THE LOSS AND THE SUPPOSED RECOVERY BY EDWARD HASTED OF HIS ANCESTRAL ESTATES

JOHN BOYLE, LL.B., F.S.A.

The story of Hasted's estates, pieced together from such materials as were known in 1972 is set out in the *Introduction* to the reprint of the Second (Octavo) Edition of his *History*, especially pp. xxix *et seq.*, where Hasted's loss of his lands is treated as having been largely due to the activities of his solicitor, Thomas Williams. This gentleman is described as unscrupulous and unpleasant and compared unfavourably with Shylock. The 1789 crisis in Hasted's finances was 'just what Williams had been waiting for' and in the 'specious guise' of confidential adviser he succeeded in getting Hasted's estates into his own hands at an under-valuation. To obtain Hasted's reluctant assent to the transaction Williams offered to execute a bond undertaking to reconvey the estates, if within a year the purchase price was repaid. This period the solicitor fraudulently reduced to six months 'knowing well that Hasted could not possibly find the money in this period'. The hapless Hasted was 'a child in the hands of the law' and was quite unable to meet the six months' deadline, so that Williams' nefarious plan seemed to have succeeded. But, years later, when Hasted was in the King's Bench prison, his son rediscovered the bond and as a result Hasted was able, after proceedings in Chancery, triumphantly to obtain the Lord Chancellor's decree for the recovery of his estates, and also to secure his own release from prison.

Thus the *Introduction*. The authority for the circumstances in which Hasted lost his estates to Williams is a statement in Hasted's hand found in the Rochester Museum, and the account of the subsequent legal proceedings and decree is presumably based on what

is said in Hasted's will[1] and his self-composed obituary.[2] However, a further examination of the Rochester material, followed by searches in the Chancery records at the Public Record Office, reveals a somewhat different state of affairs.

Hasted's statement, we find, was composed in circumstances that invite the strongest suspicions as to its candour and accuracy, while the assertions made or implied in his will and obituary turn out to be pure self-deception and fantasy.

Two counsel's opinions found at Rochester and not mentioned in the *Introduction* throw a new light on the story; they were given by J.S. Harvey of the Middle Temple, an equity draughtsman and expert on property law who was later to become a Master of the Chancery; he was, incidentally, one of the Tilmanstone Harveys and is mentioned in the *History*. A careful study of Williams' bond also reveals some new facts.

The bond is a most complex document, with long recitals having within them sub-recitals and sub-sub-recitals. The new facts are, first, that the transfer of Hasted's estates to trustees, which the *Introduction* mentions as having been recommended by Williams, was in fact effected (12th March, 1789) so that the subsequent sale of the estates to Williams was, technically, made by these trustees, though Hasted joined in it. Secondly, the purchase money – a mere £287 because of the many debts encumbering the estates – was paid to these trustees while the bulk of the sale-price was simply retained by Williams to meet the debts.[3]

Hasted's 'statement' also reveals at least one significant fact not previously mentioned, namely, that before the sale to Williams and *without Williams' knowledge,* Hasted had made second mortgages (then held by the respective executors of a Mr. Davies and a Mr Rugg) of two of the estates transferred to Williams.

Turning now to J.S. Harvey's opinions, the first, relying on Hasted's statement and the terms of the bond, was to the effect that there were strong circumstances why the conveyance to Williams

[1] He requests his executor, John Barlow, to 'use his best endeavours for the performing and bringing to a conclusion the business of the recovery of my estates according to the Decree of the Chancellor lately made and settling the accounts of the same and the sale of the estates for the most price that can be got in such manner and parcels as may be most advantageous and with the earliest convenient speed.'

[2] . . . 'and, having obtained, a few years ago, the Chancellor's decree for the recovery of his estates in Kent, of which he had been defrauded, it enabled him again to enjoy the sweets of an independent competence during the remainder of his life.'

[3] Additionally £100 was paid to Hasted as a 'douceur'.

should be considered in a court of equity as a mortgage only, and that, had Hasted applied within a reasonable time, though after the time specified in the bond, the court would have ordered the reconveyance of the estates to Hasted's trustees on payment of what was due to Williams. The long delay had weakened the case, but Harvey considered that success could be reasonably expected for such an application even at that late date.

Harvey's second opinion, contained in a letter addressed to one Clarkson, a London attorney, refers to a proposed assignment by Hasted of the bond of Williams to Messrs. Simmons and Scudamore, attorneys representing the mortgagees Davies and Rugg respectively, on trust for their clients. Harvey advises that if the terms of the assignment were slightly amended and the document then executed by Hasted he would recommend the mortgagees to consent to Hasted's discharge from prison. (No other creditor seems to have been involved). All this is new to us.

The *Introduction* mentions that before the rediscovery of the bond Thomas Williams had died, and that his nephew John Williams was the heir to Hasted's former estates; accordingly, one would expect to find in the Chancery records about 1802 or 1803 a case brought against John Williams and ending with a decree ordering the reconveyance of part at least of the estates sold to T. Williams. Despite the strong hint that Hasted might have assigned his rights under the bond, a search was first made under his name in the registers for the years 1800–1812 (the date of Hasted's death) but without result. The dates of the cases are those of 'sortation', i.e., filing of the pleadings and the staff of the 'Long Room' at the Public Record Office advised that this might be a short time later than the date of the lodgement of the pleading. So, without much hope a further search up to 1820 was made. There are six indexes, one for each division, and they are not alphabetical beyond the initial letter. However, the additional labour was well rewarded, yielding no less than four entries under the name Hasted, viz., *Hasted v. Debary,*[4] *Hasted v. Scudamore,*[5] *Hasted v. Simmons,*[6] and *Hasted v. Rugg.*[7] Disappointment followed when, after the week's delay required for fetching the documents from a distance, it was found that 'Hasted' was E. Hasted Junior and not the historian, though examination showed that the subject matter related to the

[4] 1816 C 13 – 1688/35.
[5] 1816 C 13 – 1678/23.
[6] 1818 C 13 – 1697/32.
[7] 1818 C 13 – 1698/8.

latter's affairs and revealed the vital fact that in 1803 J.P. Davies had instituted certain Chancery proceedings against J. Williams (the nephew and executor) and against Hasted (Senior).

This explained why the historian's case could not easily be found; he was not a plaintiff as he had implied but a defendant. A search under the names of *Davies v. Williams* and *Davies v. Hasted* soon led to the information for which one had been searching. The main case was found to be *Davies v. Williams* 1803,[8] supplemented by *Davies v. Hasted* 1808.[9] We may therefore leave aside the son's litigation for the moment and examine the earlier cases involving the father directly.

The case of *Davies v. Williams* illustrates three important principles of equity which are still to be found in the textbooks – that a solicitor receiving benefits from a client who has no independent advice is guilty of 'constructive fraud'; that a conveyance of land with an option to re-purchase may be considered to be a mortgage; but that 'delay defeats equity'.

The facts revealed, much abridged, are as follows. The executors of Joseph Davies and those of Robert Rugg (and their trustee-solicitors John Simmons and William Scudamore) were suing John Williams and John Tasker (the executors of T. Williams), Sarah Williams, his sister-in-law, and a whole host of sisters, nieces, and nephews who were beneficiaries under T. Williams' will, and lastly they were suing Hasted. Davies and Rugg were asking for the reconveyance of Hasted's former estates on payment of what (if anything) should be found due to T. Williams' estate, *to them,* Davies and Rugg.

Their justification for this request took the form of a long and complex recital of the dealings with Hasted's former estates from 1784 to 1802. It seems that in the former year Hasted's holdings consisted of freehold lands in Cliffe parish and of freeholds, and the leasehold manor of Horsham, in Rainham, Newington, Halstow, Hartlip, Bobbing and Detling.

In 1784, Hasted had (without his solicitor's knowledge) mortgaged his freeholds of Court Sole and Cock Farm in Cliffe to various members of the Gibbs family of Ickham.[10] These mortgages had been assigned first to W. Pattenson and from him to Joseph Davies.

[8] C 13 2415
[9] C 13 2427
[10] The bond noticed in the Maidstone Museum relates to this transaction.

In 1786, Hasted had mortgaged his leasehold interest in Horsham Manor (held from All Souls College, Oxford) to Robert Rugg, again keeping T. Williams in ignorance.

In 1789, when Hasted was financially embarrassed, particularly by the additional mortgages to T. Williams and to his clients, Mrs. Warde and Godden and Collyer, T. Williams (according to the plaintiffs' claim) 'formed a plan to obtain to himself the said estates' and with that design recommended Hasted to transfer his estates on trust to W. Pennington (another attorney) and John Williams (Thomas's nephew and partner). The next stop in this nefarious plot was (according to the plaintiffs) for T. Williams to pay off the mortgages of his clients, Warde, Godden and Collyer, and to have them transferred to trustees for himself. However, according to the defendant, John Williams, this was not done until a later date, *after* T. Williams had bought the estates from Hasted. It was T. Williams (again according to the plaintiffs) who persuaded Hasted's mother to execute a document releasing the estates from her annuity (for which she had given up her claim to dower). The way was then clear for T. Williams, taking advantage of Hasted's 'great distress' to buy his estates 'then worth £12,500 and upwards' for £8,685 plus £100. The famous bond for reconveyance within six months was then given by T. Williams. When Davies and Ruggs' executors heard about the transfer, they applied to T. Williams to redeem the premises mortgaged to them, but Williams claimed that Hasted's freeholds had been mortgaged to a Mr. Warde in 1767 – long before the Gibbs (through whom Davies claimed) came on the scene, and that Williams (who had subsequently paid out Warde and taken over his mortgage) had done so in ignorance of Davies' mortgage and was accordingly protected from Davies' claim. Likewise, Williams claimed that he had a mortgage of the leasehold premises, Horsham Manor, prior to that under which the Ruggs claimed.

Being ignorant of the fraudulent circumstances under which T. Williams had purchased Hasted's estates (went on the plaintiffs' prayer) and also not knowing about the bond that Williams had given, Davies and Rugg were unable to enforce their claims, while Hasted in his distress mislaid the bond and considered it lost 'whereby he was less able to adopt proceedings to redeem the said premises.' But afterwards the plaintiffs found out about the bond and 'they caused diligent search to be made for the said bond' and when Hasted's son discovered it at Hollingbourne amongst some old papers of his father, Hasted 'in order to enable the Plaintiffs to recover the amount of their demands, agreed' (24th February, 1802) 'to assign the benefit of the bond to J. Simmons and W. Scudamore' (the solicitors to the Ruggs and Davies). They were to endeavour to

recover the estates, and divide the residue after payment of costs between the two plaintiff mortgagees. It will be noted that Hasted was to get nothing: the consideration for the transfer of the bond was apparent when, after seven years in gaol, he regained his liberty.

The plaintiffs asked that Hasted's transfer of the estates to T. Williams should be set aside, having been made for very inadequate consideration, by fraud, taking advantage of Hasted's distress and of his confidence in T. Williams as his legal adviser. Failing that, the plaintiffs claimed that Hasted had at least the right to redeem the premises by paying what was owed, which right he had, of course, assigned to the plaintiffs.

The Williams family had been in possession of the estates for a dozen years and the bill went on to claim that they had received enough from income and sales to discharge the mortgage debts owed to the family.

The routine allegations followed – of conspiracy, of confederation, of pretending more was owing than was really due, of refusing information when asked 'in a friendly manner'. Finally, Hasted 'refuses to join your orators in this suit' and, since Chancery practice demanded that all interested parties must be brought in on one side or the other, he had to be treated as a defendant.

After this lengthy and complex bill in Chancery had been duly lodged, the defendants' answers put in and divers witnesses examined, the plaintiffs made a discovery which must have caused them some disquiet. In effect, they found that there were others with interests in Hasted's former estates besides themselves, Hasted and the Williams family. These were the children of Hasted, who had claims under a settlement made by the historian on 23rd October, 1789.

It may be recalled that Hasted had conveyed his estates to W. Pennington and J. Williams and they held them on trust to sell, pay off mortgages and hand any balance back to him. But, by the 1789 settlement, this had been altered and after providing for various life interests (which envisaged, incidentally, the possibility that Hasted and his wife might separate) only one-third of the residue was to go to Hasted and the other two-thirds to his children as he should appoint. Hasted did not therefore have the undisputed right to make over the residuary interest to Simmons and Scudamore and (as the plaintiffs put it in a supplementary bill) 'the children of Hasted pretend . . . that their title under (the settlement) is prior to any title the Plaintiffs can claim under the assignment to J. Simmons and W. Scudamore'. The children had therefore to be added as yet more defendants to Davies and Ruggs' bill.[11]

To all this the substantial answer was given by the defendant, John Williams. One of the Ruggs' strong points was that they were in possession of the original twenty-year lease of Horsham Manor granted by All Souls College, Oxford, in 1781 to Hasted. Williams seems to imply that Hasted got hold of the lease, which he had mortgaged to the Warde family by a trick, in order to get another loan on mortgage from Robert Rugg. 'If in fact Hasted did deliver the lease to Rugg, then' (Williams believes) 'the same was not done until after the same had been deposited with Catherine Warde and Hasted procured it from T. Warde or C. Warde . . . (or their agents) in order to deliver the same to Child and Co., bankers, of All Souls College, for the purpose of surrendering it to the College and obtaining a fresh lease . . .'

Set out in the schedule to Williams' reply is 'an account of the freeholds and leaseholds which were in April, 1790, conveyed to T. Williams with the situations, occupations, rents, or yearly value according to the rent book.' A photograph of this interesting document (occupying most of two skins) has been obtained and placed in the Canterbury Cathedral archives.

A point made by J. Williams is that his uncle was no longer Hasted's attorney in 1790, having retired from the firm a few years before. He gives an account of the circumstances in which Hasted executed the transfer of his estates which has an air of candour, and differs in many details from that given by Hasted. The overall impression given is that Hasted knew very well what he was doing, but was in difficulty because of his desire for secrecy. 'Hasted did not wish his desire to sell the estates to be known until he had left the country.' He feared his creditors. The purpose of the bond was that it 'might be left in the hands of some friends or relation, in case someone could be found to pay more for the estates than T. Williams' price', so that the surplus could go to Hasted's family. In 1790, Rugg had brought an action of ejectment against T. Williams to recover possession of the leasehold premises, but Williams satisfied Ruggs' solicitor of his title and the action was dropped. A letter is quoted *verbatim* in which T. Williams, in 1791, offers to transfer the estates to Hasted's mortgagees if they will pay T. Williams what is owed to him. This offer was not accepted.

As could be expected, J. Williams denied that the estates were worth £12,500, contending that they were only worth the figure that his uncle gave for them.

[11] The foregoing account is an attempt to marry together and summarise the claims set out in the main and supplemental bills.

In their answer Hasted's children, Edward Hasted Junior, Charles, Ann, Catherine and John Septimus (Francis Dingley was away in India), say that they desire the sale to T. Williams to be set aside. Further, that their mother was a purchaser for valuable consideration of the benefits given to the children in the settlement of 1789. They therefore claim to be preferred to the claimants' rights under their mortgage, (of which they, the children, had no notice) and to those under the assignment by their father to Simmons and Scudamore.

The decree of the Lord Chancellor (Lord Eldon) is dated the 24th May, 1808.[12] It is a lengthy document of ten folios (i.e., 20 folio pages). The hearing of the case in the first of the two bills took place on the 11th February and the 3rd, 7th, 9th, 10th, 11th and 19th March, 1808. The long preamble to the actual decision consists predominantly of a recital of the various parties' pleadings, the gist of which has been stated above. We find that Hasted had put in an answer largely a repetition of his 'statement of his transaction with T. Williams[13] and therefore virtually evidence for the plaintiffs by one who was nominally a defendant. He, too, wished his conveyance to T. Williams to be set aside but failing this, the plaintiffs should be allowed to redeem the estates, (i.e. to get them back on paying the debt owed to the Williams' estate). Hasted contended (presumably as an alternative) that the estates should be sold for the purposes of paying the Ruggs and Davies what was due to them; he offered to 'concur in all necessary steps' to this end. 'He hopes to be allowed his costs in this matter as he does not expect to derive any benefit for himself from his suit except the payment of the debts due to the executors of J. Davies and R. Rugg'. Many exhibits, both legal documents and letters, had been produced when the case was adjourned for judgement, and the second bill was brought forward and heard on the 10th, 21st and 23rd May, 1808. This bill, it will be recalled, was occasioned when the plaintiffs discovered the existence of the settlement of 1789 whereby Hasted had conferred certain interests on his children. The contentions of the children have already been mentioned.

Giving judgement on the two bills 'His Lordship doth declare that the Conveyance to T. Williams ought only to stand as a security for what (if anything) shall be found due' on the taking of an account, to John Williams 'for principle of the £8,685 mentioned in the Conveyance of the 7th April, 1790'. Other outgoings and all income

[12] C 33 558 f. 1494.

[13] From internal evidence, the terms of this statement are influenced by a certain amount of 'priming' by the lawyers.

received from the estates since 1790 were to be taken into account by the Master responsible, who was also to report in whom the leasehold of the Manor of Horsham was then vested – a most obscure question. Lastly, John Williams was ordered to pay the entire taxed costs of the suits. Lord Eldon reserved all further consideration until the Master had reported.

To find out what happened next we turn again to the case of *Hasted v. Debary* (1816).[14] The plaintiffs were Hasted Junior and W. Bugden, W. Jeffreys and J. Gurr, all of Chatham, bankers, while the defendants were G. Clarkson, R.W. Clarkson, R. Debary, J. Scudamore, B. Curey, J. Barlow, J. Simmons, W. Scudamore, S. Taylor and Harriet his wife, J.P. Davies, J. Blaxland, R. Rugg and J. Rugg. The three additional plaintiffs were bankers at Chatham to whom Hasted Junior owed money; of the defendants the first five and also Simmons and Scudamore were attorneys, concerned in dealings with the former estates of Hasted Senior. Barlow was Hasted's executor, Harriet Taylor, the lady hitherto known to history as Harriet Brewster,[15] and S. Taylor, her husband. Davies, Blaxland and the Ruggs were representatives of the deceased mortgagees of Hasted's estates. The gist of the case was that the defendants, or some of them, were withholding monies due to the estate of Hasted, to two-thirds of which the son claimed to be entitled. He had pledged his rights to the bankers to secure the £537 19*s.* 6*d.* he owed them, and asked the Court for relief, including the taking of accounts and if necessary the appointment of a receiver.

The plaintiffs repeat the whole sad story from 1789 to Lord Eldon's decree in 1808, and add that 'before any further proceedings were had in the said Causes' Hasted died (January 1812). Hasted's will is mentioned and the marriage of Harriet Brewster (his residuary legatee) to Samuel Taylor. It is then revealed that on the 23rd April, 1812, the principal parties to the litigation (Williams and Tasker, Ruggs' and Davies' executors, Simmons and Scudamore and Hasted Junior) together with Hasted's executor, John Barlow, entered into an agreement to settle the litigation by a compromise. John Williams had computed that the balance due to the Williams' estate was £13,931 11*s.* It was agreed that all the former properties of Hasted should be sold and the proceeds should be used first to meet the Williams' claim and secondly to pay off the Ruggs and the

[14] C 13 1688/35. The entries *Hasted v. Scudamore, Hasted v. Simmons* and *Hasted v. Rugg* (see ante p. 29) all refer to subsidiary documents in the case of *Hasted v. Debary*.

[15] Hasted's servant after his parting with Mary Jane Town.

Davies, the remainder going to Hasted's executor, Barlow, to apply as directed in Hasted's will. Two firms of London attorneys were retained to handle the disposals. 'Mr. Dawson the auctioneer' conducted the sale of the larger part of the estates at the Crown Inn, Rochester, on the 25th and 26th April, 1812, and the attorneys disposed of the rest by private contract; the total realised was £22,816 5*s.* 1*d.* These latter facts are taken from the defendants' answer to the suit. They claim that after paying off the mortgagees they have 'only a small balance of £53 4*s.* 5*d.*' A number of sales, however, had not been completed and were expected to yield another £3,000 or so. Hasted's executor had received only the bare costs of probate, so that there was nothing at the moment to satisfy the claim of Hasted Junior to two-thirds of the surplus, due to him in accordance with the family settlement and Hasted's will.

The final decree was not made until 1822, and it reads as follows:[16]

'Edwd. Hasted Clk & ors Plts
Geo. Clarkson & ors Defts } Tuesday, 19th Feby. 1822

'Upon motion this day made unto this Ct by Mr. Beames of Cl for the plts. It was alled[c] that the plts having filed their Bill in this Court agst the Defts the mres in diffce bet[n] the part.[s] having been Accommodated. It was therefore prayed that the plts Bill may stand dismissed out of this Court with[t] Costs which is ord[d] accordingly 'Mr. Abercromby of Co[s] for the Defts consenting thereto.

J.C. (or I.C.)'

[16] C 33 691 663.