

LORD GREAT CHAMBERLAIN

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Q U E S T I O N

submitted to the Law Officers and
Mr. Geoffrey Ellis and of their
Opinion thereon.

Treasury Solicitor.

OFFICE OF LORD GREAT CHAMBERLAIN.

THE LAW OFFICERS and MR. ELLIS are REQUESTED TO ADVISE:-

- (1) Whether, having regard to the decision of the Committee of Privileges in 1902, the purported appointment of Lord Levisham as deputy to perform the Office of Lord Great Chamberlain during the reign of His present Majesty has any legal effect or whether it may properly be disregarded by His Majesty.
- (2) Whether the appointment of a deputy requires the unanimous assent of all those in whom for the time being the Office of Lord Great Chamberlain is vested.
- (3) Whether, if a deputy may be appointed by a majority only, the votes of those interested are to be reckoned per capita or per stirpes, that is to say, whether the descendants of Lord Lincolnshire are entitled to one vote or to five.
- (4) Whether, on the assumption that the Office of Lord Great Chamberlain is vested as to one moiety in Lord Cholmondeley and as to the other moiety in Lord Ancaster and the family of Lord Lincolnshire in equal shares, Lord Cholmondeley would be entitled, in the event of appointment by a majority, to two votes and Lord Ancaster and the family of Lord Lincolnshire to one vote each.
- (5) Whether the Deed of 15th April, 1912, in any way affects the legal position as declared in 1902, or has any binding effect, otherwise than as a matter of honour, upon the parties to it or their heirs.
- (6) Whether, in the event of a failure on the part of those interested to submit within a reasonable time the name of a deputy for His Majesty's approval, it would be proper for His Majesty to cause an intimation to be sent to them that if a deputy is not submitted for His Majesty's approval within a specified time His Majesty will appoint such person as he may be pleased to select.
- (7) Generally on the case.

O P I N I O N
OF THE LAW OFFICERS OF THE CROWN
and MR. R. GEOFFREY ELLIS.

The Office of Chamberlain in or about the year 1133 was granted by Charter in fee to Aubrey de Vere (1) and his heirs by King Henry I. In or about the year 1332 there was an inspeximus of the original charter, and a confirmation to Robert de Vere, ninth Earl of Oxford, and his heirs by King Richard II. Subsequently the members of the de Vere family were the subjects of various acts of attainder and restoration. In 1509 there was an inspeximus of the Charters of Kings Henry I and Richard II, and by Letters Patent dated the 22nd May 1509, granted by King Henry VIII, these charters were confirmed to John thirteenth Earl of Oxford (2) (Patent Roll, Chancery, 1 Henry VIII).

John, the thirteenth Earl of Oxford, died on the 10th March 1512-13 leaving as his heir-at-law and successor in title his nephew John, fourteenth Earl (3), then under age. In 1520 the King granted special livery to the fourteenth Earl of all lands and offices of which the thirteenth Earl died seised (Patent Roll, Chancery, 12 Henry VIII).

John, the 14th Earl, died on the 13th July 1526 without issue, leaving three co-heirs, his two sisters, Elizabeth Lady Wingfield (4), Ursula Lady Knightly (5), and John Nevill (6), the infant son of his sister Dorothy Lady Latimer; also leaving an heir male to the Earldom of

Oxford, a second cousin John de Vere (8), who succeeded as fifteenth Earl. Disputes immediately arose between the co-heirs and the fifteenth Earl as to the devolution of the lands and offices comprising the late Earl's inheritance.

These disputes were submitted to the arbitrament of King Henry VIII, and a Royal Award, confirmed by Act of Parliament, divided the estates and offices (Statutes of the Realm, vol.III, p.412). The Office of Lord Great Chamberlain was not expressly mentioned in the Act, but it has been decided that the Award passed the Chamberlainship. (See the Resolution of the House of Lords 1902).

John, fifteenth Earl of Oxford, died in 1540, and between April of that year and November 1553, the Office was granted by Kings Henry VIII and Edward VI to five persons, all strangers in blood to the de Vere family. These grants appear to show that the Crown had taken the Office into its own hands. This treatment in view of the original Charter and the above-mentioned Act can only be regarded as usurpation.

At the Coronation of King Edward VI, John sixteenth Earl of Oxford, though he took some part in the ceremony, does not appear to have insisted on his right to the Chamberlainship as against the Earl of Warwick, one of the five grantees mentioned above. In 1547 the Lord Protector Somerset demanded from the Earl of Oxford that his "patent of the Great Chamberlainship" should be surrendered, but the order does not appear to have been obeyed, and this fact is some evidence that the sixteenth Earl never surrendered his hereditary rights in the office.

At/

At the Coronation of Queen Mary in 1553, the sixteenth Earl (9) officiated as Chamberlain. At the Coronation of Queen Elizabeth he presented a claim to act, on the ground that the fourteenth Earl and his ancestors were seised as of fee of and in the office of Great Chamberlain of England, and cited the Award of Henry VIII. His claim was allowed, and he acted in the Office. (Lord Chamberlain's Records).

On June 2nd 1562 the sixteenth Earl affected to settle the Office so as to descend with the Earldom of Oxford in tail male (Close Roll Chancery). He died 3rd August 1562, and the office remained in the de Vere family until the death of Henry the eighteenth Earl (10), who died without issue in 1625. The eighteenth Earl left surviving him (1) a first cousin of the whole blood, Robert Lord Willoughby d'Eresby (11); (2) a second cousin, Robert de Vere, afterwards declared to be nineteenth Earl of Oxford (12); (3) three sisters of the half blood, namely, Elizabeth Countess of Derby (13), Bridget Lady Morris (14) and Susan Countess of Montgomery (15).

The Office was claimed by: (a) Lord Willoughby d'Eresby, on the ground that as an office held in fee simple it descended on the heir-at-law; (b) by Robert de Vere, under the entail made by the sixteenth Earl; (c) by the Earl and Countess of Derby, apparently on the ground that the latter was the nearest of kin to the eighteenth Earl though^{of} the half blood. (See Sir W. Jones Reps. p.26; also 2 Bro.P.C.146; 1 E.R.650).

The Petitions of the Claimants were referred by King Charles I to the House of Lords; and a series of questions/

questions put by the House to the Judges, who subsequently reported that they were of opinion that the Office belonged to the "heir-general, the now Lord 'Willoughby'" (Sir Wm. Jones Reps. at p.100).

The House of Lords desired the Judges to consider (22nd March 1625) (a) "Whether the Earl of Oxford who made the Intayle of the said office were at that time seised of the said office" and (b) "Admitting that he were seised of it whether such an office may be conveyed by the way of limiting of uses".

Trevor, Baron, Yelverton and Doddridge JJ. gave their opinions (28th March 1625) in favour of Lord Willoughby, the heir-general, while Crew C.J. and Walter C.B. were for the heir-male, the ground of the majority being that the office was a personal dignity, annexed to the posterity and fixed in the blood, and that any person seised of such an office in fee has an inheritance which cannot be conveyed to an use. (Sir Wm. Jones Rep. at p.127.) Later (1st April 1625) the petition of the Earl and Countess of Derby was heard by the House but rejected, the Report being in accordance with the previously expressed opinion of the majority of the Judges.

The Office continued in the male line of the Willoughbys until the death of Robert fourth Duke of Ancaster (16) in 1779. He left two sisters, his co-heirs: Priscilla (17), the elder, wife of Peter Burrell, and Georgina (18), afterwards Marchioness Cholmondeley. Claims to the Office were then made by: (1) Peter Burrell in right of his wife, Lady Priscilla Burrell, the senior co-heir; (2) Brownlow fifth Duke of Ancaster, uncle of the fourth Duke, as heir male (19); (3) Earl Percy (20),
claiming/

claiming through Dorothy Lady Latimer; and (4) the Duchess Dowager of Atholl (21), claiming through Elizabeth Countess of Derby. The House of Lords first took the opinion of the Judges on the two latter claims, which were held to be barred by the Statutes of Limitation. (Reported 2 Bro.P.C. 146; 1 E.R. 850) The final question put to the Judges was whether the office belonged to the eldest sister alone or to both sisters; and the reply was that it belonged to both, and the decision was in accordance with this view.

The Office continued in the representatives of Lady Priscilla Burrell and Georgina Marchioness Cholmondeley until in 1902 a claim was made by the Earl of Ancaster as the representative of Lady Priscilla Burrell, and senior co-heir to the entire Office. Other claimants were the Marquess Cholmondeley to a moiety of the Office, and Earl Carrington to a quarter (both claiming through Georgina Marchioness Cholmondeley); and the Duke of Atholl (25), to the entire office, claiming through both Dorothy Lady Latimer (senior co-heir of John de Vere fourteenth Earl of Oxford) and Elizabeth Countess of Derby (senior co-heir of Henry eighteenth Earl of Oxford). (Minutes of Proceedings L.G.C. Case 1902).

The Petitions were referred to the House of Lords, and it was decided that the rights of the co-heiresses who had inherited the Office were in the Earl of Ancaster (22), the Marquess Cholmondeley (23) and Earl Carrington (24), in whom the right of selection of a deputy rested, subject to the condition that he must be at least of the rank of a knight.

The conclusions to be gathered from the history

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of the succession to the Office of Chamberlain are, we consider, as follows:

1. It is an hereditary office in gross of an anomalous nature, partaking of the character of a dignity, and at the same time comprehending in some of its attributes the character of an office of profit.
2. Its course of succession has been subject to arbitrary interference by the Crown which in the person of King Henry VIII awarded the office to an heir male in preference to heirs-general, but this act was confirmed by Parliament.
3. The Office has been held subject to the doctrine of *possessio fratris*, and to the operation of the Statutes of Limitations; and now appears to be vested in co-heirs jointly as co-parceners.

Before answering specifically the questions put it must be noted that this Office is of a personal nature about the Court and that therefore the Crown is not bound to accept unreservedly any deputy who may be nominated, and reasonably so, since if an existing Deputy became incapable of carrying on the duties of the office or proved obnoxious personally to the Crown it must be within the power of the Crown to terminate the appointment and to ask for the submission of another agreed name.

Since the office is hereditary and inalienable without the consent of the Crown expressly given (see the proceedings of 1625) it appears to be held in co-parcenary among all the co-heirs (*ibid.*) and since it is indivisible the consent of all is required for the appointment of a Deputy. By the terms of the Resolution of 1902 it is clear that the consent of all co-heirs is required/

required for the effective nomination of a Deputy. It is therefore clearly in the power of any co-heir whether individually, or as member of a line, to prevent the unanimous nomination which is legally required.

In answer to the questions specifically put, we advise as follows:

1. The purported appointment of Lord Lewisham as Deputy to perform the Office during His present Majesty's reign has no legal effect, and may be disregarded by His Majesty because the Office having become vacant by the death of Lord Lincolnshire is now vested in all the co-heirs, who are, as to one moiety Lord Cholmondeley, as to one quarter Lord Ancaster, and as to one twentieth each the four living daughters of the late Lord Lincolnshire and the heir of the fifth daughter recently deceased.
2. The unanimous assent of all the members of the co-heirship existing at the time of a vacancy is required for the valid nomination of a Deputy.
- 3 & 4. While in our opinion the question of a majority vote does not arise, it might be of moment should the co-heirs fail to agree. This office according to previous decisions is held in co-parcenary; and the interests of such a holding are calculable per stirpes. (See the Rule in Cooper v. France (1850) 19 L.J.Ch. 313.) Therefore should His Majesty be minded to make an ad interim appointment on the recommendation of a majority of co-heirs holding per stirpes, pending agreement by all the co-heirs, such an appointment would appear to be an equitable solution of the difficulty.
5. The deed of 15th April 1912 has no binding effect. The office is always in the co-heirship at any moment of vacancy/

vacancy, the rights being in the existing co-heirs who have no legal power to deal with the privileges of the office without the consent of the Crown; and it is at least questionable whether co-heirs could bind the rights of their own heirs in an office which has also some of the attributes of a descendible dignity. By the deed power appears to be taken to bind the co-heirship and the Crown through five reigns. Were a vacancy to occur at any time during that period it is difficult to see how the right of any individual member of the co-heirship to share in the nomination of a Deputy could be resisted, since if it were refused, the nomination of a Deputy would not be unanimous within the terms of the 1902 Resolution. Moreover, it is sought to limit the rights of the Crown during five reigns, and the Crown is no party to this deed. The deed cannot be regarded as other than a direction by existing members of families as to the way in which they consider their descendants should act on the happening of a future event. It may be considered as an obligation of honour by the parties to the deed. The Crown and other co-heirs would not be acting illegally if fifty years hence they held a different opinion, and acted on it.

6. Should the co-heirs fail within a reasonable time to arrive at a unanimous nomination, we are of opinion that it would be proper for His Majesty to cause an intimation to be sent to them that if a unanimous nomination be not submitted for His Majesty's approval within a specified time His Majesty will appoint such person as he may be pleased to select. Such appointment might, in our opinion, be made during pleasure.

Generally/

Generally, we are of opinion that the Deed of Deputation dated 21st January 1911 is ultra vires of the parties in so far as it purports to nominate a Deputy to act throughout the reign of The King. The right is to offer the name of a Deputy to the Crown for the Crown's acceptance so long as that particular Deputy is satisfactory to the Crown personally and in his performance of the duties of an office about the person of the Crown. The Royal Warrant of Appointment (27th January 1911) while referring to the Deed of Deputation above-mentioned does not approve Lord Carrington's appointment for the whole period of His Majesty's reign, as asked for in the Deed; and it may reasonably be inferred that the appointment was intended to be made without prejudice to the Crown's right to terminate the same if just cause should, in the opinion of the Crown, arise.

(Sgd) T.W.H. Inskip.

(") F.B. Merriman.

(") Geoffrey Ellis.

LAW OFFICERS' DEPARTMENT.

25th July, 1928.