

The Security of Copyholders in the Fifteenth and Sixteenth Centuries

AMONG the 'Notes and Documents' of the April number of this REVIEW is a criticism by Professor Ashley of a paper contributed by me to the 'Transactions of the Royal Historical Society' for 1892. The origin of this contribution, which took the form of an introduction to the inquisition into inclosures of 1517, was a contention raised by Professor Ashley before the British Association in 1890, and in the 'Annals of the American Academy of Political Science,' that the inclosing movement of the years 1450 to 1550 involved 'the actual dispossession of the copyhold or customary tenants by their manorial lords.' That this alleged dispossession was within the law rested upon the further assertion that 'the mass of copyholders' had 'at the beginning of the period no legal security.' While thus limiting his proposition, Professor Ashley gave no indication of the moment or manner in which, during the period, legal security previously non-existent came into being; who constituted the minority which, apparently, enjoyed it, or who 'the mass' to whom it was denied. In my introduction I endeavoured to show, from medieval jurists, from cases in the royal courts and from manorial records, that customary tenants or copyholders had already long enjoyed considerable security, both through the effective agency of the manorial courts as anciently constituted, and from the court of chancery, while in 1467, at any rate, that is, soon after the agricultural revolution had set in, they received additional protection from the common law courts. The evictions accompanying the inclosing movement could not, therefore, have been evictions of copyholders or customary tenants. To the legal argument both as to the origin of the copyholders' security and as to the protection afforded them by the courts, Professor Ashley has not even attempted a reply. The object of this supplementary paper is to show how greatly I had understated my case.¹

Since publishing the paper of which I have spoken, I have

¹ I propose to deal with Mr. Ashley's minor criticisms in a preface to the instalment of the Inquisition of 1517 contained in the forthcoming volume of the *Transactions of the Royal Historical Society*.

had access to the documents of the Star Chamber and of the Court of Requests preserved in the Public Record Office. The papers of the Court of Requests have never before, as I am informed, been examined. The documents consist of the pleadings and proceedings in actions heard before these two tribunals. In the case of the Court of Requests the judgments are frequently, though by no means in all instances, preserved. The earliest belong to the years 1491-2. The judgments of the Star Chamber have perished. For the purpose in hand, however, the judgments are not of paramount importance. The records of both these courts are crowded with cases involving the rights of customary tenants generally; and as, in the nature of things, the tenants were as a rule the plaintiffs, it is clear that these courts were not regarded as ineffective. It is not necessary here to discuss the origin or constitutional character of these jurisdictions. Of the two, that of the Court of Requests was in respect of copyholders the more direct. Its judges were at first a committee of the privy council, 'appoynted for the heryng of power mennes causes in the kynges courte of Requestes.'² A manuscript list shows them to have numbered fifteen in 1529. In 1552 there were eight commissioners, in lieu of whom two 'Masters of Requests' appear to have been substituted in 1558.³ The jurisdiction in copyhold cases exercised by the Star Chamber was, I apprehend, founded upon the statute of 1487, which specified 'greate riotts and unlawfull assemblez' as within its cognisance. Such riots were a constant incident of encroachment upon the rights of common claimed by manorial tenants. In addition, the privy council at large, as distinguished from these special committees of privy councillors, interposed an occasional protective authority both before the establishment of the two courts and after, perhaps when there was a glut of business before the courts and immediate action was desirable.⁴

It must be borne in mind that contemporaneously with these two jurisdictions, those of the common law courts, at any rate after 1467, and of the court of chancery were also actively enforced for the protection of aggrieved copyholders. Upon this I have sufficiently dwelt elsewhere.⁵ The practical need for other extraordinary tribunals appears both from the preamble of the act of 1487, *Pro camera stellata* (8 H. VII, c. 1), and from the language of the petitioners in the course of their pleadings. The act enumerates jury-

² MS. Record Office, Court of Requests. *Orders and Decrees*, ix. 9.

³ *Ibid.* ix. 179.

⁴ This appears from a pleading in 'The Inhabitants of Thingden v. Mulsho,' an action before the Star Chamber in the early part of the reign of Henry VIII, which mentions that a decree was issued by the council in the time of Henry VII, ordering Mulsho to throw down his inclosures. It is, however, possible that the word 'council' is here used loosely. Cp. Nicolas, vii. 124, 228, &c.

⁵ *Transactions of the Royal Historical Society*, 1892, pp. 288-247.

packing, bribery, and intimidation as attendant mischiefs upon the practice of the common law before the judges of assize. The inhabitants of Draycote urge upon the Star Chamber in 1516, the lord of the manor being the defendant, that 'thei are not able nor of power nor yet dare not sue for their remedie in the premisses and continue in your seid countie for fere of their lyves.'⁶ In a replication by the parishioners of Hedor Ossby and Asby against an inclosing landlord, they allege, 'To that he saithe that all the paryssnenours of Hedor Osby and Asby do not compleyn upon hym, the truthe ys they dar not.'⁷ So the plaintiffs against the Seynt Johns, father and son, allege to the Court of Requests that 'they ben not able nor of power to trye with the seid Sir John Seynt John and Oliuer, beinge gentilmen of greate londes possessions and substaunce and in greate estimacyon and auctoryte in the cowntre ther for ther remedie by the due course of your comen lawes.'⁸ These extraordinary tribunals got rid of intimidation by dispensing with juries. Interrogatories were framed, administered *vivâ voce* by special commissioners, usually neighbouring justices of the peace, and the evidence reported to the courts, upon which they gave judgment. Poor complainants derived the further benefit of being protected against the corruption both of the judges and counsel which, if we are to believe contemporary witnesses, was prevalent in the common law courts.

There was yet another mode, exceptional indeed and wholly irregular, by which tenants might have redress, at least so long as the jealous vigilance of Cromwell was dominant in the state. This was the direct interference, by way of what is called in Russian extra-legal proceedings 'administrative action,' on the part of the king or his ruling ministers. Among the domestic papers of 1538,⁹ is a letter from Edward, earl of Derby, in reply to one from Cromwell. A complaint had reached Cromwell and the king that Derby had evicted seven tenants on his Ellesmere estate, and the suggestion had evidently been made that dislike to loyal subjects had prompted his action. The answer of the earl was a justification on the ground of riot, gaol-breaking, and complicity with murder. But the government took the evidence of the evicted persons themselves, and in doing so made careful inquiries into their tenures. Their depositions remain, in which each tenant admits that 'he hathe no copie indenture ner other writing of the tenement that he holdeth of the said erle, but that he dothe occupie the said tenement with thappurtenaunces at the said Lordes pleasyr.' We may note in

⁶ MS. Record Office, *Star Chamber Proceedings*, xiii. 88.

⁷ *Ibid.*, bundle 22, No. 153. Similar language is used by the inhabitants of Swarby and Thorpe, Lincolnshire, plaintiffs against an inclosing landlord. MS. Record Office, *Star Chamber Proceedings*, bundle 26, No. 469.

⁸ MS. Record Office, Court of Requests, bundle 7, No. 10.

⁹ Gairdner, *Letters and Papers of Henry VIII.*, xiii. i. 384, ii.

passing the distinction taken between tenancy by copy and 'at pleasure.' It is scarcely credible but that Cromwell, between whom and the territorial nobles little love was lost, contemplated further proceedings had illegality been committed by the eviction of tenants by copy or by lease. Similar powers of summary interference between landlord and tenant were entrusted to the commissioners appointed in 1597 to inquire into the disturbed state of Lancashire.¹⁰ These occurrences well illustrate the truth of Mr. Froude's observation that 'never did any government strain the legislation more resolutely in their [the labouring classes'] favour.'¹¹

In the course of the proceedings before the Court of Requests and of the Star Chamber, all the various methods by which a tyrannical lord could oppress his customary tenants are seen to have been practised. Of these the first and most obvious is that of direct eviction from copyhold. Now if the customary tenants and copyholders, for there is no distinction in this matter, possessed no legal security, the elaborate pleadings which remain to us in these cases have no meaning. An evicted copyholder plaintiff would be *bombinans in vacuo*. On the part of the defendant it would be enough to raise a demurrer and there would be an end of the dispute, except that the Star Chamber would summarily punish all persons guilty of 'unlawful assemblies' gathered to vindicate rights which had no existence. But no such record of procedure is to be found. On the contrary, where aggressions upon such tenants were matter of complaint, a plea to the substance of the charges is regularly filed by the defendants. This fact and the points taken in the pleadings themselves, show the limitations recognised as confining the lord's manorial rights.

The first illustration I will take is the complaint before the Star Chamber in 1516 by the inhabitants of Draycote and Stoke Gifford, Somerset against Sir John Rodney, to which reference has already been made.¹² I pass by the minor charges, such as inclosure of common land, stoppage of right of way, allowing houses to fall to decay contrary to the statutes, and so forth. The point here at issue is the eviction of copyholders. This was alleged against Sir John as lord. What was his answer? That a man may do what he will with his own, and that complainants had no *locus standi*? No. He advanced the justification which had been demanded by the common law courts as long before as the time of Edward III.¹³ 'As to the taking away of the seid house, the seid sur John seieth that the seid John holdeth the same tenement which lieth in Stoke of the seid sur John by copie of courte Rolle where the custume is that noo tenaunt shal make noo vnder tenaunt without licence of

¹⁰ *Ibid.* xii. 302.

¹¹ *Hist. of Engl.*, ii. 449.

¹² MS. Record Office, *Star Chamber Proceedings*, xiii. 83 fol.

¹³ *Trans. of the Royal Hist. Soc.* 1892, pp. 214, 215.

the lord upon payne of forfeiture.' This custom the complainant had, he averred, broken, and this was his warrant for the re-entry.

In 1543 a complaint was laid before the Court of Requests by sundry 'tenautes and inhabitants' of the manor of Abbot's Ripton, Hunts, which had recently been granted by the crown to Sir John Seynt John, having formed part of the possessions of the dissolved abbey of Ramsey.¹⁴ Numerous acts of tyranny were alleged against the lord, amongst them forcible entry upon the tenancies of the petitioners. I cite this case especially because it is the only one, with the exception of that of the abbot of Peterborough, which will presently be noticed, in which an allusion is made to the phrase 'at the will of the lord,' indicating copyhold tenure, which suggested Professor Ashley's contention. It is just such an exception as proves the rule. In the course of a long plea, all of which was superfluous if the copyholders had no legal security, Sir John Seynt John answers, 'The said defendant perceyvinge the said complaynauntez to contynewe in their obstynatye and perverse mynd discharged the said complaynautes from their occupacion of their severall ffermes beyng but his tenauntez at wyll. And vpon the regresse of the said complaynauntez the said defendant hath pursewed one Accion of trespas agaynst them at the kynges commen lawe as lawfull it was and ys for him to do.'

Now the point of Sir John's answer is not that they could be evicted because they were copyholders, but because they were not copyholders. The Court of Requests decided, after an examination of the manorial rolls from the time of Richard II, conducted by Nicholas Luke, one of the barons of the exchequer, that the defendant's case was good, and that the copyhold titles claimed by the complainants were not immemorial, an essential condition, as Littleton¹⁵ tells us, of a copyhold, but had for the most part been fraudulently granted by the last abbot about the time of the dissolution of the monastery, 'soo that there was no matier of substaunce brought before the said counsaile to approve the said copies graunted vnto the said complaynautes to bee of any force or strength in the lawe.' The extracts from the court rolls given in the proceedings fully justify this finding. Upon the point of creation of copyholds the law was clear, even in the absence of fraudulent intention. It is set forth in the act of 1548 'for the assuraunce to the tenautes of Grauntes and Leases made of the Duke of Somerset's demesne Londes,' as follows: ¹⁶—

Whereas of truthe noe custome or usage can or maye by the lawes of this Realme be annexed or knytt to any meases landes tenementes or hereditamentes letten or to be letten by copppe of Court Rolle to anye person or persons, albeyt those Wordes secundum consuetudinem manerii

¹⁴ MS. Record Office, Court of Requests, Mr. Hunt's *Calendar*, bundle 7, No. 10.

¹⁵ *Tenures*, § 73.

¹⁶ 2 & 8 E. VI, c. 12.

be rehersed and expressed in the said Court Rolle or Coppie thereof had or made, excepte that the same meases landes tenementes or other hereditamentes so letten be olde Customarie or Coppiholde Landes, and have byne used by all the tyme whereof memorye of man ys not to the contrarie to be letten or demysed by copy of Court Rolle, or other wise at the will of the Lorde accordinge unto the Custome of the said Honnor or Manor. And for that cause, suche and those leases demyses and grauntes made or to be made for terme of lyfe or lyves by coppie of Courte Rolle of demeane or barton landes or other the said landes, and not being olde customarie or coppieholde Landes, nor having any lyverey or season of the same, byne by the lawes of this Realme of noe better force then leases made or to be made onely for and duringe the will and pleasure of the leassors and grauntors thereof, at and by the common lawe.

For the same reason special acts of parliament had been passed in 1544 and 1545, authorising the creation of copyholds on lands previously belonging to the priory of Walsingham and upon Hounslow Heath.¹⁷ It will be observed that the act of 1548 recites the customary phrase 'at the will of the lord' as a mark of stability of tenure, distinguishing tenancies with which it is associated from mere common law tenancies at will. And the tenants of Abbot's Ripton, in a replication, themselves plead it in the same sense. They

seyen and euery of them seith that the seid complaynauntes and their Auncestores and all they whois estate they have in the premisses tyme out of mynde haue peasablie vside and accustomyde to haue holde occupye and inioye the same severallie by copie of courte roll to them or their heires in fee simple fee taile for terme of liffe or lyves or yeres at the will of the lorde of the same premisses for the tyme beinge in manere and forme as in their seid bill of compleynte is allegide.¹⁸

The politic tenderness of the courts towards tenants is shown in the protection extended even to those whose claim to be copyholders proved unsound. The Court of Requests in giving judgment for the defendant Seynt Johns, notwithstanding that the complainants had even committed waste upon their holdings, stipulated that leases for terms of years at reasonable rents should be granted to them and that their goods, taken under distress, should be delivered up.¹⁹

There is one other case with which I have met where appeal

¹⁷ 85 H. VIII, c. 18. 'A byll concernyng the houses, tenementes & landes lying in Walsyngham to be letten by copy, which late were belonging to the Pryory,' and 87 H. VIII, c. 2: 'An Acte for the particon of Hounsaloo Heath.' A very curious case (*Ayshe and others v. Slannynge*) was brought into the Court of Requests about 1550, in which it is imputed to the defendant that he fraudulently granted copies of non-customary lands, intending afterwards to evict the tenants on the ground of invalid title. MS. Record Office, Mr. Hunt's *Calendar*, bundle 16, No. 104.

¹⁸ For the history and significance of the phrase 'at the will of the lord,' see *Trans. of the Royal Hist. Soc.* 1892, pp. 219-21.

¹⁹ MS. Record Office, Court of Requests, *Decrees &c.*, vii. 241.

is made to 'the will of the lord.' It confirms in the strongest manner Coke's interpretation of the phrase as referring to the 'commencement of the tenant's title.'²⁰ For the usual position of parties is in this case reversed. The abbot of Peterborough as lord of the manor brings a complaint into the Star Chamber against one John Power and others, copyholders of Peterborough, for that 'they wold not suffer him to keape any cattell in the same ground beyng his owne proprur grownd, very soyle and freehold.' Instead of the lord evicting the copyholders, the copyholders were evicting the lord, the defendants 'all beyng tenauntes but att the wyll of your seyd oratour,'²¹ with the exception of one freeholder. Here, apparently, is a feeble attempt to revive the plea overruled by Danby, C. J., in 1467.²² But if it were relied on, there was no need for the abbot to bring his complaint at all. He had only to evict the commoners, and their resistance would have been punishable either by the Star Chamber or at common law. In fact, however, I conceive the plea that the defendants were tenants at will not to refer to their copyhold tenures at all, but to the rights of common which they were alleged to be asserting to the exclusion of the lord. The doctrine that the wastes, to which the fen in dispute is specifically mentioned as belonging, were part of the lord's demesne, in the narrow sense of the term, was, as we know from Fitzherbert, now fully established. With regard to the land in dispute, then, the defendants were tenants at will at common law, with the exception of the freeholder, who enjoyed the protection of the statute of Merton.²³

I will conclude this point with another Star Chamber case of the alleged eviction of copyholders. This was brought by the tenants of the manor of Eglesden, Sussex, in 1545, against John Palmer, the grantee upon the dissolution of the monastery of Sion to which it had belonged.²⁴ The defendant was accused of conduct recalling the famous Sutherland clearances. He had pulled down or burnt the copyholders' houses, cleared the tenants off the land, and deprived them of their pastures. His defence was not that he had exercised the right which all lords are now asserted to have enjoyed against their copyhold tenants, but a plea to the substance of the charges. He admitted that the tenants held by copy of court roll at the will of the lord according to the custom of the manor, and

²⁰ *Compl. Copyh.* § xxxii.

²¹ MS. Record Office, *Star Chamber Proceedings*, bundle 24, No. 113. I have not found the statement of defence. The name of the abbot is not given in the statement of claim, nor the date; but there are grounds, on the authority of Gunton's *History of the Church of Peterborough*, for fixing the date at about 1510, during the abbacy of Richard Kirton, who was stated to have overcharged this common (the Burgh Fen) by grazing 1,500 sheep upon it. *Ibid.* p. 56.

²² *Trans. of the Royal Hist. Soc.* 1892, pp. 240-2.

²³ 20 H. III, c. 4. *Trans. of the Royal Hist. Soc.* 1892, pp. 255, 258.

²⁴ MS. Record Office, *Star Chamber Proceedings*, vi. 181.

treated the admission as an acknowledgment of their claim to security, for he explains that he had first agreed with the complainants for an exchange of the lands and houses occupied by them. Having received good consideration, they had made default in carrying out a contract which he represents to have been perfectly free and *bona fide*. Concurrently with the case in the Star Chamber, another tenant was petitioning the Court of Requests in the same matter, and its judgment has been preserved.²⁵ From this it would appear that the defence was substantially true; but favourable terms were decreed for the complainant. It is evident that in these disputes the stubbornness of the copyholders was strengthened by the favour they looked for from the king's extraordinary tribunals. This expectation even manifests itself in the language of the pleadings.

That the landlords recognised the fact that copyholders' titles were a legal security against arbitrary eviction is to be inferred from a charge not infrequently recurring, that of obtaining their 'copies' from the copyhold tenants by fraud or violence. Clearly this was a work of supererogation, as indeed were the copies themselves, if these documents were of no avail in the courts. The charge was brought by the tenants of Draycote against Sir John Rodney in 1516, and indignantly repudiated by him as 'very slanderous,' which it could not well have been had mere waste paper been in question. So it was alleged against Sir John Seynt John that 'maney wer compellyed to surrender and gyve up thayr copyes by threttes and manysshynge.'²⁶ In 1553 a like complaint was made to the Court of Requests against the steward of the crown manor of Dovercourt. 'They compelled us to delyuer vnto them our old copies to make the newe by. And nowe we cannot haue nor yet obteyne neyther our old copies nor newe in vii. or viii. yeres together, nor yet the sight of the court rolles & by that meanes some have lost part of their landes.'²⁷ It is for those who deny the validity in law and equity of copyhold titles to offer some explanation of these proceedings. The vigour with which the copyholders asserted their rights is a striking feature of these disputes. The lords could not always even control the independence of manorial juries. In 1537 a complaint was laid in the Star Chamber by Lord Braye, as lord of the manor of Houghton, Beds, against his copyhold tenants. They had asserted a right to a fee simple interest in ancient demesne, and had, for reasons which may be inferred from what has gone before, refused to produce their copies. The jury of the manor court had found in favour of their claims, and the lord

²⁵ MS. Record Office, Court of Requests, vii. 250-1. The manuscript is decayed in parts.

²⁶ Answers to interrogatories, *Cas. supr. cit.*

²⁷ MS. Record Office, Court of Requests, Mr. Hunt's *Calendar*, bundle 20, No. 158.

was compelled to have recourse to the Court of Chancery, from which, apparently in consequence of delays, he removed his case to the Star Chamber.²⁸ The tenants of Abbot's Ripton, according to Sir John Seynt John, 'procured one common purse to be ordeyned to geyther one common stock to thentent obstynatlye to defend their peruerse and ffroward appetitez and to enioye their voyde coppie holdes maugre of the lordes hedd.' On the whole they may be regarded as having conducted their struggle of two years to a not altogether unsatisfactory issue.

The most remarkable example of obstinate litigation with which I have met was a series of contests maintained by the inhabitants of Thingden, Northants, against the lord of the manor, John Mulsho. It must be premised that this person was a man of some importance. He was high sheriff of his county in 1520. In 1481 or 1482 he had succeeded to this property and had at once proceeded to inclose. The inhabitants then obtained a decree from the privy council ordering him to throw down his inclosures.²⁹ About 1526 he seized the copyhold of one Henry Selby, 'a husbandman,' on the plea of breach of custom of the manor with regard to admittance and fine. Selby brought a case in the Star Chamber claiming a copyhold estate of fee simple. An award was made which, according to Mulsho, Selby refused to perform. The cause of Selby's contumacy seems to have been the demand by Mulsho, as lord of the manor, of a fine which Selby considered unreasonable for his admittance to the share of the copyhold lands claimed by him. In 1528 Selby sued Mulsho upon this ground in the Court of Requests. Mulsho proved the fine to be customary and reasonable. Selby continuing his refusal to pay the fine, Mulsho entered on his copyhold. Upon a re-entry by Selby, Mulsho brought a common law action for trespass at Northampton and obtained judgment with costs. In 1529 Selby brought an action against Mulsho in chancery before Sir Thomas More. More issued a commission to Edward Mountague, serjeant-at-law, and, strangely enough, steward of the manor of Thingden, to hear and determine the cause. In 1530 Mountague awarded the copyhold in dispute to Selby upon payment of a fine of five shillings. Selby, refusing payment, was committed by More to the Fleet prison for a fortnight. Selby next obtained 'a writ of Monstraverunt against Mulsho in the comen place. This writ, it should be said, issued upon the allegation that the land in question was ancient demesne, on which the fines were fixed and not determinable by the lord or his steward.'³⁰ Mulsho complains

²⁸ MS. Record Office, *Star Chamber Proceedings*, vi. 32, 33.

²⁹ *Ibid.* bundle 26, 359. This statement is from the finding of Robert Brudenell, a judge commissioned by the Star Chamber about 1526 to ascertain the facts. The rest of the history of the litigation is taken from the answer of John Mulsho to the complaint of Henry Selby before the Court of Requests in 1534.

³⁰ See *Trans. of the Royal Hist. Soc.* 1892, p. 252 and note 3.

that in this action 'the seid Selby was moche ffauored & was admytted in forma pauperis & had assigned to his counsaill iiii. serieauntes at the lawe & his attourney to geve hym counsell without payeng any ffeez for the same.' The result of this action does not appear. Emboldened by this favour or by the sympathy of his neighbours, Selby in 1531 brought an action at Nisi Prius at Northampton, claiming that the land in dispute was a freehold in tenure. The jury found against Selby, who brought another action in chancery before Lord Chancellor Audeley in 1533. But 'the seid lord chauncellour tolde the seid Selby that his matter was nought & that if he troubeled hym eny more with the same he would cause his heyrez to be naylled to a pyllory.' The undaunted Selby in the following year (1534) brought an action in the Court of Requests upon the plea of socage in ancient demesne, of which I have not discovered the judgment.

It has been said that other inhabitants of Thingden were interested with Selby against Mulsho's proceedings. About 1529 they joined in a petition to Wolsey, then chancellor, with respect to the inclosures. The story is told by Mulsho in a cross-action against the inhabitants of Thingden,³¹ brought by him in the Star Chamber in 1530. Wolsey, by one of those high-handed acts of policy which involved him in so much unpopularity, if we are to believe Mulsho's version—

Withowte dewe examynacyon thereupon hadde in the kynges name grauntyd a wrytte oute of the Chauncery to Sir William Fitzwilliam knyghte then and nowe shryue of the said countye. of Northampton commaundyng him by the same to take the power of the said countye with him to throwe down the said hedges and dyches aboute the said closes so made by the said John Mulsho wythout callyng the said John Mulsho by any ordinary processe to make answer to the same and withoute any Inquisicion or other mater of Recorde remaynyng in the saide courte of Chauncery or els where proung the saide Inclosure to be contrary to any lawes or statutes of this Realme.

The inhabitants of Thingden, after the sheriff had executed the chancellor's decree, again met and riotously dug their manorial lord's obnoxious plantations, or what had been left of them, up by the roots (1530). It was for this riot, which ended in a general destruction of his agricultural improvements, that Mulsho summoned them before the Star Chamber. As was alleged against the tenants of Abbot's Ripton, so those of Thingden were stated by Mulsho to 'calle commen councelles and parves and make a commen purse among them promising all of them to take parte with other, saing that xxti of them would spend xxti score poundes ayenst the said

³¹ This document has been erroneously indexed *Mulsho v. Abbot of Croxton*, having been mixed up with papers belonging to another suit. MS. Record Office, *Star Chamber Proceedings*, bundle 26, No. 250.

John Mulsho.' They had influential abettors, for about 1531 Mulsho brought two actions in the Star Chamber against Elys (Attercliffe), abbot of Croxton, in the county of Leicester. Of these one was for the 'mayntenaunce & procurement of the same pluckyng downe.'³² This the abbot not only denied, perhaps as a matter of pleading, but alleged a fresh unlawful inclosure by the complainant of half an acre belonging to the house of Croxton. The other action, which was tried first, and which was, apparently,³³ with respect to the destruction of some inclosures of Mulsho under the abbot's direct orders, resulted in a judgment for Mulsho of 34*l.* 15*s.* 4*d.* as damages, of which the abbot was ordered to pay half, which payment he refused or neglected to make. While these riotous proceedings, leading to the intervention of the Star Chamber, were taking place, the inhabitants brought an action in the Court of Requests, in which they obtained a judgment in their favour as to the fines demanded upon admittance to copyholds. I have now enumerated some thirteen cases of litigation within a few years in various courts arising out of the relations of this lord of the manor of Thingden and his copyholders. Had the copyholders been without legal security, not one of these causes would have been heard.³⁴

It may be suggested that, though it is clear that they were amply secured against direct eviction, copyholders might at the expiration of a term be exposed to exactions in the form of fines which would operate to the same end. But a fine, even though 'uncertain,' was bound to be 'reasonable,' and the word 'reasonable' was a term of art, the measure of 'reasonableness' being custom.³⁵ That the dicta of the jurists in this matter were enforced by the king's courts will be sufficiently shown by the judgment of the Court of Requests in an action brought in 1529 by the copyholders of Thingden against John Mulsho, a fourteenth case. The complaint was the demand of 'excessyve and grete fynes.' The judgment runs :

(It) ys nowe by the said Counsaill ffynally ordered and determyned fforasmoeche as the said Mulsho hathe proved before the said Counsaill by his olde evidences customaries and courte rolles that the fynes of the said tenauntes bee not certain but determynable at the Lordes reasonable will somtyme more and somtyme les. That the same Mulsho and his heires fromhensforth upon suyt and request to hym made by any of his copy

³² This is from the abbot's answer. MS. Record Office, *Star Chamber Proceedings*, bundle 26, No. 250, B. I have not come across the original complaint of John Mulsho.

³³ The documents of this action have not been found. It is referred to as above in John Mulsho's replication to the answer of the abbot of Croxton.

³⁴ I by no means feel sure that I have enumerated all of them. There are occasional references to actions between these parties which, in the absence of the complete pleadings, I cannot positively assign to any of the causes mentioned.

³⁵ For the legal history of this interpretation of 'reasonable,' see *Trans. of the Royal Hist. Soc.* 1892, pp. 249, 250.

holders and ternautes vse the censing of the same ffynes reasonably according to his custumarie courte rolles and presidentes.

In case of further dispute on the point, the tenants are to resort to the steward, who is to assess the fines with 'equitie right and good conscience, as he wol aunswere affore the Counsaill to the same.'³⁶

Professor Ashley relies upon two passages in the Inquisition of 1517 as leading to the conclusion that 'a considerable clearance of the customary tenants must have taken place' in the course of the agricultural revolution. One of these is the destruction of *unum integrum hamelett cum omnibus tenementis* by the lord of the manor. The other is the direction to the commissioners to ascertain *quae et quot villae prosteruntur*. Since the greater includes the less it will suffice to inquire what was the size of the 'villae' or 'towns.' Upon this we have contemporary evidence. In the act of 1515 (6 H. VIII, c. 5) 'concernyng the pulling downe of Townes,' the preamble dwells in language unusually forcible upon the evils of diminishing the population by inclosures. The extremity of the mischief it illustrates by the following example. 'For where in somme oon towne ii. hundred persons men women & chyltern . . . were dayly occupied . . . now the seyd persons & their progeny is mynysshed & decreasyd.' The same language is repeated in the act of the following year (7 H. VIII, c. 1.). This, which is evidently adduced as a maximum, implies some thirty-three to forty families. In the Record Office³⁷ is a manuscript draught of a bill belonging to the year 1514 'against engrossing of farms.' This paper is disposed to estimate at a somewhat lower figure the maximum population of a rural 'town'—'So that where was in a towne xx or xxx dwelling houses they be now decayed.' In the Inquisition of 1517 itself, under Yorkshire, we have a striking example of what the commissioners understood by 'town,' a return being there given of the decay or destruction of *vnam villam vocatam Skelton . . . in qua fuerunt quattuor messuagia et quattuor cotagia*.³⁸ If such were the 'villae,' what were the 'hamlets;' and what necessity is there for imagining the evicted population to be copyholders? A 'town' of this size might reasonably be said to have been 'decayed,' though all the copyholders were left. I find, indeed, one case in the Court of Requests in which, according to the complainants, 'the holl towneship is & shalbe shortly leyd unto pastur.'³⁹ This was the 'town' of Ascott, itself a hamlet of the parish of Milton in Oxfordshire. It

³⁶ MS. Record Office, Court of Requests, *Decrees, &c.*, v. 135. The fines which contemporary writers complain of as having been heightened were the 'gressums' (*ad ingressum*) on the grant of a new estate. The judgment appears to refer more particularly to those paid on the vesting of an estate.

³⁷ MS. Record Office, Brewer's *Calendar*, i. 5727.

³⁸ *Trans. of the Royal Hist. Soc.* 1893, p. 107.

³⁹ MS. Record Office, Mr. Hunt's *Calendar*, bundle 8, No. 256. *Eustace v. Dormer*. Internal evidence shows the date to have been between 1526 and 1529.

has been seen how ready copyholders were to prefer suits to the Court of Requests, and how indulgent those courts were to their claims. In this case, however, the complainants are described as 'husbondmen.' There is no suggestion of their being copyholders. Their case is that for the offence of giving evidence before a commission on inclosures 'your said suppliantes and bedmen be discharged of ther holdinges & tenementes & charged to awyde at the feast of thannunciacion' &c. The evictors are Robert Dormer, apparently lord of the manor, and John Wylmot, 'ffermer of all the said town of Ascott havynge all in fee fferme of the said Robert Dormer and by them the holl township is & shalbe shortly leyd vnto pastur.' It is incredible, after the cases of Abbot's Ripton and Thingden, that this involved an eviction of copyholders too timid or too supine to vindicate their rights in combination with these tenants at will at common law in the 'Poor Men's Court of Requests.'

I trust I have now established the main point of my original thesis, the ample and effective protection accorded to copyholders between 1450 and 1550. My data have throughout been the records of manors, early cases, the statute book, judicial decisions, and the treatises of the contemporary jurists. Neither in these, nor in the transactions of the two courts with which I have been here concerned is there any support for the dictum that the mass of copyholders were without legal security.

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