

Manorial title: Reconstructing title

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The sale of manorial lordship titles to the general public was a development which began in the 1980s. Sales were originally by auction, but in more recent years titles have been available online, with a very wide range offered. The prices asked and paid run into the thousands, with the price reflecting the celebrity of the locality named in the lordship as well as its historical associations. Quite rightly, most lordship titles which are sold involve no claim by the vendor that the title is anything more than a name which may carry a degree of social prestige. Some newly acquired titles, however, either confer substantive rights or are believed to do so by their holders, and these have given rise to major litigation in the courts after the holders have sought to exercise those rights. The cases illustrate a broader point: that lordship title may be worth acquiring for commercial reasons. Where a title is offered for sale as having substantive rights in relation to land owned by others, it must of course be investigated before any decision to purchase; but where a title is offered and acquired without such rights, is it possible for the purchaser to identify rights which the vendor was unaware of and exercise them? Put differently, is it possible to reconstruct manorial title? That is the question this article addresses.

Lordship title

The reason the question arises at all is due to three factors: first, the nature of a manorial lordship title; second, the law and practice of land registration affecting manorial title and rights; and third, the state of documentation as it affects manors generally.

As for the first, a lordship is a property right known as an incorporeal hereditament; but it is a particular kind of such right because it can exist in gross – ie, without attachment to land. Before 1290, when new lordships could still be created, land was attached to them and formed part of the manor over which the lord exercised customary rights. A manor,

therefore, had three separate elements: lordship, land, and rights. The extent of the manor declined as land was sold off, but even when all of the land had been sold so that the manor became extinct, the lordship title itself continued as a lordship in gross. Today, as HM Land Registry point out (in the HM Land Registry Practice Guide 22: Manors (updated 24 June 2015), these elements of lordship, land and rights:

... may exist separately or be combined. The lordship title cannot be subdivided, but the manorial land and the manorial rights can be.

The lordship was and remains intangible, capable of being inherited and capable also of being bought and sold.

Registration of lordship title

Second, there has never been any requirement to register lordship titles at the Land Registry, and after the entry into force of the Land Registry Act 2002 on 13 October 2003, it has been impossible to do so. The result is that there is no comprehensive list recognised by law of all extant lordship titles in England and Wales. Some commentators on the Act have expressed the view that the registration of manors offers few advantages (Charles Harpum and Janet Bignell, *Registered Land: Law and Practice under the Land Registration Act 2002* (2004), p.18), but the absence of any requirement to register creates uncertainty. If a lordship is asserted but not registered, it will still be recognised by the law if the party asserting its existence can establish that they are the owner of the lordship title. Conversely, registration of particular kinds of lordship rights – more usually known as manorial rights – was required by the 2002 Act with the consequence that those not registered before 13 October 2013 would cease to be overriding interests and would fail if the land otherwise subject to them was thereafter sold to a third party. The rights affected included the lord's sporting rights and mineral rights, and they could still be registered after 12 October 2013 where the land had not been sold. The upshot is that land which has been in continuous ownership since before 13 October 2013 may be subject to lordship rights belonging to a lord whom the owner of the land has no way of knowing exists. If rights incidental to the lordship were registered at the Land Registry before the first disposition of the land after 12 October 2013, then the land will remain subject to those rights. This explains why, before 13 October 2013, there was a rush to register lordship rights by landowners who were also lords of the manor.

Documentation

Manorial documentation, for all practical purposes, can be divided into two categories. The first category, so called because of their definition by statute, comprises manorial documents (See sections 144 and 144A of the Law of Property Act 1922). The position relating to these has undergone significant changes in recent years with the digitalisation of the process of cataloguing them and identifying their location. As the [National Archives website](#) explains, the [Manorial Documents Register \(MDR\)](#) is the official index to English and Welsh manorial records and provides brief descriptions of documents and details of their locations in public and private hands. Manorial documents noted in the MDR are

defined by the Manorial Documents Rules as court rolls, surveys, maps, terriers, documents and books of every description relating to the boundaries, franchises, wastes, customs or courts of a manor (SI 1959/1399).

The second category comprises title deeds and documents concerning descent of title. These are not within the statutory definition of manorial documents and are therefore not included in the MDR. For lawyers, of course, they will be significant if not critical in any case involving a question of ownership or date of ownership of manorial title. Where titles have been registered, the Land Registry's certificates will amount to proof of title; but where they have not been registered, the burden of proof will rest with the party asserting title to prove it.

Lordships and reputed manors

The confusion of terminology relating to manors tends to obscure the fact that a lordship is a peculiarly resilient legal right. Manors are dissolved when either any one of the elements of lordship, tenants or services ceases to exist or becomes separated from the others. This most usually arises where sales of land out of the manor as freehold reach the point where there is only one free tenant able to sit in the manorial court known as the court baron. Since at least the early 17th century, the royal courts have taken the view that a manorial court baron is essential to the working of a manor and that without it, however much or little land remains in the lord's ownership, the manor is dissolved. However, dissolution in this context does not quite mean what it says and can be misleading because the term applies only to the cessation of the working manor. When a manor was dissolved, what remained is a 'reputed manor' – in other words a manor by reputation only (a reputed manor may also be referred to in the reports as a quondam – ie, 'sometime' – manor: see, for example, *Soane v Ireland* (1808)). Yet a reputed manor was not simply the ghost or shadow of the manor now dissolved. Depending on the circumstances, it could be far more. The lord of a reputed manor could have demesne lands, used by himself, or copyhold lands where surrenders could be made or admittances taken of copyhold titles in a customary court where the lord's steward was judge, and the lord could be entitled to any prescriptive or customary rights that had not been severed from the lordship or the lord's own lands (see *Soane* at 262; 103 ER 773 at 773-74; *Smith v Smith* (1816) at para 111 per Wood B and Richards B; 146 ER 34 at para 38; and 'Scriven on Copyholds' (7th edn, 1896), pp. 9-10). As Sir Edward Coke put it in *The Compleat Copy-holder* (section XXXI):

... this in the eye of the world is a manor, though in the judgment of the law it cometh far short of one.

Most manors in England and Wales today are reputed manors (as noted by Lewison J in *Roberts v Crown Estate Commissioners* [2008] at para 137). The process of manorial decline represented by the sale of lands, rights or titles, the disappearance of courts baron and customary courts and the statutory enfranchisement of copyhold land in 1926, has created a situation where the rights attached to the lordship of a reputed manor may vary in extent from no more than the right to use the title itself to substantial.

Modern case law

In the 21st century, lords have tried to assert those rights in the higher and appellate courts with varying degrees of success. Thus in *Roberts v Swangrove Estates* [2008], the claimant Mr Roberts acquired the lordship of Magor in Monmouthshire and claimed paper title to the fee simple in the adjacent parts of the northern foreshore and fundus of the Severn estuary to the centre of the deep water channel. The area in question comprised thousands of acres of sand, mud flats and similar land. He contended that this had been the legal position since 1066, with the parcel or boundaries of the manor determined according to ancient customary or Welsh law. Had the claimant succeeded, he would have been entitled to exploit the commercial uses of the estuary: dredging sand; fishing, wildfowling and shooting, with the prospect of future use extending to wind farms or tidal barrage. The Crown, however, successfully argued that it had established title to the foreshore and fundus by adverse possession, and the effect of this was to extinguish any lordship title over them.

The same Mr Roberts had also acquired the lordship of St Davids, an ecclesiastical manor on the Pembrokeshire coast where the lordship had been held by the bishop of St Davids. In *Crown Estate Commissioners*, he was unable to claim commons, wastes, mines or minerals because they were excluded from the sale, and unable to claim the foreshore because of the earlier *Swangrove Estates* case. Now at issue was the extent of any surviving proprietary rights which the lord had over the foreshore. The rights claimed were wreck de mer, a several fishery (ie, an exclusive right to fish in the sea); treasure trove; sporting rights and estrays. The court found that the foreshore in fact was never part of any manor of which the bishops were lords, so that the crown had title without having to claim it by adverse possession. The consequence was that Mr Roberts was entitled to none of the rights claimed over it save for a moiety (or half share) of a right of wreck shared with the Crown. This was not a manorial right but a franchise (ie, a breach of the royal prerogative) granted by the king to the bishop of St Davids as lord of the manor of St Davids.

In *Burton v Walker* [2013] the claimant had acquired the manor house and lordship of Ireby in Lancashire, and registered his title to the lordship with the Land Registry. In his capacity of lord he then occupied and shortly thereafter persuaded the Land Registry to register his title to some 360 acres of fell land adjoining the house which he claimed was waste of the manor. The first instance judge found that the manor had broken up in the 17th century and that the claimant had no entitlement to the lordship. However, since the land had previously been unregistered and the claimant had spent a modest amount of money maintaining it, and there was no-one else was claiming it, the registration of his title to the land would remain. The Court of Appeal upheld the judgment.

The most recent case is *Wynne-Finch and others v Natural Resources Body for Wales* [2020]. Here, the claimant trustees held the lordship of the manors of Arwystli and Cyfeiliog in Montgomeryshire, and were seeking to assert their rights of ownership to stone lying beneath lands that were formerly rough open pasture of the manors. The lands had gone out of the manors at different times and in different ways. Category A and B lands were the subject of freehold conveyances, each containing minerals reservations which expressly included stone. Similar reservations were present in category C lands, the subject of contractual enclosure agreements entered into from the 1850s onwards. These lands, initially copyhold, went out of the manor upon statutory enfranchisement in 1926

and became freeholds. Category D lands were lands awarded under the Arwystli Enclosure Act of 1816, which contained mineral reservations in favour of the lord in or under former waste of the manor. All of the lands had passed through a series of owners down to the defendants, who had occupied them for many years and used the stone beneath them, which was mudstone, for sale or the construction of forest roads tracks. The judge held, in relation to category A, B and D lands, that as a matter of construction the words of the contractual or statutory reservations did extend to other minerals but not to mudstone. She found that this had one of the lowest values of any rock, had limited uses and was not exceptional, and was not what the mineral or commercial world or landowners at the time would consider that the reservation was aimed at. She further held, in relation to category C lands, that the defendant had title to the surface and everything beneath it, and that the title of the claimants' predecessors had been extinguished by adverse possession by the defendant's predecessors. The claim was therefore dismissed, and the Court of Appeal upheld the judgment.

Conclusions

Acquiring a lordship title can be an expensive business if the title is unregistered, as most are. As such, the purchaser wants to be as sure as they can be that they are getting a valid title. If the acquisition is primarily for reasons of social prestige, there is no real need to research matters other than devolution of title, although it is important to be aware that there is a statutory obligation on a lord of the manor to preserve all manorial documents in their control or possession (SI 1959/1399, The Manorial Document Rules 1959, para 2), and that with former copyhold land enfranchised in 1926, lords may continue to have liabilities subsisting at enfranchisement in relation to that land. Paragraph 6 of the Twelfth Schedule of the Law of Property Act 1922 remains in force, and this preserved any liability which a lord or tenant had on 1 January 1926 for the construction, maintenance and repair of dykes, ditches, canals, sea or river walls and other works within the boundaries of the manor.

As far as minerals and waste are concerned, the right to them remains an incident of the lordship title. The ability to exploit that right will depend on circumstances including identification of previous sales or devolution of lordship rights or manorial lands; the historic boundary of the manor at various times up to the date of acquisition; the plot locations of current owners of former manorial land and neighbouring land, and the activities of those owners which could amount to adverse possession of the lord's historic mineral rights. Knowledge of those circumstances will require investigation at the Land Registry and local record offices, which between them will provide the evidence of title documents and manorial documents which require assessment before claims for minerals and waste can be made. Although this may sound a difficult and costly task, the digitalisation of manorial records and the ready availability online of indexes to those records makes it much easier and cheaper than it was when the market for sale of manorial titles began forty years ago.

So, the answer to the question posed above is that it is possible, up to a point, to reconstruct manorial title – but those wishing to do so should have clear objectives and the means to investigate the evidence to see if those objectives can be fulfilled.

Cases Referenced

- *Burton v Walker* [2013] EWHC 811 (Ch); [2013] EWCA Civ 1228; [2014] 1 P. & C.R. 9; [2013] 3 E.G.L.R. 129
- *Roberts v Crown Estate Commissioners* [2008] EWHC 1302 (Ch)
- *Roberts v Swangrove Estates Ltd* [2007] EWHC 513 (Ch); [2007] 2 P. & C.R. 17; [2008] EWCA Civ 98; [2008] Ch 439 (CA)
- *Smith v Smith* (1816) 2 Price 101; 146 ER 34
- *Soane v Ireland* (1808) 10 East 259; 103 ER 773
- *Wynne-Finch and others v Natural Resources Body for Wales* [2020] EWHC 1924 (Ch); [2021] EWCA Civ 1473

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