

ART. XVI.—*Cliburn Hervey and Cliburn Tailbois, Part I.*
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THE family of Hervey, or as the name is spelt over and over again Hervy (Hervi), seems to have been possessed of two—perhaps three—estates in Cumbria. There was one, the relief *i.e.*, succession duty to which is entered in the Pipe Rolls of the second to the ninth year of King John, and that was in Westmorland. The relief owed was 20s. of which William son of Hervy accounted for 10s. paid in the second year of John; and nothing was paid afterwards up to the last year of the Pipe Rolls of Westmorland, the 12th year of John, in that reign. The relief, 20s., is too small to have been that for Cliburn Hervy. It was usually in small estates the first year's estimated revenue, and the revenue for one year of that moiety of Cliburn is set down (*Feoffees of the Cliffords*) at 10 marks which would be ten times 13s. 4d.: but when we next hear of the valuation, which is in 10 Edw. I, there were three owners, Walter de Theyle, John de Staffol and Hugh de Sowerby, and it is evident that the Hervy lands had been partitioned, not through female heiresses, as is shown by the fact that the mill was not partitioned, but by grants to daughters, not heiresses, which were given in marriage, and it seems as if this began early. The William son of Hervy may therefore be paying for a portion only which came to him. And there is nothing in the history of this moiety to prevent us from thinking that sons as well as daughters had lands granted out to them, but rather the reverse as we shall see.

Hervy also possessed the holme in the suburbs of Carlisle which is called Holme Hervy in a charter of grant dated Wednesday before Epiphany, 24 Edw. I (January 4, 1296),

in which it is granted, along with other tenements, by Adam son of William Armestrang of Ulvesby, to John, son of Alan Gerbod of Carlisle and Sabina his wife, together with houses in the fee of the bishop of Carlisle; and should John and Sabina have no issue, then after the deaths of both, these were to go to Adam Ward the "consanguineus" of John, which might mean his descendant, as often in these documents.

The mill, as I have said, was not divided. For in A.R. 979 (40 Henry III, 1255-6), action is brought by Robert le Fraunceys and Elizabeth his wife against Hugh de Teyl for raising the level of the pond of his mill, by which raising they claimed that their corn land and grass land were subject to flooding and that this heightening of the level of the pond kept the flow so that till Hugh released it by grinding in his mill they could not use their mill, for the stream flowing from his mill to theirs was not released to let their mill be in work except when his mill was working.

The jury stated that Hugh had built a new mill and had raised the pond one foot above the regular course of the stream (which he had apparently not banked in to take the flow to his pond) but that he had done no injustice in so doing, and therefore Robert and Elizabeth le Fraunceys lost the case, but it was suggested that they might bring action again on other grounds. The account in the Assize Roll is not altogether clear.* Before this question about the mill came a final concord between the widow of one of the owners, a de Sowerby, and the Abbot of St. Magdalen, about an obscure grant to the abbey which she had made. This final concord is of 19 Hen. III, 1235. From it we find that $8\frac{1}{2}$ acres had by her been leased to the Abbey, and the Abbey appears to have put

* The de Theyll mill must have been near the old manor house and the church. The le Fraunceys mill was lower down on the stream near where the Lyvennet joins it.

in a freeholder on the land, Adam son of Gilbert. Godith the widow in the final concord renounced her right in favour of the Abbey. She was to receive yearly one quarter of rye at Easter during her life, and after that the payment from the Abbey was to cease. This looks as though the land was hers (not her husband's) and had been conveyed by her marriage to de Sowerby, and as he died first had remained in her possession, and quite possibly her son was under age. But it is not like the grant made to an abbey by one who had no heirs. It is on far too small a scale.

Twenty-one years after this, in 40 Henry III, was a case in assize as to whether Robert de Veteripont and others had disseised Hugh de Sowerby of common of pasture in Whenefeud, which belonged to his tenement in Sowerby. He was owner in Cliburn also in which Whenefeud (Whinfell) lies in great part. He claimed 2000 acres of woodland and moor. Thomas de Musgrave defended the case on Veteripont's behalf. The jury decided that Hugh de Moreville had held, as owner, the two bovates of land in Sowerby which Hugh de Sowerby owned then, and in that holding enfeoffed Ulkyl, ancestor of Hugh, in King John's time, and to this tenement the common claimed belonged; but they said that King John kept the park of Whynefell as a separate portion enclosed, except that Hugh de Morville had common there and Hugh de Morville's rights had come to Veteripont. This seems to be the account in the Assize Roll in which parts are difficult to read.

In the same year Agnes daughter of Adam claimed against Hugh de Sowerby two bovates of land in Cliburn. Hugh, she said, only had entrance into these by Adam de Sowerby who had disseised her (Agnes) unjustly. Hugh agreed that Adam de Sowerby had put him into possession but, he maintained, had not disseised Agnes. The land, he said, was the inheritance of Hervey, brother of Agnes, who feeling ill went on a pilgrimage to the Holy Land and

put in Agnes as tenant at will till he should return. When he returned he took the land into his own hands and enfeoffed Adam, and Adam enfeoffed Hugh. A (final) concord was the result. Hugh gave Agnes half a mark, and she recognised the land as his, and he granted her half a toft and half a croft and four acres of the land on the terms that the four acres held by her, which were to go down to her daughter Cristiana, should discharge the forinsec service due from one quarter of a bovate.

In 1260 was also a final concord between some of the de Theylls. It was between Hugh de Theyll applying for and Walter de Theyll withholding one messuage, 80 acres of land and a mill in Clyfburn. This final concord was to establish in the king's court the agreement made between them. Hugh recognised the tenements to be Walter's right as those which he had given to Walter; and Walter in response allowed Hugh and Alice his wife to hold them under him and his heirs during the life of either of them, giving 6s. 8d. at St. Michael's day and doing forinsec service belonging to two bovates. After the deaths of both Hugh and Alice the tenements were to revert to Walter and his heirs, to be held of the chief lords by the services due. Should Walter have no heirs then the tenements were to remain to Nicholas his brother and his heirs; if Nicholas had no heirs to Hervey his brother and his heirs, and if he had none, to remain to Cristiana their sister and her heirs. This was simply making an entail, in the way in which it was often done, of a portion of Cliburn Hervy which might turn out to be the chief portion.

Besides these brothers there was another brother, Adam, who in 1278 (7 Edw. I), had a final concord with Walter, about three messuages, four bovates and eight acres of land in Cliburn. Walter sought the tenement, Adam and Agnes were holding it. The right was Walter's by gift of Adam. Adam and Agnes gave these to him to be held of

the chief lords. Should Walter have no heirs the premises were to go to Nicholas de Tyle his brother and his heirs; if Nicholas had no heirs, to Hervey his brother and his heirs. This final concord may be interpreted in two ways. Either Adam was the eldest brother and he saw no chance of progeny, or more probably, as Agnes is conjoined in the final concord, she was the ultimate heir of the Staffol portion, whose possessions in Cliburn came to an end early.

In 1255-6 (40 Henry III) other things happened in Cliburn which came before the assize. Emma daughter of William de Cliburn (possibly of William son of Hervey) charged Alan of Eunethweyt with the death of her husband Adam, slain in her arms, and he was outlawed. The sheriff could not amerce because he was a Cumberland man living outside the shrievalty of Westmorland; and because the jury testified that Adam was assassinated in the village of Cliburn and the murderer was not arrested by the inhabitants, the village was liable to the amercement customary. Evidence was given that John de Melfel, Reginald Coppenege, Robert Bunnan of Gyllecamban, John Hale [de Hobeye], Adam son of [] of the barony of Greystoke, Hugh son of Robert le Eng[], forester in Inglewode and Thomas de Joneby and Alan de Joneby, both of Yorkshire, were present at the murder and did not come to the summons and were not "attached." Hence application was made to the coroner, and precepts were issued to the sheriffs of Cumberland and York to cause them to appear in the octaves of Trinity at Lancaster. Afterwards Henry de Redman appeared and made a fine for the aforesaid John de Hobeye, Thomas de Joneby, Alan de Joneby and Robert Bunnan of Gillekamban for trespass, for two marks, by the surety of Bertin de Joneby. And because the aforesaid Thomas was still in Yorkshire and others were lurking in Cumberland, charge was given to the sheriffs of Yorkshire and Cumberland,

and measures were to be taken accordingly. After that appeared Alan de Orreton and made a fine for John de Melfil for half a mark for his trespass in not appearing, and precept was issued to the sheriff that he was not to proceed further about it. Of the results of prosecution for the attack and the murder itself there is no record left.

Another incident which came before the assize in the same year was that Aylmer le Escot and Alexander de Newby had a quarrel and a fight in the vill of Morland. Aylmer struck Alexander with a hatchet on the head by which he was killed at once. Aylmer was arrested by the villagers and kept in ward but escaped, made for Morland church, owned the deed and abjured the realm before the coroner (*i.e.* was outlawed). His chattels were valued at 21s. 6d., and Hugh de Coleby and Thomas de Bonevill made a false valuation of the chattels. Hence they were at the mercy of the court. Then came up the point of the escape and witness was given also that after Aylmer had abjured the realm, Henry son of Cokyn of Westgarth and Henry son of Thomas de Linaker forced him to leave the king's high road (by which he was to leave the realm) and wounded him with three arrows, so that he made for the churchyard of Cliburn and when he had entered this they forced him out of it and decapitated him. Therefore their lands and tenements, if they had any, were to be confiscated.

No further enquiries appears to have been made. Thomas de Linacre held lands in Newby and Strickland, as appears from a summons requiring him to warrant Thomas son of Adam in 8 acres there, in this same assize. And in the same assize was again a case brought requiring Robert de Veteripont to answer Avice de Marmyon, about 2 acres and a toft in Wardcopp, but he was beyond sea at Leghorn, and Hugh de Theyll was appointed as his attorney. Also Elizabeth wife of Robert le Fraunceys appointed her husband Robert, or William de Slegill,

as attorney about a trespass. There was also a discussion about novel disseisin applied for by Adam son of Hugh and Alice his wife against Robert le Fraunceys and Hugh de Teyll, as to common of pasture in Cliburn, but they withdrew and they and their pledges for the prosecution were therefore open to amercement; these were Adam son of Pagan (Payn) and Gilbert son of William son of Simon.

Six years later (50 Hen. III, 1266) a final concord was concluded between Nicholas Mannesin (Manvoisin) appellant and Adam son of Hugh de Tyle and Agnes his wife deforciantes for one messuage, four bovates, one acre and one rood in Cliburn, on the plea of an agreement made between them. Adam and Agnes recognized the tenement to be the right of Nicholas as that which they had given him to be held of them and the heirs of Agnes for all time, giving one penny at the Nativity in lieu of all services to them and the heirs of Agnes and doing the forinsec service to the chief lords of the fee for them and the heirs of Agnes. Adam and Agnes warranted the possession and Nicholas paid for this 40 silver marks.

Walter de Theyll, clerk, with Gilbert de Brunolvesheued [Burneside], was appointed attorney by Roger de Lancaster in 1275 in a suit about land, and in 1276 Roger de Lancaster and Philippa his wife had Walter de Tyle and others as attorneys, and Margaret de Ros chose Walter de Tyle, clerk, and another in a suit between her and William de Windsor about a mill in Grayrigg. Then in 1277 (A.R. 890, 6 Edw. I) Robert Mannysin (*Manvoysin*) claimed the one messuage, four bovates and four acres of meadow as his demesne in fee which Nicholas Manneysin his uncle had held. This was in the tenancy, in 1277, of Walter son of Hugh de Til (A.R. 980; also in A.R. 981) who had one messuage, four bovates and five acres of land, and of Geoffrey son of Hervy de Cliburn who held one acre of meadow, but stated that Walter was the tenant (he was probably holding this as sub-tenant under

Walter). The agreement come to was that Robert Mannesyn recognized the tenements to be Walter's right and he renounced claim. And Walter for this owed 27 marks, which were to be paid by instalments: nine marks at Purification that year, nine at Easter and nine at St. Lawrence following. And if this were not done the sheriff should use his authority and compel. His pledges were John de Helton and John de Soureby who undertook to pay if Walter defaulted.

In the next year, 7 Edward I, 1278, there was another final concord between Walter de Tyle, applicant, and Adam de Tyle and Agnes his wife, deforciants, about three messuages, four bovates and eight acres of land in Cliburn. This also was a plea of covenant made; Walter claiming the tenements as the grant of Adam de Tyle and Agnes who had made the grant to him and his heirs to hold of the chief lords of the fee for all time. He was to do all services which belonged: if he died leaving no heirs the tenements were to remain to Nicholas his brother and his heirs. In case of failure of his heirs, to Hervy brother of Walter and Nicholas and his heirs. Walter gave to Adam and Agnes £10 for this. The land was evidently that of Agnes, the same that we have been dealing with before.

In the Close Roll of 1281, Walter de Tyle and Nicholas his brother of Melkanthorp are entered as owing to William de Hamelton 20s. which is to be paid from their lands in Westmorland. In that of 11 Edward I, 1283, John le Sumoner was to replevy Oliver le Bydun—*i.e.* to get back by writ for him—his lands in Raundes, Kingsland and Cotes (Northants.), forfeited for his default in the king's courts against Adam, son of Hugh de Clyburn; and Nicholas de Clyburn is entered as owing to William de Hamelton 10 marks which were to be levied in default of payment from his lands and chattels in Northamptonshire. In the Close Roll of 1287, Nicholas de Clyburn is stated to

owe Richard de Berford, cleric, 40s. which are to be levied from his lands in Northumberland, and to owe William de Holecote $3\frac{1}{2}$ marks to be levied in Westmorland. He is entered from 1287 as Nicholas, parson of Burgham (Brougham), owing to William de Holecote, cleric, 30s. to be levied from his lands in Westmorland and Northants. Nicholas de Cliburn was deputy-sheriff of Westmorland in 1297 and 1298, but one cannot quite see of what great worth he was with this record of debt against him. And there was one recorded in Bp. de Halton's registers of 23 Edw. I, 1295—a sequestration against him for a debt due to Bp. Robert Burnell, the late bishop of Bath and Wells, whose executors claimed £35. In 1302 King Edward issued a writ to Bp. Halton to compel Nicholas to appear at York at Hilary to answer Robert de Louthur for having, together with Robert de Grendon and Gilbert de Hellebek, seized the person of Robert de Louthur at Morland and done him damage against the peace to the extent of £100 (8th Dec., 30 Edw. I); and in 1309 King Edward II requires the bishop to distrain Nicholas de Cliburn, formerly sheriff, to appear at Westminster at Hilary to acquit Matthew de Redman of the claim made by William de Wakefield for 50s. which Nicholas while sheriff exacted from Matthew's goods and chattels, and of which he ought to have acquitted him before.

The possessions of the family being in Northamptonshire as well as Westmorland, and in Northumberland too, point unmistakably to the Hervy family having been granted possessions through connection with Scotland (as does also Holme Hervy) and that after the time when by the marriage of Matilda, daughter of Judith, niece of William the Conqueror and widow of Simon de St. Liz, with David I, king of Scots, the Scots king became owner of lands in Northants and Hunts. Pretty clearly the de Theyls were in this way of a higher position than being mere owners of a portion of Cliburn Hervy.

The elder sons of Hugh de Theyll seem to have been clerics, though I think that Adam was really the eldest, and not a cleric, and they left no descendants. The descent of the Cliburn lands is not very clear, but it is certain that they came to the le Fraunceys family later on.

In the partition of the Veteripont estates in 1283-4 between Isabel de Clifford and Idonea de Layburn, according to Dodsworth in vol. 70, Isabel conceded to Idonea the services of Geoffrey son of Hervey and the tenants of the lands of Reginald de Maundemander (was this Manvoysin?) and Idonea conceded to Isabel de Clifford the services of Walter de Tylia, John de Staffole, Hugh de Sowerby and Lucas Taylebois. Cliburn was thus divided between the two Veteripont heiresses, but not according to the two ownerships Hervy and Tailbois. Isabel de Clifford had all Cliburn Tailbois and the chief part of Cliburn Hervy. In a year more John le Fraunceys of Clyburn had succeeded his father Robert and purposed having an action against Walter de Teyl, but did not prosecute and hence he and his pledges for prosecution were "at the mercy of the court." His pledges, who would be friends if not kin, were William de Wyndesor and Geoffrey de Slegill.

In 16 Edw. I (1287-8) Agnes wife of William son of Alan de Cliburn had a case against Thomas son of Alexander de Hoton in Englewood, but no details are given. In 18 Edw. I (A.R. 1271) 1289-90 A.D., Henry son of Roger de Wateby sought for possession of two messuages and 24 acres of land which he claimed Mariota de Wateby (his mother) had in her demesne. The tenement was at the time held in portions. Walter son of Pagan (Payn) and Cecilia his wife were holding one messuage and 16 acres and one acre of grass land, and Cecil daughter of Hugh Maundemander was holding one messuage and sixteen acres of land and 11 acres of grass, and John le Fraunceys of Clyburn two acres. The respondents appeared. Walter

called John Mannysin to warrant him and the warrant was given, and he also called Cecilia daughter of Hugh, by the wish of Nicholas Mannesyn to whom Cecilia's father had granted the tenements. And Cecilia referred to the two Veteripont heiresses. And John (le Fraunceys) called Cecilia to warrant, for the portion which he held. The record ends here, but like others of the various entries in the Assize Rolls it cannot be passed over. Each entry may tell us very little and practically nothing, but none can be neglected in such an obscure bit of the history as that which comes before the le Fraunceys family is recorded as having full possession of the Hervey moiety.

In 16 Edw. I, 1287-8 (A.R. 1277), Agnes wife of William son of Alan de Cliburn chooses as her attorney her husband William in the case against Thomas son of Alexander de Hoton, chaplain in Englewood, and the case is one of mort d'ancestor.

In 20 Edw. I, 1291-92 (A.R. 987) Hervy de Cliburn appoints Adam de Bruham (Brougham) in a case against Elena de Hoff in a plea of lands, and also against John le Fraunceys de Clyburn; and Nicholas, rector of Brougham, gives 40s. for licence of (final) concord with William de Goldington; and about the same time Nicholas son of Nicholas de Appelby seeks against Walter de Teyl of Cliburn, for a strip of land 60 feet in length and one foot in breadth, and no particulars are given. In the same year (A.R. 987) the question whether Elizabeth Taylebois, mother of John le Fraunceys of Clyburn, was seised in demesne as of fee of one messuage in Clyburn and its belongings when she died. This was, of course, not her whole estate there; it was simply the ownership of a tenement in it which was in question and whether her right went to John as her heir. Hervy son of Hugh de Teyl held it at the time. John le Fraunceys appeared and called to warrant Roger le Flechcher who came and gave warrant. He stated that Robert le Fraunceys, father of

John, whose heir John was, and who had held the aforesaid messuage, gave it to Roger and bound himself and his heirs to warrant. And John le Fraunceys was unable to deny this. And as Roger asked for judgment whether the action brought against him was just, John asked for leave to withdraw and had leave graunted by W. de Mortimer. This looks as if John le Fraunceys had put Hervey son of Hugh de Teyl in possession, and as if his right to do so was questioned because of his father having granted it to le Flechcher.

In the same year, 20 Edw. I (A.R. 988), Agnes daughter of Hervy de Cliburn appealed for judgment against William de Coghele, Robert son of William de Neuby and Elena his daughter and Simon son of Robert Brid whom she accused of the death of her aunt Custance de Cliburn: she also charged William de Neuby with aiding and advising her death. William de Coghele and Simon son of Robert Brid were outlawed in consequence of her appeal. The aforesaid Robert son of William de Neuby appeared. But Agnes did not appear, and did not follow up her suit; hence, she and her pledges, Geoffrey son of Hervy de Cliburn and Gilbert son of Hervy de Cliburn and Adam [] (the name is lost) were at the mercy of the court. The jury decided that the accused were in no way blameable, but there is no more told.

In 1291 (A.R. 980) Hervey de Cliburn answered for the chattels of Ralf Rouchworth (arrested) value 32s.; and because he took the aforesaid chattels without warrant he was at the mercy of the court, and he and his pledges Walter de Tayle de Cliburn and Nicholas de Cliburn were at the mercy of the court. He was amerced in 20s. Accusation was also made that Hervey de Cliburn while he was bailiff took possession of cattle and other stock in distrain, for the king, for debt when other distrain sufficient had been taken, contrary to the statute, and again he was at the mercy of the court. In 1294-5, 23 Edw. I (A.R. 1306),

Walter son of Hugh de Clyburn brought action against Adam son of Hugh on the plea of mort d' ancestor. No one appeared and the matter remained. This was probably only a friendly suit, not a quarrel between members of the family.

In 1308-9, 2 Edw. II (A.R. 992) the question came up whether Gilbert de Culwen, Nicholas de Cliburn and Adam de [] and [] son of William had unjustly deprived John de Rossegil of rights of common of pasture in Hepp. The entry is imperfect.

In the inquest about the age of Roger de Clifford, brother and heir of Robert de Clifford, taken 28 Edw. III (1354) at Appleby on 10 Aug., Roger was shown to have been born at Burgham (Brougham) on 20 July, 17 Edw. III, St. Margaret's day, 1343. His father was 21 at the time. This was agreed to by Walter de Tyle, aged 54 years and over. His mother Emma de Tyle died, he said, on the Thursday before Roger's birth. This shows that the Walter who gave evidence was a different Walter, and not the Walter son of Hugh. He was heir of Cliburn Hervey, but whose son he was is uncertain.

In A.R. 1426*b* (of 1340), a case had been brought by Henry de Rosse, the incumbent of Cliburn, against this Walter de Tyle and John de Cliburn as to whether they were depriving him of his freehold in Cliburn; that is, of reasonable estovers in 40 acres of wood, scrub for burning and repairs and fencing and of a messuage and 40 acres in Cliburn. John de Cliburn answered for Walter as his attorney, and stated that he held the tenements about which the complaint was made in common with the aforesaid John de Cliburn and Beatrice his wife, and held it when the brief was issued, namely February of the 14th year of the king, and that Beatrice is not mentioned in the brief. And he asks whether the brief is not defective; and John says that the said tenement contains only 20 acres of waste. And he stated that Richard de Hadelham,

John de Bolton and John de Morland, chaplains, by their charter granted and conceded to the aforesaid John, by the name of John Frankys de Cliburn and Beatrice his wife, the manor of Cliburn with its belongings, part of which the aforesaid tenements were, to be held by them and the heirs of John in perpetuity. And he produced the charter. And he claimed that he in conjunction with the aforesaid Beatrice held the aforesaid tenements on the day of the issuing of the brief. And Henry de Rosse lost his case.

In 1344, 18 Edw. III (A.R. 1435), the question came before the assize whether Walter de Tyle was unjustly disseising Eda, who was the wife of William de Tyle, of six acres of land and one of pasture in Cliburn. Walter said there were only two acres. The jury decided that Walter had unjustly disseised Eda of two acres to the damage of Eda to the amount of 2s. 6d. Walter was mulcted to that amount.

On Monday before the Assumption of the Blessed Mary a question before the assize was whether Walter, son of Hugh de Bolton and Mariota his wife had wrongfully disseised Robert de Clyburne the younger of his freehold in Clyburne. He complained that they had disseised him of 10s. of rent. The aforesaid Walter and Mariota came in person as tenants of the holding and they stated that the tenement was outside of the fee of Robert. And Robert for title of his tenement stated that Geoffrey son of Hervy of Cliburn held this tenement of William son of William de Neuby for the services of 10s to William and of 2s. to the hospital of []. And the aforesaid William son of William granted the aforesaid rent (2s.) together with the services of Geoffrey son of Hervey (of 10s.) to Alan son of Robert de Neuby and his heirs in perpetuity, subject to the 2s. of fee to the aforesaid hospital, by virtue of which grant Geoffrey attourned himself to the aforesaid Alan, and Alan granted the tenement subject to the aforesaid 2s. fee to Robert le

Fraunceys of Clybburn, grandfather of Robert, who is his heir, to him and his heirs in perpetuity. And Geoffrey attourned himself accordingly to Robert. After whom John, son and heir of Robert, was seised in the 10s. rent and died seised, and after him the claimant, his son and heir should succeed. And he claimed that the premises lay within his fee. The jury decided that Robert was the owner, and Walter and Mariota were mulcted to the amount of 20s.

Thus ends for the present the history of Cliburn Hervey, to be continued, as I hope, next year.
