

ART. XIII.—*Mr Gilpin and manorial customs.* By  
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*Read at Grange-over-Sands, August 31st, 1961.*

I. INTRODUCTION.

ISAAC GILPIN was the son of Martin Gilpin of "Hiegate" who was buried at Kendal on 19 December 1629. Martin was an exceptional old man, for he lived to be 92 years of age, and was keeping the courts of Kendal until he was 80. His son Isaac has unfortunately not dated this little manuscript, and I can find no mention of his death in the papers here.

Nicolson and Burn mention Isaac Gilpin's manuscript in volume i page 26. It has crossed my mind that Mr Gilpin might possibly have taken part in the case they mention before Judge Dolben in 1690, as it is similar to the case which made the great moment in Gilpin's life. If, however, this is so, then Isaac must also have reached a great age, and have been born when his father was at least 80. It is true that Gilpin describes himself as "a Dyeing man", but surely if he was within reach of his century, he would have mentioned it. I therefore suppose that Isaac was born about 1580 (when his father was 40) and was feeling his age in about 1650, when he was 70, and tentatively date the manuscript 1650-1660.

The customs of land tenure in England have always been intricate and by the 18th century attempts were being made to free landlords of customs, which not only varied from manor to manor but were originated a thousand years before. The Earl of Suffolk and Berkshire who owned Levens from 1730-1757 instructed his agent to maintain all customs and take herriots in kind, not to compound for them. Levens estate included the Lumley Fee of the Barony of Kendal and many neighbours

held parcels of land at a customary rent. There is, for instance, a long and acrimonious correspondence with Mrs Wilson, widow of Col. Wilson of Dallam, as Levens wished to take the coach as a herriot, and the Dallam men took it off its wheels, saying that wheels and coach were separate. Craven, the Levens agent, reported that Mrs Wilson was compelled to borrow a chaise, as she dared not put the coach on its wheels. He also said that Mrs Lowther sent a letter saying she would compound but that "she might have saved her breath, the best was all gone before". All this sort of thing entertained the villagers, but did not make for good relations among the neighbouring landlords, and it is amazing but true that it was not until the Agricultural Holdings Act of 1948 that all customs were finally abolished or assimilated.

Mr Gilpin's little treatise has been the only authority to which the Levens agents could turn, while they were administering the Lumley Fee. It is interesting to compare his remarks on Elizabethan Northumberland and its blood feuds with Hodgkin's *History of the Anglo-Saxons*, vol. i, chap. vii. The place-name of Bellingham is, of course, Saxon. It was "because of the name" that the people of Bellingham protected Alan Bellingham. Hodgkin notes that as late as the 17th century heathen Saxon customs were in force in the Hamburg district. Things seemed much the same in 16th-century Bellingham-in-Tindale.

My thanks are due to the Lancashire Record Office who have repaired the manuscript which was badly damaged by damp. Without their aid, most of Mr Gilpin's work would be, literally, dust.

## II. THE CUSTOMS OF KENDAL.

A Short Collection of the Customs of those Lands Called Tennantright now in use in the two Northern Countyes of Westmorland and Cumberland and especially in the Barrony of Kendal.

*Here follows a preamble in Latin, most of which is missing, but which is signed Isaac Gilpinus.*

To the Reader

Generous Reader, thou mayest justly wonder why such an absurd ignote and simple fellow as I should presume to undertake a work of this nature; and mayest perhaps (in secret thoughts at least) tax me with either arrogancy or folly (if not all at once), Therefore for thine & other men's Satisfaction herein I shall (God willing) give you a true accompt of the reasons or motives whereby I was invited hereunto.

The first reason & motive was this, some of my countrymen in the Barrony of Kendall who knew both my birth & breeding & that after I was taken from schoole I lived diverse years with my old father whose knowledge and abillities both in the Lawes of the Land and Customes of these Northern counties together with his great Experience in the Countryes affaires & businesses (Being as I have heard from his own mouth) Employed therein by the space of Threescore yeares or more, was & yet is accounted much on, & reverenced in these parts. and that I was also Employed in these occasions by the space of Twelve yeares or thereabouts vizt in the infirme age & untill the death of my father who dyed about the yeare of his age 92 after whose death I removed into Berwick (?) I say upon these Considerations some of my Countrymen supposing I had gaynd some knowledge herein have diverse tymes earnestly desired me That what I had leard from my old father or by my own Experience, I would Committ to writing that it might remaine to posterity & not be buried with me in my Grave which I must and dayly doe now Expect; and Therefore I have as a dyeing man & as if these might be the last words I should speak to the world (for I know no other) even so have I herein truely & faithfully without any favourable respect had either to Landlord or Tennant discharged my Conscience & do bequeath this small token as my Last Legacy to my County & Countrymen.

Secondly not many yeares since, I was summoned to appear at the Assises at Appleby in the County of Westmorland to be a Witness betwixt a Landlord & Tennant in a suite touching a Fine where haveing taken the usuall oath given to Witnesses vizt That I should True Answer make to such Questions as the Court should demand of me and amongst other Questions Three especially were demanded, First when and how Fines were due by the Custome. To which I answered That the generall rule was that Fines became due either by the death of the Lord or by the Change of the tennt either by death or Alienation.

That is upon death of the Lord a generall Fine, & upon Change of Tennant as aforesaid a particular or Speciall Fine.

The Second question was whether a Landlord which came in by purchase could have a generall Fine after the death of the old Landlord; To which my answer was that *qua* purchaser he could not, in which answer I layd the Emphasis upon the word *qua*, & repeated it twice over with the same Emphasis: which one of the Lawyers catched att & I Expected it would have started an other question, to witt whether such a purchasing Landlord upon some other ground or notion might not have the generall Fine after the death of the old Landlord, but I was disappointed of my Expectation, & Therefore I had thought to have beg'd leave of the Court that I might have had Liberty to Explayne my selfe. But the Judge being desirous to put the business to Arbitration I was thrust away from the Barr & so forced to leave it.

The Third Question was whether A Fine being Arbitrary (that is as Lord & Tenant can agree) may for want of Compounding be lost. To which my Answer was not possitive But I said that they, vizt the tennants, held that it might be Lost.

Thirdly because in those few Law Bookes that I have seen though some have treated of Custome in Generall or of Some Particular Customes as of Gavelkind in Kent & Borough English & the like, yet I find not so much as any mention of the Custome of Tenantright as it is used in the Northern Partes of this kingdome. And though I hold and acknowledge my selfe unworthy unable & unfitt for such a Task, yet Considering with my selfe how necessary & beneficiall it might be to the Country to settle a tru & right understanding therin betwixt Lords & Tenants, both for the mittegating or utter Extinguishing of those many Costly suites in Law which have been moved betwixt Landlords & Tenants, And also for the happy and Comfortable uniting them in mutuall & reciprocall Love & amity, and also Considering that although I may herein Committ many failings, yet that some other of more abillity may thereby be moved to take in hand either to correct & amend wherein I have done amiss or adds what I have omitted; (*facilius enim est Culpare quam Emendare et facilius Emendare quam facere*) or otherwise to Compile a new tract upon the same subject & so perfect what hereby I have intended & if either, So that God may have the glory, The Country the profitt, Then shall I attaine that End I aimed att, and which is herein the full & Sole desire of him who is

Thy truly Loveing Friend  
I.G.

A Short Collection or treatise touching the Customes of Tenantright within the Counties of Westmorland & Cumberland & Especially within the Barrony of Kendall in the County of Westmorland:

Customes especially in the Northern Parts of this nation are so various & differing in themselves as that a man might almost say That there are as many severall Customes as mannors or Lordships in a County, yea and almost as many as there are Townships or Hamletts in a mannor, or Lordshipp each one differing from other in some particular Cases or other, which to sett forth in every particular Circumstance I dare not undertake, But those that are most generall & do agree in them themselves in both these Counties I shall endeavour (by God's assistance) as breifly & plainly as I Can, to Leave in writing as a Legacy bequest or Token of that good will & dutie which I owe to my Country, and that more Especially to the Barrony of Kendall (wherein both my selfe my father And Ancestors had our birth & much of our breeding), & the particular differences so farr forth as my knowledge & weake memory will inable me, I shall speake to as they shall fall under some of those heads which are more generall. And first I shall speake of the Barrony of Kendall as it was anciently in the time of the Barrons of Kendall as I have had by relation from my old father Martin Gilpin who lived a parte of King Henry the Eight his reigne all King Edward the 6th Queen Mary Queen Elizabeth King James and parte of King Charles the first his reigne and dyed in Kendall Towne about the yeare 1630 & about the 92 yeare of his age: by whose relation as I have heard him say diverse times that the Barrony of Kendal was anciently but one Entire Mannor, yet Conteyned diverse Lordships; Striclands, Ducketts, Gilpins, Thornboroughs, Bellinghams of Burnshead, Prestons & others, who hold their severall Ldships of the Barron of Kendall for the time being as Lds Paramount of the said Barrony, and whereof John de Gaunt in his time was Barron, and the last Barron as I take it was William De Lancaster who indowed the Town of Kendall alias Kirby Kendall with a great part of those Franchises Lyberties and priviledges which it yet Enjoyes, and in these times as it seems to me to be very probable for the reasons here after, mentioned The said mannor or whole Barrony of Kendall had *but one whole entire Custome for the tennts.* which held by Tenantright both of the Barron & of the other mean or inferior Lords, by which Custome the Tennants held their Tenements by & under certaine rents, fines, boones duties & services, with suit of Court. And for the Fines or Gressomes

which are due from the Customary Tennts or Tenements by Tenantright are by the Generall rule all over these two Counties of Westmerland & Cumberland due upon death of the Ld & Change of the tennts, whether by death or Alyenation. That is to say upon death of the Lord there is a generall Fine or Gresse due which is to be payed by all & every of the Tennants that hold by Custome upon that Landlord so deceased, and there is a speciall or particular Fine due by a particular Tennant either when the Tennant dyeth or otherwise selleth or giveth away his Tenement in his life time. And those are called special, particular or dropping fines, yet this Generall rule admitts of some Exception, for a generall fine is not due upon the death of every Landlord that hath Customary Tennants under him as shall be shewed afterwards: Now those Fines both Generall & Speciall or Particular are in some places of those two Counties Certaine. That is at a Certaine known rate or sume of money according to their ancient rents: In other places *they are uncertaine or arbitrary* as Lord and Tennant can agree *pro rata*; and touching those that are Arbitrary & uncertaine have risen Commonly the greatest Questions & very Costly & Chargeable suits att Law for the utter avoydance wherof & of the discord hatred and malice which by reason of these uncertaintyes have sprung up between Lords & Tennants in every Particular mannor which in many places upon Sad Experience of the Inconveniencies which the people have found by those wrangling differences has of some Late yeares been effected.

How that the said Barrony of Kendall was anciently one Entire Mannor & had such a Custome for Fines Certaine I shall Labour to make it appeare thus, vizt. The Last Barron of Kendall which (I take it) was that William De Lancaster who gave most of the priviledges to Kendall But whether he was sonn Grandsonn or Great Grandsonn to John of Gaunt I have not found nor much Enquired after neither is it much materiall or pertinent to my present intended purpose But however this Last Barron *quisquis fuit* when he dyed left no issue male (as some have by tradition related) but only four Daughters which were Coheires & that four Sisters had the Barrony amongst them equally divided into four equall Parts & severally allotted or appropriated to the said four Sisters or Coheires is Certainly manifest at that after the division was so made between the said Sisters or Coheires were respectively & severally seised every one Enjoying her severall Quarter or fourth part thereof one of them dyes unmarried & her Quarter or fourth part came to the Eldest surviveing Sister. But wheither it Came to the Eldest Sister by the appointment of their father in his life

time or by the will or other act of the Said Sister that so dyed or otherwise I know not. But that the Eldest of the three surviving Sisters had that Sisters part is manifest.

**RICHMOND FEE** How that the said Eldest Daughter surviving Sister or Coheir was afterwards married to the Earle of Richmond who by that Inter-marriage became Lord of halfe the Barrony of Kendall which retains the name of Richmond Fee to this day . . .

**MARQUESS FEE** Another of the said three surviving Sisters or Coheires was married to Marques Parr by that marriage became seised & was Lord of his wife's fourth part of the said Barrony, in which fourth part was Comprised Kendall Castle, the Park & Mills at Kendall (called the Castle Mills) with other Tennants & Freeholders, at which Castle the said Marques Lived with his Lady for some time after their Marriage in which time great discord & strife fell between the said Marques & Sr. Roger Bellingham Knight then Lord of Burnshead which to treat of would make me digress too farr. Therefore I will wave that digression as Impertinent. Now this Quarter or fourth part of the said Barrony keeps the name of Marques Fee & is so Called att this day.

**LUMLEY FEE** The Third Sister or surviving Coheir was married to the Lord Lumley of Standsteed in the South, which Lord Lumley built Lumley Castle in Berwick, neare Chester in the Street & neare the high way betwixt Durham & New Castle. And his successor the Lord Lumley that now is of Standsteed aforesaid is Lord of the said Castle with the towns of Lumley thereto Adjoyning as also of the towne & Lordshipp of Hartinpoole which said Lord Lumley by his said marriage Became Lord of another Quarter or fourth part of the said Barrony of Kendall, which part still keeps the name of Lumley Fee. After the said Barrony was thus divided and the Coheires married as aforesaid at the beginning of the happy reigne of Queen Elizabeth when Popery was disclaimed & a new Declaration & refermation of Government Especially in matters of Religion Established. And that many sharp Lawes were Enacted & made against Papists & popish recusants. The papists being there with discontenteds began to Conspire against the Government And having diverse great & noble men of that faction they rose in open rebellion in the North, The Ringleaders being the Nevills, then Earles of Westmerland, & the said Earl of Richmond, who (as before) had married the said Eldest Coheir of the Barrony of Kendall with others of Note whereby Great Commotions & Troubles were stirred up in the Northern parts of this nation

as in the history thereof is att large elswhere set down. Where I note by the way that in all change of Government Especially in matters of religion which do most binde mens Conscience it is [expedient] at first to Establish the Government [with as much] rigour as might be instanced in . . . (*missing part of a page*).

In the said mentioned rebellion The Said Earle of Richmond being involved amongst others, forfeited all his Estate to the Queen, so that the said Richmond Fee (being halfe of the Barrony aforesaid; save what was in the possession of the aforesaid mean Lords And other Freeholders) came to be invested in the Crowne where the same yet doth & (I hope) will Continue.

Not Long after the said Richmond Fee was thus forfeited to & Invested in the Crowne The Said Marques Parr Exchanged his Quarter or fourth part of the said Barrony (Called the Marques Fee) with the Queen For other Lands in the South that were nearer & more Convenient for him there. So the said Marquess Fee Came to the Crown also & so is att this day, Saving that the Castle, Park, & Mills are sold to several particular persons.

LUMLEY SOLD HIS 4th PART TO BELLINGHAM About that time alsoe The Lord Lumley, because he lived in the South, & haveing no other Estate near Kendall, thought he Could never make any Considerable profit of his Quarter or fourth part of the said Barrony att that distance, Sold the same to Alan Bellingham Esquire who was surnamed Bellingham the Wise. Which said Mr Bellingham being much Intrusted with Queen Elizabeth's affaires in the North, was made Treasurer for the Garrison at Berwick upon Tweed, And because he had occasion diverse times to travell thither through those then Theevish places of Northumberland for his better safeguard in Travelling to & fro he purchased of Cliffords a Markett Town there called Bellingham in Tindall. The tennts & inhabitants whereof although they were amongst themselves very brutish and much addicted to robbing, stealing and many other rude & disorderly Qualities, yet because of the name, they so Loved their Landlord that they would unanimously rise, & upon notice when Mr Bellingham was to make his Journey towards Berwick they would alwayes be ready in their best & warlike posture to meet him att Hexham or some other place upon his Entrance into the County & would duely & faithfully, guard him his men and horses & whatsoever he had till he was out of the Country again. This people although they made no Conscience in those times of stealing robbing & killing such as they had a spite or

Quarrel to, or with whom they had (as they Calld it) a deadly feud, though the Quarrell had rison upon some old injury done perhaps 20, 30 40 or more yeares before, by some of the fathers, Grandfathers, Great grandfathers, or other Ancestors of a name or family (as their Tearm & speech was), To any of the Ancestors of another family name or kindred that deadly feud was never reconciled so long as any of the kindreds lived, but wheresoever They mett they would fight & kill one another for revenge. Yet if they did but promise to defend a man or his goods, they would hazard their lives rather than break or falsifie their promise.

Now haveing related how the Barrony of Kendall Came to be divided & how the Marques Fee & Richmond Fee Came to the crowne, according to my promise I shall show upon what grounds & reasons I Conceive that the wholl Barrony of Kendall had but one Entire Custome for payment of Fines & Gressomes, & that at a Certaine rate; viz: upon death of the Lord Two penny Fine, or doubling the ancient rent, And upon Change of the Tennant whether by death or Alyenation three penny Fine, or Tripling the ancient rent.

1. REASON First it is manifest and apparent that all Customary Tennants both of the Richmond & Marques Fee being (as I have formerly shewed) Three parts of the Barrony of Kendall which did Immediately belong to the Barron of Kendall do, & for ought which can appear to the Contrary, still have kept & retayned the said Custome Certaine in payment of their Fines, as even at this very time they pay no more. Although the rest of the Sd. Barrony *have Lost & broken the said Custome* And their Fines now as in many other places both in the County of Westmerland & Cumberland are become Arbitrary & uncertain (that is as Lord & Tennt Can agree) which hath, & doth breed diverse Questions Cavills and Costly Suits betwixt Landlords and Tennants to which I shall say more hereafter, God willing.

2. REASON Secondly I myselfe have seen ancient acquittances of Tennants belonging to other inferior Landlords within the said Barrony for Fines by them payed to their said Landlords which have not exceeded *three times their ancient rents* and as I said before they are now become uncertayne & arbitrary as most part of the Tennants' Fines are in the rest of the Countyes, both of Westmerland and Cumberland. But how the said Fine Certaine Came to be arbitrary in all the Barrony of Kendall save only the said Richmond Fee & Marques Fee, Because there is no hope now to get the said Custome restored & because the reason is very obvious too, and may easely be Con-

ceived by any reasonable Capacity, I shall here desist to treat any further thereof, and shall now apply myself according to my intended purpose to speak briefly to the other particular Customes which are now in use in both Countyes.

CUSTOME WHAT And before I enter hereupon it will be necessary That I Consider what Custome is & how it is defined which the Lord Cook and other honorable & worthy men of the Law have thus, vizt: *Consuetudo est usitatio quædam antiqua ex rationabili quadam Causa usitata*. In which definition I observe these two parts or Generalls — First that every usage will not make or amount to a Custome. Secondly that every Custome is not a lawfull or good Custome, for the first is so plaine & Easy to every man that I shall not need to say much to it for who knowes not that a man may have for his more Ease & Conveniency a way over his Neighbour's Ground either to Church Markett or some of his own Ground out of Curtesy, and this may Continue so long as these two neighbours live by reason of some mutuall benefitt or other friendship betwixt them. How when either of these Neighbours dyes this usage Cannot be Claymed as a Custome for want of antiquity for it ought to have been of ancient Continuance Tyme without mind as Mr Shipperd In his Epitomy of the Law hath noted, and therefore it is said in the definition to be *usitatio antiqua*. For the second, to witt, that every Custome is not a good or a Lawfull Custome is also manifest because Antiquity alone Cannot make a Custome to be Good or Lawfull. Then might Sinn, yea any sinn, stand up & plead Legallity as well as any Custome whatsoever. And as the Apostle speaking of Sinn or the Law that was in his members Rom: Ch. 7. V. 23 I feel a Law in my members Contrary or rebelling against the Law of my mind. There he Calles Sinn a Law for *Consuetudo est Lex* yet withall he tearmes it *Lex Contraria* or *rebelliosa*, a rebellious Law or a Law rebelling. And therefore it is well said in the definition that it must be *usitatio antiqua ex rationabili quadam causa fundata* or as some have it, *usitata* And as the said Mr Shepherd in his aforesaid booke of the Epitomy of the Law Saith all Customes must be reasonable according to Common right though it Cannot well be Conceived how it began. And the said Mr Shepherd saith further in the same place that such Customes have the force of Lawes and may take away the force of other Lawes that oppose them, and then Quotes this rule, viz.: *Consuetudo pro Lege quandoque servatur in partibus ubi fuerit more utensius approbata et virem legis obtinet. Longævi enim Temporis et Consuetudinis non est vilis autoritas, Longa possessio sicut Jus parit Jus possidendi et tollit actionem veri*

*domini* (Co[ke] super Littleton 110, 6, 60. Dyer 54; 35. 25. Hen 6, 25.) Thus much touching the definition of Custome whereon I have Insisted the more because it will help to the right understanding and resolving some doubts and Questions which follow. How haveing spoken something in Generall touching Customes (I shall as God shall enable me) speak Something in particular to such Questions as have most frequently been moved betwixt Landlords and Tennts.

**FINES** And first touching Fines which as I have before touched are either Generall or Speciall.

Generall Fines arise & become due only upon death of the Landlord. The Speciall or particular Fines become due upon Change or the Tennt whether by death or alenyation.

**EXCEPTION** How that this rule for Generall Fines Holds not in all Cases according as I promised before I shall Labour to make appear thus:

Suppose a man purchaseth of a Lord of a Mannor Certaine Tennants by Custome This purchaser upon his purchase is become Lord of those Tennants which he so purchased & so Lives & Continues perhaps 7, 10 or more yeares all which time he receives the ancient rents, speciall or dropping Fines, Herriotts suit of Court & other services & profitts ariseing or falling due from those Tennants For perhaps he has in all this time kept Court amongst them as the Landlord on whom he purchased had done or might have done. Now this purchasing Landlord dyes The Landlord on whom he purchased & who had formerly received a generall Fine from these Tennants yet Liveing the death of this Landlord which came in by purchase Cannot nor does not Cause a Generall Fine to become due.

Suppose further that after the death of this purchasing Landlord his Sonn & heir enters upon these Tennants as descending to him from his father & thus by descent Continues Lord of these Tennants for some Considerable space or Tearn of yeares. And this Landlord alsoe, which came by descent, dyes, (The Landlord on whom the father purchased still surviveing) yet the death of this Landlord who thus came by descent will not Cause a generall Fine to become due.

Suppose yet further that after the death of this Landlord who Came by descent as heir at Common Law his heir at Common Law Enters to & becomes Lord of these Tennants, and afterwards dyes (The Landlord on whom they were purchased and which had formerly received a generall Fine, yet surviveing) The death of this Landlord alsoe Cannot make a generall Fine to become due, although he was heir at Common Law to a

Landlord who came also to be their Land Lord by descent and according to Common Law. Now by Customes here there Cannot be a Generall Fine due, though there be never so many descents of the Immediate Landlord so long as that Landlord Lives who once had duely received a Generall Fine.

Now to Come to some other Questions and doubts which have been raysed between Landlords and Tennts touching their Customes or at least to so many of them as I can remember I shall as briefly and plainly (as God will enable me faithfully set down and declare my knowledge without partiality to either party

QUESTION 1 And now touching other Questions about Fines The First is wheither a purchasing Landlord after the death of the old Landlord of whom the Tennts were purchased Can have a Generall Fine or no

ANSWER Whereto the Tennants answer in the Negative and say that a purchasing Landlord Cannot Clayme a Generall Fine

RESOL: To which I say (as in my Epistle to the reader) That *qua* purchaser he cannot. My reason is this for is *qua* purchaser he could have a Generall Fine then should the Generall Fine become due by & upon the purchase & so might the Tennants be Lyable to pay a Generall Fine every yeare may every Quarter yea every month which would be against reason & against the definition of a Good and Lawfull Custome which sayes that a Lawfull Custome must be *ex rationabili quadam causa usitata* or as I have Quoted out of Mr Shepherd's Epitomy of the Law that all Customes ought to be reasonable and it would be Contrary to the Generall rule which saies that a General Fine becomes due only upon the death of the old Landlord which formerly received or might or ought to have had a generall Fine and not upon the death of every Landlord as I said before.

QU: 2 Now upon this Question arises (and that upon necessary Consequences) another Materiall Question. For (Say the Landlords) you Confess that upon the death of the old Landlord a Generall Fine is due, And you will say that the right heir by descent Cannot Have this Generall Fine because his descent & Tytle is Cut off and extinct by reason of the Intervening purchase you say also that the present or Immediate Landlord who came in my purchase Can not (*qua purchaser*) have this Generall Fine Yet that a Generall Fine is due is Confest at all hands, and if due, it mus be due o some person. Therefore to whom this Generall Fine is due is the Question.

ANSWER To which I say that here Indeed Lyes the Knott

or difficulty which I shall resolve vizn. There is a maxim in Law that a man sell a Debt whether it be by bill, bond, Covenant in writing, or by paroull, or promise by word of mouth, yet put the Case that such a man which has such a debt due to him stands need of a present sume of money for some necessary use which must be had; and the man to whom this debt is due cannot thereby be supplied at present either by reason that the debt is not yet due or because the debtor, though otherwise able enough & willing too, yet at present wants money and therefore Cannot yet pay it. In this Case the Creditor repayres to a neighbour which he knowes (or at least Supposeth) has money Lying by him, to whom he makes his Cause known & desires him to furnish him with such a sume of money and he will turne over or Assigne this debt unto him. Whereupon they agree of a Certaine sume of money, which this neighbour delivers & payes over to the Creditor for the said debt & the debt is assigned and Turned over to this neighbour. Now this neighbour Cannot by vertue of this bargaine or Contract sue the debtor nor recover the debt when it becomes due & payable. But by a letter of an Attorney from the party to whom the debt was owing and as his Attorney (*in hac parte*) he may both sue & recover the said debt

Not much unlike hereunto is the Case of a purchasing Landlord touching the Generall Fine which falls due from his Tennants by the death of the old Landlord of whom he purchased for when a man purchaseth a Mannor or parcell of a mannor where Tennts by Custome are Comprised or Included in the purchase so soon as he is seised possessed of or Invested in the said purchase, presently *habet se Jus Hereditatis* he hath in him the right of Inheritance and by vertue hereof he receives the Rents Speciall or dropping Fines, Herriottts & other duties, and services as they fall due. But now the old Landlord dyes and hereupon the purchasing Landlord hath not only *Jus hereditatis* but also *Jus heredis et stat in Loco heredis et etiam si non est heres secundus legem vel ad legem* (as Lawyers speak) yet he is now as I may call him *heres adoptus* or *heres factus per Legem* & though he Cannot Clayme the Generall Fine *qua* Purchaser yet as he is now heir adopted or heir made by the law he may have the Generall Fine Fallen due as aforesaid and thus I have heard my old father argue & dispute the Case and this under favour & with humble submission to the more knowing & Judicious I believe to be the tru and right resolving of the Question

Again for the more Clearing hereof put the Case that a Lord of a Mannor hath diverse sonns and his Eldest hath given him

occasion of dislike so that thereupon he doth disinherit him and gives his Land & Tennants to a Second or third Sonn Now this 2nd or 3rd Sonn Cannot be said to be heir to his father by descent yet it will not be denied but that he is his fathers heir adopted & that Lawfully & by the Law and may have a Generall Fine upon the death of his father as if he had been his Eldest Sonn

And yet further suppose a Landlord who is seised of a Mannor & diverse Tennants by Custome he hath diverse sonns & upon or before his death he divides his Lands amongst them To his Eldest he gives his seat or Mannor house with halfe of the Tennants To the Second he Gives another house with a Quarter of the Tennants To the third Sonne he Gives another house & the other fourth parte of the Tennants. This man dyes after his Lands thus disposed and after his death his Children Enters and divides the Lands & Tennants amongst them as their father had disposed them Now it is true that only the Eldest Sonn is heir to his Father by birth descent and at Common Law yet the other two are heirs to him for their severall shares only adopted or so made by the Law which approves and makes Good the Fathers Gift and Either of them shall have a Generall Fine of his severall Tennants after the death of the Father as well as the Eldest otherwise the Eldest sonns Tennants should pay a Generall Fine & the rest should go free which would not be equal and thus much touching this Question.

QU. 3 Another Question touching Arbitrary Fines is also put or raysed by the Tennants vizn. Whether an Arbitrary Fine may be lost for want of Compounding or agreeing upon the rate For (say the Tennants) Where the fine is Arbitrary that is as Lord and Tennt Can Agree If such a Fine fall due and the rate not agreed upon before another Fine fall due for the same Tenement Then is this Fine lost for want of Compounding for they hold if never agreed upon it is never due.

ANSWER. To which I answer that in such a Case so soon as such a Fine Falls due or at least so soon as it is demanded It is the Tennants duety to tender to his Landlord a reasonable and sufficient Fine or a sufficient Composition for a reasonable Fine that is such a Fine as usually and anciently has been payed either for the said Tenement or other Tenement of Tenements in the same Lordshipp of the like rent value and if the Landlord refuse to accept thereof intending to exact upon the Tennant and so delays to Compound till either the Landlord or Tennt dye If in this Case the Landlord lose his Fine though it be *sibi damnum* yet it is (as I take it) *sine injuria* for as

the law sayes *volentis non fit injuria* and according to the vulgar addage *Quis cum potuit noluit quando voluit non habebit.*

But on the Contrary, if the Landlord demands no more but a reasonable Fine such as hath been formerly and anciently payed wether for the said Tenement or other Tennments in the same Lordshipp of the like value and rent pro rata and the Tennant either out of refractoriness or because the Landlord perhapps be old or sick and therefore the Tennant thinks to delay time till the Landlord dye and so to drown the Fine in the meantime due, or however if it be through the Tennants and not through the Landlords default it would not seem reasonable that the Landlord should loose his due for the Stubbornness or wilfullness of the Tennant and if the Fine should be lost in this Case it would be Contrary to the definition of a good and lawfull Custome which saith it must be *ex rationabili quad ad causa usitata*

And thus much touching Fines Generall & Speciall and how when and where upon they become due.

Now for the rate or value of the Fines either Arbitrary or Certaine I shall say little because they differ almost in every Ldshipp.

WIDDOWES I shall now speak something touching the Custome for Widdowes.

Within the Barrony of Kendall if a tennant dye & leaves a Widdow this Widdow by the Custome there will have all the whole Tenement or tenements be they never so many, which her husband dyed seized of dureing her Widdowhood That is so long as She keepest her selfe a pure Widdow and the heir Can have no benefitt during that tyme. But if she marry or miscarry then she losseth all her Interest in her husbands Tenements Neither Can the husband by his last will & Testament hinder his widdow of her Widdowes Estate (though in his life time he might have sold his Tenement though it had Come by his wife). But if by his will he dispose of his Tenement or Tenements to any of his Children after the Widdowes Estate is Expired (I take it) this gift will hold, *sed quere.*

HERRIOTTS. Within the Barrony of Kendall there is a Herriott due to the Lord for every Tenement which the Widdow Enjoyed but if there be no Widdow then there is no Herriott due For in that Country Herriotts are accounted to be due only for and in lieu of a Fine for the Widdowes Estates but in Cumberland and in some places of Westmorland the Custome is much otherwise touching Widdowes, As I shall touch upon it after. Now in this Custome of Widdowes I Conceive there may

happen a verry hard Case which though I dare not take upon me to resolve yet I shall propound the Case and leave the Solution to those of more profound Judgment.

Suppose a Tenant Seized of a Tenement by Custome dyes leaueing only one daughter to Inherit this Tenement who after her fathers death Enters payes a Fine to the Lord and is admitted Tennant at the Lords Court according to the Custome Shortly after she marryes a husband who lives with her perhaps one year 2 or 3 and dyes without any Issue by her after whose death this Widdow being yet young marryes a Second husband upon which Second marriage according to the rule for Widdowes she looseth all her Interest in that Tenement though it was her own by Inheritance and for which she payed a Fine. Now if this Woman had had Children of her own to whom the Tenement might have Come the Case had not been so hard because Children both by the law of God and the law of Nature are bound to maintayne their parents in Case they fall into want. But now that this Tenement should fall upon an Uncle or Uncles Child or other more remote Cousin & the woman perhaps may be destitute of meanes to live upon I think this a very hard Case I know what some may answer and say hereunto viz; *volentis non fit injuria*; she may blame her selfe for she knew the danger and if she had kept herselfe unmarried she might still have kept the Tenement. But to that may be alleadged that saying *Commune animantium omnium est conjunctionis appetitus procreandis causa* and that of St Paul, 1. Tim 5. 14. speaking there of the Case of Widdowes saith *volo igitur juniores nubere, liberos gignere, domus administrare, nullam occasionem dare adversario ad maledicendum* where we see that Paul does not hold it only Convenient but necessary that younger Widdowes should marry Now put the Case yet further and Suppose this Widdow being yet young upon her Second marriage hath lost her Tytle to the Tenement and an Uncle or Uncles sonn enters and payes a Fine to the Landlord and after that this Widdow now the Second tyme Married hath Children.

The first Question I shall propound in this Case is whether this woman being heir to her father can or ought (upon her Second marriage) to forfeit her Tytle to the Tenement or Tenements which Came to her by descent as heir to her father for albeit upon the first marriage her right or Tytle to the Tenement or Tenements was in her husband and he (by the Custome within the Barrony of Kendall) might have sold the same yet he not having otherwise disposed thereof but dyes & leaves the property unaltered I think his Widdow as touching her Tytle

to the Tenement or Tenements which she had from her father is in *statu quo*. For she holdeth the same now not as relict of her late husband But as heir to her father *ergo quere*.

SECOND QUESTION. Secondly Suppose this woman upon her second marriage Could forfeit her Tytle to her fathers Tenement or Tenements wherby her uncle or uncles Sonn or other next of kin enters payes a Fine and is admitted Tennant yet she haveing a Child or Children by her Second husband whether may not her Second husband in right of such Child Enter or by law put out such kinsman as an Intruder for although he was admitted Tennant in the Lords Court according to the Customs yet we say that the Lords admittance doth not. *Creare aut facere sed Confirmare Jus*, and therefore in my tyme while I was an unworthy Steward of some Courts the Tennants admittances were entered oftentimes, if not altogether, with a *Salve Semper jure cuiuslibet* which if not Expressed is alway implied or to be understood

SELLING OF TENEMENTS. As for selling of Tenements there are different Customes for within the Barrony of Kendall The Tennants usually sell their Tenements without Consent of the Lord and without any Surrender in the Lords Court, and the purchasing Tennant will Enter upon his purchase without being put into possession by any officer for the Lord. But hereupon he ought to repair to the Lord and Compound for his Fine and upon Compounding for his Fine then at the next Court the Jury is to Fine & present this purchaser as next Tennant; and upon the Juryes presentment he is admitted Tennant by open proclamation and his admittance Entered in the Court Roll. But in other places both of Westmerland and Cumberland it is otherwise accustomed as shall be shewed after.

WOODS. Now that I may say Something touching the Custome about woods:

Within the Barrony of Kendall woods are thus distinguished vizt into woods of warrant and underwoods, Now underwoods are commonly hazels willowes alders thorns and the like; Woods of warrant are ash, oak, holy, crabtree and some places birch and whitethorne are counted as wood of warrant, and they are so called because albeit these woods grows upon the Tennants grounds and the Tennants commonly claymes necessary houseboot hedgeboot plowboot and cartboot out of woods Growing upon his own Tenement, yet notwithstanding, the Tennant cannot cut down any of these woods upon his own Tenement for any of the aforesaid uses without warrant or lycence from the Lord or delivery of the Lord's Baillyffe Servant or other officer

appointed by the Lord. Neither hath the Tennants any Interest or Property in any woods whatsoever, but only under a certaine duty or acknowledgment which is called Greenhew that is *Pro Viridi bosco* which in some Lordship is rd for one Tenement in some iid and in some place iiid. and is commonly payed at the Lord's Court yearly or with their rent, and by vertue of this duty of Greenhoew the tennants challenge Liberty of cutting such underwoods as grow within their own Tenements and alsoe the lopping or cropping of such woods of Warrant as grow in the Tennants Grounds. For according to the old maxime in law *Quicquid aut secitur plantatur aut edificatur cum solo cedit si tamen radices edit* But if the tennant shall lopp or cropp any such woods either unreasonably or unseasonably then he is a Trespasser to his Landlord and the Lord has remedy against him either by amerciaments in his Court or by action of Trespass at Common Law

**UNREASONABLE LOPPING** Unreasonable lopping of Timber trees or woods or warrant is either when the braunches are cut off too neare the Boale, or when the master branch or topp of the tree is cut off whereby the boale will in time be decayed.

**UNSEASONABLE LOPPING** Unseasonable lopping is when such woods are loppt or cropt at an unseasonable tyme of the yeare as in Sapp tyme when the Sapp is either ascending or descending for this will also decay the boale & decay the Tymber Now whilst I supplied my old Father's place as Steward of those Courts in the Barrony of Kendall which did belong to Mr James Bellingham Knight which was about Twelve yeares (when my old Father was grown Infirm) at every Court both of Richmond Fee, Marques & Lumley Fee, the Tennants as they are calld in the Court, laid their hands upon the book and took this oath Following viz:

**OATH FOR WOODS.** You shall sweare that neither you nor any of you nor any to your use or knowledge hath Grubbt Sold or Cutt down any wood of warrant as ash oake holly or crabb tree within this Lordshipp or any other part of the Lords Lands since last Court here holden without Licence of the Lord or delviery of his officer so help you God. This done they payed their Greenhewes unless they were payed in with their rents.

**REPAIRING OF HOUSES** Now whereas Tennants by the Custome clayme to have allowance of Wood for house boot Hedge boot & plow boot. Thereupon the Tennants in some places supposing that their Landlords are to find & allow the Tennants whatsoever they need or rather (indeed) what they desired, in some places as (I have heard) in the tyme of the

Late Troubles have presumed without leave or warrant to Enter upon the Lords woods, yea, within his demesne Ground, and have cutt at their pleasure. Therefore these few things are to be known.

WOODS First (as I partly touched before) all woods generall belong to the Lord of the Soile and though the Tennants clayme allowance of Wood for some necessary uses but yet they can have no supply out of the Lords Park or demesne Lands but only out of woods growing upon their own Tenements and yet in some parte of their own Tenements also they cannot have supply or allowance for any of the uses aforesaid unless the Lord of his own Good Will do Give it For the Landlord may & doth usually makes Springs or Coppises of such Woody Grounds within the Tennants Grounds as have been aunciently Copised or Sprung and these after the Lord have sufficiently fenced them then they are to be maintayned and kept by the Tennt according to the Statute in that Case made and provided—

Secondly it is to be Known that the Lord is not to find the Tennant all kind of wood for building nor yet for all Sorts of building but only for a Convenient dwellinghouse, Barn, Bier,<sup>1</sup> or Cowhouse. And as I have heard my old father sometime Express in his Charge to the Jury in the open Court That the Lord was to allow only principalls that is to say the byndings Coplings or Syles (as some call them) Eastry or Riggin tree sparres, Ribbs and Lathes for the covering and that the dwelling house Barne or Bier should not Exceed 3 pair of Bindings, & for small Tenements fower might serve, and the allowance which the Tennant was to have he was to have of the woods growing in his own Grounds. Sometime They had helpe out of other Tennants Grounds where there was wood to spare of the same Lords Lands, and in the same Lordshipp or hamlet.

Thirdly in Case there were no such woods upon the particular Tennants Ground so building or repairing nor in any other Tennants Grounds in the same Lordshipp or Hamlett, or if the Tennant would build Larger houses for his own pleasure or conveniency rather than for necessity, in both these cases the Tennant was to provide tymber at his owne charge, for it were an unreasonable Custome that the Landlord should find his Tennant tymber for building for his pleasure or vain Glory, as I have known some do, but if the Landlord will in these cases give the Tennant any allowance of Tymber it is *ad bene placitum dominis non ad libitum Tenentis*

<sup>1</sup> Byre. but spelt "Bier" throughout.

BIERLAWMEN. Fourthly for repaying houses in decay the usuall course in my time was this: that once a yeare when the Lord kept his Court two of the most substantiall Tennants in the Lordshipp were Elected by the Jury and the Court and those they called Bierlawmen and their office was this if any Tennant Complayned for want of Tymber to repayre his houses then those Bierlawmen were to view the decay and see whether

*Missing pages and mutilated index follow.*

*(Mr Gilpin must have started a new heading of "Customes in Westmorland and Cumberland other than the Barrony of Kendall", which continues as follows):*

For here in most places the widdow hath onely a Third Parte dureing her pure Widdowhood & the Heir two partes and in some places the Widdow has halfe and the Heir the other halfe and if the Heir be an Infant or under age then the Widdow or Guardian if there be no Widdow payes the Fine for the Heir and hath the whole Tenement or Tenements for the Fine and for Education of the Heir till the Heir Come to full age Now in some places there are no herriots at all due but in some other places there is both a Fine and Herriott due upon death of every Tennt whether there be a widdow or not

SELLING OF TENEMENTS. Now also for Selling of Tenements in these partes the Tennant can neither Sell nor Lett above one yeare nor Sell his Tenemnt nor any parte thereof without the Lycence or Consent of the Lord or of his Steward authorized by the Lord neither is the Sale of a Tenement though with Licence accounted Good or valuable unless the same be Surrendred in open Court by the party Selling the same or by his attorney. But where a Tennant comes in by descent after the Death of his Ancestour there needs no Surrender neither can any Surrender be made thereof because there is none living that has power to doe it and here it is sufficient that the Jury do find & present such a man or Woman to be next heire to such a man or woman now deceased and upon this presentment (as upon Surrender) proclamation is made and if no cause be alleged to the contrary then the heir is to be admitted Tennt according to the Custome of the Mannor and his name and admittance are both to be entered in the Court Roull and Where the Lord keeps no Court (as there be some Landlords which have some Tennants but no Court at all) there all these ceremonies are supplied by Landlords own act Lycence and consent, And in the Mannor of Scailby the Tennts take coppies of their admittances out of the Court Roll as coppingholders usually do.

But here may a Question be putt vizn. Suppose a Tennant Sells his Tenement with consent of the Lord and undertakes to surrender at next Court Now as soon as he has sold his Tenement he leaves the Country (as it often happens) or suppose he makes a powre of Attorney to another to surrender for him and the Attorney dyes before next Court and the seller is also dead or cannot be heard of so that no Surrender Can be made or suppose the party or his Attorney be in the Court ready to surrender and the Steward by reason of some prejudice which he has against the new Tennant will not suffer the surrender to pass nor yet admitt him Tennant albeit he had compounded for or perhappes payed his Fine to the Lord in any of these cases shall the purchaser loose his money & the Tenement for want of any of these ceremonies. I think it were too hard and unreasonable and therefore *Quere*.

**BOONES & SERVICES** Now for the Boones and services due by the Tennants both in that other part of Westmerland and Cumberland they are more & Greater then in the Barrony of Kendall for in these partes the Tennants are bound to many carriages, as to carry the Lords tres to any place within the County upon their own charge which they commonly do by turne, alsoe for carrying coales or provision for the Lords Mannor house, for carrying lime-stone tymber and such like materialls for building or repayingr the Lords houses, also boon shearing plowing mowing harrowing & the like; and for these in some Mannors or Ldshipps the Tennants performe more and in some fewer which to sett down in particular as the labour would be Tedious so alsoe I think it is needless. Therefore I have given only a short Tast of the most generall differences of the Customes in these partes from those in the Barrony of Kendall

I have also heard of some other Customes held in some Mannors or Lordshipps in Cumberland whereof take these instances following: In some place this I have heard to be the Custome vizt. That if a Tennant dye without issue male & leaves only Daughters then his Tenement or Tenements falles to the Lord as an Escheate and the Lord may make any of his servants Tennant thereof at his pleasure Alsoe if a Tennant dyes & leaves diverse Sonnes and the Eldest which should be heire be lame or any way Infirme of Body so that he cannot serve the Lord in the Kings Warres (For all Tennants by Custome of Tennant-right in these Northern partes were said to be bound to attend their Landlord in their best array when he went to the Warres in the Kings or Queens service (then the Landlord may, in such case, make which of the Sonnes Tennt. as he best liketh.

But this I have only by relation, and therefore leave it to the better Enquiry of those that shall desire to be better or more full Informed therein.

There is also a Lordshipp or Mannor in Cumberland called by the name of Hutton John, in the parish of Graystock where the Tennants pay every Seventh yeare a Generall Fine or (as they call it) a running Fine besides the Generall Fines upon the death of the old Landlord and the particular or dropping Fines upon change of the Tennant. And these Tennants alsoe (as I have it by credible relation) doe till their Landlords Grounds with their draughts, harrow them, mowe, work and winn his meadows, & sheare all or most of his corne besides other services.

Now if any be desirous to know the first rise or original ground of these Customes because I would avoid prolixity I shall refer him to that book intituled *A Collection of some Principall Rules and Maximes of the Common Lawes of England* sett out by that honourable person famous for his Learning both in the Lawes of this nation and also in Philosophy to witt Sr. Francis Bacon then Solliciter Generall to the late Renowned Queen Elizabeth afterwards Lord Verulam and Lord Chancelour of England where he treateth of the original of Mannors.