

ART. VII.—*The Customary Tenant-right of the Manors of Yealand.* By J. RAWLINSON FORD.

Communicated at Appleby, September 10th, 1908.

AMONGST the title deeds relating to the manors of the three Yealands is an exemplification under the Duchy Seal of a decree dated May 5th, 1659, made by the Court of Chancery of the County Palatine of Lancaster, confirming an award by certain arbitrators who had been appointed to settle disputes which had arisen between Sir George Middleton of Leighton, the lord of these manors, and his customary tenants concerning their customary tenant-rights and estates in their respective tenements, and their rents, fines, heriots, customs and services. It is a long document on many skins of parchment, and perhaps as regards its details of local interest only. But it seems to be worth recording for two reasons—namely, because it shows that the Border tenant-right obtained in Lancashire not only Over Sands,* but also on this side the bay, and because it throws light upon the settlement of the claims which the lords of manors in these northern counties had been encouraged to make upon their customary tenants by the proceedings which James I. had taken with regard to the Crown manors in Cumberland and Westmorland. The history of these proceedings and of their final settlement is fully recorded in Nicolson and Burn's *History*, vol. i., pp. 51 to 59; and by the late Chancellor Ferguson in his *History of Westmorland*, chap. x., "The Border Tenant Right." † But while the decree

* Ferguson's *History of Westmorland*, p. 128.

† See also an article on "Customary Tenure in Westmorland," by George Gatey, in the *Transactions of the Cumberland and Westmorland Association*, part xi., 1885-86.

of the Court of Star Chamber of June 29th, 1625, confirmed the certificate of the judges that the estates of the tenants were estates of inheritance descendible from ancestor to heir according to the customs of the several manors whereof they were held, yet the question whether the fine payable to the lord on death or alienation of the tenant and on death of the lord be certain or arbitrary was left unsettled, and seems to have given rise to disputes. Amongst such disputes was one between the lord of the manors of Yealand Redman, Yealand Conyers, and Yealand Storrs and his customary tenants, which was finally settled by an award of four persons to whom the questions were referred, and a decree of the Duchy Court which confirmed and established such award.

The history of these manors and of their descent from the date of the first grant to Adam d'Avranches down to the opening years of the eighteenth century, when for the first time they were alienated to a purchaser, has yet to be written. It is sufficient for the purpose of this paper to say that the "vill" of Yealand was granted by William de Lancaster I. to Adam d'Avranches by charter, the date of which was probably about the middle of the twelfth century,* and that after several failures of direct male heirs it was ultimately carried to Geoffrey Middleton (of Middleton Hall in Lonsdale) by his marriage with Alison Croft, one of two co-heiresses, in whose descendants it remained till on the death of George Middleton Oldfeild, in 1709, one of his two co-heiresses, who took the manors as part of her portion, sold them.

That the tenure in these manors was that of Border tenant-right seems clear from the terms of the award, since the customs thus declared agree with those applicable to tenant-right in Westmorland except in one particular—namely, the widow's dower. This is not expressly dealt with by the award, but there is a proviso

* See *The Redmans of Levens and Harewood*, by W. Greenwood, p. 3.

that it shall not be prejudicial to the estates of widows, but that they may hold the same as formerly, paying their *proportionate parts* of the rents and services due to the lord. This would seem to imply that they did not take the whole tenement during widowhood as was the custom in Westmorland,* but only some portion, as otherwise they would have paid, not a proportionate part, but the whole of the rents and services. But on the other hand, the tenants in their Bill of Complaint, mentioned later, allege that "the widow of any tenant has always been allowed to enjoy her late husband's land without payment of fine," which would seem to imply that she took the whole tenement.

The reason usually given for the Border custom that the widow should take the whole tenement on the death of her husband, and that she alone should be liable to a heriot, is the inconvenience which would be caused if the widow and the heir had to produce a man for the Border service by *thirds*, and that as she could not perform the service in person she gave the heriot as a recompense.† But if the tenant left a son, it is difficult to understand why he could not perform the service for his mother and himself, and the reason does not seem very convincing. Probably, as Nicolson and Burn tell us, the custom was not universal in Westmorland.‡

The disputes between the lord and his tenants seem to have originated in the time of Thomas Middleton, the father of Sir George Middleton. Dr. William Farrer has obligingly lent me a transcript from the Duchy of Lancaster pleadings for Easter Term, 1642, setting out a complaint by certain of the tenants against George

* Ferguson's *History of Westmorland*, p. 129.

† Nicolson and Burn, vol. i., p. 24.

‡ In the bottom of Westmorland the widow has in some places half, and in others only one-third, of her husband's customary estate; and in that part of the county not many heriots are paid: for in those cases there is an heir at law, who enters immediately, and consequently the lord did not want a soldier.—Nicolson and Burn, vol. i., p. 25.

Middleton, and alleging that Thomas, his father, exacted a general fine of seven years' ancient rent and very heavy particular fines—namely, ten, sixteen, and even thirty years' rent.

This allegation is confirmed by an admittance by Thomas Middleton, dated April 24th, 1624, in which he exacts a fine of £3 in respect of a tenement of the rent of 3s. 4d.—that is to say, a fine of eighteen years' rent.

Thomas Middleton was fined as a recusant, and his son, Sir George Middleton, suffered severely for taking up arms for Charles I., and so it would seem they both of them sought to make amends by squeezing their tenants, in which they were helped by the uncertainty in which the decree of the Star Chamber had left the question of the fines payable by the tenants. In the pleadings above mentioned the tenants allege that the general fine (*i.e.*, on the death of the lord) is arbitrary—sometimes two years', sometimes three, and sometimes even four years' ancient rent, "but this last has always been deemed very grievous because of the poverty of the country and the barrenness of the land." They further allege that the widow of any tenant has always been allowed to enjoy her late husband's land without payment of fine, but that it has been customary for her to give to the lord the best beast formerly possessed by her husband, and that this heriot is payable by the widow only. This allegation agrees with the claim made by the tenants of the Crown manors in their answer to the bill filed by the Prince of Wales in 16 James I.*

The Bill of Complaint is sufficiently interesting to justify its being given in full:—

Duchy of Lancaster Pleadings. Bundle 370.

Easter, 20 May, 1642.

Richard Robinson, Robert Stable, Jervice Wattson,
Richard Backhouse, Christopher Hobkin, Thomas
Wattson, Thomas Clarkson, Nicholas Hutton, John

* Nicolson and Burn's *History*, p. 52.

Comminge, John Kilner, Thomas Hubbersty, John Barker, and other customary tenants of the Manor or Lordship of Yealand Redman, Yealand Conyers and Yealand Storrs in Lancs. v.

George Midleton (son of Thomas and grandson of George Midleton Lords of above Manor).

The tenants hold their tenements, &c., by inheritance descendible according to the custom of the said Manor from ancestor to heir by the payment of several certain yearly rents, duties, and services, and by the payment of a running fine or greshome called a Town Tacke, which last is the doubling of their rents every tenth year; also by the payment of general arbitrary fines at the death of the lord, and particular arbitrary fines at the change of every tenant either by death or alienation. The general fine is sometimes two years, sometimes three, and sometimes even four years' ancient rent, but this last has always been deemed very grievous because of the poverty of the country and the barrenness of the land. The widow of any tenant has always been allowed to enjoy her late husband's land without payment of fine, but it has been customary for her to give to the lord the best beast formerly possessed by her husband, and this heriot is payable by the widow only. It has been customary for the heir or heiress to be admitted to the tenement formerly enjoyed by his or her ancestor, unless such tenant leave a widow. The late Lord of the Manor, Thomas Midleton, endeavoured to form a precedent by exacting a general fine of seven years' ancient rent. The tenants were obliged to pay this because they were too poor to defend themselves, and this encouraged Thomas Midleton to exact very heavy particular fines. In this he was assisted by his son George, the Defendant. On the death of a tenant he would demand ten, sixteen, and even thirty years' ancient rent, and from some of his poorer tenants he extorted the whole of their tenements. He would also enter into the inheritance of an heir under age and take the profits for himself, and when the heir came of age he would demand as unreasonable a fine as if he had not enjoyed such profits. If such an heir were a daughter he would sometimes seize the half and sometimes the two parts of the tenement, and would keep the same to himself and his heirs for ever, pretending this to be in satisfaction for his particular fine. He would never admit an heir to his inheritance unless he agreed to such unreasonable provisions, conditions and covenants as would quite overthrow the ancient customary estate of inheritance.

The said Thomas, being the owner of a Park adjoining his Manor, called Leighton Park, continually kept the said Park overcharged

with multitudes of red and fallow deer, and allowed these to feed and depasture on the grounds and land of the tenants, so that they were unable to preserve their crops of corn and grain from being consumed by these deer.

Also there are certain commons or waste lands for which the tenants pay yearly to the King a quit rent of thirteen pence. The said Thomas enclosed with a wall a large portion of these, the portion being the most fertile part thereof, and also debarred the tenants from several highways leading from their dwellinghouses to the Church and Market Towns. He also debarred them from the use of several wells which they have always been accustomed to use.

All these oppressions, &c., Thomas Midleton committed with the assistance of his son, George Midleton. Since his death a general fine has become due, and the said George Midleton desiring to depopulate the Manor, has imposed fines of twelve and fourteen years of rent, being twice as much as his father extorted. He has also demanded a heriot to be paid out of the goods of every tenant who has died seised of any tenement, whether there be a widow or not. He asks as particular fines sixteen, twenty, and thirty years' rent, and terrifies his tenants with threats, saying that their refusal to pay such fines is absolute forfeiture of their tenements. He insists on treating heirs under age and heiresses as his father treated them.

The tenants wish to have the enjoyment of their estates according to the ancient custom of the Manor or Lordship above mentioned.

Whether this Bill of Complaint is a part of the proceedings which led to the award referred to in this paper is uncertain, but it seems probable. The award recites that George Middleton of Leighton,* Anne his wife,† Somerford Oldfield, Esq., and Mary his wife, the only daughter and heir apparent of the said George Middleton, had exhibited their bill of complaint against certain persons (forty-five in number), customary tenants of the

* It is curious that Sir George Middleton is not given his title or described as a knight or baronet, whereas his son-in-law, Somerford Oldfield, is described as esquire. Perhaps during the Commonwealth the honours conferred by the king during his conflict with the Parliament were not recognised. Charles I. knighted George Middleton at Durham, June 26, 1642, and created him a baronet the following day.

† Anne Middleton was his second wife, and a daughter of George Preston of Holker.

said George Middleton within the several said manors of "Yelland Redmaine Yelland Storres and Yelland Coniers," and Robert Browne of the Dykehouse in "Lyndeth," one other of the tenants of the said George Middleton in Lindeth aforesaid; and that the same persons had exhibited their bill of complaint against the said George Middleton and the other plaintiffs in the first bill, such bills setting forth that there had been differences between the parties for and concerning the customary tenant-rights and estates of the tenants of and in their several messuages, cottages, lands and tenements situate within the manors and Lindeth, and the rents, fines, heriots, customs and services due and payable to the lord; and that there had been several suits, writs, or actions of replevin, trover and conversion, assault and battery between the same parties; and that the parties had referred themselves and their disputes to Alexander Rigby of Preston, esq.; William West of Middleton (in Lancashire), esq.; Ralph Baines of Meweth (in Yorkshire), esq.; and George Pigot of Preston, gentleman, as arbitrators, in case they all could agree, and, if not, then to Alexander Rigby and William West alone; and that the four arbitrators had made their award, bearing date September 18th, 1658, in the following form, and then follows the award verbatim.

In the first place the arbitrators ordered that all actions pending between the parties should be withdrawn, and awarded to George Middleton certain moneys which had been recovered against Thomas Hobkin, one of the tenants, and which were then in the hands of Evan Wall of Preston, gentleman, by order of the late deceased Major-General Charles Worsley. Then after reciting that the tenants of the manors and Robert Browne of Lindeth held their tenements to them and their heirs according to the custom of tenant-right of ancient time used within the said manors upon payment of certain yearly rents and other services, and upon general and particular fines payable to the lord for the time being upon the deaths of the

lord and tenants for the time being and upon alienation of their tenements, which fines had been alleged by the tenants to be arbitrable at the will of the lord so as the same did not exceed four years' ancient rent, and that it had been alleged by George Middleton that the assessing of the fines was arbitrary and uncertain at the will of the lord without any such limitation, they awarded that for making the general and particular fines certain, "and for settling the customary estate of inheritance and tenant-right of the tenants in their several and respective . . . tenements . . . for ever hereafter," the tenants should in future pay eight years' ancient rent as a general fine upon the death of the lord within one year afterwards, and the same as a particular fine on the death of a tenant and on alienation within three months after such death or alienation. This was an extraordinarily heavy fine if it be compared with the fines paid by the customary tenants of the Crown manors within the barony of Kendal (namely, two years' old rent on change of lord by death and three years' old rent on change of tenant by death or alienation), and it seems to be unfair and unreasonable. And, indeed, the whole award is so much in favour of the lord that the tenants, as we shall see later, at first refused to perform it, though eventually they yielded. On the other hand, in the dispute between the Earl of Thanet and his Westmorland tenants in 1739, the jury found that the fines were to be assessed at the will of the lord, the general fine not to exceed ten pence for every penny old rent, and the particular fines not to exceed seventeen pence for every penny old rent.* One ought to know, however, what proportion the old rent in each case bore to the actual value of the land before making a comparison.

The arbitrators then proceeded to award that the lord should have a heriot from *every* tenant dying seised of a messuage and tenement, or cottage already erected or to

* Ferguson's *History of Westmorland*, p. 138.

be erected—that is, the best quick goods—or failing such, the best other thing of the goods of such tenant; and, further, that every purchaser of any part of a messuage and cottage and above four acres of land should be accounted as liable for a heriot. The tenants had claimed that a heriot was due from widows only, as was the custom in manors within the barony of Kendal; but in their award the arbitrators favoured the lord by decreeing a heriot from every successor of a tenant.

Then follows a series of awards in regard to the tenants' personal obligations towards the lord—namely, that every tenant who keeps a draught (of oxen) to plough his own land shall plough one yoking or day's work in the year in such of the lord's demesnes at Leighton, Hyning, Tewitfield or Yealand Hall as shall be reasonably required by the lord; that every tenant who keeps a horse in the time of corn seeding shall find for one day one horse and a harrow for the harrowing of some of the lord's demesnes; that every tenant who has paid boon hens or capons shall henceforth pay yearly three boon hens according to a schedule annexed to the award; and that every tenant shall yearly send two able persons to shear in some of the lord's demesnes.

The arbitrators next deal with the rights of the tenants to timber, and find that they shall have liberty without assignment of the lord to cut down timber trees or other trees or wood on their tenements and not elsewhere as well for building or repairing houses, as also for ploughbote, wainbote, cartbote, firebote, hedgebote and housebote to be employed on the premises and not elsewhere and not otherwise; and later on in their award they find that the tenants have liberty to get stones for building or repairing their houses or fences, and limestones and sods for kilns for their own use, and likewise may enjoy their brackendales and common of pasture, together with the moss and turbary belonging to their tenements as they or their ancestors had enjoyed the same, but without any

wilful waste, and so as that the stones and sods which they got on that part of the commons called Barrow Hill* and Crindle Barrow† be gotten on that side next Yealands.‡ The lord is ordered to keep a bull at Leighton Hall or somewhere within the manors for the service of the tenants without charge.

The arbitrators then award that the tenants shall pay their town tack to the lord, "to wit, shall double their rents every tenth year as formerly they have used and been accustomed to do." This the tenants had not disputed, since in the pleadings before quoted they had alleged that they held their lands "by the payment of a running fine or greshome called a Town Tacke, which last is the doubling of their rents every tenth year."

The tenants are ordered to grind all such corn and grain as grows upon their tenements which they "shall spend in their own houses" at the lord's mill called Whitebecke Milne, or at any other mill which the lord shall erect within Yealands or Leighton, and they are to pay the usual or accustomed toll or multure, so that they "be served in due and convenient time, to wit, within the space of four and twenty hours, and so that the milners deal honestly and take no more toll than is right and due, to wit, so much as the tenants have been accustomed to pay for the space of seven years last past." If they are not so served, or the miller by due proof be found to be dishonest, the tenants have liberty to grind elsewhere till the lord has reformed what is amiss, and then they are to return again to the lord's mill. Whitbeck Mill still exists, but it is not nor does it appear to have then been within the manors.

At the next Court held after the death of a tenant, it is to be inquired by the jury who is next heir, "to the end that the lord may know his tenant," and the inquest is to

* Now called Summerhouse Hill.

† Cringlebarrow.

‡ That is, on the side furthest from Leighton Hall.

be entered on the rolls by the steward without fee, the tenant being entitled to a copy of such inquest attested by the lord or the steward.

Then follows an important declaration—namely, that every tenant seised in fee or in tail may pass or grant his tenement upon sale or alienation by deed or conveyance, sealed and delivered by him, and entered and enrolled at the next Court with or without livery of seisin, fine, common recovery at the common law, enrolment according to the statute or other ceremony of law whatsoever as his counsel shall advise to have and to hold unto and to the use of the purchaser, his heirs and assigns according to the custom of the manors upon payment of the fines, rents, boons, duties, services, matters and things mentioned in the award; in other words, their tenements may be conveyed like freehold land. And such deeds are to be made and mentioned to be made by and with the licence and consent of the lord, and that upon such deeds being tendered to him with the fine due he is to forthwith sign the same by subscribing his name with these words first written—namely, “I do consent and agree to this deed,” and the date. This was no new regulation, as conveyances dated before the award are expressed to be made with the licence and consent of the lord, though not always signed by him. The purchaser may, *if he so please*, present the deed at the next Court, and desire the jury that he may be found tenant; but if he do not make any application, or the same be not so found, yet the deed shall be valid. It is to be noted that the grantee need not present the deed unless he pleased, and it is on this account probably that the holding of Courts fell into disuse, since, unless the tenants presented their deeds to the jury, there was little or nothing for the latter to do except to present trespasses and such matters, and as the number of tenants rapidly diminished as time went on, owing to consolidation of holdings, the lord would have no difficulty in knowing his tenant. Moreover, Charles

Gibson of Preston, the purchaser of the manor in 1713, seems to have been immediately willing to enfranchise the tenements, as many deeds of enfranchisement bear date within the next few years; and in 1816 there was, I believe, only one customary tenant left. The last record of a Court I can find is of one held on June 20th, 1682, but others were probably held later until the sale of the manor, when, in the absence of a resident lord, Courts most probably ceased to be held.

It is clear that the arbitrators considered that in fixing the fines at eight years' rent they had been unduly lenient to the tenants. The lord had alleged that the fines were arbitrary and uncertain; the tenants that, whilst arbitrary and at the will of the lord, yet they ought not to exceed four years' rent, and this was more than the fines in other manors within the barony of Kendal, as we have seen. And yet the award goes on to say that "for the perpetual settlement and ascertainment of the premises, and in consideration of the consent of the said George Middleton . . . thereunto," the tenants are to pay to him $22\frac{1}{2}$ years' ancient rent, according to a schedule annexed (amounting to £1,214), half within six months after the entry of the decree to be obtained confirming the award, and the other half six months later. The tenants seem at first to have refused to pay this enormous sum, but they ultimately consented to the decree confirming the award, for having submitted their case to the arbitrators, they could not help but yield to their decision. It is difficult to estimate the value of this sum of money, but it was a considerable proportion of the fee simple value of the tenants' holdings. For instance, in 1665, Robert Watson sells two acres of customary land in Yealand Redman, for which he paid 2s. ancient rent, for £11 10s. The fine of $22\frac{1}{2}$ years' rent would be £2 5s., which is about one-fifth of £11 10s., the selling value. In 1632, Robert Johnson sells land of the ancient rent of 3s. $7\frac{1}{2}$ d. for £17, and in this case the fine is rather less than one-fourth of the fee simple. In 1698,

Robert Hubbersty sells a house and land of the ancient rent of £1 14s. 8d. for £400, and in this case the fine would work out at about one-tenth of the fee simple. But the house had been rebuilt since the decree. In 1659, George Robinson sells land of the ancient rent of 1s. 8d. for £12, which works out at rather more than one-sixth.

I could give many other instances of sales, both earlier and later than the award, but the result seems to be that the fine imposed on the tenants to compensate the lord for agreeing to the award was from one-fifth to one-sixth of the fee simple value of their tenements. And it must be remembered that in addition they had to pay up arrears of fines—namely, the general fine due on the death of Thomas Middleton and the particular fines due on subsequent changes of tenants, all of which they had refused to pay pending the suit, so that the burden imposed on the tenants must have been very heavy. It is difficult to understand why the arbitrators gave the lord this money, except on the supposition that they considered he had proved his contention that the fines were arbitrary and uncertain, and that they thought it better to make them certain in the future. It may be added that in case of refusal by the tenants to pay the sums awarded, the lord might enter and hold the tenements till he had satisfied his claims and interest thereon at six per centum per annum out of the rents and profits.

The arbitrators then set out the form of admittance to be used in future, which is to be signed by the lord, "or in his absence or minority before the steward in open Court."

Lastly there is a proviso that the award is not to be prejudicial to the estates of widows, "but that they may hold the same as formerly, the widows paying their proportionate parts of the rents and services due."

In this dispute the tenants come off distinctly the worst. We do not know the nature of the evidence adduced by Sir George Middleton in support of his claim,

and, unfortunately, I can only find one admittance which bears date before the award, so that it is impossible to say what fines had been usually exacted. But one cannot help thinking that the pecuniary difficulties of Sir George Middleton and his father, Thomas Middleton, made them strain their manorial rights, and had a good deal to do with the heavy fines which the tenants complained of. The manor was a valuable asset. The total rents payable by the tenants amounted, according to the award, to £29 13s. 5½d. a year, besides sixty-eight boon hens and twenty-four capons; and each of the forty-five tenants who kept a yoke of oxen owed a day's ploughing, or who kept a horse a day's harrowing. And every tenant was bound to send two persons to shear the lord's sheep; besides, every tenth year the tenants paid a town tack or double rent. When it was sold to Charles Gibson in 1713 he paid £1,800, including, however, some farmhouses and about ten acres of land, the freehold property of the lord. Allowing for the value of these freeholds, he must have made a substantial profit on the purchase. For instance, I take two deeds of enfranchisement both dated 1718. In the one case he received £117 1s. 8d. for the enfranchisement of tenements held at the ancient rent of £2 6s. 10d., and in the other £67 10s. for tenements held at 9s. 8d. If all the other customary tenements of the manor were made freehold at the same number of years' purchase as the first of these, which is the lesser of the two, he must have received about £1,500 from the tenants, besides the general and particular fines in the meantime, and the yearly rents with double rent every tenth year.
