argument based on Manwood's Forest Laws and Coke's Institutes of the Laws. It turned out that the basic reasoning behind what is, and is not, a bird or beast of warren was the necessity of preserving the King's right of hawking, which he franchised out as a privilege to various people whom he liked.

Accordingly, birds and beasts of warren are those usually taken by long-winged hawks. To quote Manwood's Forest Laws: 'A forest is not a privileged place generally for all manner of wild beasts, nor for all manner of fowls, but only for those that are of forest chase and warren. The beasts and fowls of warren are these: hare, coney, pheasant and partridge. None other are accounted beasts or fowls of warren, so grouse are out. However, I have heard it said that wild duck may be included. Do long-winged hawks kill wild ducks? I do not go hawking, but I am sure that some members present do.

For the Bench to decide what grouse were included required an array of legal talent such as one cannot imagine. The court's judgment was delivered by Lord Tenterden, the Chief Justice of King's Bench, who pointed out that the franchise of free warren, which the Duke of Devonshire was trying to exercise, was of great antiquity and singular in its nature, giving a property in wild animals which may be claimed in the land of another to the exclusion of the owner of the land. Therefore, since there is an encroachment on somebody else's property rights, the right ought not to be extended by argument, but should stay with whatever were the limits of free warren in the early Middle Ages, so grouse are out. He did not know why grouse were out, but he said that perhaps the birds could not be taken by any of the ordinary modes of sport in use at the time when the franchise had its origin, which would have been shortly after 1066, and that the other reason might be that the Normans did not have grouse when they came here, but we did.

That was 23 June 1827. Judges in those days were kept very busy and an equally important case was being heard on the same day. Although it has nothing to do with my direct topic, people might like to know that it involved Sir Oswald Mosley suing a Mr Walker to protect *his* franchise. Sir Oswald Mosley's franchise in 1827 was the right to hold Manchester market, which was worth a bob or two. I think that he succeeded, although the Duke of Devonshire lost.

There is also the continued existence, after 1926, of the waste land of the Manor. That is important because there is very little that one can get one's hands on in one's Manors, and one will want to find out whether any waste land continues to exist. Waste is defined as open, uncultivated, uninhabited land within the geographical limits of a Manor. It is one of many words derived from the Latin "vastare", which means to lay waste. The first known use of the term in what passes for the English language is in the prologue to Piers Plowman, according to the original edition of the Oxford English Dictionary, in 1377. Langland wrote:

uncoupled they wenden
Bothe in wareyne and in waast where hem leve liketh

Is there anyone here from Scotland? That sounds like lowland Scottish to me. Was Piers Plowman a Mercian or a northerner—a Northumbrian? Does anybody know? Langland was the author. *[Interruption.]* Warwickshire—the language of Shakespeare? It does not sound much like it.

We have to identify the boundaries. Members heard a talk yesterday about how to do that. Then we will want to try to establish the wastes and see what can be done with them. People will have to reconstruct the history of their Manor. Yesterday members were informed of various sources. I do not think that conveyance plans were expressly mentioned, but a plan is liable to be attached to a conveyance to help people identify what the words refer to.

The same is sometimes true of turnpike plans. If a main road goes through a Manor, it might have been established by a Turnpike Act and the scheme is likely to have a plan attached that would tell people something about what they have and where the road is. That is important because of the significance of highways when defining waste.

Tithe maps have been mentioned. Boundary agreements might exist and be recorded. Sometimes they turn up in old court decisions, either because they are a means of settling a dispute or because they have given rise to one. That can have repercussions.

I see that a lady from Washington is here. You may have heard of the case of Penn and Lord Baltimore. That was a boundary dispute in 1750 and one of the leading boundary cases. Lord Baltimore, as we can tell from his name, was an Irish peer who in William and

Mary's time was granted vast estates and a colony in the New World called Maryland. His neighbour to the north was Mr Penn, who, as a Quaker, would never be anything other than Mr. However, he was an immensely powerful man from an immensely powerful family. (The Penn and Montagu families were described in Samuel Pepys' diaries as fighting each other to become Lord High Admiral).

Mr Penn had a stretch of land called Pennsylvania, which extended some little distance, and they could not agree where the boundary was. What difference would even a few thousand acres have made? However, the case went all the way up through the courts and in the end it was necessary to appoint two surveyors to hammer the matter out—a Mr Mason and a Mr Dixon. They did their job well. We still live with the consequences of these boundary disputes in the Mason-Dixon Line.

In the case that I mentioned involving the Manors of Sagebury and Obden, 20-odd years ago some research was done—not by Stephen, but by a gentleman called Mr. Moss. I do not think that he is here; in fact, I do not know whether he is still alive—it was in 1969 that he did his research. It was a classic case. In the record office in Worcester, which has some terrific medieval and later records, including, I think, Shakespeare's father's indenture or marriage settlement—one never knows what one will find in such places—Mr Mosse found that there were many deposits relating to precisely those Manors and the families that owned them.

Mr Mosse got a list detailing the full succession of Lords of the Manor from Elizabethan times onwards and came across an indenture dated 1737 that described the different fields appertinent to the Manors being conveyed. It did not have a plan, but he got names. Then he got the tithe map from 100 years later and was able to connect the names, some of which had been slightly corrupted, to numbered fields on a plan. Then he got the then current Ordnance Survey map on which the fields were still identifiable in their parcels. He was then able to do just what Stephen described: draw up a full plan of the boundaries of the two Manors of Sagebury and Obden, although he did not know quite where one ended and the other started because they became amalgamated and the same family owned them both.

I am sorry that I do not have copies of the plan, but it is of interest and I shall lay it on the table for people to see it if I finish in time. This is Worcestershire, here is the Dodderhill parish, here is Upton Warren parish, which is a giveaway name—either someone had a free warren there or it was a Royal warren that continued to exist—and here is the boundary.

Some of it follows a river called the Salwarpe, which runs into Droitwich, which tells us one of the reasons why the place is quite important and significant. Droitwich was one of the medieval sources of salt—in fact, the Romans used it—the reason being that the Salwarpe is a briny river. All people have to do is to boil up the water in vats, which a number of artisans did in Droitwich, and they have dry salt that could be taken by road to London, Birmingham and places further north.

There are many fascinating features on the map. For instance, there is an old Roman road, some of which is marked as "course of old Roman road", so it has been diverted from time to time. The M5 is outside the boundaries. The railway line is here. This is the Worcester and Birmingham canal, which I have highlighted in yellow to make it easier for people to spot. The British Waterways Board has the maps, plans, agreements and Acts of Parliament under which all the canals were established, which might be a fascinating source of information—for example, how much Mr. MacPherson was paid for a particular plot of land, what trouble there might have been with a Mrs. Little on another piece, and so on.

There are also roads and highways. Shaw's lane goes past a bit of apparently open land with a pub on it called Bowling Green Inn, which tells us something. There are various footpaths, one of which cuts across some fields and then follows a field boundary up to a railway line, goes under the railway line and then joins a relatively major public highway. Also, so that people know when it pops up later, there is a little stream that joins the Salwarpe called the Henbrook. That is a practical example of what we can find out, how members can help to establish their boundaries and, then, what they can get to work on trying to discover whether they own more than, as Lord Templeman called it, an empty title.

It is not only documentary evidence of boundaries and the extent of holding that can be used. There is also oral evidence, which is where the perambulations that Stephen mentioned yesterday come in. Perambulations not only result in the steward or surveyor in charge writing down what happened—he might or might not get it right—but, if attended with sufficient ceremony, with enough people tagging along, a little band and plenty of free beer, witnesses to the boundaries will be created who, 60 or 70 years later, can perhaps say, "I saw that the boundary went from here to there". If they cannot do so, 100 years later their grandchildren might recall being told what happened.

I am in favour of reviving the old idea of the ceremonial perambulation. Some parishes still hold them and I do not see why Lords of the Manor should not do so, especially if one has a local connection, lives in the area and can get people interested. Members can do the same thing and most people like to know what the Manor in which they live consists of.

When it comes to looking for their waste, people will want to know why. The answer is that, subject to whatever the Commons Registration Act 1965 and subsequent similar countryside legislation have done, they own the waste, which is also, of course, subject to the rights of commoners. They did not acquire an empty title; they acquired real land if any waste still exists. Enclosure has taken place over the centuries, bit by bit, and there is very little left. That is why we shall consider highways, which are rather special. Nobody encloses a highway, otherwise people could not drive or walk on or off it, except for footpaths over stiles.

One has one's mineral rights in the soil of the land, and one has—in theory—the right to build on one's land. However, any commercial extraction of the minerals would be development, so we also have to think about the necessity for planning consent, which might not be granted. On the other hand, it might. There are rights in the air. When one owns land in this country—I apologize, but by "this country" I mean England and Wales, as I am afraid that I do not know much, if any, foreign or Scottish law—one also owns the air. One owns three-dimensional space, not just

something on a plan. Although we use plans and maps all the time, they can be misleading from that point of view. The person who owns the land owns it *ad caelum et ad inferos*—up to the heavens and down to hell. If someone ever gets there, they can say, 'This bit's mine'.

What is the use of the air space? If one erects a building, it can go up very high. One might put advertizing hoardings up, again subject to planning consent. For one reason or another, one might want to straddle the highway with, for example, some wires—for example, electrical—which happens more often than might be thought. I shall go into how one can and cannot do that in a moment or two.

Let us consider highways. What one cannot do is touch or do anything on the surface of a highway or interfere with the rights of those entitled to use it, any more than one could if someone had a private easement of a right of way—for example, when someone owns some land and their neighbour owns adjacent land with entry to a house, and he has the right to walk in front of the person's house to get to the main road. That person cannot do anything that significantly obstructs his right to use the way that exists. That neighbour does not own any of the person's land; all he has are certain private rights over it.

A highway is nothing more than a *public* right of way over some land. The land itself will belong to someone. The public do not own it, but they have a right to pass over it. The extent of the user varies. The public can only use footpaths on foot and bridleways on a horse or on foot. Now there are also cycle ways—I am a cyclist. There are cart ways, drift ways on which to drive animals somewhere, and so on. There are things that people normally mean by highways, which are roads that people drive motor vehicles up and down on.

The Highways Act has ensured that all highways that are maintainable at public expense have been taken away from whomsoever owns the land, so some land ownership rights have been taken away. The title is vested as to the surface in whatever is the appropriate highway authority or the Department for Transport, depending on what type the road or path is—which is a pity, but that is the way things go. The concept of vesting a surface in someone is rather strange. It is a bit like owning a line.

What is a surface? It has virtually no physical existence; it is the outside of something. There is, of course, a leading case that tells us that the people who own or have vested in them the surface of a road or highway also own whatever is necessary for the purpose of maintaining and keeping in operable condition the rights that pass over it. The surface might therefore extend down a little way, or in some cases a long way if there is a need for supports to go through the soil. The highway authority's air rights are bound to go at least as high as the biggest lorries that will use the roadway.

However, there comes a point below the surface of the soil and above the height of the necessary air space when whoever owns the original land over which the public rights were created still owns land—land including air and minerals. That person may very well be the Lord of the Manor. Highways are likely to have been created in the following ways. The first was under the Highways Act and its predecessors. There will have been a scheme of some kind under which compulsory purchase powers were enforced. That is likely to mean that all the land was compulsorily purchased, so members can forget any rights that they think they might have enjoyed.

Secondly, there are Turnpike Acts, as I have mentioned, which laid down certain schemes. We might find that the turnpikes commissioners, or whichever body ran the road when it was a turnpike road in, let us say, the 18th century, had certain soil rights vested in them. However, they might be only the trustee owners, as it were, of the right of the public to pass in return for paying the toll to be levied on them.

Thirdly, there might simply have been a dedication by the owner of the soil to the public. That, I think, is the way in which most highways came into existence, because most are small lanes, roads, byways and footpaths. If we think back to the middle ages and the example of a highway such as Shaw's lane, for example—this is pure inference on my part, as I have not researched it—there was probably a lot of waste land on the Manor and plenty to spare to the commoners and copyholders to pasture their cattle, take their turves or do whatever they had the right to do, and people wanted to go from A to B. In this case, they might have wanted to go from the church to the bowling green or the allotment gardens that now exist next to the bowling green.

The public-spirited Lord of the Manor might have helped them or perhaps encouraged them to get busy digging, putting gravel down and so on, and would dedicate that way to the public; or, people might just walk along it, nobody objects, everybody is happy and it is presumed that there had been a dedication by lost grant or prescription, but on either side the land is—we are in the middle ages or Elizabethan times now—still waste land of the Manor.

Gradually enclosure takes place and waste ceases to exist, commoners might simply not live there anymore or might no longer be interested in pasturing their cattle on waste because they have good enclosed land and can go in for more efficient agriculture. However, what has happened to the soil under and the air above the track or lane? They still belong to whomever owned the waste land of the Manor. Well, we know who that is: you. When a deviation has taken place, the freed land with all its surface will, of course, belong to the Lord, free of encumbrances.

Sometimes enclosed land might stop very much short of the metalled or trodden surface on the highway. There might be a verge that is used neither as a highway for passage nor for what the enclosed land on either side is being used for, whether that be a suburban villa with a garden or a field with cattle in it. In such circumstances, if a dispute arises as to who owns the grass verge, the court will have to decide on the basis of the evidence.

In the vast majority of cases that come to court—there are not that many, but over the years there have been some—there is no evidence worth speaking of. The court will then presume that the nearest landowner who can be identified has, just for convenience, stuck a fence there. Enclosure has taken place and a verge put in place, but the landowner continues to own the land right up the edge of the road which, for various reasons, he has fenced off.

That is only a presumption in the absence of other evidence, however. If, as in the case that Stephen Johnson mentioned yesterday, conveyances from a little way back mention the fact that the verges beside the road are being conveyed to somebody, it will not be taken for granted that the land is the neighbouring enclosure-owner's property, and the presumption will be fairly easily rebutted. Whoever owns the bit of land by the side of the road will also own the subsoil just under the bit that the public now owns and which is vested in the highway authority, upto the mid-point. If someone owns the verges on both sides, however, they own all the subsoil under the road. That is good news, because they now have a way in, so that they can take a pickaxe and exercise their mineral rights.

The bad news is that the Highways Act 1980 prevents them from doing any such thing without a licence from the relevant authority. A licence sounds like a grand thing, but in law it only means permission; it just means that we cannot do something without the relevant authority having a look at what we want to do and saying, 'Yes, you can', 'No, you can't' or, 'You can do so only subject to the following conditions'. Highway authorities, like other public bodies, can only exercise their powers of saying yea and nay reasonably and for proper purposes. They cannot just say, 'We don't think this bloke should be able to extract valuable minerals from this land.' There might be pyrites, for instance. Someone I know even had coal under a bit of waste land on his Manor, although special rules apply to that. The authority cannot say, 'We don't think he should make money without benefiting the public and we're going to tell him that he can't.'

A quite recent case that went to court is an example of someone building over a very important highway: the A1. The Galleria centre at Hatfield straddles the highway. I do not know quite what lay behind the case—there might have been some special scheme—but such building can certainly be done.

In my example of Dodderhill parish there are some highways and a Roman road, the course of which appears to have deviated at various points. Although it predates the Manor, it is likely that manorial waste would have been used for a deviation somewhere. There are water courses, which are rather special, plus a canal and plus the M5. There are also paths that go across fields—there is not much that we can do about them—and which then start to follow the side of a field.

Very often such paths have an interesting history. The paths grew up for convenience's sake along the side of a field and we might find that the Lord who would have originally had either his demesne land or his copyhold land there would have alienated the parcel of land that did not have the path on it. Later on, that Lord is likely to have alienated the field that does have footpaths on it. If we look at the original conveyance—we might have to go back and back and back from the present-day owners—we may very well find that the second of those conveyances excluded the path, because it was thought a good idea to preserve it and not let it get into private hands. The Lord of Manor might have kept that to himself, not paying any attention to its potential value, and members may now be the owners of the subsoil of such paths that follow the sides of fields. They are worth looking at, and there are one of two on this map—I do not whether whoever is now Lord of the Manor has followed this up, but he may wish to.

When one is looking through the history of one's Manor—I mention this because it is so interesting—one never knows what will turn up. I mentioned the Worcester record office, but I did not mention that I visited the Public Record Office, or at least that branch of it that is still housed in Rolls Building in Chancery lane. It is called Rolls Building because the old pipe rolls of Plantagenet times were still there and the person in charge of them is the Master of the Rolls.

In the Victoria County History relating to these Manors there was mention of the fact that they appeared in a foot of fine at the time of Queen Elizabeth. People can get copies of those feet of fines. Here is one. It is the recording of a judgment, but not an ordinary judgment. These were collusive actions. The whole thing was set up because the only way in those days that one could get a mortgage redeemed was by going to court and having a judgment, which was in fact a consent judgment. No doubt one had to pay for the privilege. Instead of paying a building society, one paid the seven clerks in chancery or people like that.

Here is something from Worcester Assizes in the 25th and 26th years of Queen Elizabeth's reign—1558 plus 25 is 1583. So some time during the 1580s the Lord of the Manor who had borrowed money from rich city merchant venturers wanted to pay it back and had to go off and get a foot of fine. It says that the people who were what we would call mortgagees were one Franciscum Drake et Phillipum Drake—his brother, I think—which is rather a redolent name. When looking through the history of an insignificant little place in Worcestershire one does not expect to find that Sir Francis Drake was busy borrowing and lending money. He had his finger in all sorts of financial pies. It is fascinating how he popped up.

There is a canal map showing the holdings of the Manor still recorded in the 1980s, I think, in the British Waterways Board's archives. That is not all. Not only did he get a mention in the foot of fine of Francis Drake, but the rights that had been mortgaged and bought back again are also recorded. They include the right to *piscatorium aqua de Hen brook—piscatorium libere*. It was a free fishery, another franchise that was not even mentioned in the Victoria County History and is only found when looking at some other document. The Henbrook is shown as going through the Manor of Sagebury. Quite what kind of fish there were I cannot imagine but the Salwarpe is a source of salt, unusually, so perhaps it was a pickled herring fishery! There are all sorts of fascinating things.

I think I should move quickly to something that may or may not crop up in court one day. The Commons Registration Act, which had laudable objectives, rather strangely had a time limit. Under section 1 all commons, as defined in the Act, had to be registered by a time that has now passed. Under section 22 all waste land of the Manor, even that which does not have any existing commons rights over it, is defined as common, so under section 1 had to be registered.

Also under section 1, after the cut-off date no land which is common land shall be registered as common land. That has sometimes been interpreted as meaning that if waste land of a Manor without commoners' rights over it had not been registered in time, it ceased to be waste land of the Manor because it was too late. That, in my opinion at the moment, is not correct because

[Jeffrey Littman]

deeming is a way of dealing with things that one either cannot or cannot be bothered to prove one way or another. People can deem that black is white in English law. All it is saying is that if someone crops up with some waste land of a Manor which does not have commoners' right over it that has not been entered in the register in time, it will not be deemed to be common land for the purposes of the Act.

My way of interpreting this is that it falls outside the Act altogether. However, the first of those views I have mentioned was one taken by the leading authority on the subject of boundaries, a Mr Colin Sara, a member of the Bar of great distinction. Until some other people talked to him and he came out, as one has to when writing textbooks, he said that he did not think that any more. It remains an open question, and perhaps one day one of us will resolve the matter with more success than Sir Anthony Milburn when it gets to the House of Lords.

There is still plenty of hope that if someone can prove that these strips, not just under the road, but verging alongside the road, are theirs and no one has put them on the register, they may be completely free of restriction and not fall within the intended regulatory framework—the Commons Registration Act, and that covering the countryside and so on.

The one thing I have not dealt with but said I would is to go into slightly more detail about free warrens. They were abolished in 1971, with other franchises such as forest, free chase and park, for no other reason than that the Law Commission thought that sporting rights over other people's land were anomalous and that the manorial system had completely broken down and so on, so it was necessary to abolish them.

It came up with a draft Bill which was passed word for word as the Wild Creatures and Forest Laws Act 1971. It described the abolition clause as: one which formerly abolishes any franchises for free chase, park or free warren; these are franchises granted by the Crown to its subjects; these franchises have become obsolete and have long since ceased to protect the sporting rights of landowners who have come to regard these rights as incidental to their ownership of the soil.

No one challenged that in 1971 when Parliament passed the Bill in its entirety, and there is not much we can do about it, except perhaps for the following.

One reason why people cannot mess around with the surface of the highway is because they would be causing a nuisance and interfering with the rights of the public who pass over it. Nuisance is distinguishable from trespass—remember that the Duke of Devonshire brought an action in trespass against Mr Lodge—because trespass is, roughly speaking, an interference with a property or ownership right, something that one possesses physically, whereas nuisance is an interference, more than just transient, enjoying in this case the right of going over someone's land.

Although it may not be possible these days to assert directly a franchised monopoly right of free warren, none the less, if their Manor has a free warren appurtenant to it and they and their predecessors until abolition in 1971 had a monopoly right to all the rabbits—and hares, partridges, pheasants—in the copyhold lands and manorial waste, people who neighbour the bit of soil that they own will have been aware—or should have been aware—that they came to live in or occupy a piece of land next to land subject to those franchised rights.

I wanted to say a bit more about rights in respect of water courses because that is very special. People cannot own water that flows through their land; they can only own river beds. I would have quoted from the leading case in which the judge was none other than Baron Parke. However, it is already quarter to 12 and although I have only been on my feet for 40-odd minutes, if any people want to say anything more and with apologies to Mr Ackroyd, who I am sure wants to get started, I will stop, with everyone's permission, and take questions or just let people come up and look at the foot of fine with Francis Drake's name and the map. Is that all right?

The Chairman: With thanks to Jeffrey, we will then go straight on to Jeremy, who will give the view from the ground, as it were. He knows lots about common land and Manorial waste in Cumbria. One interesting thing I recall about Cumbria is that when I was acting for the late Charley Carlisle, the Earl of Carlisle, he had a map about the size of this screen, which was made in 1828. It was a map of the Barony of Gilsland, of which he was the Lord, and showed all the Manors within it. The most interesting thing about the map was that in 1828 it showed all the plans for the railway lines through it. Railways Acts are also documents to look at, but the most important thing is that this was the year before the Rainhill trials. The railway network for this country was already planned—forward thinking.

Jeremy Ackroyd FRICS (Ackroyd and Harrison, Chartered Surveyors and Land Agents): I am afraid the subject title of 'Severed manorial minerals in Cumbria' is a bit of a mouthful, but it involves some rich and interesting historical research. There is also a real possibility of making some money. For those who want to go to sleep now, I will bang the table when it is time to talk about the money side —it will be towards the end.

There is quite a lot to get through, so I will take questions at the end if I may. I speak as a chartered surveyor and not as a lawyer. I am certainly not a retired Law Lord. The reason why I am doing this talk is that about 18 months or two years ago my firm was instructed by four Cumbrian landowners who were becoming increasingly concerned about their severed minerals miles away from their landed estates. What should they do now with the proposed changes in the law, they asked? Between them, my clients own about 70 Manors scattered throughout the county and North Yorkshire. This talk is based on the review and what we found, and what my clients are doing now after the challenges in the Land Registration Act 2002.

Some landowners have hundreds of Manors within their estates, but my talk is primarily aimed at those members who have just one or two Manors with minerals attached. What is the definition of 'severed'? 'Severed' just has the ordinary meaning: that the surface land and the underlying minerals are in separate ownerships. The law is complex and that is because over the years the Courts have tried hard to balance the directly competing interests of the mineral owner and the surface owner. Members can imagine the conflict.

The surface owner wants to retain whatever is on the surface and the mineral owner wants to quarry the minerals and thereby destroy the surface. The situation could be no more black and white than that. The Courts over the years have tried to be fair to both parties.

I will discuss the following: why the review has been undertaken; where the legal interest in severed minerals originates; what has been found in the review to date; the research and the historical researchers, who are all working hard; Counsel's advice on the Enclosure Acts and awards; Counsel's advice on the research we have done in respect of copyhold minerals; an update on the mineral disputes with a cost-benefit analysis; and a summary for members undertaking research into severed minerals for the first time.

Why are the reviews being undertaken by my four clients in Cumbria? The medium-term aim is for the clients to register all their landed estates and the severed minerals with the Land Registry. They are doing so for cheaper conveyancing—my lawyer friends tell me that if one has a registered estate and sells it, the conveyancing costs could be 35 to 40 per cent cheaper than if it were unregistered—to stop claims for adverse possession; and to stop others from interfering with our severed minerals.

The Land Registration Act 2002 was the catalyst for the four clients coming to my firm for advice. As we all know, unless the severed minerals are registered by 13 October 2013 registration will not be possible thereafter.

Another reason for this work was the increasing number of developments in the semi-uplands throughout Cumbria since the 1990s, which required reasonably deep foundations and site levelling within the severed minerals. Such developments consist of telecommunication aerials, wind farms, and small landfill sites. We have always had telecommunication aerials in Cumbria, but there was a big surge in their number from the mid-1990s onwards. The question is whether the developments are interfering with my clients' minerals.

The starting point was where does the legal interest originate for the minerals? In Cumbria there are three main sources. The first is enclosed common land—minerals reserved to the Lord in enabling Acts and enclosure awards during the period of the statutory enclosures. In Cumbria these started in the 1760s and the latest one I have seen was from about 1864. The enclosure movement came quite late to the semi-uplands in Cumbria due to the generally poor quality farming land. That had advantages, because by 1820 the lawyers were more up to speed and the legalese is easier to understand. Enabling Acts also tended to be printed as opposed to being in script. The whole exercise is a lot easier compared with examining documents before the mid-1700s.

Secondly there are severed minerals reserved to the Lord in private agreements to enclose common land. In my experience, such agreements date from about the 1500s and continue until the 1870s.

Thirdly, there are minerals under former copyhold land which are reserved to the Lord in an enfranchisement agreement with the copyholder or under the Law of Property Act 1922.

I have recently seen, for the first time, an actual agreement between the Lord and 14 commoners to enclose part of the common land. It is dated 1686. It is on vellum and the 14 commoners put their cross on the tags at the bottom. Their initials were on the tags, they crossed the appropriate tag and the minerals were reserved. The agreement related to the common land in a Manor south of Carlisle: it gave consent to the commoners to enclose the land which was then leased from the Lord. That is the first such agreement that I have seen, and the researcher said that it has hardly ever been opened and is as good as new.

As we have heard, there are problems for the Lord in entering and working minerals under former copyhold land. By about 1500, almost all villein land had been turned into copyhold, and tenants had pretty secure tenure as long as they paid the periodic fines to the Lord of the Manor. Those fines were mostly fixed by 'custom' as the late medieval mind had not grasped the concept of inflation. As time passed, the fine became proportionately smaller in real terms. The expression 'copyhold' originates from the tenant's attendance at the manorial court, and receiving confirmation of his tenancy by copy of the court roll from the Lord of the Manor or his stewards.

From about this time, the Lord had no automatic right to enter the copyhold tenement and work the minerals as the copyholder possessed the land. The Lord had the legal interest in the minerals, but he could not enter without the copyholder's consent. However, in some West Cumbrian Manors it was the custom of the Manor—in this part of Cumbria there are a lot of mineral rights with minerals near the surface—for the Lord to enter the copyholders' land, dig up the minerals, and restore the surface without requiring the consent of the copyholder. In my experience, proving a custom of the Manor is difficult, but a custom of the Manor is established law with the appropriate evidence.

The documentary evidence of custom does not seem to exist for my clients' Manors; I have carried out this review over the last 18 months and have come across little. The trouble is that all the 'old boys' who used to be able to remember the custom of the Manor are long since dead. But Mike Westcott-Rudd told me after his talk that he has seen custom recited in indentures (old conveyances) and enfranchisement agreements.

With the creation of copyhold tenements in the early 1500s, Lords and copyholders have been agreeing terms for copyholders to enfranchise their land by paying a capital sum to the Lord, copyholders rid themselves of the manorial dues and liabilities. But in Cumbria, it is common that these new 'freemen' continued to pay one shilling a year to the Lord, and we have found this very helpful in proving title to land and minerals which were previously under copyhold tenure.

In enfranchisement agreements, it was normal for the Lord to reserve the minerals and, sometimes, the specific right to work them, though not always.

The Law of Property Act 1922 did not give any additional rights to the Lord for access to work minerals through statutory enfranchisement. However, we have many compensation agreements under this Act where the agent, probably out of deference from the ex-copyholder, managed to have the right to work included. In a standard compensation agreement of this

[Jeremy Ackroyd FRICS]

sort the agent has included the words 'reserving the Mines and Minerals with power to work and remove the same and subject to the Exceptions and Reservations contained in any Enfranchisement or Grant affecting the said premises'.

This agent wrote to the client's London solicitors on 22 January 1926—22 days after the statutory provision came into force. He said, 'We have been in the habit of reserving the power to work in our compensation agreements where the landowner did not object. But some wide awake owners have objected, and we could not insist on the reservation.' I have seen hundreds of standard printed compensation agreement forms under Section 138 of the Law of Property Act 1922. I understand that ex-copyholders had to have a receipt from the Lord before they could sell their land as freehold.

For those interested in the history of villeinage and how villeins obtained 'security of tenure' and became copyholders, I can recommend a book called *Copyhold Equity and the Common Law* by Charles Montgomery Gray (Harvard University Press 1963). If a modern-day politician tells you, 'We invented security of tenure for all those poor tenants at the top of those tower blocks', don't believe him. According to Charles Montgomery Gray's book, security for copyholders commenced in the latter part of Henry VII's reign, with many successful cases in the Tudor Chancery Court.

In the two-year review, we have found numerous reservations of minerals in Enclosure Acts and awards in south Cumbria. We also found a strong mineral reservation/exception in the enabling Acts that granted the bedrock and the stone within the subsoil to the Lord. In addition, there was a full right to work. This means that the surface owners' rights are limited to the turf and the topsoil, together with the right to remove stone for agricultural buildings and walls. All this was found in family estate documents and in county record offices.

We went on to identify various surface developments directly affecting the reserved minerals which is where things became interesting. We found an unlawful greenfield quarry excavating grit stone, which was reserved to one of my clients in an Enabling Act dated 1837. It was leased to a national quarry company and the surface owner was doing well from the royalty payments. We also found three unlawful telecommunication aerials penetrating the minerals, and a wind farm.

In South Cumbria, there is a large mast, used by three telecommunication companies. A security fence is in place, and there are blocks of limestone which must have been removed during construction. The important point is that the tower has been constructed with no authority to disturb the minerals. A landowner can only disturb minerals for agricultural purposes We shall have an interesting time attempting to resolve this interference and I think that the evidence is quite strong in our favour.

I am aware that a huge wind farm is being constructed in North Wales. The turbines will be 350 metres high. I do not know who owns the subsoil or the minerals, but *prima facie* if they are severed from the surface someone should be able to sustain a claim for interference—if they have not already done so. If members find that sort of thing on their Manors, I suggest they do something about it.

To prove our claims, much depends on historical researchers. I have two employed on a part-time basis. There are about 70 Manors to assess. The first task was to produce a composite Manors plan, so that we knew exactly where they all are and how they fit in with each Lord/landowner. Fortunately, my clients possess numerous old estate plans, which include the manorial boundaries, so there is no need to start at the beginning by producing manorial boundary plans from the original descriptions of the boundaries/perambulations of each Manor.

In extracts from the composite Manors' plan, we have numbered all the Manors. Once the plan was produced, the researchers' job was to go to the Cumbria Record Offices—there is one in Kendal and another in Carlisle. They studied the Enabling Acts and awards, and transcribed the boundary information onto Ordnance Survey maps.

The job of transcribing the inclosed common land on to a 1:25000 Ordnance Survey map is not the most difficult of tasks and such a person will cost about £12 to £14 an hour.

One researcher is in charge of looking at the minerals under former copyhold land. She is highly qualified with an MA in museum studies and understands the law. Her first task was to research copyhold minerals adjacent to existing quarries, on the basis that these may be expanded in the short term. Once that is under way, her second task will be to research title to copyhold minerals in Manors where there are existing commercial minerals, and where there is potential in the next 100 years or so for quarrying to take place (planning policies permitting).

Researching title to minerals under former copyhold land can be expensive and we were selective. If we had 10 researchers looking at copyhold title in 70 Manors for the next 10 years, I do not think that we would get to the bottom of it. It is a massive task and we have only eight years remaining in which to register.

An interesting point is that from a parliamentary inquiry in the 1780s, it was estimated that about 60 per cent of lowlands and semi-uplands were in copyhold tenure. We had a geological report prepared. by local geologists. In Cumbria, Solway Firth is sandstone; and limestone and grit stone are found in mid and south Cumbria. There are quite a lot of quarries there. The grit stone runs north-east to south-west, but it is variable in quality. At the moment, we are not going to research my clients' minerals within the national park.

We have to take a decision on whether the shale and sandstone between the coal seams will be registered. It is worth going to look at an open-cast coal mine if you get the opportunity—there are not many left in Cumbria; unlike chalk, coal does not come in a 100-feet-tall seam but in narrow bands, and between them there is shale and sandstone. When coal was nationalized by the Government in 1947 the other minerals between the coal seams were not normally included, unless they were part of a coal mining lease which was also acquired at vesting.

Since the semi-privatization of the working of coal, the new Coal Authority now says, 'Fine, here is the licence Mr Operator. You can dig that coal up but you

have to treat with the owner of the 'severed' minerals within the coal'. A more open market has now developed, and five years ago some of my clients were receiving royalty payments of £2 to £4 a tonne of coal mined in consideration of the destruction of my clients' 'severed' minerals within the coal seams. Such a royalty is quite useful for estate finances, but it cannot be obtained at the moment because the world price of coal is relatively low, although it is increasing. In Cumbria, where the coal is high in sulphur, I cannot see the market paying that royalty again for some time.

Having carried out all the research and gaining all this information, it was time to obtain opinions from Counsel. He advised that the Enclosure Acts clearly awarded the minerals to the Lord, my clients, and the reservations included the minerals in the subsoil plus the right to work. This means that any surface development that is not simply *de minimis*, but relatively substantial, and which is not for agricultural purposes on inclosed common land, is a trespass for which damages are recoverable. That is based on the same principle that applies to trespass of air space, which is actionable without proof of damage—see *Anchor Brewhouse Development Ltd v. Berkeley House (Docklands Developments) Ltd. 1987*; and, for those who read the *Estates Gazette*, the same principles were applied in a similar case in the High Court in Leeds in June 2004: *Laiqat v. Majid and others*.

The level of damages should be assessed on the user or 'way leave' principle. A person who has wrongfully used another's property is liable to pay as damages a reasonable sum for the wrongful use, as in the Court of Appeal case: *Stoke-on-Trent City Council v. W & J Wass Ltd 1988*.

Counsel thought that the open market rent or royalty for the telecommunications aerial, wind farm or other development should be split 50/50 between the surface owner and the mineral owner where substantial interference could be shown. I think that the development in Case Law over the past 15 to 20 years has been extremely helpful to owners of 'severed' minerals who suffer interference from unlawful developments on the surface.

We have also been busy looking at potential copyhold minerals, especially under land adjacent to a sand and gravel quarry in north Cumbria. We searched dozens of boxes of documents to prove title, at a cost of £6,500, and she produced a report, with all the relevant documents attached. Counsel believes that a case based on this work is likely to succeed in Court.

I now have some very interesting negotiations with a national quarry company currently working the sand and gravel quarry. Most of the national quarry companies will take such claims 'on the chin', but I find telecommunication aerial companies are not at all happy at receiving a claim informing them that they do not have the required permission from my clients for the foundations of their masts to interfere with the 'severed' minerals.

You will need to produce documents showing title the reserved assets, such as minerals, under copyhold land. In the case of a quarry, we have been able to demonstrate this from 1587 by searching through the estate papers. None of the copyholds had been enfranchised at any time, including at the time of the statutory enfranchisements—1 January 1926, when the Lords could—some did—agree to enfranchise their minerals, selling their mineral rights to the ex-copyholders.

We went through grants and re-grants of the ex-copyhold land from 1672 to 1938. That was a serious detective exercise. Very helpful as a starting point was a book *A Perambulation of Cumberland* by Thomas Denton, first published in 1688, and republished in 2004 by the Surtees Society. It is well worth checking at the county record office, or at the British Library, for such books before you start on the old documents. They can give useful pointers and save much time.

We worked through a long series of rental and call books, the earliest dating from 1587. In 1672, the enfranchisement agreements show that the copyholders purchased many of the feudal liabilities, but that the minerals were reserved to the Lord of the Manor. Although the copyholders were now free from the payment of feudal dues and liabilities under the 1672 agreement, they remained freemen in the Manor and liable to the shilling-a-year fine. This was important, as with this fine, we were able to trace the names in the books all the way through to 1939 when the final entry showed the now ex-copyholders had paid the required compensation to the Lord on the abolition of copyhold tenure under the 1922 Act.

You must be prepared to pay your researcher and be patient. They sit in county record offices and look through box after box, knowing that their fees are mounting, but find nothing for their client. Then, finally, they find the right document which leads to a breakthrough.

The principles of adverse possession do not apply where the minerals are severed from the ownership of the surface land. But the Courts do apply these principles where a trespasser works a quarry for 12 years: he will gain possessory title to the minerals which he has occupied and worked over this period. This can sometimes entail the trespasser gaining a valuable 'ransom strip' to the remainder of the Lord's mineral reserve.

The right of the surface owner of former copyhold land to interfere with the Lord's minerals is found in Schedule 12(6) of the Law of Property Act 1922. It gives the current surface owner the right to disturb the Lord's minerals as is 'necessary or convenient' for the purposes of making roads or drains, erecting buildings and obtaining water on the land. Buildings, in my view, do not include wind farms or telecommunications aerials. But what you can claim from surface development on copyhold land is obviously limited.

Three of my clients use Dickinson Dees, solicitors of Newcastle, for advice on landed property. The firm is highly experienced in advising on rural estate matters and is one of few firms who are experienced in manorial mineral law. The firm has now made three applications to the Land Registry for registration of 'severed' minerals under enclosed common lands in nine Manors. Again, that is all now subject to Counsel's opinion being obtained by the Land Registry, to which Mike Westcott-Rudd referred yesterday.

We have sent Counsel's opinion to three unlawful developers seeking to agree terms for them to retain their apparatus within the severed minerals or to remove it. One operator has removed an aerial.

[Jeremy Ackroyd FRICS]

We are obviously trying to obtain repossession of the 'greenfield' quarry. That case may be heard in the High Court; writs have been served but the good news is that, in September 2005, we heard that the surface owner may not put in a defence to the action. If he confirms this position we will need to sort out the compensation and royalty payments for the past six years.

My overall advice depends on whether the opinion sought by the Land Registry on mineral registration is favourable and if so I would encourage you to register your 'severed' minerals with the Land Registry. You must know what you own before any surface development commences. Negotiating to right the wrong after the development has started is time-consuming, costly, and frustrating for everyone.

The cost of the research and negotiations: surveyors and legal fees for the 'greenfield' quarry on inclosed common land are about £16,000, but we should have royalties of £75,000 a year. I reckon that we have spent £5,000 on the wind farm, but we should receive about £9,000 a year. We have spent £5,000 on three telecommunication aerials, and we should achieve rental payments in the region of about £9,500 a year.

The mineral rights under the former copyhold land in north Cumbria have been expensive to research and deal with: £15,000 has been spent to date, but as my client has no working rights we will need to do a deal with the surface owner. The royalties will be in the region of £60,000 a year., but we will have to go 50/50 with the surface owner, so that takes it down to £30,000 a year. For the four clients, that is a total of about £125,000 a year and very roughly a total value of about £1.1 million.

Those figures are quite encouraging, but it all depends on the wording in the Enabling Acts reserving the minerals in the first instance. The evidence has to be strong; if not, the Court will throw it out. Always remember the Court has to balance the interests of the mineral owner and the surface owner.

For those who have to carry out research into their Manors for the first time, my overall advice is to start your research now. You do need strong documentary evidence; if you do not have it, you will not get anywhere. You certainly will not win much against the telecommunication aerial people; they will just politely tell you to go away.

You will require a map of the Manor. If you do not have one, you will need to find an historical description of the boundary of the Manor. We have all learned at this conference that there should be plenty of documentary evidence available, and from this evidence you may be able to find enough evidence to prepare a map. My advice is that if there is no map or historical description, you will probably be wasting your money. If you can obtain a map showing minerals in your Manor, or you have one made, find out whether the minerals have a commercial value and whether they are relatively near the surface and near a road. Ask a local geologist. If you wanted to do it absolutely free of charge, you could talk to your county mineral planning officer: they are often very helpful.

You may want to hire a competent researcher to do the initial research. One of the problems that I found is that there is a dearth of good historical researchers in the north. If anyone is thinking of a new career, this could be it. Historical researchers will soon be in great demand. If you are successful with your research, register with the Land Registry.

A point about the physical extent of enclosed land in England: first, I refer to a map that comes from Professor H C Darby's book published in 1938, *The Historical Geography of England before 1800*. He took the map from Dr G Slater's paper 'The English Peasantry and the Enclosure of Common Fields' of 1907. The map shows the vast extent of common fields that were enclosed from the start of statutory enclosure movement in the mid 1700s. My view is that, for 90 per cent of the land, the minerals will have been reserved the Lord of the Manor. That does not include common land which was also enclosed, so there is a lot to go for.

If you get to know where your minerals are and get them registered, you can be even more proactive. To protect your minerals, send your manorial map to the local planning authority and the county mineral people. I have done that for clients. The local authority will be pleased to receive your manorial map because if it receives a planning application for a new quarry, officials will check the map and inform you and the potential developers of your interest in the subsoil.

Planning committee agendas can now be viewed on the internet. Planning applications for minerals tend to be on the agenda for six or seven months, if not longer and there is time to make your objections and signal your rights.

How do you know if the proposed or existing surface development will prejudice or is prejudicing your 'severed' minerals? The easiest way is to go to the site and, if it is not obvious, get a spade and dig a hole. If it is more than 2 feet deep, get a JCB. If you own the severed minerals, you should have the right of search, but if you are going to use a JCB, do inform the surface owner. I have found that surface owners are not unhappy if you do not do much damage; just carefully scrape away the grass and put it to one side, dig the hole and take a photograph. And get a local geologist to accompany you and to write up a geological description.

Enfranchisement agreements freeing copyholders of manorial liabilities exist in their thousands in the Cumbria Record Offices. They were neatly written from about 1770 in copperplate script, but very few such agreements have a plan attached showing the land. Your researcher will need to transcribe the description of the copyhold property onto a modern Ordnance Survey map.

I am continually surprised by the wealth and extent of documents that have been deposited in the county record offices over the years. There is a reasonable chance of finding historical records for your Manor. Remember that in 1900, 90 per cent of all agricultural land in England and Wales was tenanted and formed part of a small or large agricultural estate. Many estate documents will have survived.

The Chairman: Jeremy Ackroyd's instructive talk concludes another Annual Conference. In acting for a number of Cumbria clients, he has brought home to us, at the practical level, the crucial importance of doing your research first, the principal theme throughout all the papers this weekend. It is no use saying, 'Well, I am

the Lord of the Manor, and I claim rights over and under all that I survey.' You will be asked to prove your rights, sometimes, if necessary, all the way up to the Civil Courts. But if the research and mapping have been undertaken and done professionally, the chances are more likely that any opponent will come to terms with you.

It has been estimated that there are three million acres of unregistered common land or manorial waste in England and Wales. Some of this, as we heard from Jeremy, is in the north-west, in Cumbria, formerly, Cumberland, Westmorland, and North Lancashire. The two other main areas are north and central Wales, and the West Country, especially Devon.

As the Lord of the Manor, you might feel like spending a few hundred pounds on research, and even if there is little or nothing of commercial value, there is much pleasure in knowing more about the manor's history, and your predecessors in title. If nothing else, a well researched manor—with a map which can be illustrated in a catalogue, coming up for sale again in the future—will fetch quite a lot more than a manor which has not been researched in any detail. In this regard, ask your researcher to produce a simple, black and white second map for possible future catalogue purposes, as a large detailed map would be hard to reproduce. Such maps might illustrate elsewhere, such as in a local county history, or parish magazine which some one else is publishing. It all adds to the public perception of the continuing role of the lord of the manor in the community.

Selling agents can give a broad outline of owners to make the particulars more attractive to prospective buyers, but it is not economical, within their commission structure, to visit the manor or hire a researcher for detailed work.

You can still register proved manorial rights at HM Land Registry until 2013, under the Land Registration Act, and you will not lose any unregistered rights after that date. They will still be yours, but simply unregistered. The English Manor Register has been formed by a small group of experienced researchers and a solicitor to provide inexpensive registration of Manors and Rights to fill this potential gap. It is not a State body, but it is hoped that over time the Register, a not-for-profit company, will become a record of authority on the ownership of Lordships of the Manor, Extents, and Rights, consulted by government departments and agencies, legal institutions, solicitors, land agents.

We have also heard this weekend some useful legal pointers from the solicitors and barristers, and just as it is important to know what rights you have and where these are located in the manor, if these rights are of value then you will need to consult an expert lawyer in the field. There are not too many of them, and most have been with us at Merton. Taken together, historical and mapping research, and legal research will stand lords, who have commercial rights in good stead. In my experience and contrary perhaps to general opinion, lawyers are as keen as clients to avoid the Courts. If they can put together good evidence of a manorial claim, they would prefer to do that by mutual agreement, and if you have a well authenticated claim you are much more likely to achieve a favourable result without recourse to the Courts. Jeremy mentioned a few minutes ago, that one firm had taken down an aerial, and another was seeking an accommodation with his client, in face of good research and legal work.

I think I can say without fear of too much contradiction that the Society has brought together a group of researchers, land agents, and lawyers who are at the top of their field. No one else has staged a conference approaching this one on this subject. The opinions expressed by HM Land Registry, HM Adjudicator and Chief Commons Commissioner are simply opinions that could not be bought in the usual way through your solicitor.

We have heard from a researcher and a land agent and we are printing these talks, which are effectively opinions that would not otherwise be obtainable. The actual opinions of practising solicitors and barristers which we have heard have cost nothing. All of these talks will be printed in Proceedings at no additional cost to the Conference fee, and, if you were to instruct solicitors to obtain these opinions on your behalf, you would run you into many thousands of pounds worth of costs, I have no doubt.

Speakers this weekend are either members or friends of the Society, and what I have discovered in the last quarter century as its Chairman is the wealth of knowledge and experience among members, some here this weekend—whether it is minerals or common, or opening manorial fetes, fund-raising for local causes, or selling a quarry. If a member has a question or a problem, and I don't have an immediate answer, I can usually telephone another member who has an answer, or one of our friendly experts.

Membership of the Society is, of course, social, as this weekend has also been, but it is much more than that if a member wants it to be. Weekends like this, the Proceedings that will follow are the tip of the Society iceberg. Unseen is what goes on daily, of which at HQ we tend to know, but if we do not we know some one who does.

Participants

Richard Bagley, Lord of Westport
Mr and Mrs Paul Blaikie, Lord and Lady of Cantley Netherhall
Ms C Buchbinder
Murray Chapman, Trustee, the Powys Estate
Lesley Crewe, Lady of South Otterington
Mr and Mrs Arnold Davis, Lord and Lady of Barnham Broom
Elsie Downer, Lady of Crouch
Patrick Emek, Lord of Donaghmore
Anthony Engel, Barrister
Charles Eugster, Baron of Callan
Mr and Mrs John Gardyne
Professor L W Gormley, University of Groningen, Netherlands
Mark Gray, Manorial Society
Royston Griffey, Lord of Bishopsworth, Deputy Lord Mayor of Bristol
Mr and Mrs Walter J Hall, Lord and Lady of Brimstage
Brian Hamilton, Scottish Barony titles
Mrs C E Hill, Lady of Staunton Harold
Mrs W Hobday, Lady of Ruislip
John Hornchurch, Lord of Hornchurch Hall
James Howe, Church Commissioners
Mr and Mrs C R Humphery-Smith
Mr and Mrs Graham Humphrey, Lord and Lady of Harvington
Glyn Jones, Mills & Reeve Solicitors
David Jones, KJD Solicitors
Professor Nicholas Kittrie, Lord of Croughton
Ronald Knight, Lord of Purse Caundle
Julian Kowalik, Seakens Solicitors
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Mr and Mrs Russell Male, Lord and Lady of Waterton
Ms L Marriott, Seakens Solicitors
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Mrs E Orr Sutcliffe, Lady of Didlington
Michel Pilette, Baron of Kinnear
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Eugen Polli, Lord of Wellow
Gerald F Rand, Lord of Lynford
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Mrs P M Rycroft, Lady of Sunningley
Mr and Mrs H-P Schoch, Lord and Lady of Wallbury
Paul Schofield, Lord of St Margarets
Timothy Shorland, Lord of Hempton & Northwick
Roger J Shuttleworth, for the Lord of Abergwlli
Paul Sleigh, Baron of Carbury
Lord Sudeley
William Tudor-Smith, Baron of Barnstaple
R A Smith, Duchy of Lancaster
Mrs G Sobel, Lady of Croughton
Ms E Stuart, Duchy of Cornwall
Professor S Sverdloff, Lord of Theddingworth
Mr and Mrs Peter Till, the Wolseley Park Estate
Douglas and Vicky Wagland, Baron and Baroness of Pitcruivie
Dr Ralph Waller, Principal, Harris-Manchester College, Oxon
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