

1. In 1787, the lands of the first baronet, Sir John Whalley Smythe Gardiner (including the reputed Wheatley manor) were put, via a marriage settlement, into a trust for his and his wife's use.<sup>1</sup> Trustees were George Gostling and Henry Newcome (possibly father or some other relation of his fiancée Martha Newcome). Their job was to ensure the estate produced the money for Martha's jointure (see below) and an annuity of £200. (The device of a trust stopped the owner from selling land out of hand and over-riding annuities etc which had been charged on the estate.). If she should survive him, she should have for life an annuity (jointure) of £800, in lieu of dower, with the usual powers of entry, distress, and subject thereto, to the use of George Gostling and Henry Newcome, their executors, for ninety- nine years, to commence from the decease of the said Sir John W. S. Gardiner, in trust for better securing the said annuity of £800, with remainder to the use of him, his heirs, and assigns, so a life interest. The residue of the estate was granted to his children (but he died without issue) and then to his brother James (I) Whalley and James I's sons in tail male.
2. In 1789, Sir John mortgaged his estates to the Duke of Somerset for £8000.<sup>2</sup>
3. In 1797, Sir John died with no heirs.<sup>3</sup> The Will referred back to the above marriage settlement and the £200 and £800 provided via this to his wife Martha. It also appointed Sir William Henry Ashurst as trustee with powers to mortgage or sell any of the properties in the marriage settlement including raising money to pay Sir John's debts and funeral expenses, then to convey the property to the trustees for the use of his sons, or others in default of not having a son. The device of an entail was normal for the period. With no children, James (I) Whalley, his brother, became the tenant in tail.
4. Sir John's younger brother, James Whalley (James I) became the second baronet after his brother's death in 1797 until his own death in 1805. He had married Elizabeth Assheton in 1784 but she died in or soon after childbirth a year later; and then re-married Jane Master, aunt of Robert Mosley Master. William Assheton later becomes a trustee, and the Assheton, Mosley and Master names are found in the later history. In his first Codicil dated February 1799, James I noted that he was entitled to a life interest in the estates left by his brother, John, and that these would pass to his eldest son, James II born 1785 and died 1851, later Sir James, the third baronet, (taking the full name of Whalley Smythe Gardiner).<sup>4</sup>
5. In 1807, Sir James II 'barred the entail', thus regaining title in fee simple of all the lands left to him with a life interest by the Will of Sir John. By indentures of lease and release, dated July, 1807, on his marriage to Frances Mosley, another trust was set up for all the land.<sup>5</sup> Trustees were Thomas Lister Parker and Rev. Streyntam Master. The terms of the trust were to continue paying Martha's annuity; to enable Sir James II to be the 'life tenant'; to set up a sequence of male heirs on Sir James II's death ('in tail male'); to

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<sup>1</sup> 'Synopsis to the Title...' by John Davenport, solicitor, 1850. B. Tearle, From the 'Synopsis to the Title...' by John Davenport, solicitor, 1850, Appendix 1, point 1.

<sup>2</sup> Tearle, *Synopsis to the Title*, point 2.

<sup>3</sup> PROB/11/1300/29. Tearle, *Synopsis to the Title*, point 3.

<sup>4</sup> PROB/11/1433/229. Tearle, *Synopsis to the Title*, point 4.

<sup>5</sup>; Dash XIX/xiv/17, Oxfordshire History Centre. A summary of this is also found in *Parker v Biscoe* (1819) 3 Moore 24. Tearle, *Synopsis to the Title*, point 5.



provide a sum of £800 for his wife Frances if there were no male heirs. If there were no male heirs then to trustees, Sir Oswald Mosley and John Peploe Mosley, to receive the £800 for Frances; if no sons and after £800 for Frances had been raised, the property went to new trustees William Assheton and George Smith to raise funds for portions for Sir James and Frances' daughters. When all those conditions had been met, the property went to Sir James' heir - the 'right' heir was identified through a carefully worked out priority of relations and could be quite distant.

6. In 1809, William Assheton had died and his son William Henry Ashhurst succeeded him. There was an indenture between Ashhurst; Sir James II; and Parker and Rev Streynsham as trustees to the marriage settlement of 1807.<sup>6</sup>
7. With the trustees, presumably having power of sale, these lands were put up for sale in 1812, 1813 and 1817 but failed to sell. [Immediately after the Napoleonic Wars farms and farmland were in the doldrums].
8. In 1819, £8000 and interest was repaid and the mortgage cancelled by the then current Duke of Somerset. Following the release of the mortgage held by the Duke of Somerset to Sir William Ashhurst, this effectively transferred all the ownership of Wheatley lands (but not the so-called manor) to Parker and Streynsham Master (later succeeded by ? Masters and then Greatorrex) to carry out the 1807 trusts.<sup>7</sup>
9. It seems likely that the 1819 court case was brought under a technicality by parties representing Sir James II to try and get control of the Wheatley properties. But this failed, and matters staggered on to 1834.<sup>8</sup>
10. In June 1834, on James III reaching his majority (21), Sir James II and his son James III barred the entail and set up a new one. (This was normal practice and done when the heir reached 21. It drew him into the web of trusts and ensured that when he inherited he could not sell off the property.)<sup>9</sup>
11. In 1834, the Wheatley estate was then 269 acres plus 62 acres in hand (part in Cuddesdon, all mostly woodland) was valued at £8,250.<sup>10</sup> The rest of the Oxfordshire estate (Cuddesdon and Denton) was valued at £24,577 and the Hampshire estate at £34,477. With other assets of £20,806, the total holdings of £88,517 were the security for an additional mortgage of £40,000 at 4% (see point 13). The income of the estate and additional assets was £3,474 of which Lady Martha Gardiner had a rent charge of £1000 and 'pin' money of £400, leaving an income of £2074 to cover the mortgage interest of £1600.
12. It is believed that James II was at this time very unwell, perhaps as a result of excessive drinking, and that this is the reason that he transferred this holding to his son James III.<sup>11</sup>  
At the time of the transfer  
12.1. Sir James (II) was tenant for life of the entire Oxfordshire estate

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<sup>6</sup> Tearle, *Synopsis to the Title*, point 6.

<sup>7</sup> Tearle, *Synopsis to the Title*, point 6.

<sup>8</sup> Parker v Biscoe (1819) 3 Moore 24. Tearle, *Synopsis to the Title*, point 7.

<sup>9</sup> Tearle, *Synopsis to the Title*, point 9

<sup>10</sup> CR 237/697/1-6, Warwickshire Record Office.

<sup>11</sup> Hess, *Wheatley Manor*, p. 126.



- 12.2. The mortgagees were to appoint their own receiver of all the estate and had full power of sale
  - 12.3. James (III) was to give mortgagees first charge subject to his father's life interest and to include in the security such part of the monies in the funds which yield £1040-8-6 p.a. to which he is entitled from his father's estate.
  - 12.4. Mortgagees held the title deeds.
13. On 26 June 1834, James III had the Manor House and adjacent 16 acres transferred to himself.<sup>12</sup> The Conveyance refers to the homestall containing by estimation 1 acre 0 roods 16 perches be the same more or less, the orchard and garden containing by estimation 1 acre 0 roods 5 perches be the same more or less, and also The Breach containing by estimation 13 acre 3 roods 6 perches be the same more or less in Wheatley [which were] then or later in the several tenures or occupation of John Haynes and Thomas Juggins.
  14. On 14 July 1834, James II raised a mortgage of £40,000 at 4% interest from Henry Sandor and George Kindersley, repayable on 14 July 1837 [but not paid off until 1846, see point 27].<sup>13</sup>
  15. In 1835, a new loan of £2,000 at 5% was raised on 14 January and £6,867 at 4% on 31 July [paid off in 1845, see point 22].<sup>14</sup>
  16. However, if his father was a drunkard, James III was worse and he died, age 25, in 1837 as a result.<sup>15</sup>
  17. James III's will was dated 1 February 1837, with a codicil of 10 February 1837.<sup>16</sup> It left any unmortgaged land, or land not already in trust to his trustees William Henry Ashhurst and Anthony Greateorex, with a life interest to his brother John Brocas and his heirs in tail male; then in default to John Brocas's daughters in equal share; and after other family successions to Sir Oswald Mosley and George Robert ?Faith. The Will expressly permitted his mother, Dame Frances, to be allowed to live in the Mansion house and associated accommodation [establishing that he had ownership of this]. Annual sums of £450 and £350 and £200, already secured, making a total of the £1000 [previously available to Lady Martha] out of the estate was to be made available, during the joint lives of his grandmother, Lady Martha, and father, Sir James II and also James II's wife and his mother, Dame Frances, to his grandmother, Lady Martha, together with her pin money. In this way, he perpetuated the terms of his father's will. His grandmother died in 1840, his father in 1851 and his mother in 1855.
  18. In 1840 Martha widow of Sir John died.<sup>17</sup>
  19. Probate to James III's Will took several years to be attained, but once it was, the mortgagees put the estate up for sale by auction on 4 February 1841.<sup>18</sup> This was clearly a trustee sale of all the Wheatley lands not the subject of the will as probate had not by then

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<sup>12</sup> E. Hess, *Wheatley Manor: Its Owners and Occupiers, 956-2015*, (Wheatley, 2015), p. 126.

<sup>13</sup> Tearle, *Synopsis to the Title*, point 11.

<sup>14</sup> Hess, *Wheatley Manor*, p. 126.

<sup>15</sup> Hess, *Wheatley Manor*, p. 127

<sup>16</sup> PROB 11/1950/72. Tearle, *Synopsis to the Title*, point 12.

<sup>17</sup> Tearle, *Synopsis to the Title*, point 13.

<sup>18</sup> CR 237/697/15-17, Warwickshire Record Office.



been granted. The Manor house and its immediate 16 acres, which had been bought out of the estate by James III in 1834. were, nevertheless, included in the sale – albeit they failed to sell. Being sold as 25 lots, the estate was then valued at £15,722. About half of the Lots were sold, it is believed to Groves, an existing farmland occupier of many adjacent farmland plots.

20. Probate to his will of was granted on 6 August 1841 to John Brocas Whalley Smythe Gardiner, the brother of the deceased and residual legatee.<sup>19</sup>
21. In 1840, Martha widow of Sir John died.<sup>20</sup>
22. In 1845, George Kinderley sold his part of the 1835 mortgage to the other mortgagee, William Henry Ashhurst.<sup>21</sup>
23. By deed poll of 12th July 1845 the 1835 mortgage of £6,867-was discharged.<sup>22</sup>
24. 1845 Greateorex resigned and George Herbert Kinderley was appointed a trustee under the 1837 will of James son of Sir James.<sup>23</sup>
25. In 1846, the remainder in 1846 to Chillingworth.<sup>24</sup>
26. 1846 Sir James III's life estate was conveyed to Ashhurst and Kinderley for £2550 on the trusts of son James's will.<sup>25</sup>
27. 1846 Henry Hoghton replaced Ashhurst as a trustee and the estate was conveyed to Hoghton and Kinderley as trustees.<sup>26</sup>
28. 1846 The mortgage of £40,000 and the charge of £2,000 (from 1835) owed to Lander and Kinderley were paid off.<sup>27</sup>
29. In 1850, the Manor House and its immediate 16 acres was sold to the Diocese of Oxford. Proof of ownership was deduced by John Davenport, solicitor for the purchaser, on 24 August 1850.<sup>28</sup> A copy of this is held in a pdf file, 'Whalley Smythe Gardiner proof owns Manor+16acres'. The plan below is an extract from the conveyance of 1850 to the Diocese of Oxford.

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<sup>19</sup> PROB 11/1950/72. Tearle, *Synopsis to the Title*, point 12.

<sup>20</sup> Tearle, *Synopsis to the Title*, point 13.

<sup>21</sup> Tearle, *Synopsis to the Title*, point 14.

<sup>22</sup> Tearle, *Synopsis to the Title*, point 15, but assuming that the date of 1835 meant 1845.

<sup>23</sup> Tearle, *Synopsis to the Title*, point 16.

<sup>24</sup> M. Heaton, *Bygone Wheatley: A History of Wheatley from Roman Times*, (Wheatley, 2020), p. 108.

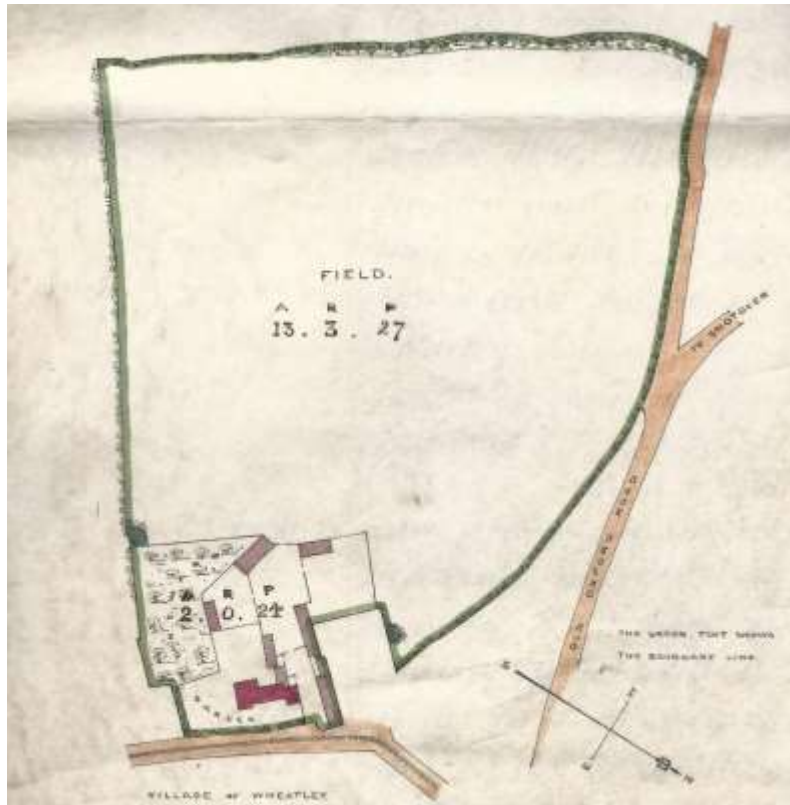
<sup>25</sup> Tearle, *Synopsis to the Title*, point 17.

<sup>26</sup> Tearle, *Synopsis to the Title*, point 18.

<sup>27</sup> Tearle, *Synopsis to the Title*, point 19.

<sup>28</sup> Hess, *Wheatley Manor*, p. 130-1. Deed held by Elizabeth Hess





Sir John and, later, Sir James II and James III, the Whalley Smythe Gardiners appear to have had no beneficial ownership, only lifetime interests, in the estate since 1787. The management and estate sales were conducted by the trustees. The Manor house and its immediate 16 acres was the only part of the estate to come into absolute ownership, this in June 1834. It might be speculated that this was to allow his mother to live in it [whether she did is not clear]. Before this was sold in 1850, the ownership being ‘proved’ in a deed.<sup>29</sup>

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<sup>29</sup> Held by Elizabeth Hess. A copy pdf of this opinion ‘Whalley Smythe Gardiner proof owns Manor+16acres’ is held by Wheatley Village Archive. We are indebted to Barbara Tearle for the interpretation of this opinion, her text forms much of the basis of this appraisal.



## **Appendix 1**

### **The long summary of the Synopsis of title:**

Extracted from document held by Elizabeth Hess and held by Wheatley Village Archive as a pdf 'Whalley Smythe Gardiner 1850 proof owns Manor+16acres'

1. 1787 Sir John's lands (including Wheatley manor) were put into a trust for his and his wife's use. Trustees were George Gostling and Henry Newcome (possibly father or some other relation of his fiance Martha Newcome). Their job was to ensure the estate produced the money for Martha's jointure and an annuity of £200. (The device of a trust stopped the owner from selling land out of hand and over-riding annuities etc which had been charged on the estate.)

2. 1789 Sir John mortgaged his estates to the Duke of Somerset for £8000

3. 1797 Sir John died. No children. Sir John appointed Sir William Henry Ashurst, probably as his executor, to raise money by sale or mortgage of the property to pay Sir John's debts and funeral expenses, then to convey the property probably to the trustees for the use of his sons, or others in default of not having a son. The device of an entail was normal for the period. Sir James became the tenant in tail.

4. 1797 Sir John was succeeded by his brother Sir James, who died in 1805 and was succeeded by his son Sir James.

5. 1807 The second Sir James 'barred the entail' i.e. regained the fee simple. On his marriage another trust was set up. Trustees were Thomas Lister Parker and Streyntham Master. The terms of the trust were to continue paying Martha's annuity; to enable Sir James to be the 'tenant'; to set up a sequence of male heirs on Sir James' death ('in tail male'); to provide a sum of £800 for his wife Frances if there were no male heirs. If there were no male heirs then to trustees, Sir Oswald Mosley and John Peploe Moseley, to receive the £800 for Frances; if no sons and after £800 for Frances had been raised, the property went to new trustees William Assheton and George Smith to raise funds for portions for Sir James and Frances' daughters. When all those conditions had been met, the property went to Sir James' heir - the 'right' heir was identified through a carefully worked out priority of relations and could be quite distant.

6 1809 William Assheton had died and his son William Henry Ashurst conveyed his position as trustee to Parker and Masters to carry out the 1807 trusts.

[Auction of freeholds at Wheatley and Cuddesdon including a farm of 270 acres at Wheatley were advertised in 1812 and 1813 and again in 1817.]

7. 1819 Case of Parker v Biscoe in the Court of Common Pleas.

8. 1819 £8,000 and interest was repaid and the mortgage cancelled by the then current Duke of Somerset.

9. June 1834 Sir James and his son James barred the entail and set up a new one. (This was normal practice and done when the heir reached 21. It drew him into the web of trusts and ensured that when he inherited he could not sell off the property.)



10. 1834 Sir James conveyed his life interest in the estate to his son James to secure £20,000. Son James assigned it to Henry Denton on trust for Landor and Kinderley (solicitors).

11. July 1834 and January 1835 James the son raised a mortgage of £40,000 and then £2,000 on the fee simple from Henry Eyres Lander and George Kinderley and a further £6867 18s 7d on his reversionary interest in the property from William Henry Ashhurst and George Kinderley. (The £40,000 mortgage is probably on property in several counties and the £6,000-odd mortgage on the Oxfordshire property only.)

12. 1837 James the son of Sir James died. He left his real property to William Henry Ashhurst and William Anthony Greateorex as executors (or trustees) to ensure his mother had Roche Court in Hampshire to live in and the residue to his brother John Brocas Whalley Smythe Gardiner for life, then to his brother's sons. The executors were empowered to sell part of the estate if necessary.

13. 1840 Martha widow of Sir John died.

14. 1845 George Kinderley sold his part of the 1835 mortgage to the other mortgagee, William Henry Ashhurst.

15. The paragraph beginning 'By deed poll of 12th July 1835 Messrs Ashhurst and Kinderley' is probably a mistake for 1845. The discharge of the 1635 mortgage of £6,000-odd makes more sense if the date is 1845.

16. 1845 Greateorex resigned and George Herbert Kinderley was appointed a trustee under the 1837 will of James son of Sir James.

17. 1846 Sir James' life estate was conveyed to Ashhurst and Kinderley for £2,550 on the trusts of son James's will.

18. 1846 Henry Hoghton replaced Ashhurst as a trustee and the estate was conveyed to Hoghton and Kinderley as trustees.

19. 1846 The mortgage of £4,000k and the charge of £2,000 (from 1835) owed to Lander and Kinderley were paid off.

While every care has been taken in summarising Davenport's synopsis and providing a timeline, I am not a lawyer or legal historian. Further research is needed to establish the procedures being employed in dealing with the estate

Barbara Tearle  
16 August 2021