

VII.—BIRTLEY FELL, COUNTY DURHAM.

BY SIR WILLIAM WAYMOUTH GIBSON.

[Read on 26th April 1944.]

In the high lying region forming the eastern part of the township of Birtley in the parish of Chester-le-Street in the county of Durham there is a tract of land called Birtley Fell or Birtley Common or Birtley Black Fell or the Black Fell. The first of these names is that generally used.

The area of this tract was formerly about 330 acres, but is now about 290 acres.

It is clear from an act of 1794 for dividing and enclosing certain moors, commons or tracts of waste land within the parish and manor of Chester in the county of Durham that Birtley Fell was a common within that manor. As the act recites that the lord bishop of Durham was in right of his church and see of Durham lord of the manor seised of the royalties within and under the said moors, commons and wastes the mines and minerals under Birtley Fell were owned by him.

One of the provisions of the act is that it should not empower the commissioners thereby appointed to divide or allot Urpeth Common and Birtley Common within and parcel of the said parish and manor or either of them. Neither of these commons is included in the list given in the act of those for the enclosure of which it was passed.

Urpeth Common was in pursuance of a deed dated 12th February 1799 divided by an award dated 1st July 1799, but Birtley Fell has never been divided by any act or deed.

The ownership of the soil of Birtley Fell presents

mysterious features, and it is the object of this paper to throw such light on this ownership as is available.

No reference to Birtley Fell has been found in Hutchinson, Surtees or Boyle, and it has not been possible for the writer to have searches made in the Record Office. But Surtees states that Birtley was an ancient manor and vill to the north of Chester-le-Street and gives some details about the owners of it.

In a minute made in 1748 of proposals for working coal under Birtley Fell there is a reference to "the freeholders" who are not otherwise referred to. That name continued in use until recent years, but has since been superseded by the term "Owners of Birtley Fell."

The name and the term both undoubtedly mean the owners of the soil.

As Birtley Fell was a common within the bishop's manor of Chester he must originally have owned the soil subject to the rights of the commoners just as the Newcastle upon Tyne Corporation own the soil of the Town Moor subject to the herbage rights of the freemen.

How then did the ownership of the soil of Birtley Fell pass from the bishop to other persons and who were those persons?

Such a transfer of ownership would in any case be unusual, but when it is recalled that in the eighteenth century and the early part of its successor the lord bishop of Durham was lord of a palatinate and one of the most wealthy and powerful subjects of the Crown the nature of the transfer appears startling.

What follows is an attempt to state and explain how it happened.

When the soil of Birtley Fell was owned by the bishop persons owning lands or burgages in the township of Birtley had the right of pasturage on the fell for certain animals and for geese.

But at an early date, certainly before 1800, freeholders or other persons had enclosed parts of Birtley Fell and

divided them into small plots called garths on some of which houses, stables and other buildings were erected. The freeholders charged a rent of 12s. od. per acre for garths and they also let the herbage of the rest of the fell. They collected rents for the garths and the stints, and divided them amongst themselves. At one time no rent was charged for stints in the hands of the commoners proper, but about 1870 the practice of making commoners as well as outsiders pay rent for stints was adopted.

The garths were usually let to persons owning lands or burgages in the township of Birtley, but in some cases garths were let to other persons.

The stints were also usually, but not always, let to the same class of persons.

For horses and cows the charge in old days was 17s. od. a year to persons within the class and 12s. od. a year to others, but for many years before 1876 a uniform charge of 12s. od. for the summer half year and 5s. od. for the winter half was made to everyone.

Asses were charged at 3s. od. a year and geese at 3d. a year.

Unauthorized people often turned animals on to the open part of the fell, which caused much trouble. It was difficult to collect stint rents from them.

In 1817 Thomas Humble, owner of land in the township of Birtley and as such entitled to a right of common on the fell, brought an action against Messrs. Hunt Perkins & Co., predecessors of the present Pelaw Main Collieries Ltd., claiming abatement of a nuisance caused by waggonways from their Urpeth and Ouston collieries across the fell which he alleged had materially abridged his right of common and materially injured his property.

These waggonways had been constructed recently by the defendants under a power purported to have been leased to them by the bishop.

The questions involved in the suit were whether the bishop had a right to lay waggonways across the fell,

whether he could prove that right to have been exercised from time immemorial, whether the plaintiff had a right of common on the fell and if so whether it had been so materially injured that there was not sufficient herbage left for the commoners.

Some witnesses for the defendants proved that waggon-ways had existed on the fell "near seventy years," but unfortunately for them one William Hind, aged eighty-three, whom they called, allowed in cross-examination that when he first knew the fell there were no vestiges of old waggon-ways on it. That cost them the case, as the jury returned a verdict for the plaintiff for whom judgment was entered.

The bishop to whom the defendants had been paying rent under their wayleave lease and who seems to have supported the defendants threatened that there would be an appeal, but the defendants agreed to pay him one sixteenth of the wayleave rent and they afterwards also paid the full wayleave rent to the freeholders. The defendants and their successors continued to pay both these rents until about the end of 1939.

In 1819 one George Maddison, owner of land in Birtley township and as such entitled to herbage rights on the fell, brought an action of trespass on the case in the Court of Common Pleas at Durham against Sir Thomas Henry Liddell, baronet, the Right Honourable John Bowes Earl of Strathmore and the Right Honourable James Archibald Stuart Wortley, who constituted the firm of colliery owners for long known as the *Grand Allies*.

The plaintiff stated that his right of common was subject to the right of the owner of the soil of the fell for the time being to make any pits or shafts thereon for winning and getting any coal or cinders won or gotten from beneath any lands in the township of Birtley and also to lay waggon-ways across the fell for leading and conveying such coal or cinders, and he claimed that from 1st August 1813 onwards the defendants had made ten pits or shafts on the fell for winning and getting coals from beneath other lands than

those within the township of Birtley and unlawfully and unjustly put 50,000 tons of coal and cinders about the bank and mouth of such pits and shafts which had been won and gotten from beneath lands within the township of Usworth and had wrongfully laid large quantities of iron and wood in and upon the fell and thereby and therewith made a waggonway for leading and conveying coals not won and gotten from beneath lands within the township of Birtley but from beneath lands within the township of Usworth.

In consequence of these acts the plaintiff alleged injury and disturbance to his right of common on the fell and claimed £500 damages.

The jury found for the plaintiff and awarded him damages of 1s. od. and costs.

In a note made in 1876 Mr. John Johnson, agent for the freeholders, stated that about the year 1818 they made a claim for the wayleave rents which had previous to that date been claimed by and paid to the bishop of Durham and an "auction" [*sic*] "Rand & Hunt and others" was tried at Durham and resulted in favour of the freeholders, and the following entry in the books dated 1st April 1818 referred to this trial :

Debtor Hunt Perkins & Co.

"To a verdict given for damages over Birtley Fell for Ouston Colliery leading coals over the same to this date £500 0 0."

The freeholders divided £500 on 29th August, but whether that had been received from Messrs. Hunt Perkins & Co. does not appear.

From the reference to the year 1818 in Mr. Johnson's note and from the fact that in the action of 1819 the jury awarded the plaintiff damages of 1s. od., it would seem probable that this payment of £500 was made in settlement of the damages in the action of 1817, and that would accord with the entry in the books of the 1st April 1818.

What does however emerge is that the action of 1819,

though not brought by or on behalf of the freeholders as a body, had been brought by the plaintiff who was a freeholder by arrangement with the others.

From about 1820 the control of Birtley Fell was delegated by the freeholders to a committee of management which until the present century almost invariably consisted of the principal freeholders or their agents.

The present owners have a plan made by Ralph Coulthard in 1845 showing the separate garths and another plan of his of the same date showing the whole area of garths by green colour, and giving the following particulars :

Name of proprietor.	Yearly value.			Amount of claim.		
	£	s.	d.	£	s.	d.
1. The Earl of Durham	205	0	0	10	16	10½
2. Messrs. Humbles	457	7	0	24	3	10
3. Geo. Maddison	196	14	10	10	8	1½
4. Lord Ravensworth	327	17	0	17	6	10
5. Robert Warwicke	482	17	0	25	10	10
6. Lady Byron	85	0	0	4	9	11
7. Geo. Baker	100	0	0	5	5	9½
8. Peareth's Exors.	16	1	4	17	0	
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	£1870	17	2	£98	19	2½

The above are the principal proprietors who receive £98 19s. 2½d. per cent out of the money collected for way-leave and garths and stints on Birtley Fell.

This valuation was made in 1818 and 1821. And the first dividend was made in 1821.

1845 R.C.

Names of small proprietors and their claims.

Names of proprietors.	Yearly value.			Amount of claims.		
	£	s.	d.	£	s.	d.
1. Robert Hair	15	6		10		
2. William Pickering	2	6		1½		
3. William Hunter	12	0		7½		
4. Ralph Naters	2	0		1		
5. Robert Braban	1	5		¾		
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Carried forward	1	13	5	1	8½	

	£	s.	d.	£	s.	d.
Brought forward	1	13	5	1	8	$\frac{3}{4}$
6. Geo. Greenwell		2	8			$1\frac{1}{2}$
7. Geo. Burnet		4	5			$2\frac{3}{4}$
8. Robt. Gibson		19	4	1	0	
9. John Day		1	0			$\frac{1}{2}$
10. John Crow	5	15	6	6	1	
11. John Ellis	3	0	0	3	2	
12. John Butson	3	0	0	3	2	
13. Mrs. Mary Humble	2	14	4	2	10	$\frac{1}{4}$
14. do. for Miss Humble			7			$\frac{1}{4}$
15. Miss Margt. Humble	1	6	9	1	5	
16. — Smiles			10			$\frac{1}{2}$
17. Thos. Braban			7			$\frac{1}{4}$
18. Messrs. Fenwick & Co.	1	11		1		
19. Catholic Minister		3	3			2
20. Thos. Humble		4	8			$2\frac{1}{2}$
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	£19	9	3	£1	0	$4\frac{1}{4}$
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Yearly value of large claims	£1870	17	2	98	19	$2\frac{1}{2}$
Do. of small do.		19	9	3	1	0 $4\frac{1}{2}$
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Totals	£1890	6	5	£99	19	7
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<i>On a Dividend of £100.</i>						

An acct. of the acres of Land in Birtley Township.

	A	R	P	
Lady Byron	47	0	0	
Henry Tower	49	2	0	
Robt. Warwick	254	0	5	
Lord Ravensworth	164	2	17	
Geo. Maddison	112	0	2	
The Earl of Durham	136	2	21	
Messrs. Humbles	279	1	37	
Peareth	4	3	0	
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Inclosed	1048	0	2	
Birtley Fell about		322	0	0
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Total	1370	0	2	
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Although not so stated in these particulars the yearly values given are those from the book of the poor rate of the township of Birtley, and according to them the first division of rents was made in 1821.

The first division of which details are recorded in the books was of £748 2s. 7½d. on 30th April 1849.

It is believed that all divisions since the first have been made substantially on the original basis regardless of changes in value of holdings.

The plans show that the fell included a narrow strip of ground running westward to the village of Birtley, and one of them shows a plot at the junction of the road through this strip and the Durham Road marked "Constables Garth."

This strip was for access to the fell. There were similar access strips to the Town Moor from Newcastle and to Gateshead Fell from Gateshead.

The Constable's Garth was formerly the pound for the Fell. It was sold in 1932.

When the Law of Property Act 1925 came into force on 1st January 1926, Lord Ravensworth, the Earl of Durham, Baroness Wentworth and Pelaw Main collieries received about 98 per cent of the rents and the balance went to about sixty-three small freeholders, most of whom got only a few pence each annually.

The inference from these facts is that at some date probably before 1800 the freeholders had established or were in process of establishing a title by adverse possession to the soil of Birtley Fell against the bishop by means of the exercise of acts of ownership. In this it is certain that they succeeded and so converted themselves from commoners into absolute owners of the soil as tenants in common in unequal shares.

In law such owners could not act by a majority. For many years the small freeholders were given an annual dinner when their shares of rents were paid to them and so they gave no trouble. The dinner was paid for out of the whole of the rents.

But shortly before 1926 difficulties of several kinds arose. However, soon after the Law of Property Act 1925 came into force the large owners exercised a power given by the act for a majority in value of more than half to appoint trustees of the entirety of the fell in place of the Public Trustee in whom it had vested under the act on the statutory trusts; and these trustees have since controlled the management of the fell. Until a few years ago the bulk of the rents was derived from the waggonways of John Bowes & Partners Limited—the Pontop & Jarrow Railway from Marley Hill to Jarrow—and Pelaw Main Collieries Limited—the Pelaw Main waggonway from Ouston and Urpeth to Pelaw Main, but those companies then took advantage of a decision of the Railway & Canal Commission as to surface wayleave rents for coal and terminated their tenancies. Thus the income from the fell was much reduced as the trustees instead of receiving large sums for wayleave rents now receive or will receive only the income from the prices paid or to be paid to them by the companies for the outright purchase of the waggonways which were based on land rents and not on the wayleave rents.

This account of a little known chapter in local history seemed to the writer to have some general interest because of its special features and so to deserve a place in our records.