

## THE UNOFFICIAL ENCLOSURE PROCEEDINGS: A STUDY OF THE HORSHAM (SUSSEX) ENCLOSURE 1812–1813

by John Chapman

*The Horsham Common enclosure is of particular interest in that, in addition to the official records, the private papers of one of the principal unofficial participants also survive. These reveal the complex motives involved, and show that political interests played at least as important a part as the desire for agricultural improvement in initiating the enclosures process. They reveal also the degree to which personal animosities could prolong and complicate an enclosure which was apparently unopposed, and how individuals bent on creating problems could do so without taking steps which would reach the official record.*

One of the major problems in the study of Parliamentary enclosure of land is to determine the real motives of those involved, and the reasons why the proceedings followed the course they did. The awards, with a few exceptions,<sup>1</sup> contain nothing more than a straightforward account of the allotments made, and even the commissioners' minute books, where they exist, are normally confined to recording claims and counter-claims, though a few may include the detailed evidence of witnesses examined to determine matters in dispute.<sup>2</sup> The occasional chance survival of private papers is thus of particular interest, for it may reveal the role of personalities in the proceedings, and may show the relationship of the enclosure to other contemporary events. The Horsham Common enclosure of 1812–13 is such a case, for though two of the principal landowners, the Duke of Norfolk and Robert Hurst, seem to have left few papers of relevance,<sup>3</sup> and those of the third, Sir Henry Fletcher, have not been located, the papers of Thomas Charles Medwin, a Horsham solicitor, make it possible to appreciate some of the complexities behind the bland official record.<sup>4</sup>

The formal proceedings of this enclosure were the subject of a highly detailed account by W. Albery some thirty years ago.<sup>5</sup> Albery's version, however, follows very closely the Hammonds' views on the motivation for enclosure,<sup>6</sup> and his assumption that the whole process was a simple case of a tightly organised conspiracy by the three major landowners to out-manoeuvre all other parties cannot be sustained. As Medwin's papers make clear, relations between Fletcher, on the one hand, and the Duke and Hurst on the other, were far from cordial, and personal antagonisms had a significant influence on the enclosure proceedings.

Medwin was in an unusually good position to see the whole enclosure process, for he initially acted for the Duke, and later for Fletcher and his allies. Indeed, as steward to the manor of Horsham he had had responsibility for the Common since 1787, so he was intimately involved with the area for over 25 years. He was also the Duke's steward for the Rape of Bramber and, according to Albery, a close political ally of the three landowners, who were all firm supporters of the Whig cause.<sup>7</sup> His knowledge thus extended to the personalities as well as the land.

The area affected by the enclosure, Horsham Common, consisted of some 737 acres<sup>8</sup> of

*HORSHAM COMMON  
AT ENCLOSURE*

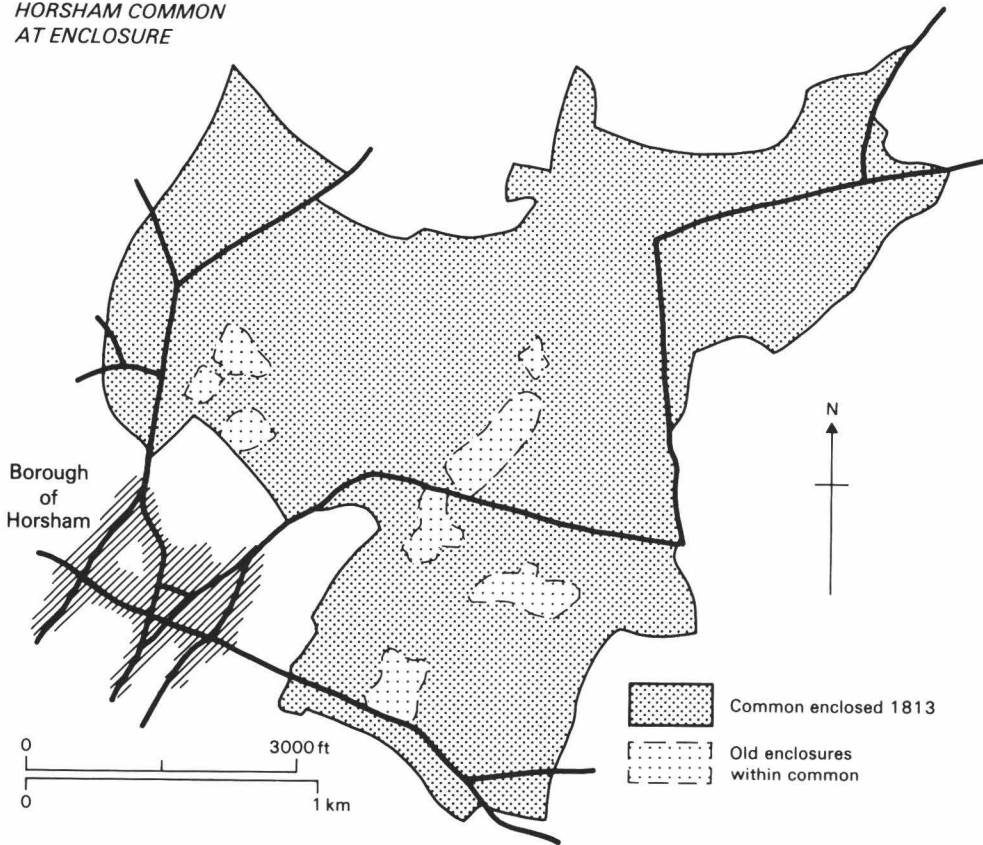


Fig. 1.

'waste' lying on the edge of the town of Horsham, (see map) and the events leading up to the enclosure were inextricably linked with the political struggle for the control of the Horsham parliamentary constituency, a factor not unknown elsewhere.<sup>9</sup> Until the succession of Charles Howard as eleventh Duke of Norfolk in August 1786, the family appear to have neglected both Common and borough for many years, and the former had been freely encroached while the latter, politically, was a 'rotten borough' firmly under the control of the Ingram family, who were ensuring the election of Tory members.<sup>10</sup> As lord of all four manors concerned with the Common, the new Duke had an obvious motive for intervening to prevent abuses, and, to an active Whig politician, the borough must have been a tempting target. The fact that, by a legal quirk, Horsham voters were able to vote additionally not only for the county constituency but also for the Shoreham one<sup>11</sup> can only have enhanced its desirability, while the total confusion of the legal entitlement to votes provided the necessary opening for an attack. However, the process of buying out burgage holders and landowners, which was necessary to gain political control, would also have increased the Duke's ability to push through an enclosure of the Common, a prospect which the Duke, as an active encloser in Sussex,<sup>12</sup> Norfolk<sup>13</sup> and elsewhere, could hardly have missed.

The first major step in the political campaign was a successful attempt in 1787 by Medwin and the Duke to have their own supporters, rather than those of the Irwins, appointed to the Court Baron. They were then able to manipulate the acceptance or rejection of admissions to burgages, and hence the number of qualified voters. This also, however, left them with clear and unequivocal responsibility for the Common. Thus, when six individuals, including Robert Hurst, wrote to Medwin on 10 September 1787 demanding that he put a stop to encroachments and other nuisances which infringed their rights, he was forced to take action. The quotation of Court Leet presentments for similar offences, presumably to establish precedents, makes clear the recent neglect, for there were no references later than 1742.<sup>14</sup> Similarly, Medwin, in his own survey of 1798, records many cases of illegalities sanctioned by default, including a 99-year lease of 15 December 1724 to one John Burstow for land 'enclosed some few years since . . . out of Horsham Common', where no rent had been paid for about fifty years.<sup>15</sup> Not surprisingly, the occupier in 1798 flatly denied any liability for payment.

The first stage in the re-imposition of control saw the presentment of eighteen cases on 9 October 1787, including, ironically, one against Hurst. These covered offences ranging from leaving dangerous pits after digging stone and gravel to erecting a shop and tannery buildings on common land. One encroachment, by J. Manley, Esquire, was as large as 1½ acres.<sup>16</sup> Medwin was stung into appointing a reeve to prevent further problems, but without total success, for a later letter from the Duke authorised him to prosecute further offenders. The Duke, however, expressed his displeasure at the use of his own name on the warning notices, and was clearly unwilling to be seen to be personally responsible for any action taken,<sup>17</sup> probably for political reasons.

Elsewhere the desire to be free of the problem of encroachment and other abuses was a major reason for enclosure, and this must have been a factor here. From the Duke's point of view there may also have been a political motive, for in the confused state of the local franchise there was at least a possibility that successful encroachers might acquire a vote, and not necessarily one on which he could rely. Thus he had ample reason for wishing to be rid of the Common, though precisely when the idea of an act was first mooted is impossible to determine. Medwin was making active attempts to tidy up the estate during the early years of the nineteenth century, beginning in 1799 with moves to sell lands and buildings in order to redeem the land tax. Later activities included the sale of an acre of common to the Board of Ordnance as a site for an armoury in 1804.<sup>18</sup> Enclosure might have been a logical culmination, but the Duke was in no position to force one through without the consent of either Lady Irwin, current holder of the Ingram lands, or Sir Henry Fletcher. He was locked in an increasingly acrimonious and writ-strewn battle for political control with the former, and his attempts to buy out the latter were unsuccessful. Though his prime objective was Fletcher's voting power, he had, in Albery's words, 'one eye at the same time upon the enclosure of the Common', and only Fletcher's determination to extract an exorbitant price eventually killed the deal, after several years of wrangling.<sup>19</sup> Thus it was not until after the death of Lady Irwin late in 1807 that any progress could be made.

After further protracted haggling, this time with Lady Irwin's heirs, an agreement for the purchase of the Ingram lands was finally drawn up on 31 December 1810<sup>20</sup> and the Duke took possession in April 1811, gaining an almost free hand in both the borough and the Common. On 4 September Medwin drew up a draft notice of intent to submit a bill,<sup>21</sup> and the bill itself reached the House of Commons on 20 January 1812 when it was read for the first time.<sup>22</sup>

It is clear that the other landowners, at least, had no serious objections to the enclosure,

for the committee of the House of Lords reported that the owners of all but 36 acres had given their support, and even the remainder were neutral rather than hostile.<sup>23</sup> Furthermore, the transparent inaccuracy, probably adopted for political reasons,<sup>24</sup> of naming the Duke's relative, the Earl of Suffolk and Berkshire, as lord of Horsham manor in the act offered an opportunity to cause trouble for anyone wishing to do so. In fact the bill proceeded smoothly through the various stages, piloted by Hurst as M.P. for Sussex. The Commons committee formed after the second reading on 25 February<sup>25</sup> reported favourably on 10 March,<sup>26</sup> and the only hint of anything untoward was a note that they had made certain amendments, including changing one of the proposed commissioners.<sup>27</sup> Unfortunately in the absence of any committee minutes the reasons for this are not clear, but there were no further problems and the bill finally received the Royal Assent on 20 March 1812.<sup>28</sup>

This smooth and amicable progress was not continued into the actual enclosure. While the Duke and Hurst apparently acted in collusion throughout, Fletcher had good reason to be wary. There were various ways in which the claims to the common might be interpreted by the enclosure commissioners, and the resulting allotments to some individuals would be substantially different. The methods were summarized for the Duke by Henry Howard<sup>29</sup> as follows:-

- (i) allotments might be made to all occupiers 'making possession the Rule', in which case the award would be to the lessee, unless the lessor had explicitly reserved the common rights to himself
- (ii) allotments might be made by valuation of ancient tenements, in which case only freeholders or burgage tenants would be eligible
- (iii) allotments might be based on the proportion of the burgage rent paid for each burgage.

The first, in Howard's view, was likely to be the one established if any law suits were brought, and would have given the Duke the largest share, while Fletcher would lose substantially as many of his lands were leased to Hurst. Indeed it would mean "nearly an end to Sir Henry Fletcher, both in the Borough and in the common". The second would very much favour Fletcher, and be the worst for the Duke, since it would probably give votes to many burgage owners, but was unlikely to be the method established. The third would give greatest advantage to the Duke, and was strongly supported by Hurst, in spite of the fact that he stood to lose greatly by it since the lands leased to him would not qualify.<sup>30</sup> The Duke's subsequent tactics were clearly based on the assumption that this assessment was correct, and that the third alternative was the one to be supported.

Fletcher, meanwhile, must have been fully aware of the Duke's tactics, for he had acquired the services of Medwin, who had hitherto had a major hand in framing them. Medwin ceased to be employed by the Duke early in September, apparently after some disagreement, and promptly became agent to Fletcher, who he was already assisting in the Pulborough enclosure.<sup>31</sup> In this capacity he wrote to other minority landowners inviting them to a meeting to discuss tactics during the enclosure,<sup>32</sup> and succeeded in forming an opposition group. He offered his services to the commissioners as clerk but was rebuffed when Dewdney Stedman, another local solicitor, was given the post,<sup>33</sup> and hence he had no official status in the proceedings. However, as co-ordinator for the Duke's opponents he had a powerful influence on subsequent events.

It was only at this point that the three commissioners, who figure so largely in the official records, became directly involved. Two of the three, Thomas Hopcraft of Crowton in

Northamptonshire and George Smallpiece of Stoke by Guildford, were already experienced in this work, though the third, William Clutton of Reigate, was apparently a newcomer. They were immediately faced by a deluge of claims and counterclaims, reflecting the different possible interpretations outlined by Howard. Fletcher, presumably aware of the dangers to his position if he caused problems, followed the Duke's line and claimed "an adequate allotment . . . in proportion to the Burgage Rents payable by him to the Lord of the said Manor". The Duke, through his new agent Joseph Harting, issued a wide range of individual objections plus a blanket statement that he 'generally objects to the claims of all persons not being Tenants of the Manor and having no rights of common upon that part of the lands . . . to be enclosed in the Manor of Roughey'.<sup>34</sup> A mass of objections flowed from most of the other parties, ranging from complaints about the size of the claims to niggling over the description of some lands which did not appear to be in the exactly prescribed legal form. Whether the commissioners were unable to agree amongst themselves or whether they simply felt it prudent not to become involved in a situation where personal animosities were aroused is not clear, but at a meeting on 27 August 1812 they declared themselves not competent to judge the claims about the burgage allotments and demanded an assessor.

The method of choosing the assessor strikes the twentieth century mind as somewhat curious, though all parties at the time seemed perfectly happy with the arrangements. The commissioners suggested a Mr. Scarlett for the post, Harting, as the Duke's agent, proposed a Mr. Harrison, while Medwin, as the rival agent, suggested John Gurney. The three names were then placed in a hat, and Gurney's was the one drawn. On 23 September, with Gurney's assistance, the problem was resolved, and the enclosure proceeded with an auction of land to cover expenses on 23 October.

At this point the enclosure was apparently complete, but in practice the uncertainties continued as the various aggrieved parties deliberately prolonged the disputes. Fletcher and the Rev. Charles Bridger objected to Gurney that Hurst in his capacity as impropiator of the tithes had been granted five acres too much, since they contended that his eleventh should have been calculated on the residue after deduction of the lord's share and the land sold for expenses. This argument Gurney promptly squashed with a note, dated 15 December, that the impropiator's share was in his view correct. Meanwhile Hurst and the Duke announced that they intended to dispute the commissioners' verdicts in the courts, which effectively prevented Medwin from fencing and leasing the allotments as he had intended.

Fletcher's personal antipathy to Hurst is clear from a letter of 25 December to Medwin, and he was obviously becoming increasingly exasperated with the Duke. Medwin himself was furious, and on his own admission decided to be as awkward as possible. He refused to accept the formal notice of intent to take court action when Stedman, the Duke's solicitor, presented it on 22 December on the grounds that only one commissioner, Hopcraft, had signed it, and it took Stedman almost a month, until 16 January, to collect the necessary signatures of the others and return. Meanwhile Medwin wrote to a London lawyer for an opinion as to the legality of the Duke's action in challenging the decisions after agreeing to accept Gurney's arbitration, only to be informed that he was not legally bound by his agreement and the court action could proceed.

Whether there was any real intention to proceed is open to doubt. The potential gains in land would have been minimal and would hardly have justified the expense involved. Fletcher certainly seems to have doubted whether it was anything more than an irritating delaying tactic, and so it ultimately proved, for on 7 May 1813 Medwin wrote to Bridger announcing that as no



action had begun within three months both he and Smallpiece were of the opinion that no court action was now possible and he had fenced the allotments as a preliminary to leasing them.

The final award was eventually signed on 15 July 1813,<sup>35</sup> but even at this stage the issue of the Horsham enclosure was not dead. In 1814 Medwin, with some delight one may suspect, pounced on two supposed irregularities affecting Hurst's properties and wrote for yet another legal opinion. His grounds for complaint were that Hurst 'had prevailed upon' the Commissioners to allot him half an acre of land lying within Horsham borough, which did not form part of the area specified in the original act, and that Hurst had realigned a road there. Again, however, he got little comfort from the legal opinion. The lawyer consulted, John Sens of Lincoln's Inn, firmly squashed the complaint about the road on the grounds that the commissioners had full powers to realign any road other than turnpikes and Hurst's action would almost certainly be accepted. As for the allotment of land within the borough, while accepting Medwin's point, he wondered why Medwin had taken so long to raise the matter, and implied that the courts were unlikely to upset the award at this stage. In the face of this advice Medwin obviously felt unable to proceed any further, and the last rumblings over the enclosure died away.

Whether the end result of the haggling was a fair distribution of the land is impossible to determine. Albery's view, that it was not, represents a judgement on the morality of enclosure as a process rather than an attempt to assess the honesty with which this particular enclosure was conducted. Unfortunately even the latter cannot be tested in any objective manner, for there is no means either of assessing the validity of the original claims or of converting legally acceptable claims into acres allotted. However, it can be stated that there is no detectable partiality in the acceptance or rejection of claims by the commissioners, and that various matters complained of, insofar as they were genuine, were the result of minor errors rather than deliberate dishonesty. It also says something for the independence of these men that the Duke was clearly uncertain how they would rule, even though he, as lord of the manor, and Hurst, as tithe owner, must have had a major part in naming two of them. Certainly there is no evidence that any of those who received allotments were seriously unhappy with the results, and Bridger, writing to thank Medwin for his efforts, expressed his delight at the outcome.<sup>36</sup>

The Horsham enclosure has some general significance in that it illustrates the tensions and manoeuvring which could occur even in an apparently straightforward enclosure. The official records give no indication of any problems, for there was no formal opposition to the enclosure, and the threats of legal action were not pursued. In practice, however, there was sufficient disagreement to force the commissioners to seek outside help, and to cause frustration and delay to the various landowners involved.

Much of the trouble sprang not from any great concern over the land as such, but rather from the political and personal animosities of the principal protagonists, who in the later stages seem to have been more interested in scoring points than in ensuring swift, fair and inexpensive proceedings. It is of particular significance that much of this activity was provoked and controlled by an individual who was not an official party to the enclosure, and whose name might never have appeared in the official records. Such shadowy and often unrecorded figures as Thomas Medwin must have played a major role in many enclosures but only rarely is it possible to reveal their full influence.

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## Footnotes

<sup>1</sup>E.g. Slayley, Northumberland County Record Office, QRA 9.

<sup>2</sup>E.g. Beeston and Pitcroft, Portsea, Hampshire, Portsmouth City Record Office, CLC 4/13.

<sup>3</sup>Arundel Castle Archives, and West Sussex Record Office (W.S.R.O.), Hurst Papers (not fully catalogued) respectively.

<sup>4</sup>Horsham Museum (H.M.) Manuscripts, 200-4 and 432.

<sup>5</sup>W. Albery, *A Millenium of Facts in the History of Horsham and Sussex 947-1947* (Horsham, 1947), 169-203.

<sup>6</sup>J. L. and B. Hammond, *The Village Labourer* (1911).

<sup>7</sup>J. Chapman, 'The Parliamentary Enclosures of West Sussex', *Southern History*, 2 (1980) 90.

<sup>8</sup>See, for example, S. Elliott, 'The Open Field System of an Urban Community: Stamford in the Nineteenth Century', *Agricultural History Review*, 20 (1972), 165 and 168.

<sup>9</sup>Albery (1927), 114.

<sup>10</sup>Albery (1927), 116-7.

<sup>11</sup>E.g. Houghton and South Stoke, W.S.R.O., Add, MS 5161.

<sup>12</sup>E.g. Forncett, Norfolk County Hall, uncatalogued.

<sup>13</sup>H.M. MS 201.

<sup>14</sup>H.M. MS 200.

<sup>15</sup>H.M. MS 201.

<sup>16</sup>H.M. MS 201.

<sup>17</sup>H.M. MS 202, letter dated 3 August.

<sup>18</sup>Albery (1947), 180.

<sup>19</sup>Arundel Castle MS, HO 5.

<sup>20</sup>H.M. MS 204.

<sup>21</sup>House of Commons Journal (H.C.J.), 67 (1812), 129.

<sup>22</sup>House of Lords Record Office, Lords Committee Book, 1812, 18 March, 161.

<sup>23</sup>Albery (1947), 190.

<sup>24</sup>H.C.J., 67 (1812), 147.

<sup>25</sup>H.C.J., 67 (1812), 189.

<sup>26</sup>H.C.J., 67 (1812), 189.

<sup>27</sup>H.C.J., 67 (1812), 214.

<sup>28</sup>Apparently not a relative. F. W. Steer (Ed.), *Arundel Castle Archives*, 1 (1968), 227.

<sup>29</sup>H.M. MS 204.

<sup>30</sup>See Petworth House Archives, 8143 (dated 1808).

<sup>31</sup>H.M. MS 432.

<sup>32</sup>H.M. MS 432. Letter of 21 March 1812.

<sup>33</sup>H.M. MS 432.

<sup>34</sup>W.S.R.O., QDD/6/W8.

<sup>35</sup>H.M. MS 432. Letter of 2 December 1812.

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