Proceedings of a Seminar

The Land Registration Act (2002)

held at the

Royal Institution of Chartered Surveyors

Westminster

Monday 4 November 2002

by

The Manorial Society of Great Britain

ISBN 0951666843

The Manorial Society of Great Britain

104 Kennington Road

London SE11 6RE

Tel: 020–7735–6633

Fax: 020–7582–7022

email: manorial@msgb.co.uk

The Manorial Society of Great Britain

Land Registration Seminar

Monday 4 November 2002
Held at the
Royal Institution of Chartered Surveyors,
Westminster,
By the Manorial Society of Great Britain

(MR ROBERT SMITH, CHAIRMAN OF THE SOCIETY, PRESIDING)

The Society welcomed a panel of experts to the Seminar, members of the Society, and interested professionals. Mr Charles Harpum was the barrister most closely involved in two big reports, which he wrote, on land registration reform, Land Registration for the 21st Century—a Consultative Document (1998), and a subsequent consultation document which was fed into a draft Bill and a final report (2001). The Act was passed in 2002 and will begin to come into force on 13 October 2003 in England and Wales.* The Act is perhaps the most important piece of land legislation since the Property Act (1922), and while it mostly deals with real property, it has implications for the holders of Manorial Lordships, which were the focus of the Seminar. Mr Harpum felt that a particularly beneficial change for the Manorial Lord was that registration of franchises (mainly markets and fairs) and wreck would be no longer attached to physical property. Similarly, profits prendre in gross, such as sporting rights (eg shooting) would also be registrable separately. These were considerable advantges, as were new regulations against squatters which would give landowners two years' notice before a possessory title was granted to what he called 'nicked' land. The Crown—the biggest landowner in the country—has been unable to register its property, but will now be able to do so. After the Church Commissioners and the Duke of Devonshire, the Crown—from the Duchy of Lancaster, through the Forestry Commission, to Department of Defence—is the largest holder of Manors.

Mr Christopher Jessel, a Partner in Farrer & Co Solicitors, whose firm represents many important landowners, including the Duchy of Cornwall, while welcoming the Act, put forward some doubts from the Manorial Lords' viewpoint, particularly as regards the implications of the Act on the Lords' rights to minerals. He emphasized the need to register Cautions as soon as possible if a Manorial Lord believed he owned the minerals. He also had important comments on waste of the Manor, especially roadside verges which only belonged to the Highway Authority in the context of highway purposes. He advised protective Cautions. Mr Jessel is updating his book, The Law of the Manor, with a Supplement to accommodate those parts of the Act which affect Manors (see below).

Mike Westcott-Rudd is Corporate Services Lawyer at HM Land Registry, London, who said that the Land Registry believed that much good work could be done together in the next nine months to make the Act work well for the Agency and Lords. He sought input from Lords and their advisers on franchises and profits. He was at pains to scotch the idea that the Land Registry acted only to disprove title. On the contrary, the Agency and its team of local lawyers were there to help, and had much information that could be of great assistance to Lords, solicitors, and land agents. A telephone call was all that was needed and the advice was free and independent.

While title to the Manor will not be registrable after 13 October 2003, this will not prejudice a Lord's ownership and manorial rights not on the Register by then will registrable for the following 10 years. But even after 2013, unregistered rights will not be lost. They will simply not be on the Register. The aim of the Act is to transfer to electronic conveyancing from October 2003. Traditional, paper conveyancing, as for Manors, will be as effective from next October as it always was. It will simply not be electronic if unregistered beforehand.

If not already on the Register, all three panellists strongly urged Lords to start digging now in record offices, tithe maps, and enclosure awards, to consult the Land Registry for advice, and to talk to professionals. There were nine months to register the Manor and a further 10 years to register the rights separately. A modern map of the Manor will be required and this can be constructed in many cases, fairly inexpensively, from older maps and documents. So as ever history, or provenance, is necessary. The Society can recommend Stephen Johnson and Carol Zillern who will make a report and quote a price.

**Scotland is a different legal jurisdiction and the Scottish Parliament passed a land reform Act in 2000, which is expected to come into force on 28 November 2004.*

Further information:

Manorial Law, by A W and C Barsby, published by Legal Research and Publishing, in association with the Manorial Society of Great Britain, available from the Society, 104 Kennington Road, London SE11 6RE, for £49.95

The Law of the Manor, by Christopher Jessel, published by Barry Rose Law Publishers Ltd, Chichester, for £195.00 (hardback) and £88.00 (paperback); a Supplement is in gestation

Stephen Johnson MA, 43 Seabridge Road, Newcastle Under Lyme, Staffs ST5 2HU; tel/fax: 01782-613503; email: steve.jhistoricalresearch@virgin.net

Mrs Carol Zillern, 115 High Street, Bexley, Kent DA5 1JX; tel/fax: 01322-552665; email: stewardship.services@btinternet.com

HM Land Registry, 32 Lincoln's Inn Fields, London WC2A 3PH; tel: 020-7917-8888; fax: 020-7416-4725; email: mike.westcott-rudd@landreg.gsi.gov.uk

Mr Charles Harpum (Falcon Chambers): The Act was the outcome of two big reports, one of which was published in 1998 with the somewhat preposterous title of "Land Registration for the 21st Century—A Consultative Document". It is 301 pages long. I know that; I wrote it. It proposed all sorts of weird and wonderful things for the reform of our land registration system. The traditional view has always been to regard land registration as an adjunct to existing land law, but it is not quite like that. It cannot be for various reasons.

[Mr Charles Harpum]

The proposed legislation was radical because it tackled many matters and proposed various substantive changes in the law that would be unique to registered land. The consultation document received well-informed, excellent responses, which were fed into the process and, in due course, a draft Bill and a final report were produced in 2001. I wrote that report, too. It is also long; it is 370 pages. It is unique in the history of the Law Commission that the report was published about three weeks after the Bill that it accompanied was introduced in Parliament. It was the only time that I can remember a complaint being made by Members of Parliament that they had not received a Law Commission report to help them.

The Act will come into force on 13 October 2003. Given that it received Royal Assent on 26 February this year, that may seem a long time off. However, there are reasons for the delay. The Act will make huge changes to the way in which we deal with land, some of which I shall explain. It is also necessary for rules to be made under the Act to deal with the nitty gritty, such as what forms are used for such an application and details of the process that will be used. The draft rules were issued for consultation in August. They form a weighty tome. I forget the exact number, but I think that there are about 220 draft rules to which responses must be made by 19 November. Those of you who are practising lawyers will have read them and may have comments to make about them. The rule-making process and the gearing up of both the Land Registry and the legal profession to cope with the responses means that the Act cannot come into force until 13 October next year, at which time it will bring about big changes.

What are the main objectives of the Act? Its principal objective is to facilitate the process of buying, selling, and dealing with land by attempting to create a conclusive register as far as is possible. The idea is that solicitors and licensed conveyancers can undertake virtually all investigations on title in due course on their personal computer. In other words, they will not have to go here, there or everywhere making this or that inquiry. They will be able to undertake all inquiries and investigations on line. The registered title to which they can have access already by computer is only part of the story. The National Land Information Service attempts to provide other information that people need to know about land if they want to buy it, such as coal searches, local authority inquiries and so on. Such information will be available eventually at the end of a computer, which should make the conveyancing process much easier.

The process of creating a conclusive register is not only about being able to access the register by computer, but making sure that everything is on the register. That is the key point. At present, it is impossible to have a conclusive register. I shall cite two examples. If I transfer a piece of registered land to someone, I will execute a deed of transfer in a prescribed form in his favour and, after that transaction has been completed, his solicitor or licensed conveyancer will send that transfer to the Land Registry to be registered. Registration will take place in due course. It will take effect not from the date that the transfer was executed and the person moved into his new house, but with effect from the date on which the application was received at the Land Registry, which could be some time after the person thought that the property was his. In one sense, it was his property, but he was not the registered owner until it was deemed to be registered.

A person could look at the register of title and not know the true state of the title at a given time because there may have been a transfer or other disposition of land that had not yet been registered. The only way in which to have a conclusive register therefore is to ensure that, when there is a dealing with registered land, it is registered simultaneously—in other words, when the person makes the dealing, it is registered simultaneously. The only way in which that can be done is to move from a paper-based system of conveyancing and dealing with land to an entirely electronic system. That will happen, not on 13 October 2003, but four, five or six years down the line.

The process has begun, however, and that is the world to which we are moving. Paper will be mainly banished from the process of buying, selling or dealing with land and replaced by electronic dealings. When a solicitor executes a transfer, he or she will press a button, the transfer will take place and ownership on the register will simultaneously change. So the register will be conclusive about the state of the title at that time. That has all sorts of far-reaching implications for the conveyancing process. I shall not speak in detail about those issues today, as they are of more interest to lawyers than to landowners, land agents and Lords of the Manor, who are represented here. The Act will bring about a big change in the way in which we deal with land, moving from a paper-based system to an electronic system.

One of the key aims of the Act is to provide better protection for landowners whose titles are registered and for people who have rights over registered land. In my opinion, the Act achieves that in a significant way. It improves the protection given to registered landowners and to those who have rights over other people's land, provided that they register them. The protection that they get from registration will be better under the Act.

The final objective of the new Act is to provide clear, modern legislation to govern dealings with land. Any of you who are lawyers and have ever struggled with the Land Registration Act 1925 will have scratched your heads often to try to understand it. Between you, me and the gatepost, even people in the Land Registry, who know everything, are not quite sure why some of the sections in the Act are there. Do not tell anybody, but I can point to one or two sections that I do not understand, despite years of looking at them.

There is an issue that the Act does not specifically address. It was raised in Parliament and there was strong pressure for it. I refer to the fact that there is still quite a lot of unregistered land out there, in terms not of the number of titles, but of the acreage. There are significant amounts of land—be it moorland, heathland or mountain—that is not registered. Such land will not have been dealt with for years and may have remained in the family, with ownership descending from one generation to the next.

We considered whether we could contrive a mechanism for bringing all the land on to the register. There are possible mechanisms and they were thought

about, but it was felt that, at this juncture, we were already imposing too much on people at one fell swoop and had to be realistic about what could be accomplished. We have got a new Act, new concepts, big changes and a move to a completely new way of conveyancing electronically. We thought that that was enough to keep people more than occupied for the next few years.

None the less, the Land Registry has it as an objective that all land in England and Wales should be registered by, I think, 2012. The Law Commission recommended that that should be considered again five years after the Act takes effect, with a view to devising a statutory mechanism for ensuring that the land comes on to the register. That is fraught with difficulties. There are big problems with that, as there are lots of little bits of land throughout England and Wales whose ownership is unknown or in relation to which it is very difficult to prove ownership. We all know about that and can think of such bits of land. Certainly, I encounter them quite often in practice.

The feeling was that the Act offered very substantial incentives to landowners to register their titles. It is always better to encourage people to do something voluntarily than to force them to do it, so we thought that we would see how things worked out. My guess, and certainly what I am hearing, is that more and more people who are not registered will say "Now is the time: let's get our titles registered, because we can see tangible benefits in doing so."

Christopher Jessel will tell you all sorts of reasons why I am talking poppycock and why this is the most awful Act ever. I am looking forward to that, as he will give you a completely different slant. That is good, because you will get a different perspective and he will explain some practical problems that arise from the Act.

The next issue that I want to consider is what can and must be registered under the Act. I will not cover everything in the Act, as I want to deal with things that are likely to affect you. What can and must be registered under the Act? Let us start with the "can" rather than the "must". On voluntary first registration, if somebody has a lease with more than seven years to run and it is not registered, he can register it under the Act. At the moment, only leases with more than 21 years to run can be registered. If one grants a lease of more than 21 years, one has to register it, although as we will see in a minute, that is changing under the Act. The other thing that one may register under the Act is something called a discontinuous lease. We probably do not encounter such leases very often, but they are sometimes used in relation to timeshare arrangements. Such a lease could be used to grant the right to occupy a holiday cottage in the Lake District for two weeks every year for the next 50 years. The lease is therefore discontinuous, as it involves a series of 50 two-week periods. The Act permits somebody who grants a continuous lease out of unregistered land to register it, however long or short it may be.

As you know, franchises are grants ostensibly made in days of yore by the Crown. The commonest franchises are those of market, but there are others. I recently had to advise on franchise of wreck and, indeed, on the franchise of royal fish—whale and sturgeon. People will be able to register franchises with their own titles. That cannot currently be done. At the moment, if the franchise affects specific property—some franchises do and some do not—an entry can be put on to the register to protect it. However, if it does not affect specific property, no other entry in the register can be made. Under the new Act, people will be able to register a franchise with its own title, which is useful, because I am aware that there is buying and selling. That may not occur very often, but it is possible, and if registration is possible, there will be a state guaranteed title.

The other thing that people can register, to which a similar position applies, has a wonderful legal name: profits prendre in gross. To you and me, that means, by and large, shooting and fishing rights. At the moment, those are a bit of a problem, because, once again, they burden land and an entry can therefore be made in the register in relation to the land burdened, but they cannot be registered with their own titles so that they can be bought and sold. I am well aware that shooting and fishing rights are bought and sold quite a lot. There is a lot of dealing in such rights, which will be facilitated by the Act, as they can be registered with their own titles, which makes dealing with them that much easier. That is the case because the title does not have to be deduced, as it is on the register, it is state guaranteed. When we have gone what I call "E"—electronic—that can be done electronically. So much the better.

That is voluntary first registration, or what people can register. What about what must be registered? The big change is that people will have to register the granting out of unregistered land of leases for more than seven years and not leases for more than 21 years, as is the case now. That is a big change and it is not entirely popular. Similarly, the assignment of existing unregistered leases that have more than seven years to run will have to be registered. If I had 10 years left of a 21-year lease and I assigned it, the transfer would have to be registered when the new Act takes effect.

It must be said that the Land Registry and the Law Commission were not the instigators of the seven-year rule policy. The Government said that they wanted a seven-year provision because they wanted more things to be included on the register. Personally, I am not unhappy about that because I am a believer in land registration. However, it did not eminate from the Law Commission as it is not actually a law reform question, but a pure question of policy. It was Government-driven and personally I am rather pleased about it. I know that Christopher Jessel is not, as he wrote a very rude letter to the *Estates Gazette* about it. I am sure that he will have more to say about it.

The other thing that is subject to compulsory registration is again a bit of a lawyer's mouthful—the grant of a reversionary lease to take effect in possession more than three months after grant. That means that if I were today to grant you a lease of my land that is to take effect in possession in more than three months' time—say, in March next year—however long or short that lease may be, it will have to be registered. Even if the lease were only for three years, the fact that it was to take effect in possession in March next year—more than three months from today—would mean that it would be subject to compulsory registration.

Let us turn now to registered land. Let us suppose that I own registered land and that I want to make some dispositions of it. The Act extends the circumstances in which dispositions have to be registered. First, as might

[Mr Charles Harpum]

be expected, if I grant a lease for more than seven years, it will have to be registered. I have already mentioned the assignment of existing unregistered leases. I have also mentioned the grant of reversionary leases to take effect in possession more than three months after grant in the context of grants out of unregistered land.

The grant of a discontinuous lease of any length has to be registered if it is granted out of registered land. Why? They are hard to discover. How does one know that the people who are in a little cottage in the Lake District this week will be there next week? How does one know about the rights of the people who will be there next week?

The Act has another important practical effect. After it takes effect, all easements and profits that are expressly granted or reserved out of a registered estate will have to be registered. That is not currently true. Many easements that are granted, such as rights of way or rights to buy are not registered. That is the case for technical reasons. They do not have to be registered and can still be protected if they are not, but that will not continue when the Act comes into force. If one grants an easement, for however long or short a period, be it for a freehold interest or even just a two-year leasehold interest, one will have to put a notice on the register about that easement. I know that that particular change is not regarded as entirely welcome—I believe that it is particularly unwelcome among those who deal in commercial property—but it is consistent with the principle that we are aiming for: a conclusive register. If we are to have a register that will tell us everything when we look at it, everything must be put on to it. That is part of the story.

I said that part of the aim of the Act was to provide better protection for property rights over someone else's land. At the moment, if somebody reckons that he has rights over his neighbour's land, but the neighbour will not cooperate in the registration, he will have to put a particular sort of entry on the register—a caution. A caution is not very helpful. All that it does is tell the cautioner when a neighbour will deal with his or her land. It will then be possible to have a punch up and work out whether the cautioner has a right over the land. If the notification about the caution was not received for one reason or another and there is nothing to say that the neighbour is going to sell his or her land, the claim could be lost.

The new Act changes that arrangement, as it abolishes for the future, but only for the future, cautions against dealings. It also abolishes an odd entry called an inhibition, which I will not trouble you with. The important point is that it gets rid of cautions against dealings. Instead, if a person has rights over a neighbour's land such as a right of way or has been granted an option to buy the land, if the neighbour will not cooperate in the registration, that person will be able to enter a notice on the register. That gives a right to complete protection against any buyer of the land. Once the notice is on the register, the person's right will be protected. The priority will be protected against all comers, so the right is much better protected. The neighbour can attack the notice if he or she thinks that it should not have been put on to the register, but it can be registered and protected in the meantime. If he or she does not attack it, it is there, it is safe and the right is protected. Property rights will therefore be better protected by that system and we will not be up against the vagaries of cautions, which cause a lot of difficulties in practice.

I also promised that the Act will give much better protection to land ownership where the title was registered. It does. I will be open with you, ladies and gentlemen: I do not like squatters. To put it in the vernacular, I do not like the idea that somebody can nick my land. Did you know, ladies and gentlemen, that 20,000 applications are made each year to Her Majesty's Land Registry by squatters who want to register land that they have nicked from their neighbours? Did you know that 15,000 of them are successful? You may have thought that football was the national pastime. I am sorry, but I have to tell you that it is nicking your neighbour's garden. Sometimes that takes place on a fairly grand scale. A House of Lords case arose in that regard earlier this year. I did not see the tabloids, but they probably said something like "Berkshire widow in £10 million Lotto win". It was not a Lotto win; she won in the Lords. She had been a squatter and managed to acquire a title to prime Berkshire development land—I cannot remember how many acres were involved—by grazing her cows on it. I shall be quite blunt: I do not like adverse possession or the idea that people can lose land without necessarily realising that somebody is effectively stealing it. That is an unfashionable view in certain quarters, but it is none the less my view.

I made the interesting discovery that English law is rather unusual. Every other Commonwealth country that has a system of registered title realizes that the rules of adverse possession under English law did not make sense in a registered context. English law presupposes that all titles are based on possession. In unregistered land, the basis of title is ultimately possession. If somebody has been there long enough, the land is theirs, and we have protected that principle by statutes of limitation since 1623. Registered land is not like that. We know who owns the land, as the register tells us. There were two jurisdictions in the Commonwealth that had done nothing about that: Tasmania, and England and Wales. Now it is just Tasmania.

Anyway, the new system of protection against squatters works in something like the following way. Wicked squatter Harpum has been in adverse possession of your land for 10 years. He can then apply to the Land Registrar to be registered as owner of the land that he has wickedly nicked from you for the past 10 years. When the registrar receives the application he will notify you and certain other people. For example, if the land were subject to a mortgage, he would tell the mortgagee. He would also tell one or two other people and say, "Do you object?" Surprise, surprise, you would say, "Yes." Wicked squatter Harpum is then told to go away unless he can bring himself within some fairly narrow exceptions.

The only exception that really matters is what I call the boundary dispute exception. The register is not conclusive on boundaries, as people know, as we have something called the general boundaries rule. There can be fixed boundaries—or determined boundaries under the Act—but they are rather unusual. They may become more common. We have to accept, therefore, that the register is not conclusive in relation to boundaries, so

there has to be a bit of give and take. We all know what happens. A builder lays out a new estate with lovely Land Registry plans. All the fences are marked, but the only trouble is that he puts them a foot out from where they appear on the plan. You will know that that happens every day.

The other problem area is when somebody owns a bit of land and thinks that he owns another bit because of where a hedge or stream is located, but that is not the true boundary. The physical layout of land may suggest that I own areas that I do not. Sometimes, people will innocently believe that they own a piece of land that belongs to their neighbours. If somebody can prove in such cases that, for 10 years of adverse possession, he believed on reasonable grounds—let us remember that that is an objective test—that the land in question was his, he will be entitled to be registered. What he cannot do, however, is what the lady in Berkshire did and graze his cows on someone's field for 12 years, which is the current limitation period, and say that it is his.

It will therefore be much more difficult for squatters to acquire title to land. That seems a very good reason for large landowners to register. They cannot police every nook and cranny of their estates and check in every corner that people are not encroaching. That is not realistic, so there is now a very good reason to register the land for people who think that they are remotely at risk from squatters. Such people will get a lot more protection. They will get an early warning and a chance to kick the squatters out. It is only if such landowners do not object to an application or let the squatters stay for two years after having objected that they can get the land. If somebody is stupid enough not to take steps to get the squatters out having objected and leave them there for another two years, the squatters will get the land. However, that is the owner's problem. He will at least have been warned and have had the chance to get them out.

I am quite unashamed of the provisions. I do not like squatters and I am pleased that life will be more difficult for them, but then I believe in land ownership as, I suspect, do most people in the room.

Wonderful learning went into the Act, and I had to examine the Crown's position in great detail. We have a bizarre system at present. The Crown, which is the greatest landowner in the realm, cannot register much of its land, including the foreshore around most of the kingdom. Why is that? It is because the Act says that a person must register an estate, freehold or lease. The Crown does not have an estate. It is a sovereign, paramount Lord and has absolute ownership—that might not be technically the right way of putting it—of its land. It does not have a mere estate like we lesser mortals.

The poor old Crown cannot register the land that it owns, although it owns a large amount. It seems a bit daft that the Crown, of all things, cannot register its land. Well, it can under the Act. The Act permits the Crown to grant itself an estate, in fee simple, in order to register its land. That is important and will bring much land on to the register. I know that the Crown is keen to register a lot of land, especially because that will protect it against squatters. One might think that squatting on the foreshore is a strange idea, but people build all sorts of things such as piers and pipelines out on the foreshore. The Crown is especially keen to protect the foreshore and also such things as the Royal Parks.

Many distinguished Lords of the Manor are present, so I want to talk about aspects of the Act that are specific to them. It makes three changes to the law that affect Lords of the Manor. Some they might like, and some they might not like, but the legislation is an Act of Parliament, so there we are.

I wish to refer first to something that Lords of the Manor need not worry about. It will no longer be possible to register a Lordship of the Manor with its own title. We are discussing only the title "Lord of the Manor", not the land or anything else. A Lordship of the Manor may not be registered after 13 October 2003. If a title is registered before then, that is fine. It will stay on the register unless it is removed. That does nothing to prejudice anyone because a Lordship of the Manor is not a burden on land in the same way as a right of way or restrictive covenant. The title "Lord of the Manor" carries rights such as the right to manorial documents and the right to hold a court. A person will still be able to own and prove entitlement to a Lordship of the Manor, but that will be done in the old-fashioned, unregistered way as is currently done with an advowson.

Does anyone here own an advowson? Yes, I thought that at least one person would. One used to be able to register an adowson, but in about 1986—I think, I will be told off if I am wrong—it was said that it could no longer be registered. That does not affect its validity; it is still there and it is bought or sold in an unregistered way. That will be true of Lordships of the Manor. If any of you want to register your Lordship, you should get cracking and do that before 13 October 2003. Do not worry if you do not register it because the Lordship of the Manor will not be affected and there will be no prejudice to it.

I think that the Land Registry found it quite difficult to deal with Lordships for registered land and there were practical problems, although Mike Wescott-Rudd might say more about that later.

I suspect that Christopher Jessel might say more about my second point in a minute. At present, if the sale of a Lordship of the Manor is conducted with the sale of all or part of the land of the manor and if the title to the land is not registered, there is no requirement for compulsory registration. If any other land was sold, compulsory registration would be required. Land that is sold with the Lordship of the Manor is not subject to compulsory registration. There is a technical reason why, but I shall not go into it because I do not want to ruin your afternoon. The principle disappears under the new Act because the requirement to register the Lordship of the Manor disappears. After the Act comes into force, if the Lordship of the Manor is sold with all or part of the land to the Manor but the title to the land is not registered, compulsory first registration will apply. I know that there are practical problems such as defining manorial waste and working out what falls within that. Nobody says that there are not problems. However, in the future, the present exception to compulsory registration will disappear.

The third change relates to manorial rights and is extremely important. Lords of the Manor present must bear it in mind because it might affect them. Those

[Mr Charles Harpum]

manorial rights are the Lord's sporting rights; the Lord or tenant's rights to minerals; the Lord's rights to hold fairs and markets; the tenant's rights of common, which are governed by the Commons Registration Act 1965, so they are in a sense irrelevant; and the Lord or tenant's liability for the construction, maintenance and repair of dykes, ditches, canals and other works. I have taken that list from a schedule to an Act that took effect in 1922, as it contained the most famous statement of those rights and defined the nature of Lords' rights.

Manorial rights are currently protected both on first registration and on any dealing with the land affected by those rights after registration, even though they are not protected on the register in any way. Even though they are not protected on the register, they will bind the purchaser of the land or on first registration, as the case may be. In those terms, current law refers to overriding interests, which are unregistered interests that bind a person who acquires registered land even though the right is not registered.

Overriding interests are a major obstacle to our aim of achieving a conclusive register because, by definition, they are binding even though they are not on the register and may not readily be discoverable. The Act has a series of strategies that I do not need to go into today for dealing with overriding interests and reducing their scope and impact. What is relevant for current purposes, however, is what the Act says about manorial rights. The Act ensures that the overriding status of manorial rights will be protected, as now, for 10 years after it comes into force. Until 13 October 2013, manorial rights are protected even though they are not on the register. If the title to land is unregistered, they are protected even though there has been no caution against first registration, a technical device for ensuring notification about the registration of any land over which rights are claimed.

During that 10-year period, the owner will be able to protect his manorial rights by registration, either by putting in notice on the register if the title to the affected land is registered or by lodging a caution against first registration if the title is unregistered. He will not be charged by the Land Registry for doing so; there will be no fee for that registration. After 10 years, the rights are not lost, but they will no longer be protected automatically. They will be protected only if an entry has been put on to the register.

If you have those rights—many of you will have—start thinking about getting them registered. Start a strategy for ensuring that those rights are registered. You will not have to pay the cost of registration for 10 years after the Act comes into force, but afterwards, although you will not lose your rights, they will be unprotected. That means that, if the land that they affect is sold, you may lose them as a purchaser will take free of them.

That practice of phasing out overriding interests affects other rights that may concern you, such as franchises. If you have a franchise that is a burden on specific land—some franchises are and some are not—you will have 10 years to ensure that those rights are protected on the register, either if the affected land is unregistered by a caution against first registration or if it is registered by the entry of something called "a notice". Again, there is no charge for registration during the 10-year period. I think that that needs to be borne in mind.

There are many other things that I could have said about the Act, but I think that I have kept within my 45 minutes, as I promised to do.

The Chairman (Mr Robert Smith of the Manorial Society thanked Mr Harpum and invited questions.

Mr Zef Eisenberg: Charles Harpum mentioned that something needs to be submitted on 19 November. What is it?

Mr Harpum: 19 November is an important date because it is the closing date for responses to the consultation on the draft land registration rules. If you have a copy of them and you have something to say, please make a response. It will be helpful and it is your chance to have a say.

Mr Zef Eisenberg: Your last comment was about franchises. Are you saying that agreements or restrictions on a piece of land will not be relevant after 10 years?

Mr Harpum: No. Franchise is a technical term and relates to a specific Royal grant. Franchises include the right to hold a fair or market and the right to wreck. If a ship wrecks on your bit of shore or you own the foreshore on which a ship lands—not many people do because most is owned by the Crown—you can collect the wreck. That applies if a whale washes up on your beach, if you have the franchise of Royal fish. There are a finite number of franchises and they are a bit weird and wonderful. Those that generally arise are for markets and fairs. Some markets and fairs are specific to an area of land and require protection, but others are not. There is much learning about that in case law, which I have examined, but I do not think that it is a matter for today.

Mr Ray Woodberry: If the manor owned subsoil, how could that be registered?

Mr Harpum: No problem. The same way in which you register anything else.

Mr Woodberry: Do you class it as subsoil?

Mr Harpum: Yes.

Mr Woodberry: What about roads? They will not accept roads for registration.

Mr Harpum: When you register a road, you register the subsoil underneath it. If a landowner owns land adjacent to the road, there is a presumption that he owns subsoil up to the middle of the road, in the absence of evidence of what actually happens. The Land Registry will entertain applications to register to the middle point.

Mr Woodberry: It will not at present. Before I came to the meeting, I got in touch with 12 land registries that said that they do not register roads.

Mr Harpum: I have seen some that do. Mike Wescott-Rudd will tell us about that.

Mr Woodberry: The big problem is that telephone companies, councils, and gas companies want to know who is Lord of the Manor. They want to find out the owner of a piece of land so that they can dig it up, but there is no register.

Mr Harpum: The Lordship of the Manor cannot be registered, but manorial land can be registered. The inchoate title cannot be registered.

Mr Woodberry: But what if someone owns it?

Mr Harpum: There is nothing to stop a person registering ownership of the land.

Mr Woodberry: As Lord of the Manor?

Mr Harpum: The Lordship, as such, cannot be registered but that covers quite limited rights such as the right to hold a court, although no one can be compelled to attend it, the right to manorial documents and the right for a person to call himself the Lord of the Manor of Bloggsworthy, or whatever. However, nothing stops the registration of manorial land.

Mr Woodberry: You can class it as "owned by the Manor of so-and-so"?

Mr Harpum: You can call it what you like as long as you can identify that you own the land. Do not worry about that.

I would be interested to know what the Land Registry practice is because I recently examined cases in which the Land Registry was prepared to register to the middle line of the road in the absence of evidence of who conveyed it. There is a well-established presumption in law, which was established by House of Lords authority, that a person owns the land up to the middle of a road if he owns land adjacent to it.

Mr Tony Judd: May I ask two questions? The first relates to easements over a common. Who will have to register the easement? Will it be the Lord of the Manor or the people who own the easement? I am thinking about such things as electricity infrastructure, water, and ditches.

Mr Harpum: The need to register will arise only in relation to grants of easements that are made after the Act comes into force. Do not worry about existing easements because they are protected. If I grant you easements over my land, you can register them. You would know that I own the land and that I have granted you the right. If you take the document to the Land Registry, it will register it. Existing easements will probably come on to the register in due course. There will be obligations to disclose the easements to which the land is subject, when dealing with land. If the registrar is satisfied that there are such easements, he will register them. However, they will not be lost if they are not registered.

The rule on registering easements is purely prospective. Do not worry about existing easements. Many will continue to be protected as overriding interests without registration. That will not be affected by the Act because it contains transitional provisions that preserve the overriding status of such rights.

Mr Judd: We have registered a manor and its heredity, and there is a common with it. The 1925 Act says that the registration or conveyance of a manor automatically conveys all woods, commons and ways. Has one secured registration of a common automatically by registering the manor at the Land Registry?

Mr Harpum: When you say "common", do you mean the soil of the common or commoners' rights over the common?

Mr Judd: The soil of the common.

Mr Harpum: I think that you still have to register that with its own title. If you had commoners' rights over common land, you could not register them as it would have to be done under the Commons Registration Act 1965. There are currently two mutually exclusive registration systems, for better or worse.

Mr Judd: Is there any plan to make the Commons Registration Register compulsory on the Land Registry?

Mr Harpum: There has been some discussion of that and consultation was carried out. I forget what the Department was then called, as it has changed its name so often. We will call it DETR for the moment; it is now the Office of the Deputy Prime Minister. That Department consulted about the matter, but it is not straighforward and involves some problems. The reason why is this: the Registry guarantees rights over land. However, people were able to register common rights on quite scant evidence up to a certain date after the Commons Registration Act came into force. There are disparities between the quality of title that was required for commons registration purposes and the much higher standard required by the Land Registry. In an ideal world, we would be able to combine the two, and I am sure that that will happen in due course. I do not know what became of the consultation to which I referred; I suspect that, like many other consultation exercises, it went on to the back burner. I am sure that it will be resurrected one of these days.

Mr David Harris: My client has a Lordship that involves a foreshore with probably the largest tidal flow in the world, or the second largest, so you can guess which one it is. There is a big difference between high tide and low tide. How far does the Crown's right go as far as tidal foreshore is concerned?

Mr Harpum: I do not know. I will have to ask Christopher that, as he is the expert.

Mr Christopher Jessel: There are different rules in relation to high water mark and low water mark. In relation to high water mark, there was a case fairly early in the 20th century that said that the limit was the median line of ordinary tide. To calculate the line, one

[Mr Christopher Jessel]

takes the highest and lowest tides and draws a line roughly halfway between them, which is the limit of ownership of the top of the foreshore.

The bottom of the foreshore has been obscure for some time, but in a case that arose about six or seven years ago, Anderson *v* Alnwick District Council, the judge said that, for the purposes of that case, lowest astronomical tide was taken for the bottom. That takes the lowest tide in the month or year to see how far the sea goes out and makes it the limit of ownership. The case related to the interpretation of bylaws and the judge was careful to say that it did not necessarily apply to property ownership, but the general assumption is that it probably does, although the particular point has not been tested.

Mr Harpum: That was an interesting case. It was about digging bait, as I recall.

Professor John Montgomery: I have two academic questions for you, just for the fun of it. First, were you influenced by the Australian Torrens system as you were messing about with all this? Secondly, has the measure done anything about the abominable practice of gazumping in this country?

Mr Harpum: Those are two very good questions. First, on the Australian influence, shortly after the Act was in Parliament, one of my erstwhile academic colleagues, a professor at Bristol, grabbed me at a conference and said, "So you're introducing a Torrens system into this country, are you?" I said "Funny that you say that, David; glad you've noticed." We certainly were influenced by Torrens systems. Our starting point for the system of adverse possession that we have now introduced for England and Wales was the law in Queensland. We considered what was done in the Australian states, as there is nothing like finding out what other people have done to supply ideas. We took the idea that was used in Queensland and developed it into quite a sophisticated variant, but the essential idea that somebody is given early warning about a squatter and the chance to kick them out comes from Queensland. Yes; I put my hands up, as you have caught me out. I have been looking at what was done in other systems.

The second question was about the disgraceful habit of gazumping. When we had a falling market, the even more horrible term "gazundering" was used. Unfortunately, there is one thing you can never legislate against—human nature, and particularly human greed. The idea of e-conveyancing and the model that is being developed, which I have deliberately not talked about today, is designed to facilitate the conveyancing process and ensure, especially in relation to chains of sales, which I know do not affect most people here, that there is less chance of chains of sales breaking. I do not think that gazumping can ever be completely overcome, but the quicker the conveyancing process can be made, the less attractive gazumping becomes, because the less chance there is that prices will fluctuate during the period for which the sale is on. If all sales could be got through in six weeks or whatever, there would not be quite so much incentive. If you can think of a way of legislating against human nature, let me know. The trouble with most of the devices that people have come up with for dealing with gazumping is that the cure has generally been much worse than the disease.

Professor Montgomery: The reason why the practice does not exist in either the United States or Scotland is that nothing is allowed to be subject to contract. That is to say, when an agreement is entered into, an equitable right to specific performance is immediately created. It seems to me that it is the wretched "subject to contract" aspect in this country that has posed so much of a problem.

Mr Harpum: We hear a great deal about the wonderful conveyancing system in Scotland, but it is not wonderful. We could adopt the Scottish system tomorrow. The Law Commission published a paper before my time showing how the Scottish system could apply perfectly well to England. It is entirely a matter of culture. It is not a matter of law. However, there are some fundamental problems with the Scottish system. One has to be prepared to rent a house and may have to be prepared to borrow money from a bank. I do not know when you last looked at the cost of bridging finance, but the banks rip people off something shocking. It would be fine if we did not have banks that were licensed to rob, but that is part of the problem.

Yes, we try to link everything up so all the pantechnicons move at the same time, which is wonderful. People do not then have to pay interest or move into rented accommodation, and that is considered to be a price that most people are prepared to pay. It must also be said that the number of dealings in Scotland is significantly lower than the number that take place in England and Wales. The population there is about 5 million, but it is a lot larger in England and Wales, and the level of activity in the market must be taken into account. We will probably continue with our present system and have periodic fulminations about gazumping and gazundering, and that will be it.

The Chairman: We will take one more question before we break for tea.

Mr Harpum: There is nothing to stop people asking me questions at tea time.

Major Henry Sawrey-Cookson: My question is about overriding rights such as sporting rights. Should one register a caution if one has reason to believe that they exist, such as in respect of copyhold tenure? For 25 years, I asked a particular farmer whether I could stand guns in a field that was vital to the shoot. He refused. When his mother died, the farm was broken up. To my amazement, when I received a copy of the document, it said, "All sporting rights reserved to the Lord of Manor". How can we find out all these things before it is too late?

Mr Harpum: I do not dispute the fact that that is a problem. Whenever one imposes a positive requirement of registration on people, one is inevitably assuming that they know their rights. I have to accept that that may not be so. We were not oblivious of that fact and were mindful of the not entirely satisfactory equivalent

experience in relation to the Commons Registration Act 1965. It is a question of how far we are willing to go to try to get a conclusive register. We debated long and hard about how long we should give people to register their rights and whether it should be 20 years or 10. In the end, we decided that 10 years ought to be time enough. The clear message is that, if you think that you may have rights, you should start digging. You have got 10 years to do it and your rights are protected until then. If you think that you have got rights, do some investigation and see whether you can discover them.

Clearly, if the land has been registered, your rights should be on the register anyway as they should have been picked up by the Land Registry on first registration. They are not always picked up, but they ought to have been. My advice is to do some digging. If you suspect that you have rights, try to find out what they are and protect them if they can be substantiated. You will have to substantiate them. I take the point, which was good, valid, and a not unconsidered point. It was a very carefully considered point, but as I say, one has to weigh up various competing policy objectives. If we are serious about a conclusive register, we must do something about it.

One problem with such rights is that they are unexpected. When you buy land, you do not necessarily expect to find that the local Lord of the Manor has a right to fish on it or something like that. So you can see why we were keen to get them on to the register so as to ensure that everybody knows about them and is aware of what they are buying.

If anybody wishes to come and ask me things at tea, I shall be happy to do my best to help.

The Chairman: We will now break for tea, but before we do so, I should like to say that a very good point was raised about rights. Some research has to be done into them. Two researchers are here. It is necessary to go back to the tithe maps, the enclosure awards and possibly court books, court rolls and so on. One can get a lawyer to do that work, but he will charge a great deal of money and will often simply hire an historian to do it for him. There are two people here who do such work, if they could stand up. One of them is Steve Johnson and the other is Sheldon Rooks at the back and we obviously have their details.

We will break for tea at this point. Charles will be here for the rest of the afternoon and we will meet back here in about 15 minutes.

Seminar suspended at 3.30 pm.

On resuming—

The Chairman: Ladies and gentlemen, welcome back. When we reach questions and answers, may I again ask you to say your name so that the Reporter can ensure that we have it correct?

We shall do things slightly differently this time. Christopher Jessel will speak first and Mike Westcott-Rudd, from HM Land Registry, will speak immediately after him. We shall then have question and answers in which all three panellists will participate.

Mr Jessel: Charles Harpum mentioned in his introduction that I am somewhat critical of several provisions in the Act—I am. I think that one or two things could have been done differently, especially with regard to manors. Given the vast amount of work that was being done, I thought that the work on manors was a little marginal. However, I want to make it clear that I am a fan and supporter of the Land Registration Act. It is excellent; it has improved the law enormously. It is clear and chances are that it will work well, on the whole.

I shall focus on a few squeaky corners that might not be as clear as they could be and that especially affect the manorial world. However, that does not derogate from the enormously good work that the Act can do. My two colleagues were deeply involved with the process, but I was on the periphery. It was impressive to see the amount of discussion, learning, and analysis that went into it. Every detail was examined carefully using a lot of research and thought, and the product is good and of definite class. Despite what I shall say, let us start on that basis.

Rather than going over a general area, I shall examine three topics. My third topic is waste, especially roadside verges, which can be financially important. My second topic is minerals, especially those in relation to copyhold land. I shall start by discussing franchises and profits. I shall pick up on what Charles Harpum said about that and fill in more about the way in which it might affect those present.

I shall leave manorial waste until last because I suspect that it will be the topic on which my two colleagues will disagree with me most strongly. We are all learning about the Act as we go along and I have no doubt that after I make statements, they will refer me to a section or subsection and say, "It isn't quite like that", and I will reply, "No, it isn't, is it?" If you see sparks flying and corrections made, it is part of what we are here for today. I shall building up to that because Mike Westcott-Rudd will give you practical ideas about what to do about registering areas from the Land Registry's perspective. I will point out problems and he will tell you how to solve them—I hope.

The Act makes a fundamental difference to several ways in which we see the law. Hitherto, as Charles Harpum said, the law has rested largely on possession that is proved by evidence. The evidence in most cases is a heap of title deeds, but they are not special. They are simply one form of evidence of ownership. People sometimes produce title deeds that are complete nonsense, and unfortunately that happens with manors. Several of you will know that you may get a string of title deeds that conveys a manor only to find that another person has an equally convincing set of deeds that conveys the same manor. It is common for land to be held in different ways and at different times that are not always consistent.

Charles Harpum discussed absolute titles. That is not quite the case because all titles in English law are relative. However, they are titles that have derived historically from grants by the Crown, as he explained. In a sense, the old-style title was a matter of proving where you are. With land registration, you simply look at a computer to find out whether you are registered as the owner. If you are not, unless you have one of the limited number of grounds to rectify the register, you claim for indemnity against the Land Registry. I might say a little about that later.

[Mr Jessel]

Charles Harpum spoke about franchises and profits. I shall say more about them because they are important to Lords of the Manor. A franchise is defined, in technical terms, as "a portion of the prerogative in the hands of the subject". There are two types of franchise. First, there is a franchise to which the Crown has a specific right. Charles mentioned the right of wreck. The Crown, as a broad principle, has the right to take items found all around the coast that have washed ashore from ships that have sunk or items that have been thrown out of ships in danger of storm. In the middle ages—especially—sailors would throw items off a ship to lighten the ship. If such items float ashore, they are wreck. If the ship survives, the true owner can claim the items, but if there is no true owner, the owner of wreck has the right. If the Crown has granted a person the right of wreck, Crown rights are diminished to that extent.

There are several such rights including treasure—previously treasure trove—although there are very few of those. Another right is the right to hold a court leet, although most of them are now in private hands. Other rights relate to waifs and strays, and there are other obscure ones. Such things are often referred to as "flowers of the Crown".

Charles mentioned other types of franchise that do not exist until the Crown grants them. The most obvious is the right of market, which is a restriction, strictly speaking. Anyone can buy or sell things and if there is a concourse of buyers and sellers, that is a market. A person who has a right of market has the right to stop anybody else holding a market within a defined area. The area might be a borough, the radius of six and two thirds miles from a point or an area that is defined in another way. A further franchise created by the Crown is the right of ferry, which is the right to carry passengers from one side of a river to another. Another is the right of toll, which is the right to charge people for going along a road.

Mike Westcott-Rudd has a copy of the massive Law Commission consultation document. If anybody has not seen it, you have a few days to comment on it later in the month. It says helpfully that there are two ways of registering franchises. Several franchises relate to a defined area. A person can register the right to charge toll on a stretch of road or the right of wreck on a stretch of beach because he will have a map and everybody will know where he stands. Other types of franchise, such as a court leet, are more difficult to define.

Another example of a franchise is legal personality. If the mayor and burgesses of a borough or the master and fellows of a college have the right to be a corporation, that is a franchise. It has no landed significance at all because it cannot be defined on a map. Such a franchise will be registrable, in principle, but will not be accompanied by a map. That is the Land Registry's original proposal, but it wants to receive comments. If you have a peculiar franchise and you wonder how it will be registered, give the Land Registry your comments now because you will not have a chance after later this month.

Profits are similar to franchises and, in fact, they overlap to an extent. The right to a profit is a right to take something from another person's land. The most common is the profit of grazing, which is the right to take grass through the mouths of cattle, sheep, and horses. Many profits are common rights that are not registrable under the Act. However, a right of sole herbage or vesture will be registrable.

Sporting rights are quite interesting. They arise in various ways and Lords of the Manor often claim them. There are historically two types of sporting right. There are rights of free warren, which are sometimes known as rights of chase. The theory was that the King had the right to take noble beasts—boar, certain types of deer, but not all of them, and pheasants; there is a limited list. Landowners had the right to take such beasts on their land, but the King had the right to do it anywhere throughout the country. A person would not want to exclude the King from hunting on his land because it would be a great favour. However, he would want to stop the King from granting the right to his next-door neighbour. People were often prepared to pay a lot of money for a right of free warren. It was later defined that the King would never grant rights of warren on other people's land without consent. However, rights of warren sometimes exist on copyhold land of copyhold tenants of the Manor. Rights of chase and warren were abolished in 1971. As there is a presumption against destroying rights without compensation, it is thought that they were probably converted into profits.

Other types of manorial sporting rights were referred to in the Law of Property Act 1922. The most obvious example is fishing, which Charles mentioned. They exist as manorial rights and there are many cases of their being let to a local corporation. They merge into other rights such as rights of several fishery, which gives the right to take fish from a tidal river. The right to take fish from a non-tidal river is not a problem because it is part of ownership, but the right to take fish from a tidal river depends on a Royal grant. That might be a franchise or it might not—nobody is quite sure. It might exist not only for fish, but for an oysterage. Many oysterages are governed by Acts of Parliament.

Franchises and profits tend to merge into each other, and it is sometimes difficult to say which is which. If a person enjoys the right of treasure—most people do not but there are few private ones—he has the right to enjoy ownership of a valuable ancient artefact that was discovered on another person's land. The rights will all be lumped together and can be registered, if a person can prove his title. However, there is very little time to make comments about all that to the Land Registry so that it can get the rules right. If you have such an interest, I strongly suggest that you make comments.

As Charles Harpum mentioned, a 10-year period applies to registering franchises, although I do not think that it applies to profits, which can be registered without a time limit. If there is doubt about the right, I support Charles's advice to get on and do it, and worry later, because after 10 years, it might matter whether you have a franchise or a profit.

I can move on easily to minerals because the right to take mineral substances from somebody else's land is a similar matter. Obviously, a person who owns land up to the top of the sky and down to the centre of the earth owns the minerals in that land. However, minerals have been extremely important and commercially valuable, which is why they have been exploited in many ways. Minerals have become separated from surface

ownership. If that is done specifically by conveyance with a person selling the surface and retaining minerals or vice versa, the law says that that operates as a horizontal severance because one person owns the surface and topsoil while another person owns the minerals.

The arrangement can be very specific. A person may own coal, but not tin, although there are probably few geological strata in which the two occur together. Specific coal measures might be owned. In the 19th century, people would sell one geological stratum and retain another. A person might own metallic minerals, but not stone, such as valuable granite or gravel. I am not directly concerned about that, but there are difficult issues under the Act because its provisions are not good with regard to minerals.

Land is defined in the definitions section of the Act as including minerals. However, there are two sections that are relevant to what can be registered. Section 3 says that various things can be registered, such as freehold land, leases over seven years, discontinuous leases and franchises. The section contains no specific reference to minerals, although they can obviously be registered.

Section 4 addresses compulsory registration—things that must be registered. It says that if land is sold, it must be registered. A subsection says that that does not include minerals. The effect of registration is to vest in the proprietor the registered estate. What is the registered estate? Is there a difference between land that has been voluntarily registered and land that has been compulsorily registered? I would be interested to hear my colleagues' comments.

That is a general issue that will affect mineral companies and large granite companies. However, Lords of the Manor will be more affected by copyhold land. As many of you will know, there was a rule about copyhold land—the old land of villeins—that the copyholder, who became the freeholder after 1925, owned possession of the land. He had the right of possession of all land down to the centre of the earth, but did not own the minerals because what is known as the property in the minerals belongs to the Lord of the Manor. That does not mean only the subsurface. In the books, there is one leading case in which some stones fell on to a piece of land and the issue arose between the Lord and the copyholder over who owned them. It was held that the stones were minerals and therefore belonged to the Lord.

The definition is wide: manorial minerals have been held to include brick earth and they undoubtedly include things such as gravel. There is a stalemate. There is a general rule, but it is subject to variation in relation to particular manors where special rules apply—and, very often, special rules apply. However, there is a general custom throughout the country for cases in which the Lord has the property and owns the minerals, but cannot get at them because the copyholder is in possession. When I say that the Lord cannot get at the minerals, I do not simply mean that he cannot get at them via a surface opening: he cannot even get at them via underground workings. If he happened to own a deep pit next to the minerals, he could not normally tunnel through. He could not get at them because the copyholder has possession. However, the copyholder who has possession cannot work them because he does not own them. So what is the general custom? Normally, an agreement will be needed to exploit the minerals and the proceeds will be divided 50:50. Such agreements are still quite common in certain areas.

What effect the Act will have is not entirely clear. It will partly depend on how manorial minerals are classified. Are they land? Perhaps they are, because the definition of land includes the right to work minerals—but what if someone owned the minerals but did not have the right to work them? Are they customary rights? After all, the rights are enjoyed by virtue of general custom. Are they profits? Are they manorial rights, subject to the 10-year restriction? I will be interested to hear the opinions of the other members of the panel because I find it difficult to reach a conclusion.

The Act will have certain implications for the person who has the right to possession of land. It says that if you are in possession of land, that means actual physical enjoyment of the land. That carries with it certain implications to do with ownership. For the purposes of the Act, does possession have the same meaning as it does for the purposes of ownership of copyhold minerals? Again, I will be interested to hear my colleagues' views.

There are many uncertainties. In many ways, it is unfortunate that the Act did not focus specifically, and get a grip, on the question of minerals. The only safe advice is that if you think that you own minerals in copyhold land, register a caution now. Register your rights as soon as you can—ideally before next October because you can still do that. If it turns out that the mineral rights are land, you can still register a caution within two years after next October; but, if you do not make a registration to improve your ownership after that, the caution will be cancelled. Ideally, you should register your rights straight away. You will probably still have clearance for 10 years, and you may have indefinite clearance. Who knows?

Because a right of property is involved, the Act will almost certainly be interpreted in a way that is consistent with the Human Rights Act 1998, which contains a provision against the taking away of people's property without compensation. I therefore expect the courts to interpret that in a way that preserves established rights of property. However, there is some uncertainty.

I may have been a little rude about the Act, but what I will say next will not, I think, go down very well. It relates to roadside verges. I will start by picking up on a point that Charles Harpum made about registration of short leases exceeding seven years. Yes, I did write a letter—not because I am especially opposed to the registration of short leases, but because of the red tape and bureaucracy that would be involved. Short leases—of between, say, 10 and 15 years—tend to be at full rents. Very often the tenant gets into difficulties and the landlord has to forfeit, and re-enter the property, and terminate the lease. Things are difficult enough as they are. The law places plenty of obstacles in the way. It would be a further piece of red tape if the landlord had to cancel the registered lease. Usually, he will not even have the land certificate of the tenant. He will have to persuade the Land Registry that he has re-entered, which will lead to yet more scope for a tenant who does not like what has happened to object and cause difficulties. I recognize the argument for reducing the

[Mr Jessel]

figure from 21 years and I would have thought that 14 years would be a better figure; but never mind—the Government have decided.

I want to talk about waste and, in particular, roadside verges. Charles Harpum said that the general implication of law is that, normally, the roadside verge will belong to the owner of the field or the house or whatever it is that is by the side of the road. That is the general rule; it has been established in a large number of cases. However, other possibilities exist. The surface of the roadside, if it is maintained at public expense, will belong to the Highway Authority, although that is simply for highway purposes. However, it may belong to the Lord of the Manor and many of you will be aware of cases where it does—especially if the verge is very broad, as is the practice in some parts of the country.

If you are concerned about this, how should you protect your rights, which could be very valuable? If what is beyond the fence is just a field, the owner of the field will almost certainly, over many years, have established a right of way for agricultural purposes. However, if he then gets planning permission to put a housing estate there, the right to construct a road over the verge could be extremely valuable. We could be talking about a lot of money. It can be very difficult to prove that you own the verge. It will normally have been unconsidered waste of the manor and, in past years, no one will have thought terribly much about doing anything with it. There tends to be a lack of evidence. Mike Westcott-Rudd will talk about what sort of evidence the Land Registry is likely to accept. Suppose that you own the verge but cannot prove it?

As I have said, the old system of unregistered conveyancing is a system of proving, which requires evidence. However, you may own it but not have sufficient evidence to satisfy the Land Registry. The Land Registry will have to be quizzical because, if it gets it wrong, it will have to pay a lot of compensation to somebody. If it registers you and it should not have done, it will have to pay a lot to the owner of the field. If it registers the owner of the field and it should have registered you, it will have to pay a lot to you. It is a bit chary of getting things wrong.

How can you protect your interests if the Land Registry cannot be persuaded to register you? I have several suggestions. They will not all be workable, but I want to put them out as something to think about. First, Charles Harpum talked about cautions against first registration. The relevant section of the Act says that anyone who has a registrable estate or interest, which includes a freehold or lease of more than seven years, can register a caution. However, a subsection says that a person who has a freehold or lease of more than seven years cannot register. That is a bit of inside-out drafting, but it is actually quite clever. It takes the whole field of what can be registered, and removes specific things that should be registered on their own. The drafting appears contradictory but is actually very skilful.

A protective caution can be registered for things that cannot be registered in principle. It cannot be done by claiming freehold because, by definition, there is no evidence. It cannot be done by granting a long-term lease because a title cannot be produced, subject to a point that I shall reach in a moment. One could grant an annual tenancy or a discontinuous lease. An annual tenancy is not registrable, so may one register a caution to protect it? I do not see why not, until I am told the contrary. A discontinuous lease might not have to be a real lease. It must be a legal estate and a valid document, but it could be granted to a husband, wife, tame company or a nominee.

A lease could be granted that did not take effect in immediate possession, and that would be typical of most roadside verges because no one will go into physical possession of most verges, so that might be the answer. If one does that, good leasehold title can be applied for. The advantage of that is that the tenant can apply to the Land Registry and does not have to prove an absolute title. He cannot do so because the title will not be available. That was done in the old days when landlords who granted leases often refused to produce their titles, perhaps because they contained confidential family information about which they did not want their tenants to know. That is still a possible way of showing title. The information would be on the register to protect interests. It is not a complete answer, but it might be something.

I have covered my three main topics. I recognize that I have raised almost as many questions as I have given answers. I have done that because I have no experience, as a solicitor in private practice, of working with the legislation; indeed, no one else has. My points occurred to me while I examined the Act in the light of manorial interests. We have not heard the end of the matter and further points will be covered. I emphasize again, however, that I have been critical of the Act. I do not mean to be critical of the draftsmen because they did a thoroughly good job. The provisions will be a great improvement on the current situation; we need to just work out the wrinkles.

The Chairman: We look forward to hearing from Mike Wescott-Rudd. Mike has said that because the consultation process is reaching its close, he will be happy to hear from anyone who has any thoughts or ideas about the Act as a consequence of his comments this afternoon. We have a list of Mike's details at the Society—address, fax and e-mail. We can let you have that if you ring tomorrow or any other day, and you can get in direct contact with him.

Mr Mike Wescott-Rudd (HM Land Registry): Thank you, Robert, for giving the Land Registry the chance to air its views. Well, the Land Registry does not really air its views. It seeks the views of others and hopefully takes them on board. The point that Robert made is real and important. I was struck by what Christopher Jessel said. His responses to the Land Registry consultation paper contained very constructive and useful criticism.

We have many copies of the consultation document. It is fairly heavy reading, but I would have thought that your individual and collective experiences would be useful to the Land Registry, especially with regard to franchises and profits. Charles Harpum said that the Land Registry is not used to dealing with either because they are not registrable. However, they will become registrable. I am not part of the drafting team that is involved in franchises, although I have talked to others about it to prepare for the seminar. It is eminently clear—I make no bones about it—that there is little practical experience, as would be expected. Anything

that you can add to the sum of the Land Registry's knowledge by giving your views and telling its representatives about the way in which franchises and profits work would be gratefully received.

We require the responses back within a fortnight, for practical purposes. Several dates are absolute such as 13 October 2003, but there has been slippage on consultation. Officially, there is no slippage, but if information reaches me quickly, I can ensure that we take it on board. What is the point of not allowing slippage in an area on which the Land Registry has little practical experience? We should try to derive experiences from the people who are involved.

After speaking to several of you this afternoon and listening to your questions, I have been struck by the fact that there is a high level of understanding about the way in which the Act will work and its likely implications for you. That is why I stress that the Land Registry is anxious to hear what you can offer. Christopher Jessel has responded, which has been useful. If those present respond as well, that will also be useful.

I have one further preliminary. I do not usually distance myself from any of Charles Harpum's comments, but I shall do so now once. He talked about Land Registry staff knowing "everything there is to know". I cannot put myself in that category and I do not intend to do so. My role as the corporate services lawyer at the Land Registry is partly to educate its lawyers. My job is to know a little bit about an awful lot, but an awful lot about very little, if not nothing.

We have heard a lot of legal detail so I thought that it might be useful if we go back to basics—to borrow a phrase of a former Prime Minister—and consider how the Land Registry might assist you. I shall not talk simply in the context of the new Act because the provisions will not apply for a further year. You have heard, to adopt the words of a man who did not become Prime Minister, "Go back to your constituencies and prepare for Government." You must do that now and work with the current Act. It is important to stress that because much good work can be done now.

I know that I am among friends—I recognize several people present. They sometimes have nice things to say about the Land Registry and sometimes not so nice things; it is as well to hear them both. Those of you whom I know and to whom I have spoken tell me how much they consider that the Land Registry can assist them.

Most of you are landowners. Let us put the manorial title to one side for a moment. You are either registered owners of land or potential registered owners. It is important that you have good understanding of the way in which the Land Registry operates when dealing with applications. I am sure that you know that the Land Registry is a Government agency. It is a trading fund, which means that it is self-financing. That sets it apart a little from average civil service departments. It is stocked with about 150 lawyers. There are 20 offices throughout England and Wales and about 10,000 staff. The Land Registry is labour intensive because the registration of land is a legal matter and a labour intensive business. It will become less labour intensive, and such things as the Act assist that. It will make conveyancing less cluttered and complicated, but there will also be a need for much human resource and lawyers. The Act ensures that Land Registry lawyers' jobs are assured for some time.

Staff of the local offices, especially lawyers and senior staff, are encouraged to assist with queries because that is an important role. A person who registered his manor in Lancashire told me at tea time how helpful his local registry had been. I shall give pointers of the evidence that we are looking for. However, even if you go away this afternoon and remember nothing of what I have said, please remember this cardinal point: if you telephone a district registry, it should be the registry with responsibility for registering land in your area. They are not always geographically apposite because, for example, Durham deals with Surrey. That is slightly unfortunate, but that is the way of it. If you do not know which district registry is your local registry, although most of you will already know, ring any of them and you will be told. I can supply telephone numbers. There is no harm in asking to speak to the lawyer who deals with a county, for example, the administrative area of Huntingdonshire or whatever. The lawyers will probably hate me for saying this, but put your problem to them on the telephone. There is no charge for that.

What can the Land Registry offer in response? No charge, for a start. Lawyers can give a dispassionate view of your title. That will be a considered view because it will be the view of a qualified lawyer who is well versed at examining titles. I was pleased to hear one of the points that Christopher Jessel made because few lawyers say it: evidence does not always mean documentary conveyancing evidence such as transfers, deeds and evidence of sale and purchase. Documentary evidence can include many other things such as a record in a court leet, a statement or a letter. We use such evidence when addressing lost deeds applications and we can use such evidence for manorial registrations when addressing the residual rump of land, whether that is demesne or other sorts of land. Your local registry will be able to help.

You will hopefully get from the Land Registry lawyer a considered, independent opinion, which you might not always get from your own lawyer. However, a Land Registry lawyer may know other facts that are contributory evidence because he or she might have dealt with applications in the locality and might be able to say, "Well, I know that St. John's College, Cambridge, owns next door or claims part of the title." That is possible because as well as putting human resources at your disposal, we can use our records.

We will forget about your individual residential properties, but let us consider your manorial estates. Hands up those whose estates are registered? Hands up those who own unregistered estates? Slightly more—that is interesting. Chances are that if your own estate is not registered, the land that adjoins it is. The Land Registry will have records of that, because Government agencies are good at keeping records. It has serious records on every registered title, unless they have been lost, since the inception back in 1862, as it happens, but more importantly, as Charles Harpum said, since 1875. The records can show all sorts of interesting things. There are all sorts of legal tricks on which the Land Registry can rely to support an application. I want to make something clear—I have fallen into this trap myself and it is something that I try to tell our lawyers not to do: the Land Registry is not there to disprove

[Mr Mike Wescott-Rudd]

your title. It often appears that way and perhaps sometimes, if I am honest, that is the mindset of the lawyers at times.

That is the case simply because, as Christopher has said, the titles are tricky and may be contentious. I have dealt with plenty of contentious titles. For example, the registration of a common may have been involved. I may have received 120-plus letters of objection from frontages to the common. Human nature being what it is, lawyers often want a quiet life too and may have it in mind that it will be a lot easier for them if the application is rejected.

There are two things to remember about that. First, the Land Registry is in the business of registering land. Secondly, it is ever more in that business because of another point that Charles made: we want all the land to be registered. At least, we are obliged to work towards total registration. What use is a database that is not complete? Probably the main reason why the Government say that they want total registration is transparency and the need to ensure that all the information is there. I know that you may have come across in your researches the annoyance of finding a good set of records from which the particular one that you want is missing.

That has an implication in terms of something that Christopher Jessel said about roadside waste. I can tie in with that the comment made by Ray Woodberry about the operation of the Land Registry's mapping processes. It does not always map to the middle of a road. The fact is that, if we want total registration, it has to be just that. We cannot have, as it were, a system of arteries and veins that remain unregistered because they happen to be roads, streams, non-tidal rivers, bits of waste and bits of common—or former common if it had not been registered under the 1965 Act. That is not very helpful. We will have to grasp that nettle. I can only tell you, sitting inside the Registry and speaking as someone who may well be there at the time of total registration, that I am looking with a good degree of anticipation towards that prospect, as well as some fascination.

Our mindset has got to be focused on registering. We have heard a lot about documentary title, but the other concept that the Land Registry uses, which is enshrined in the current Act, is that of the good holding title and what the Registrar may or may not accept. The framework of the 1925 was at least sufficiently perspicacious to see that there would be occasions—indeed, there are many such occasions—when there are technical difficulties with the title. For example, it might not long enough or the deeds may be lost. There are other technical problems of which we have seen many but are not an appropriate subject today.

What the Land Registry lawyer is trained to do is look at the application as a whole and, to some extent, offer after analysis, a risk assessment. Is there a risk attached to the case? If there is no risk attached, given the political expediency of total registration, now enshrined in legislation, what is the result? I leave you to put those two things together and draw your own conclusions. It may be that the Land Registry's mores of the way in which it examines will have to change. For those of you who have had rejected applications, it may have to be slightly more receptive. There are protocols that the Land Registry can follow for risk analysis.

On roadside waste or verge, for example, the registry will inevitably serve notice on the Highways Authority. It will get a certain amount of evidence from the authority, remembering that if the authorities have not been too much disturbed by local government administration, they may have records going back at least until the first third of the 19th century on some occasions. Those records can be useful in terms of showing ownership or at least use, perhaps involving mineral extraction. Speaking from practical experience—this is not an academic point—I have known cases in which people have made successful applications for registration following further researches, such as writing to the local Highways Authority and asking what records are available and how far back they go. They often go back a surprisingly long way. In some cases, however, there have been so many reorganizations, especially in the 1970s, that the records have all got lost. That is unfortunate, but the records are a very practical source of information.

Speaking of practical sources of information, we have heard about the court leet. Again, I invariably refer people to the County Records Office. I expect that most of you know that because many a happy hour can be spent determining the extent of evidence. I have seen all sorts of comments in court leets about people overstocking, which has led to their being fined. That has been good, if not conclusive, evidence, first, of the land in question having formed part of the manor and, secondly, of its remaining in the manor, in the absence of alienation.

The ownership situation is not necessarily as bleak as it appears. We are not a classic Civil Service department. It is not as if you were applying for a passport and we rejected your application and told you to start again because you had not signed on the correct line. Because we have total registration behind us, which all of us, I think, regard as a good thing; and because you will have paid a registration fee to register your land, those things combine to dispose the Land Registry to favour your application.

We will have to change our policy. It is not as consistent as it could be and a few especially contentious cases have arrived at my office in London. If we are going to reject applications outright, we will have to do so rather more quickly than we have hitherto. At the same time, we will have to tell you where we think you could help your application. Our approach to applications should be more receptive.

I am getting near the end of my time; I do not want to go into extra time because I want to allow plenty time for questions. However, I want to pick up on one or two points from a ragbag list that I have made.

From experience, I do not think that it is bad that you will no longer be able to register the manorial title *per sé*. It might be nice to have a Land Registry certificate, but all too often applications to register fail. Some of you will have had to face the technical requirements of such applications and we may have rejected them. You may not have been able to show a map of the demesne lands, or there may have been conflicting evidence that led us to reject, as we are entitled to do. That can undermine

the value of the transfer. Often, the application for registration has followed the acquisition by purchase of a lordship. People have said to me that they intend to come back after we have not been prepared to register; but land registration should not be a form of accreditation. That is not what it is about. It is not about validating or accrediting a particular form of interest; it is about guaranteeing estates' rights and interests.

I will finish by talking about freedom of information, but I will first say that, these days, there is much more access to the register. It is public. Some of you may not have known that; there is no reason why you would have known. People have a right to see the information on the register. That is part of open government and has been dramatically extended by Charles Harpum's Act. I hope that Charles will agree that the Land Registry has had no choice in the matter. The Freedom of Information Act 2000 is nearly upon us; it will come into effect, I think, on 1 January 2005, by which time the Government's records, including Land Registry information, will be publicly available.

When people are searching and they come across Lordships of the Manor, they will ask us what they are. All we can do is say to the inquirers—and they are many—that they will have to raise any particular concerns with the Lord of the Manor. That may well be fascinating to those with time on their hands, although I suspect that few, if any, of you will have. It would be an uneconomic use of your time and resources even to cross swords with that. However—and this is not a political comment but is based purely on practical experience—the changes are no bad thing.

The Freedom of Information Act 2000 will affect the Government and other public organizations. We are part of the Government so information that we hold will be available as of right, subject to certain exceptions, to members of the public. We have no choice in that. In the Land Registry, I have particular responsibility for freedom of information. We are trying to devise protocols to prevent the disclosure of confidential commercial information. I am not sure how successful we will be; that may be a debate for another day. However, you should be aware of the possible changes. You may have felt that you could correspond in confidence with the Land Registry. In my view of the Government's intentions, you will not be able to do that. I feel that that is right. If you are dealing with a public organization, it is right that, if your interests conflict with mine or with a colleague's, everybody can see what everybody else has been saying. That will benefit the Land Registry enormously because we will be seen to be, as we are, impartial. We would not be accused of bias.

That was an odd point on which to end and I am not sure how I got there. You should bear in mind that anybody will be able to read any correspondence that you enter into with the Land Registry. Your rights may be in conflict with those of various groups of people. It will not be helpful to you not to bear in mind the transparency of the correspondence.

My final message is this: use the Land Registry and its resources, and certainly before you attempt to register, if you have any doubts at all, please ring us. That is not altruism; it helps us to help you. In the long run, it is likely to save us time if we can give you some ideas of what sort of evidence you can put in your application.

The Chairman: Just before we move to the question and answer session, there is a point of information. Mike mentioned the CRO. The Public Record Office at Kew is a wonderful resource. Before 1922, in the 19th century, there were numerous copyhold Acts that enabled copyholders to enfranchise their land under certain conditions. Those were private contracts made between the landowner, the Lord of the Manor, and his copyholder. Quite a lot of them are registered at the Public Record Office, as that had to be done through the Ministry of Agriculture at the time. How land was enfranchised before the 1922 Act is often to be found at the Public Record Office. The drawback is that, the last time I heard, the archive was not yet indexed, but they are working on it.

Mr Michael Farrow: On all this business about compensation under the Human Rights Act, what level of compensation should that be? Should it be the market rate or a lower rate? If the Government offer less, is that contrary to the Act if anything has been extinguished?

Mr Harpum: That is not a very easy question and it is not one that I was expecting. As I recall it, what the authorities say is that it does not have to be full compensation—surprise, surprise. I recall that the leading case on the matter is about nationalizing a Scottish shipyard. My recollection is that that case said that some compensation has to be offered. It does not have to be full compensation, but of course, that leads to the wonderful principle in human rights law—proportionality. In deciding whether a party has acted in a proportionate way, a factor is the amount of compensation that has been offered. If you were offered derisory compensation, that may be held not to comply with the requirements of the convention, whereas if you were offered less than full compensation that was still substantial, that might well be held to be satisfactory.

Mr Farrow: Would that apply to things that had happened before we adopted the human rights legislation or only afterwards?

Mr Harpum: If you have already been paid compensation, there are limits on when you can bring proceedings anyway. I do not think that you could start reopening things that had already been done. Otherwise, I would have a wonderful life, but you would not.

Mr Judd: We have a small common that is registered under the Commons Registration Act, but we have so far been unable to have it registered under the Land Registry Act because of objections. My question refers to the 1965 Registration Act. My understanding is that, in order to qualify for registration, land had to be of the manor. My interpretation of that is that such land is owned by the Lord of the Manor. Is that a correct interpretation?

Mr Jessel: No. The Commons Registration Act 1965 provides for the opening of certain registers. Primarily, they operate by reference to rights. Normally, one has to

[Mr Jessel]

register only the ownership where the rights were originally registered. In terms of rights that can be registered under the Act—the rules are slightly different for village greens—there are two classes in relation to common land. One class is land that is subject, or was subject in 1965, to rights of common. It did not matter who owned it and whether it had any connection with the manor or anything of that sort. If it was subject to rights of common, it could be entered on the register. The other totally separate category is waste land of the manor that is not subject to rights of common. There has been an enormous amount of litigation about precisely what that means. The matter went to the House of Lords, which decided that, in effect, it referred to land that had a connection, or some recent connection, with a manor.

To give the end of the story, some land was registered and became conclusively registered even though it had no connection whatever with a manor. There are a number of cases, including one involving Lord Denning, saying that if the land had been conclusively registered, nothing further could happen. So there are various categories of land, and connection with a manor applies to only one of them.

Mr John Burnett: Regarding the Land Registry, you say that the registers are open. I have a problem at the moment. I know the field and the field number, and so on, but if I go to the Land Registry, can I see the previous records in relation to that land? Are they actually open, or are they available on payment of a fee or through an appointments system, for example?

Mr Westcott-Rudd: I can deal with that. As you might expect, there is a fee. On the question whether you are entitled to look at the records, I have referred to the Freedom of Information Act coming into effect at the start of 2005. At the moment, whether or not the Land Registry exercises the discretion to reveal that information is a decision that will be taken on the Registrar's behalf by a lawyer. It is a question of whether the discretion is exercised in your favour.

Mr Burnett: Let me explain it slightly further. The Enclosure Act 1771 provided that the waste of the manor was taken away from the Lord and he was given a forest in its place. That size of the forest is gradually reducing and, in fact, I noticed this week that a further 15 ft has disappeared. It does not appear to be registered at all—that is the specific field that I am on about. According to the 1771 Act, it is part of the Lordship of the Manor, but it is disappearing. Are you saying that I would probably have a discretionary right?

Mr Wescott-Rudd: Yes, but if the land is unregistered, the Land Registry is unlikely to have any records about it because there might not have been any applications to register it. I say "unlikely" because there might have been previous unsuccessful applications to register the land or cautions against the land in which case we would have held on to those. Chances are that the Land Registry holds no records. Have you asked the Land Registry whether it has any?

Mr Burnett: No, the matter has only come up in the past two or three months.

Mr Wescott-Rudd: The best thing to do is to ask the Land Registry straight out whether it has any.

Mr Roger Hovell: I know little about roads and their ownership. I imagine that the Highways Agency takes over ownership of a road's surface and I have seen that its ownership goes down one spit—the depth of a spade, for those who are not gardeners. If the agency goes down more than one spit when building the road, would one have a claim against the Highways Agency, or would the squatters have achieved their objective?

Mr Jessel: I cannot remember the relevant section of highways legislation. Do not quote me on this, but in effect, the road, scrapings, and the materials that make the road are relevant. If the road is constructed with its own foundations, I expect that the foundations would be vested with the Highways Authority, but only in its public capacity of being the Highways Authority. The authority could not sell the ownership because it could be used only for highway purposes.

Mr Hovell: May I clarify that? I understand that the foundations belong to the agency but if it had gone down below one spit, would it have encroached on land that it did not own?

Mr Jessel: Generally speaking, there are certain rights to improve roads, although I will have to check that; it might be under street works legislation. Bear in mind that roads can be improved only for highway purposes. I expect that that would be within the agency's powers if there were deep potholes and it needed to clear out the holes and make better foundations to prevent the road from eroding again. However, that is a difficult issue and my answer is off the cuff.

Mr Mark Relf: We have a manorial title, but much of the land in it is registered only under the Commons Registration Act 1965. Can the land be registered at the Land Registry as well?

Mr Wescott-Rudd: The point that both my colleagues made was that the two Acts are mutually exclusive. The land can be registered but, in practice, it would have been registered at the Commons Registration Authority first. If we are discussing ownership alone, the Land Registry notifies the Commons Registration Authority when it registers the land, and the Commons Registration Authority removes the details of ownership from the current ownership section. The land will change hands from time to time and the Land Registry's records are conclusive of ownership.

Mr Relf: I tried to have the land registered 18 months ago and people at the Land Registry said, "We don't want to know. We're not interested and it does not fall within what we want to do." It was thrown back at us

and left there. We have other parts that are not land under the Commons Registration Act 1965. How do we register either, both or neither?

Mr Wescott-Rudd: I would not want to give the impression that the Land Registry does not want to know. I suspect that the Land Registry was saying what Christopher Jessel and I spoke about: what evidence of title, apart from the manorial title, can you produce to show that the land is in the manor and that it has not been alienated or otherwise lost? They are the essential points.

The Chairman: That is where the county record office and historical researcher are absolutely crucial.

I think that we have time for two further questions.

Mr Charles Goodwin: I understand from the Land Registry that land that has no registered leasehold owner and land that has no registered freehold holder is indexed against the Lord of the Manor. As a consequence, I am inundated with solicitors representing people who are selling their property asking me what my corporeal hereditaments are. As they go back to Methuselah, it is damn nigh impossible to get anywhere near them. I have asked the Land Registry politely whether it would let me come along with the survey map on which its representative could put a little red dot of all the pieces that are indexed to my manor. Unfortunately, it has said, "No, sir, we cannot do that." How can it do that? I want to know where all the red dots are so that I know where I stand. Could you help me?

Mr Westcott-Rudd: I am afraid that it is a one-word answer: no. The fact is that the registration system is a system of established land ownership. The caution against first registration is a system of claimed rights, but beyond that we cannot go. The inquiry is specific. If we have a bit of time elsewhere—especially if you know about some facts that are not relevant to everyone else—we could have a chat and I could perhaps offer you a little more comfort. The short answer is no.

Mr Goodwin: That is interesting, because I have had clients such as Railtrack, which is now deceased, wanting to build a bridge and supplying me with maps of land that they say are indexed to me. They ask whether they can bore holes and sample the land, and I say yes. They then ask whether they can build a bridge. If so, they have to pay me with the land. What do I do with all these people? *[Laughter.]*

Mr Westcott-Rudd: I suggest that you take their money. It is a question about the degree of inquiry. You should certainly enter into dialogue, because such things are evidence of your ownership. They are precisely the things that I was talking about, but could not enlarge upon when I was talking about things other than documents that could establish your title. Produce enough such evidence, and the Land Registry may well listen.

Dr Khalid Shariff: Most of my questions have already been answered. I just wanted to know why the 2002 Act came so late. My concern is that there are many wheeler-dealers who are selling titles and claiming that they are genuine when they are bogus. The Internet is full of such assertions. When we ask them how they get the title, they say that they have done research and that nobody owns it, or perhaps that there was an owner a few hundred years ago, so they are now the Lords of it.

The Chairman: That is a separate matter, Khalid. You are talking about the various organizations that are now on the Internet and offering manors, knighthoods, even dukedoms. With respect, that has nothing really to do with this conference. The advice to anybody who is thinking of buying a Lordship of a Manor is always to consult an independent solicitor. In law, such an asset is an estate in land, so that is the way to handle it.

We now have to draw the conference to a close, as it is well past five o'clock. We have done very well to fit so much in. I should like to thank the members for their support and to say to our guests how pleased we are to see you. These proceedings will be available in printed form shortly and will be sent to you as part of your conference contribution. To members, the carol service is on 4 December, so those who have not yet applied for the service, which is at the Temple Church and will be the usual service of seven lessons and state trumpeters, and all the rest of it, should do so in the usual way.

Finally, I should like us to express our appreciation in the usual way to our most excellent panel.

Applause. Seminar adjourned.

Present at the Seminar

Jeremy Ackroyd, Ackroyd & Harrison Chartered Surveyors, Cumbria

Robert Andrewes

Stefan Bainbridge, Dickinson Dees Law Firm, Newcastle Upon Tyne

Michael Barnes

Geoffrey Barrett, Blakemores Solicitors, Coventry

Timothy Bartlett, Cumberland Bartlett Peirs Solicitors, London

Ms Rachel Baseley, Mill & Reeve Solicitors, Norwich

Dr V J Binkley

C R Boyes

D B Brighton

M Buckmaster-Brown

J H Burnett

M Burton

The Hon Rupert Carington, The Carington Estate

Robin Clark

John Constable

John Dayer

Mrs Kery Dovey, White & Bowker Solicitors, Winchester

Zef Eisenberg

Michael Farrow, Historical Records Agency

Mr & Mrs Gibson-Wynes

Henry Hadaway

The Hon Robert Harbord Hamond, Suffield Estate

James Halsall

Mrs Wendy Hobday, Wendy Fair Markets
Stephen Johnson, Historical Research
W Joseph Hopkin
Sir Richard Hanbury-Tenison
Martin Hopkins, Buss Murton Solicitors, Tunbridge Wells
G E Humphery
Ms J Janghra, Kent Jones & Done Solicitors, Stoke on Trent
Donald Jenks-Handford
Mr & Mrs Tony Judd
G Knowles
Colin Lightfoot
Marcus Llewelyn-Rothschild
J McLachlan
Prof John Montgomery
Michael Pendred
Harold Piggott
Gerald Rand, Governing Council
Mark Relf
Jonathan Roberts
Major J Sawrey-Cookson, Sawrey-Cookson Estate
J P Schooler
Dr Khalid Sharif
Timothy Shorland
P C K Sladden
Mr & Mrs R W G Smith
Thomas Stoten
Steve Sverdloff
John Szepietowski
James Wallace-Jarvis
Philip Whitcomb, Wilsons Solicitors, Salisbury
Ray Woodberry
Carol Zillern, Historical Research

18 823940-PAG1/18