

THE WARSHIP AND MARRIAGE OF ROBERT BARLEY, FIRST HUSBAND OF 'BESS OF HARDWICK'

By TERRY KILBURN

In 2010 Philip Riden published an account of the Hardwick family of Hardwick Hall during the fifteenth and sixteenth centuries.¹ One of the questions he examined was the first of the four marriages of Elizabeth Hardwick, better known to history as 'Bess of Hardwick'. Riden showed that much of the traditional account of how Bess met her first husband, Robert Barley, is fanciful. David Durant repeated the same account but was the first to suggest that Robert's marriage to Bess was an arrangement made to mitigate the impact of wardship on the Barley family.² Robert's father, Arthur Barley, had substantial debts even before he entered into his inheritance on the death of his father, another Robert, in 1533. For example, a writ was issued against him in November 1530 for the sum of £100 which he owed to James Daniel, a London merchant-taylor.³ It is possible that such debts led him to sell Robert's marriage and wardship in the 1530s rather than any pressing need to stave off the Court of Wards. Sometime between 1533 and 1538 Arthur sold Robert's wardship and marriage to Bess's stepfather, Ralph Leche. At some date no later than 1538 Henry Marmion, a close associate of the Hardwick family, claimed that Ralph had sold Robert's marriage and wardship to him. After Arthur's death, his lands at Barley Lees were deemed to be held by knight service to the king which led to Godfrey Boswell's purchase of Robert's wardship.⁴ Robert was aged 13 when his father died on 28 May 1543.⁵ The exact date of Robert's marriage to Bess is not known though it is thought to have taken place in the spring of that year. If so, it was destined to be of short duration since Robert died in December 1544.⁶

A chance discovery among recently digitized legal records at the National Archives has brought to light new evidence, presented here for the first time, which adds significantly to our understanding of Robert Barley's wardship and marriage.⁷ The document is an attachment relating to a plea submitted by an attorney acting on behalf of Peter Frescheville of Staveley. Dating from late in 1543 or early in 1544, it requires the sheriff to attach certain persons who were to appear before the judges in the Court of Common Pleas at Easter 1544, and clearly relates to proceedings begun by Frescheville shortly after Robert's marriage to Bess and the death of Arthur Barley.⁸ It would have been one of a series of entries relating to the case which alleged trespass and abduction. Frescheville claimed that Ralph Leche, Elizabeth his wife, and Henry Marmion '... with force and arms they did take and abduct Robert Barley, having been found at Barley, the son and heir of Arthur Barley Esquire, being under age, whose marriage belongs to this Peter, against the will of this Peter.' Bess's mother was first cousin to Peter Frescheville's mother, both women sharing the maiden name, Elizabeth Leeke.⁹ Ralph Leche married Bess's widowed mother in or about 1529.¹⁰ The sheriff was also ordered to find Robert and place him in his safe-keeping until the court determined to whom he was to be returned. Durant and others cite evidence from the Court of Wards to argue that Robert and Bess were married shortly before Arthur Barley's death. When Boswell acquired Robert's wardship it was stated that Robert was married in his father's lifetime.¹¹

The Freschevilles claimed that the Barleys held the manor of Barlow by knight service of their manor of Staveley and that they - the Freschevilles - therefore held the rights of wardship and marriage should Barlow be inherited by an under-age heir.¹² The Barleys believed they held Barlow by socage and could therefore dispose of Robert's wardship and marriage. As far as the Freschevilles were concerned, Robert's wardship and marriage were not the Barleys' to sell. Peter Frescheville has not previously been associated with Robert Barley's wardship and marriage, yet it is clear from his Common Pleas action that he considered himself to be Robert's lawful guardian and sought confirmation of this. By 1538 Arthur Barley had sold Robert's wardship and marriage to Ralph Leche. In a Chancery bill dateable to no later than 1538, Henry Marmion stated that he had paid Ralph Leche £41 9s. 2d. for Robert's wardship and marriage.¹³ At that time Robert and Bess would have been under age. Robert was born in January 1530 and so in 1538 would have been about eight years of age. Bess, born in 1521 or 1522, would have been in her mid-teens.¹⁴ Marmion would have claimed still to hold Robert's wardship at the time of Robert's marriage to Bess which probably explains why Marmion was included in Frescheville's allegations of trespass and abduction.

Although by 1538 Robert's wardship and marriage appear to have been sold twice it was not until 1543, shortly after Arthur Barley's death and Robert's marriage to Bess, that Frescheville commenced proceedings alleging that force had been used to abduct Robert. He claimed that Robert's marriage to Bess was illegal because he, as Robert's lawful guardian, had not consented to it. He clearly looked upon the marriage as a deliberate attempt to deprive him of his rights to Robert's wardship and with it control of the Barley inheritance during Robert's minority and perhaps longer. After Robert's death Frescheville became the lawful guardian of Robert's younger brother and heir, George Barley, who was then married to Frescheville's daughter, Jane.¹⁵ It is possible that Jane had originally been intended to marry Robert. If so, Robert's marriage to Bess threatened to thwart Frescheville's ambitions and resulted in his taking action to uphold his rights as Robert's lawful guardian.

Plaintiffs and defendants almost habitually exaggerated the arguments that they or their attorneys put before the courts. It is likely that in order to strengthen his case, Frescheville exaggerated his claim that Robert had been kidnapped from Barlow by force of arms. However, even allowing for some degree of exaggeration, Frescheville's allegations should not be dismissed out of hand. At the very least, he was challenging a marriage that certainly took place and his allegations demonstrate the lengths to which plaintiffs would go to support their cases in the courts. It remains unclear whether Frescheville was claiming that Robert had been forcibly kidnapped from an actual building, possibly the Barley's home at Barlow Lees, which Ralph claimed to have acquired along with Robert's wardship, or whether the reference to Robert 'having been found at Barley' referred to the manor of Barlow. It is also unclear whether Frescheville's proceedings were solely concerned with the violation of what he took to be his rights as the Barley family's feudal overlord or whether they were rooted in a struggle for control not only of Robert's marriage but also his inheritance. Despite being encumbered with various debts and claims for dower, this included land, timber, fish ponds, coal, ironstone, smithies and bloomeries.¹⁶

In order to establish her legal rights to dower in the Barley estate Bess sued Peter Frescheville and his ward George Barley in the courts of Common Pleas and Chancery. During 1545 two writs of dower were issued by the Court of Common Pleas to which after some prevarication Frescheville answered claiming that Robert Barley had never been seised of the estate from which Bess was seeking dower. She later told Chancery that Frescheville's claim was untrue

and intended simply to 'delay and fatigue' her dower proceedings in Common Pleas. She stated that she had been without 'friends, aid or comfort,' that her step- father, Ralph Leche, who was possibly then in the Fleet prison, stood 'condemned of great sums of money' and that neither she nor her mother could afford to try the issue at Common Law. Early in 1546 Frescheville engaged Sir John Chaworth, Robert's uncle, to offer Bess an out-of-court settlement which she later argued was proof of her entitlement to dower. Frescheville offered to withdraw his claim and pay Bess dower providing she agreed to farm out her widow's third at an annual rent. Bess accepted the advice of her counsel and agreed to these terms 'enforced thereunto by necessity'. She estimated the value of her dower at £26 13s 4d but Chaworth offered only £16. Bess 'constrained by necessity than compelled by equity' reluctantly accepted Chaworth's offer but at the last moment Frescheville reneged on the agreement determining instead to continue with his claim in the Court of Common Pleas. It was now, some eighteen months after Robert's death, that Bess turned to the equity courts and commenced proceedings against Frescheville and George Barley in the Court of Chancery.

Bess's Chancery and Common Pleas actions were as much concerned with the legality of her marriage as they were about her dower. In her initial Chancery complaint addressed to the Lord Chancellor, Sir Thomas Wriothesley, Bess explained how her marriage to Robert had come about. She was at pains to demonstrate that her marriage to Robert was lawful and, as had already been recorded in the Court of Wards, that it had taken place before the death of Robert's father. Bess informed Chancery that Arthur did 'covenant and bargain' and had been paid 'diverse great sums of money' for her marriage to Robert. It has been assumed that these events took place in 1543 but Bess did not state when they had taken place. Her only reference to 1543 was solely in relation to Robert's inheritance on the death of his father. It seems probable that Ralph Leche had in mind a marriage with Bess when he first acquired Robert's wardship and marriage from Arthur Barley some years before 1543 and that this remained the intention when Ralph sold on Robert's wardship and marriage to Henry Marmion. It is reasonable to assume that Arthur had been paid for Robert's wardship and marriage when Ralph Leche had purchased them and that 'being then but of tender years' Robert and Bess were espoused at that time.¹⁷

Bess informed Chancery that various payments had been made to Arthur but it is unclear who had actually made them.¹⁸ These payments may in part have been transfers of debt. Riden has demonstrated the precarious nature of Ralph's finances. Debt is one possible means through which Ralph was able to acquire Robert's wardship and marriage. An undated Star Chamber account records legal process in a case brought by Ralph Leche against Arthur Barley related to the recovery of a debt of 100 marks. Arthur had lost the case and the writ on which he was imprisoned demanded that he pay Ralph the 100 marks and an additional £3 damages.¹⁹ The 100 marks owed by Arthur to Ralph is precisely the same sum paid by Boswell to the Court of Wards for Robert's wardship. It is not implausible to suggest that Ralph Leche may have acquired Robert's wardship and marriage from Arthur Barley in lieu of debt. Pressure of debt may also have led Ralph to sell Robert's wardship and marriage to Henry Marmion. In 1537 Ralph was sued for debt in the Court of Common Pleas by Sir John Byron. Byron sued again the following year when Ralph also faced proceedings for debt commenced against him by Henry Bird, a Yeoman of the Chamber.²⁰ In 1538, at a time when Ralph was facing numerous actions for debt, Bess's mother accused him of desertion and leaving her and her children on the verge of destitution, dependent on the charity of friends and neighbours.²¹ Bess herself referred to Ralph's heavy

debts in her dower proceedings and he was to spend time in the Fleet prison in the mid-1540s, partly in consequence of a long-running dispute with Henry Sacheverell and Dame Elizabeth Savage which included accusations of debt, theft and forgery.²²

Perhaps aware of his own nearness to death and the need to minimise the impact wardship would have on his family and estates, Arthur Barley eventually sought to arrange Robert's marriage. Bess did not inform Chancery of the date of her marriage to Robert although her initial complaint to the court clearly indicates that it took place before Arthur Barley's death. There is, however, no evidence that Robert and Bess ever lived together as man and wife. Robert was just short of his fifteenth birthday when he died in December 1544. The main beneficiary of his death was undoubtedly Peter Frescheville as it ensured there would be no heir from the marriage to Bess. As the guardian of Robert's heir, George Barley, Frescheville gained what he had wanted. Frescheville's interest in Robert's wardship ended when Robert died but, having lost the Barley wardship once, Frescheville was determined not to lose it a second time. There was to be no challenge to his wardship of George Barley which he claimed as 'lord of the fee', the basis on which he had previously asserted his rights to Robert's wardship.²³ Robert's death would also have brought to an end Frescheville's legal proceedings against Robert's marriage and led to Bess's attempts to secure her widow's dower.

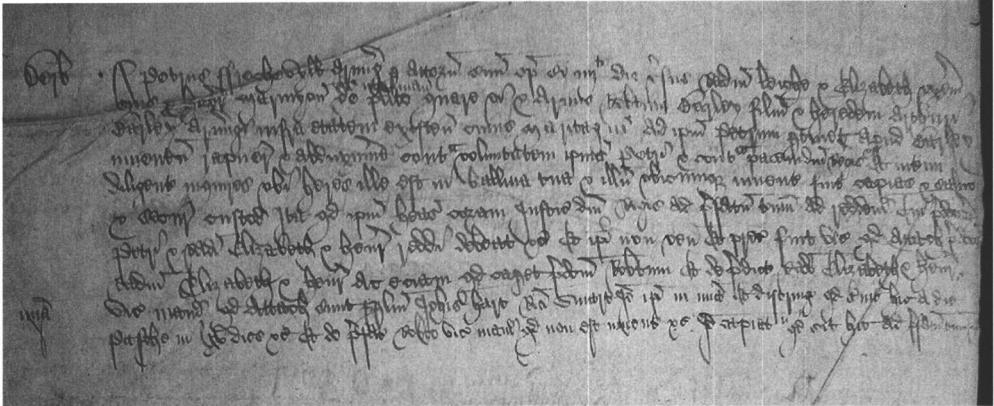
The chance discovery of part of Peter Frescheville's 1543-4 proceedings against Ralph Leche, Elizabeth his wife, and Henry Marmion, in the Court of Common Pleas sheds new light on the wardship and marriage of Robert Barley. Peter Frescheville's allegations of trespass and the forcible abduction of Robert Barley may have been no more than a legal fiction, since he certainly had sufficient motive to lie to the courts, but his previously unknown involvement in Robert's wardship and marriage adds a new dimension to the narrative. For the first time, we are able to place Peter Frescheville at the centre of the events surrounding Robert's wardship and offer a revised interpretation of Robert's marriage to Bess of Hardwick.

NOTES AND REFERENCES

- ¹ P. Riden. 'The Hardwicks of Hardwick Hall in the fifteenth and sixteenth centuries', *Derbyshire Archaeological Journal*, 130 (2010), 142 – 75. I am grateful to Philip Riden and Maureen Taylor for helpful comments on earlier drafts of this article.
- ² D. Durant, *Bess of Hardwick: Portrait of an Elizabethan Dynast* (1999), 8 – 11.
- ³ The National Archives (TNA), C 241/282/103.
- ⁴ Riden, 'The Hardwicks', 151-3 and n.72, 169. Henry Marmion and John Leeke were the executors to the will of Bess's father, John Hardwick. TNA, WARD 9/152. After Arthur Barley's death Chancery issued a writ for an Inquisition Post Mortem and the jury found Arthur held lands in Barley Lees by knight service to the king and had left an heir within age. Chancery informed the Court of Wards and despite rival claims to Robert's wardship the Court of Wards sold the wardship of the Barley Lees lands to Godfrey Boswell. in the usual way. Godfrey Boswell, or Bosvile, married Bess's sister, Jane Hardwick, sometime before 1547. He paid the Court of Wards 100 marks for Robert's wardship.
- ⁵ Riden, 'The Hardwicks', 151-2 and nn.72-3, citing TNA, C 142/282/103.
- ⁶ Riden, 'The Hardwicks', 169
- ⁷ Over eight million images from several classes of medieval and early modern legal records at the National Archives have been digitized by the University of Houston's O'Quinn Law Library. The Anglo-American Legal Tradition digital archive assembled by Robert C. Palmer, Elspeth K. Palmer and Susanne Jenks is available at <http://aalt.law.uh.edu/aalt.html> (AALT)

- ⁸ TNA, CP 40/1120 (AALT IMG 7469); see appendix 1. I am grateful to Peter Foden for transcribing the Latin text of appendix 1 and 2.
- ⁹ 'Pedigree of the Frescheville and Musard Families', *Collectanea Topographica and Genealogica*, 4, (1837), 4; In a box labelled 'pedigrees' in Belvoir Castle Muniments is a book of manuscript pedigrees of landed families c. 1565. The unknown genealogist was trying to explain contemporary allegiances. Among the hand-drawn pedigrees is one titled 'Leeke Grey and Frechvyle' which includes the marriage of Elizabeth Leeke to John Frescheville. I am grateful to Peter Foden for this information.
- ¹⁰ Riden, 'The Hardwicks', 153
- ¹¹ TNA, WARD 9/152. The statement that Robert had married before the death of his father was important as the impact of wardship was greater in cases where an under-age heir was unmarried.
- ¹² Riden, 'The Hardwicks', 152.
- ¹³ Riden, 'The Hardwicks', n. 72, 169, citing TNA, C 1/860/14-15.
- ¹⁴ Riden, 'The Hardwicks', 150-51.
- ¹⁵ G. D. Barlow, *Published Matter and Records relating to the Families of the Name Barlow* (1911), contains a printed pedigree based on the visitations of 1569 and 1611 inserted after page 20. Sir Montague Barlow, *Barlow Family Records* (1932). Pedigree number 5, inserted between pages 16 - 17. Manuscript pedigree, see n.9 above, includes the marriage of George Barley to Jane Frescheville.
- ¹⁶ Riden, 'The Hardwicks', 151-2. In 1543 Robert's mother, Elizabeth Barley, Arthur Barley's widow, began a Common Pleas action for dower against Robert Barley, Peter Frescheville esq, Ralph Leche and Henry Marmion. Her case was contemporaneous with Frescheville's proceedings against Ralph Leche, Bess's mother and Henry Marmion. Although Robert was still a minor, she did not identify his guardian, presumably because the court was yet to determine Frescheville's case. TNA, CP 40/1120 (AALT IMG 5387); see appendix 2.
- ¹⁷ TNA, C 1/1101/17 is Bess's initial complaint to Chancery presented to Sir Thomas Wriothesley who became Lord Chancellor on the 3rd of May 1544. Bess informed Chancery that she had been a widow for eighteen months which indicates that she began her Chancery action in mid-1546. The final section of the document is badly damaged with many words missing but provides details of Bess's attempts to obtain dower including references to her 1545 Common Pleas proceedings and to events that had taken place earlier in 1546. Bess also refers to having been 'married and espoused' to Robert but later reverses the order to 'espoused and married.'
- ¹⁸ TNA, C 1/1101/17 states that Arthur Barley was paid by the '[...]' of Elizabeth. Unfortunately, the word here is faded and virtually illegible, even under UV light, although it is almost certainly one word and given the context in which it occurs is most likely the word 'friends' by which Bess may have meant Ralph Leche and Henry Marmion.
- ¹⁹ TNA, STAC 2/19/310
- ²⁰ TNA, CP 40/1092 (AALT IMG 2706); TNA, CP 40/1096 (AALT IMG 2393).
- ²¹ Riden, 'The Hardwicks', 155, citing TNA, C 1/845/34. Frecheville's proceedings suggests that Ralph and his wife were reconciled by 1543.
- ²² Riden, 'The Hardwicks', 153-4.
- ²³ TNA, C 1/1101/17.

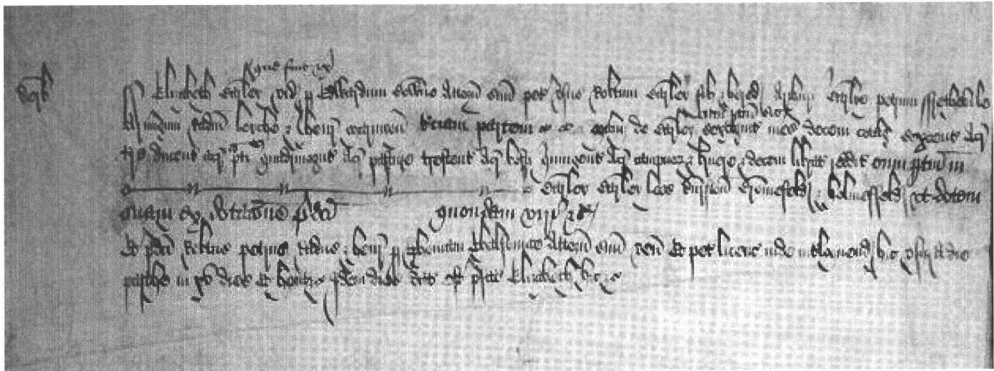
APPENDIX 1 – Peter Frescheville’s allegations of the abduction and illegal marriage of Robert Barley, TNA, CP 40/1120 (AALT IMG 7469).



Derbyshire

Peter Frechevyll Esquire by his attorney brought a case on the fourth day against Ralph Leiche and Elizabeth his wife and Henry Marmyon \of ...man/ concerning a plea why with force and arms they did take and abduct Robert Barley, having been found at Barley, the son and heir of Arthur Barley Esquire, being under age, whose marriage belongs to this Peter, against the will of this Peter and against the peace of the Lord the King, And meanwhile you shall diligently enquire where he the heir is in your bailiwick, and wheresoever you shall find him you shall take him and keep him safely and securely so that you shall have him before the Justices of the Lord the King at the said term to return unto whom of the said Peter and Ralph Elizabeth and Henry he ought to return etc. And they did not come. And the Sheriff was ordered to attach Ralph Elizabeth and Henry and also that he should seize the said Robert. And concerning the said Ralph Elizabeth and Henry the Sheriff orders that they are attached by the pledge of John Hart and Richard Smart. Therefore they are in mercy. And distrain them so that they be here on the Quindene of Easter etc. And concerning the said Robert the Sheriff orders that he is not found etc, so he should be seized so that he be here at the said term.

APPENDIX 2 - Elizabeth Barley, widow of Arthur Barley, Common Pleas proceedings for dower, 1543/4. TNA, CP 40/1120 (AALT IMG 5387).



Derbyshire

Elizabeth Barley widow (who was the wife), by Edward Bowne her attorney, demands against Robert Barley son [interlined] and heir of Arthur Barlye, Peter Frecheville Esquire, Ralph Leyche and Henry Marmyon, one third part [written over erasure “her.....”] of the manor of Barley with appurtenances and 60 messuages, 10 cottages, 600 acres of land, 200 acres of meadow, 40 acres of pasture, 300 acres of woodland, 50 acres of furze and heath and £10 of rent with appurtenances in [long erasure] Barley, Barley Lees, Dronefeld and Holmesfeld as her dower by the endowment of the said [blank] formerly her husband etc. And the said Robert, Peter, Ralph and Henry, by Thomas Chalfounte their attorney, come and here seek licence to imparl until the quindene of Easter. And they have [it] etc. The same day is here given to the said Elizabeth etc.