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Town of Brading

----- v -----

Oglander Bart.

}

Copy

Opinion

Cunliffe & Beaumont

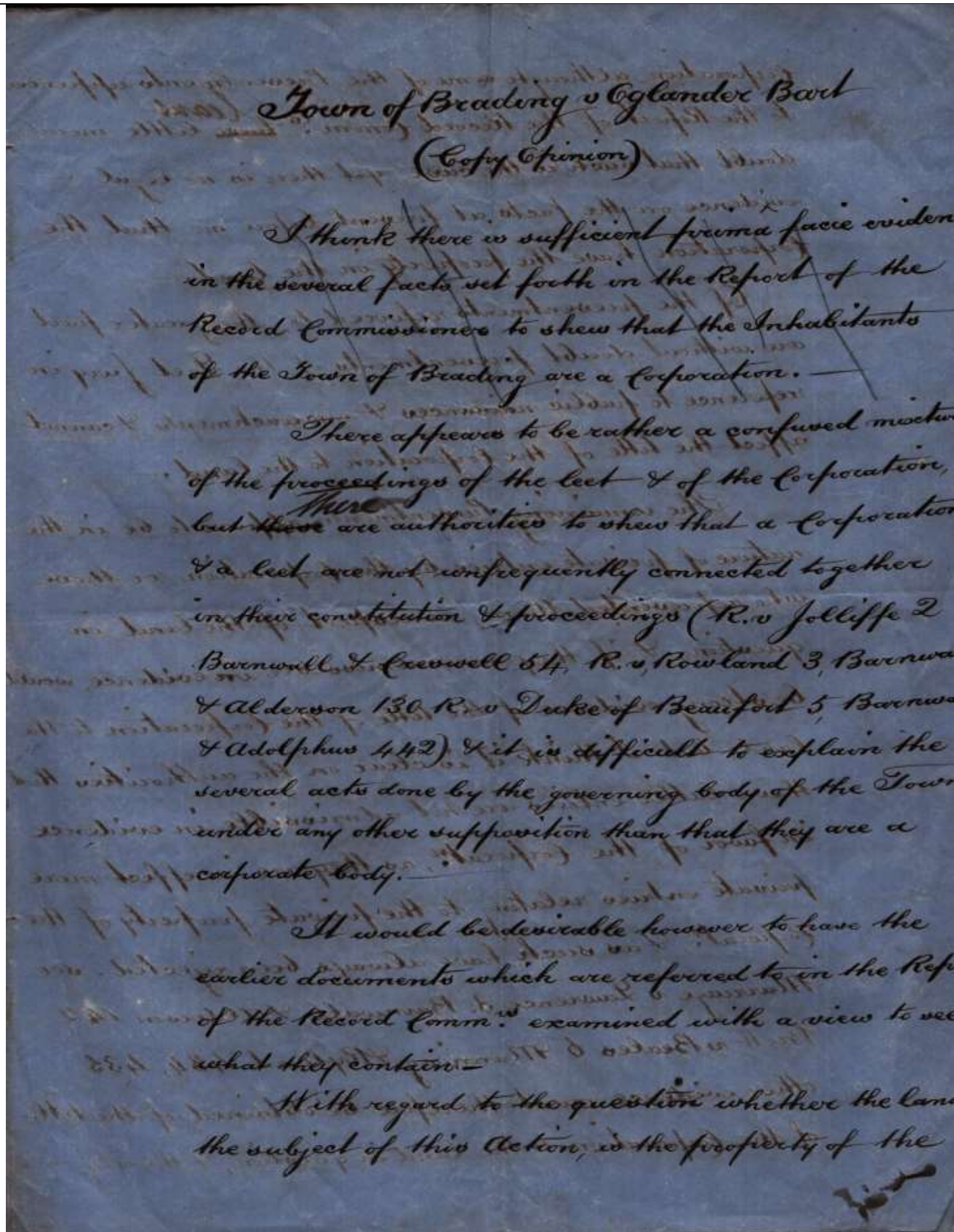
43, Chancery Lane

I think there is sufficient prima facie evidence in the several facts set forth in the Report of the Record Commissioners to shew that the Inhabitants Of the Town of Brading are a Corporation. ---

There appears to be rather a confused mixture of the proceedings of the leet & of the Corporation, but ~~these~~ there are authorities to shew that a Corporation & a leet are not infrequently connected together in their constitution & proceedings (R. v Jolliffe 2 Barnwall & Creswell 54, R. v Rowland 3, Barnwall & Alderson 130 R. v Duke of Beaufort 5, Barnwall & Adolphus 442) & it is difficult to explain the several acts done by the governing body of the Town under any other supposition than that they are a corporate body. ---

It would be desirable however to have the earlier documents which are referred to in the Report of the Record Comm.^{ers} examined with a view to see[ing] what they contain.

With regard to the question whether the lan[d,] the subject of this Action, is the property of the



Corporation, although some of the Presentments append
to the Report of the Record Comm. ^{have} ~~have~~ little moral
doubt that such is the case, yet there is no legal
evidence on the facts at present before me that the
Corporation have the property in the land.

Of the presentments referred to, the greater part
are without doubt presentments of the Leet Jury in
reference to public nuisances & encroachments & cannot
affect the title of the Corporation to the land.

The remaining Presentments appear to be in the
nature of private entries by the Corporation, or those
who represented them, in respect of the land in
question, & if they were admissible in evidence, wou
be strong evidence of the title of the Corporation to the
land, but I think it is clear on the authorities th
these latter entries are not admissible in evidence
in favor of the Corporatⁿ, as they are in effect mere
private entries relating to the private property of the
Corporatⁿ, & as such have always been rejected. see
Marriage v Lawrence 3. Barnwall & Alderson 142
Brett v Beales 5 Manning & Ryland 434, 435.

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evidence I should suppose, that can be obtained will
be proof of acts of ownership over the land as far
back in point of time as possible.

These acts may either be direct acts of interference
with the land, such as perambulating it, cutting down
trees on it or other acts of a similar description, or
they may be leases of or such like dealings with the
land, & old leases or counterparts found among the
muniments of the Corporation will be evidence for
this purpose.

If there is any common character of locality
between the land in question & the other waste
lands of the Town, evidence of acts of ownership
on the other parts of the waste would be evidence of
title & the whole of the waste lands in the Town,
including the land in question (Jones v Williams 2
Meeson & Helsby 326) but the evidence of such
community of character must be very clear & such
as to ~~leave~~ ^{leave} no doubt that the whole forms one continuous
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delay, but it will be prudent also not to go further
into the proceedings until a full enquiry has been
made as to what legal evidence can be produced
of the Title of the Corporation to the land & a full
examination has been made of the Corporation &
muniments. —

I have ventured to make one alteration in
the declaration by striking out the words "that is
to say the Corporation of the said Town" as I think
the first description of the Corporation is sufficient
& the introduction of the latter words might seem
to imply a doubt of the sufficiency of the first
description & of the title of the Corporation to sue
by that description. —

I think the Corporation cannot tax the
town for the costs of this Action — There being no
charter extant, the power of taxation must I think
be limited by the usage which has prevailed, & that
usage is confined to taxation for the repairs of the
corporate buildings & highways, but I can see no
objection to the Corporation raising money for the costs of
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T. K. Kingdon
Temple
Dec^r 4th 1863

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