

J D Foster – Did he have it coming? by Clive Pugh

A recent exhibition, “Historic Emsworth Properties – Highlights from an Archive”, at the Emsworth Museum noted that “Rate books are an excellent census substitute and a fascinating window into civic life in England”. It continued “... almost any entry in a rate book tells a story and none more so than the actual rate that is set.”

In 1906 at a meeting of Warblington Urban District Council (WUDC) it was proposed that the rate be 5s in the £, an astronomical figure that attracted interest as far away as Whitby, as evidenced by this article (Fig1) in that town’s newspaper. This proposed rate is so out of kilter with the more typical 1s 10d that it prompts the question what could have caused such a monumental figure to be considered?

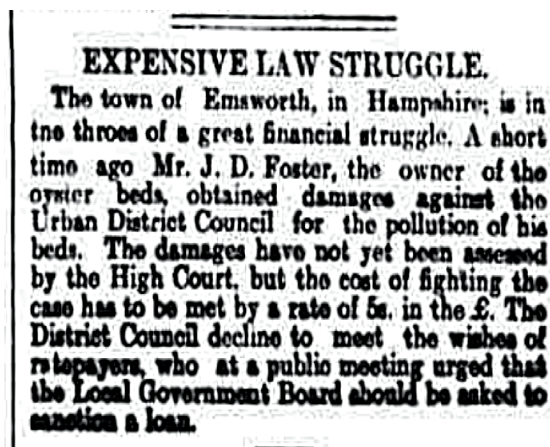


Fig. 1. Whitby Gazette 1st May 1906

The article in the Whitby Gazette gives part of the reason. The court case brought by J D Foster against Warblington UDC in 1903, for damages to his oyster business caused in the Emsworth Oyster scare, had found in J D’s favour and he was awarded £3,300 plus costs, a considerable sum back in 1903. The ratepayers were aggrieved and bitter, and the *wealthy Mr Foster was urged to forego his pound of flesh* but he refused. The WUDC subsequently appealed the Court decision. The Council Meeting, reported above, had been held in anticipation of the judicial review, which was finally heard in

the courts in 1906. *While there were no new facts, there were new twists to the plot. Mr Foster claimed that his losses had now risen to £18,000.* (Note: that was the approximate total rateable value of all property available to Warblington UDC in 1914.) *It was however pointed out that he himself had been a member of the Council when the offending sewage scheme was approved.*

The decisive factor was apparently Jack Kennett. His business had also suffered, but he made no legal claim. The exact nature of the evidence he gave to the Appeal Court is now lost in obscurity, but it helped tilt the scales of justice. Foster’s damages were cut to £850, and Kennett was the hero of Emsworth.

The italicised passages above are from un-attributed hand-written notes contained in the Morgan archive, which was donated to the Emsworth Museum earlier this year and from which the above exhibition was drawn. The notes conclude with the following paragraph:

As a postscript to this turn of the century drama, both the giant participants lived on for many years in Emsworth. J D Foster died in 1940 and was buried with some pomp, but limited local affection, in Warblington Churchyard. Jack Kennett, assisted by his son ... continued in the oyster business until the outbreak of another war in 1939, and died – greatly respected – in 1950.

Similar statements about the relative merit in which the two men were held in the community’s memory are made in Michael Kennett’s memoirs^[1], a copy of which is held in the Museum. These, as expected, firmly support the side of Jack Kennett, so might be considered biased evidence if trying to give a balanced assessment of the fairness of the above comments.

All of which seems a little hard on J D given that he is frequently credited as a hero for

winning a landmark judgement that helped many grateful others across the country in their search for justice over ill-informed sewage systems. Unfair maybe, but as an explanation why such negative feelings might have been abroad in the community, it has to be said that J D had previous form as far as involving Warblington UDC in vexatious litigation and exposing them to expensive legal settlements is concerned.

We refer to the less well-remembered High Court case of H. Guilford Sprigg v. Warblington UDC of 1899, known as the "Church Path Case" [2, 3]. In this year the Church of St James had aspirations to extend the footprint of the building and, as recorded in the minutes of a vestry meeting of the St James Church Council in early 1899, the issue was raised as to whether the gates of the church path being permanently open might cede the path as a public right of way.

It had been the practice since the church was opened in 1840 for the gates to the path to be locked at night, but things had slipped over the last few years. So much so that the path's use had changed from merely an access point to the church, and a convenient walk-through for pedestrians, to being used by all manner of traffic short-cutting from the west side of town to North St and the railway station. The vestry meeting decided to begin locking the church gates again at night. With an act of public spiritedness, to be expected from such a meeting, it was decided to inform the WUDC in order to maximise individual awareness and minimise inconvenience for all users of the gates.

As Norman Simmonds, a historian for St James Church,^[2] comments, "No-one could have predicted the outburst of indignation that followed this action." At the WUDC Meeting of 13th June 1899, it was reported that Mr J D Foster claimed that he had received a letter that very evening, from which he read: "Replying to your enquiry, I write to say that the Rector (Mr Sprigg) and Churchwardens are not empowered to close such a churchyard path as you mention."

Mr Foster claimed that the letter had been written by the Secretary to the Bishop of the Diocese, and that he was stating the opinion of the first Solicitor to the Diocese. Based on these claims, Mr Foster convinced the WUDC to issue a high-handed missive forbidding the Rector from locking the church gates. Mr Sprigg's immediate response was to test the validity of Mr Foster's evidence.^[3] He wrote to Mr Lee, Secretary to the Bishop, asking for a copy of the correspondence with Mr Foster.

Mr Lee replied:

"Mr Lee assures Mr Sprigg that no correspondence whatever has passed between himself and Mr Foster, and that he never wrote the letter attributed to him."

Faced with such a clear statement, you might have expected the WUDC to back away, but it didn't, and threatened to break down the church gates should they be locked. After a number of exchanges of correspondence, generally belligerent from the WUDC and conciliatory from the Church, the Rector Mr Sprigg took the matter to the High Court. At this the WUDC sought legal opinion from two sources, one of which felt that their case was doubtful, while the second bluntly replied that they had no case at all. We suppose that the WUDC could only have been bolstered by the first of these opinions, which was a little more optimistic than the second, for they decided to defend the High Court action. This resistance continued all the way to the High Court steps, where the Clerk advised them that the Judge (possibly motivated by the costs mounting on the ratepayers) was "certainly not favourably impressed with the action they took, and neither was their Counsel". The WUDC finally yielded and were landed predictably with a large legal bill.

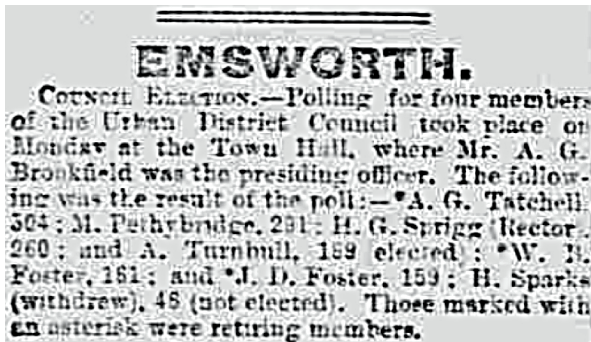
Throughout the episode of the "Church Path", the 12-man WUDC had been split, with six councillors pushing to fight the legal action. At a subsequent acrimonious meeting of the WUDC it was suggested that these six "should be made to pay the costs". They of course didn't, and so it was down to the

Continued overleaf

J D Foster continued

generosity of Mr Sprigg who lessened the financial burden facing the WUDC, when he waived the legal costs awarded to him.

One can only surmise at the role J D Foster played in all of this, given his initial contribution, but some conclusions could be drawn from the WUDC elections held in the Spring of the following year and shown in Fig 2.



*Fig. 2 Electoral Results
The Hampshire Telegraph 3rd April 1900*

It is notable that J D Foster was a retiring member seeking re-election, but was unsuccessful. Notable also is the fact that the Rector, Mr Sprigg, was successful in his attempt to gain a seat on the WUDC. It seems that the electorate had clear views as to who was the villain of the piece in this particular episode.

Two years later, by the time of the oyster scare, J D Foster had regained his seat on the WUDC. Electorates, it seems, have short memories. The community's collective memory of him seems to have lasted longer, their "Church Gates Case" views being reinforced no doubt by perceptions of J D's role in the oyster scare. If indeed these views were strong enough to hold for the following 40 years until his death in 1940, it could be said that he had it coming to him. Being such a giant of the town both physically (he was 6ft 2in) and metaphorically, it would be surprising to learn that he didn't know it was.

[1] Kennett, M, The Kennett Memoirs, Emsworth Museum.

[2] Simmonds, N, The Parish Church of St James, Emsworth, Hampshire. The First

Hundred Years by Norman Simmonds, 1980, Emsworth Museum.

[3] Pugh, A C, Friday Nights: Me, Sprigg and Whicher, The Emsworth Echo, 45, pp.6-10, 2014.

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PS: In Fig 2 it is shown that W B Foster was also up for re-election and, like J D Foster, he also failed to regain his seat. Was W B simply collateral damage arising from J D's dispute with the WUDC or did it have substance of its own? A little bit of both maybe! Fig 3 shows that W B was quite capable of carrying on his own disputes within the community. Although dated July 1900 it is clear from the text that the dispute had already been fomenting for some little time.

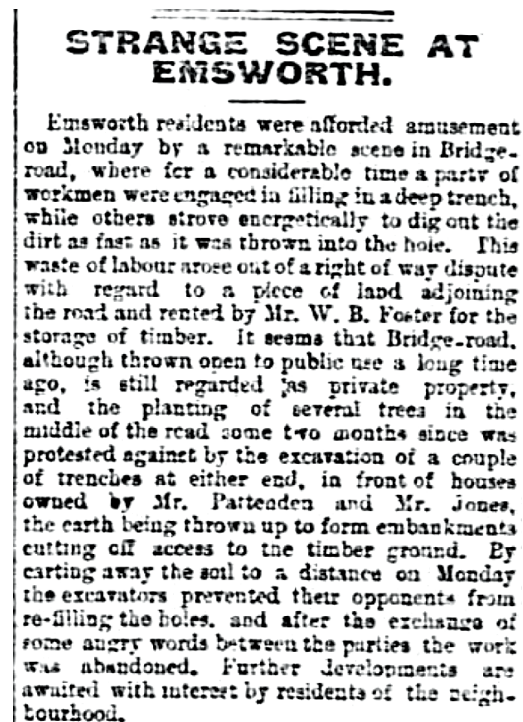


Fig 3 Evening News 10th July 1900