NYLAND AND HILLAND IN BALCOMBE,

WITH NOTES ON THE OLD MILITARY TENURE OF LAND BY KNIGHT SERVICE.

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"ALBEIT the reader shall not any one day (do what he can) "reach to the meaning of our Author or of our Commentaries; "yet let him no way discourage himself, but proceed: for on "some other day, or in some other place, that doubt will be "cleared." With such words of comfort and hope did the great author of the *Institutes* lead on his students to the dry subject of Littleton's *Tenures*. The exhortation which they contain may not be on the present occasion without its use.

Elizabeth, by the Grace of God, of England, France, and Ireland, Queen, Defender of the Faith, to her Escheator in the county of Sussex greeting. WHEREAS, by a certain Inquisition taken before Thomas Woodgate, gentleman, late our Escheator of our county aforesaid, in pursuance of our command after the death of Thomas Culpeper and returned into our Chancery it is (among other things) found. That the same Thomas Culpeper was seized in his demesne as of fee of and in a messuage, and certain lands, meadows, pastures, feedings, and woods, called Nylande, and certain other lands parcel of certain lands called Hillande in Balcom, in our county aforesaid, and that the last-mentioned premises are held of us *in capite* by an unknown part of a knight's fee, and the other lands and tenements are held of others who hold of us. And that the aforesaid Thomas Culpeper died seized of the premises on the 13th day of April, in the forty-fourth year of our reign, Edward Culpeper being his kinsman and next heir, and being at the time of the death of the said Thomas Culpeper of the age of twenty-six years and upwards. And because the said Edward being of full age as it is stated, hath paid in our court of wards and liveries according to the form of the statute in that case made, all issues and profits of all the said premises whatsoever, with their appurtenances due to us from the said time of the death of the said Thomas Culpeper to the 27th day of November last past, as by the certificate of the master and officers of our said court remaining of record in our Chancery, more fully appears. We for eightpence to us in our Hanaper paid, have respited the Homage of the said Edward to us in this behalf due, until the Feast of the Nativity of St. John the Baptist next ensuing, and we have received the Fealty of the said

Edward in this behalf likewise due, and have rendered up to him all the premises whatsoever. We therefore order, that having first taken security from the said Edward for his reasonable Relief to be paid to us to our Exchequer, you do cause full seizin to be without delay made to the said Edward of all the premises whatsoever, with the appurtenances in your bailiwick, which, by reason of the death of the said Thomas Culpeper were taken into our hands and still remain in our hands together with the issues and profits thereof received from the said time of the death of the said Thomas Culpeper to the aforesaid 27th day of November, saving all just rights.

Witness ourself at Westminster the 7th day of February in the forty-fifth year of our reign (1603). By bill of the Court of Wards and Liveries. H. EGERTON.

The document of which the above is a translation, may be taken as an illustration of the feudal system under which at its date, and for some years subsequently, much of the land in this country was held. The system was, at the date of the writ, near its close, its rigours had become practically mitigated, and it has since been entirely swept away; but in evidence of the tenacity with which English institutions cling to old usages, we find, in the mode in which land is still held and transferred, such traces of the early principles, as may render it of some interest to consider what the system was in its integrity.

It appears to have originated in the military policy of the Northmen, devised as the best means for securing possession of their newly-acquired territories.[1] Grotius states, that the feudal compact was peculiar to the Germanic races,[2] and that it is nowhere found, except where the Germans had settled; and the expressions of Tacitus (*De Mor. Germanorum*, c. 13,) confirm the view of the high antiquity of the system among those races. The hordes from the north, the *Officina Gentium*, as Pliny termed it, warlike and pressed by want, overran in multitudes, and under various names, more fertile lands; and when fields and vineyards suited to their taste were found, they took possession, with no particular sensibilities towards the Naboths who previously possessed them. The lands so taken were parcelled out by the successful chiefs among their followers, continuous military duty being exacted in return. There are unquestionable traces of the existence in England, at dates anterior to the Conquest, of usages analogous to some of

[1] Wright's *Tenures*, 6.

[2] *De Jure Belli et Pacis*, lib. i., c. 3, sec. 23.

those of the feudal system. The common geographical origin of the Saxons and the Northmen may perhaps sufficiently account for this.

Our accurate knowledge of the system as existing in England, may be said to commence with William the Conqueror. He proceeded, from the time of his accession to the throne, to consolidate his power; introduced the laws of the Northmen; caused a survey to be made of the whole kingdom, and established forest laws of extreme rigour. It is probable that the Domesday Book was not *completed* until about the twentieth year of the reign of William I.; so that the application of the system must have been a gradual operation. The forest laws, the severity of which from time to time increased, became, during the reign of William, a notable portion of the system, and added to the repugnance with which the English received it. The Saxon Chronicler, writing "as one who had known the Conqueror, and had once lived in his court," and giving him credit for many high qualities, says:—"The king was also of great sternness. He made large forests for the deer, and enacted laws therewith; so that whoever killed a hart or a hind should be blinded. As he forbade killing the deer, so also the boars; and he loved the tall stags as if he were their father. He also appointed concerning the hares that they should go free. The rich complained, and the poor murmured; but he was so sturdy, that he recked nought of them; they must will all that the king willed, if they would live or would keep their lands . . . . Alas, that any man should so exalt himself, and carry himself in his pride over all!"

Taking it then, that from the time of the Conquest, the rigours at least of the feudal system began, it may be said, that the realm of England was anciently deemed one great seigneury or possession, of which the King was sovereign or chief lord, having under him many barons or great lords, knights, burgesses, and others. By the policy of our law, most of the land is supposed to be held by grants from the crown, the crown being lord paramount, or above all. The crown, as a remuneration for services performed, and generally on the condition that future services should be performed, granted out large quantities of land to barons, knights, and

others. The land so granted to a knight, was called the knight's fee. His stipend or pay given in land.

When land was held directly from the crown, the possessor was called a tenant *in capite*, or in chief. Hillande, mentioned in the writ was so held, it was then "an unknown portion of a knight's fee." But the knight's fee comprised a large quantity of land. He was not addicted to farming, and knew nothing of swedes or super-phosphates, so he granted out such of his land as was not required for the support of his household, in parcels to others. The knight,[1] although tenant to the crown, became thus lord with respect to the inferior holder, to whom he had made a grant, and so partaking of a middle nature, was called a *mesne*, or middle lord. The tenant to whom the mesne lord so granted, was called in the old Norman French, tenant *paravail* being he who was supposed to make avail or profit of the land. There were, however, sometimes several intermediate steps between the crown and the actual occupier. It appears that Nylande was not held by Thomas Culpeper directly from the crown, but "of others who hold of us." The inferior manors in the hands of the gentry were thus created.

Upon these grants, whether from the crown to the subject, or from the subject to an inferior tenant, certain services were reserved, which the tenant was bound to perform to the lord, and the lands were held only on the condition of the performance of the service. These services were *free* or *base*, and *certain* or *uncertain*. "Free services were such as it was consistent with the character of a soldier and a freeman to perform, as to serve his lord in the wars, to pay money to him, and so forth. Base services were such as were fit only for peasants and persons of servile rank, as to plough the lord's land, make his hedges, to carry out his manure, and perform other like mean offices."[2]

There were various other services, some certain and some not, as, to wind a horn when the Scots or other enemies invaded, which was a Freeman's service; or, to do whatever the lord should command, which was the lowest of base or *villein* services. The services of the baser order were often regulated from time to time by the caprice and exigencies of the lord.

[1] Blackst. *Com.*, II., c. 5.

[2] *Blackstone*, II. p. 60.

Of the tenures, the most universal, as well as the most honourable, was that by knight service, under which both Hilland and Nyland were, the one *in capite*, and the other from a mesne lord, respectively held. It was called in Latin, *servitium militare*, and in law French, chivalry, or *service de chivaler*, which answers to the Fief de Haubert, or *Feodum Loricæ* [1] of the Normans.

The *Knight's Fee* varied at different times, and in different places, both in value and extent of land. In 40 Hen. III. (1256), the King issued a proclamation, that "all such as might dispend £15. in lands," should receive the order of knighthood; and that those who would not or could not, should pay their fines; and the sheriffs were fined five marks each, because they had not distrained every such person to receive the order "as was to the same sheriffs commanded." This was about ten years before the battle of Lewes.

By the statute, *de Militibus*, 1st. Edwd. II. (1307), the King granted that all such as ought to be knights, and were not, and had been distrained to take upon them the order of knight before Christmas, then next should have respite to take the arms until the Utas (*octave*) of St. Hilary; and that if any should complain in chancery because he was distrained, and could prove that he had not clear £20. yearly in fee or for term of life, the distress should cease.

Sir James Ley, who was in 1609 King's Attorney in the Court of Wards, and afterwards Chief Justice of the King's Bench, Earl of Marlborough, and Lord High Treasurer, says, in his *Treatise on Wards and Liveries*, that twelve ploughlands, being every one of them anciently of the yearly value of five nobles, made a knight's fee, worth per annum £20., which was anciently accounted sufficient maintenance for a knight; that thirteen knights' fees and a third part, being 400 marks yearly value, made a barony; twenty knights' fees, or £400. yearly value, made an earldom; and that "according to the same proportion, 800 marks makes a marquesdome, and £800. a dukedome."

Sir Edward Coke [2] determines that the Knight's fee cannot be estimated by the acre, but must be by the carue or ploughland of which there were to be twelve, "which though they be

[1] As distinguished from *Terres Roturières*.

[2] 2 *Inst.* 596.

uncertain (for if the land be fertile and heavy, there goeth to a plough-land the less, and if it be lighter a greater quantity) yet it is as near to a certainty as can be," and, he adds, that *this computation time cannot alter*, and after referring to the rule that the knight should have £20. per annum clear, he observes that the reason hereof is that poverty should not be apparelled with honor and dignity.

The possessor of an entire knight's fee was bound to attend his lord to the wars for forty days in every year, if called upon. But by the operation of the feudal system, other burdens came in time to be added. Land held by this tenure was not originally transmissible to the heir; it was strictly the knight's "pay" for the performance of military duty, and on his death, it, in early days, reverted absolutely to the crown, and could be re-granted if the King saw fit, to a stranger, who would undertake the duties. As time went on, the transmissible character of the land to the heir became established, but the crown exacted large payments in return for such privileges. "The tenure in chivalry was granted by words of pure donation, *dedi et concessi*, it was transferred by investiture or delivering actual possession of the land, called 'Livery of Seizin,' and it was perfected by 'Homage' and 'Fealty.'"[1]

Littleton describes homage as "*le pluis honorable service et pluis humble service que franktenant puit faire a son seignior.*" For when the tenant should make homage, he should be ungirt, and his head uncovered, and his lord should sit, and the tenant should kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and should say thus :—"*Jeo deveigne vostre home de cest jour en avant de vie et de member et de terrene honor a vous serra foiall et loyall et foy a vous portera des tenements que jeo claime tener de vous salve la foy que jeo doy a nostre seignior le roy*;" and then the lord should kiss him. The ceremony was called homage, or manship, from the words "*Jeo deveigne vostre home.*"

It appears from the writ, that Edward Culpeper had not done homage to the Queen, time was given to him—"We for eight pence to us in our Hanaper paid, have respited the homage of the said Edward to us in this behalf, due until the Feast of

[1] Blackst. *Com.*, II., c. 5.

the Nativity of St. John the Baptist next ensuing." We find here a record, that among the many acts of wisdom and clemency of the great Queen, was the postponement, for the small sum of eightpence, of a journey from Nyland to Westminster or Greenwich, until Midsummer day. Her Majesty was possibly aware, that her faithful vassal might not have survived the attempt to pass through Sussex roads in February. The ceremony of homage was graciously put off until "the Cuckoo should have picked up the dirt." Dry legal antiquaries may look on the respite of homage as a matter of routine, but the exercise of the indulgence in this case, must come home to the hearts of natives of the weald, especially of those who have experience of the still persistent tenacity of the soil of Shill Lane.

The Hanaper into which the payment was made, was a branch of the Court of Chancery, out of which court, all original writs which passed under the great seal, issued. Such of these writs as related to the business of the subject, and the returns to them, were, according to the simplicity of ancient times, originally kept in a hamper, *in Hanaperio*, and the others, relating to matters in which the crown was concerned, were preserved in a little sack or bag, in *parvâ Bagâ*. Hence the Hanaper Office and the Petty Bag Office.

Fealty was an oath of allegiance and fidelity. It appears that Edward Culpeper had done his fealty, which, contrary to the rule as to homage, could be received by an officer of the lord. "*Et graund diversitie y ad perenter feasans de fealtie et de homage, car homage ne poit-estre fait forsque al seignior meme mais le seneschal de court de seigneur ou le bailife puit prendre fealty pur le seigneur.*"[1]

Barons and tenants *in capite*, were directed, in order to the due levying of the sums claimable by the crown, to make certificates of the fees held by them. Such certificates were called *Cartæ Baronum*, and they were to be laid up and preserved in the Exchequer in a hutch. There is in the great roll of the Exchequer in the time of Henry II., an entry of disbursement, which, from its minute character, must be considered by financial reformers as exemplary, viz., *Et pro una Huchia ad custodiendas Cartas Baronum de Militibus* xxiid.

[1] *Littleton.*

Of the *Cartæ Baronum*, one of Hilary, Bishop of Chichester, exists. It states among other things, that there were in Bixla (Bexhill) ten hides of land, which the bishop anciently held in his demesne, but the earl of Ou, taking away that land, enfeoffed thereof, four knights. The bishop and the church recovered five hides in demesne, and two knights held the other five hides. The effect of many of the lost certificates of barons and tenants *in capite* is given in the *Red Book* of the Exchequer,[1] in which ancient register they are entered with much method.

The transactions of the Court of Exchequer were entered or recorded on several rolls, of which the principal were the *rotulus annalis*, or great roll of the pipe;[2] the memoranda, and the plea rolls. Of these, the pipe roll was "the most stately record in the Exchequer, and the great medium of charge and discharge of rents, farms, and debts due to the crown. Into it the accompts of the royal revenue entered through divers channels, as rivers flow into the ocean."[3] There was a separate pipe roll for each county.

The writ directed that, subject to the condition of securing to the Queen a reasonable Relief, *full seizin* should forthwith be made to Edward Culpeper of all the premises. There were various modes by which possession of land was given, and evidence of its transfer preserved. Sometimes it was by actual delivery, before witnesses on the land itself; sometimes by the delivery to the grantee of a spear, a ring, a rod, or other symbol. The practice of delivering seizin by the rod, still remains with reference to lands of copyhold tenure, and we have a familiar instance of investiture in the induction of a rector or vicar, without which no temporal rights accrue to the minister, although his ecclesiastical power passes to him

[1] "An excellent treatise of the ancient rules and lawes of the Exchequer conceived to be collected by Gervasius Tilburiensis, temp. Henry II." Vernon, *Considerations for Regulating Excheq.*

[2] The Pipe Roll was to be in triplicate. Vernon (who wrote in 1642, and dedicated his book to Sir John Culpeper Knight, Chancellor of the Exchequer, and one of the Knights of the shire for Kent) observes that the rents, and other permanent revenues of the crown, were recovered by "Summons of the Pipe," whilst the payment of the casual revenue, called the Greenwax was enforced by "Summons of the Greenwax." After explaining the various checks adopted to prevent fraud, and that no officer was solely trusted with the king's revenue "no not the treasurer himself," he concurs with the sagacious Gervasius in the expediency of such checks *quia triplex funis difficile solvitur.*

[3] Madox; *Hist. Excheq.*, chap. 22.

by institution. He is inducted by delivery, by the churchwardens, of the key of the church into which the new incumbent enters alone, and takes possession. William de Warenne gave seizin of lands to the Priory of Lewes *per Capillos Capitis sui.*

Tenure in chivalry was decidedly aristocratic, but it had its inconveniences. It was well to hold directly from the hand of the sovereign, but inconvenient when the king happened, as was not unusual, to be a person disposed to be expensive in his pursuits.

There were annexed to the tenure by knight service, seven incidents or liabilities, none of them particularly agreeable.

They were—1. Aids. 2. Relief. 3. Primer Seizin. 4. Wardship. 5. Marriage. 6. Fines for alienation. 7. Escheat.

Aids, which are by Spelman called *tribute*, and by the old law writers *auxilia*, were mere benevolences, rendered by a tenant to his superior lord in times of difficulty and distress.[1] Bracton and Fleta speak of customs which are not termed services, such as *reasonable aids* to make an eldest son a knight, or to marry an eldest daughter, "*quæ quidem auxilia fiunt de gratiâ et non de jure, et pro necessitate et indigentiâ Domini Capitalis nunquam igitur exigitur auxilium nisi præcedet necessitas.*"[2] But as aids and benevolences grew frequent, they became, instead of renders of regard, established as renders of duty. The lords claimed them as matters of right.

The term "Benevolence" is still used by the Crown in Parliament with reference to money bills. A bill of supply is carried up and presented by the Speaker, and receives the royal assent before all other bills. The assent is signified to each bill by the Clerk of the Parliament in Norman French. The assent for a money bill is:—"*La Reyne remercie ses bons sujets accepte leur Benevolence et ainsi le veult;*" for an ordinary public bill the form is "*La Reyne le veult;*" and for a private bill, "*Soit fait comme il est desiree.*" During the Commonwealth, the Lord Protector gave his assent to bills in English.

The ancient feudal aids were principally three, viz.—To ransom the lord when taken prisoner in war. To make his eldest son a knight. To marry his eldest daughter by giving her a suitable portion.

[1] Wright's *Tenures*, 105. [2] *Bract.* lib. ii. c. 10, sec. 8; *Fleta*, lib. iii. c. 14, sec. 9.

"This year" (1110), says the Saxon Chronicler, "before Lent, King Henry sent his daughter Mahald (Matilda) with manifold treasures over sea, and gave her to the Emperor * *. This was a year of much distress from the taxes which the King raised for his daughter's dowry."

The *aide pour fille marier* was levied by Henry II. The City of Lincoln was on that occasion, assessed at £234. 6*s*. 8*d*., and the City of London at £617. 16*s*. 8*d*.

Richard Cœur de Lion levied an aid for the ransom of his person when imprisoned on his return from the Holy Land—it was at the rate of 20*s*. per knight's fee. William de Warenne paid £14. 5*s*. on account of that aid. King Henry III. had aid to marry his sister Isabel to the Emperor, and also to marry his eldest daughter—the former at the rate of two marks, and the latter at 20*s*. per knight's fee—and also an aid at the rate of 40*s*. per knight's fee, to make his son a knight.

But besides the *ancient* feudal aids, others were by degrees added, both by the crown and the inferior lords. Richard I. took 5*s*. out of every hide of land, and the towns and burghs were taxed in the same way,—and practically annually. When the king's tenants *in capite* paid aid to him, he granted to them authority to receive aid *pro ratâ* from their tenants; and the inferior lords exacted on all emergencies aids and contributions on their own account.

Robert de Mortimer gave to King John a palfrey, that he might have a reasonable aid from his tenants. This happened six years before the date of Magna Charta. King John's Magna Charta ordained that no aids should be taken by the King without the consent of Parliament, nor any at all by inferior lords except only the three ancient aids above stated. It soon appeared that means might be found for evading the provisions of the Charter. For instance, in 18th Henry III., the Prior of Lewes had the King's letters to the tenants of the priory lands for a reasonable aid towards discharging the prior's debts. The King's letters, although no longer in the form of a mandate, but in the language of *affectionate request*, were well understood.

Henry III., however, apparently, found some years later, that the old abuses were largely practised. In the thirty-

fourth year of his reign he went with his council to the Exchequer, and there, with his own mouth, gave ordinances to all the sheriffs of England there assembled, that they should (among other things) protect infants, orphans, and widows, and do them speedy justice. Among other ordinances was one, which may, by enthusiasts on the subject, be taken as an early germ of protection to the agricultural interest, viz., "Item, that no rustick be distrained for the debts of his lord, so long as his lord hath whereby he may be distrained; and that they (the sheriffs) diligently enquire how the great men carry themselves towards their tenants." It may have been in those days that the proverb arose:—

> In case of honour and preferment,
> The master goes before the servant;
> In hap of danger or disaster,
> The servant goes before the master.

Reliefs. Feuds, as before stated, were originally precarious, and held at the will of the lord: in time they were given for life; but although the feuds were not hereditary, the vassals or feudal tenants were called *nativi*, as if born such. It was not usual to reject the heir,[1] provided that he was able to do the service; but the heir paid a sum by way of relief (*relevamen* or *relevatio*) on taking up or renewing the feud; and although such fine or acknowledgment was originally made to secure the succession which was then arbitrary, it continued after feuds became hereditary.[2] Reliefs were not services, but fruits of feudal tenure. "They were," says Spelman,[3] "so various and uncertain, that the lords exacted what they listed for it, when the feud fell into their hands upon the death of their feudal tenant, constraining the heir as it were, to make a new purchase of the feud." They were one of the greatest grievances of tenure. Unreasonable relief amounted to disinheriting the heir. William the Conqueror after a time modified the law, and reduced reliefs to some certainty; William Rufus broke through the modifications of his father, and exacted arbitrary reliefs as due by the feudal law. A gentleman *quite by mistake* shot William Rufus. Henry I. restored,

[1] *Craig de Jure Feud.*, 20, 21.
[2] Wright's *Tenures*, 15.
[3] *Treat. of Feuds*, 33.

or professed to restore, his father's law. The relief accepted for a knight's fee was 100 shillings. The relief was only payable if the heir had at the time of his ancestor's death, attained twenty-one, which was the case with Edward Culpeper.

It appears that he had not paid his relief. The Queen's mandate was, that the escheator after taking security for a reasonable relief to be paid *into the Exchequer*, should give possession of the land.

The relief was sometimes of a different character. Thus, John de Haured, who in the time of Edward I. held of the King *in capite*, by the service of saying a Paternoster and an Ave Maria every day, made fine for his relief at two paternosters to be said by him every day.

Primer Seisin was a burthen incident only to tenancy *in capite* from the crown. It was a right which the King had to receive from the heir, if of full age and entitled to possession, one year's profits of the land. This afterwards gave a pretext to the Popes, who claimed to be feodal lords of the church, to claim from every clergyman in England the first year's profits of his benefice, by way of *primitiæ*, or first fruits.[1] Edward Culpeper, as appears by the writ, paid into the Court of Wards and Liveries, the profits of the land from the 13th April in the 44th to the 27th November, in the 45th year of Elizabeth.

Wardship and Marriage. If at the time of the death of the ancestor, the heir, being a male, was under twenty-one, or, being a female, under fourteen, and unmarried, the lord was entitled to the wardship of the heir male to twenty-one, and the heir female to sixteen, and was called the guardian in chivalry. The lord had in that character the custody of the person and lands of the heir, without any account of the profits. The heir male was supposed to be unable to perform knight service till twenty-one, but the female was supposed capable at an earlier age to marry, and then that her husband might perform the service. But the son of a burgess was held to be of full age so soon as he could discreetly count money, and measure cloth, and otherwise exercise his father's calling.

The principle on which the lord took possession of the lands of the heir during minority was, that the land being given as

[1] *Blackst.* II., 67.

a stipend or reward for actual service, which the minor could not perform, the lord should take the rents in order to provide a substitute.

The guardian in chivalry had also the right of disposing (during minority) of the ward in marriage, and the right extended to the widow of the tenant. The guardian had the power of tendering to the ward a suitable match. It was to be without disparagement. In the old French, *une dame de hault parage*, meant a lady of high family. *Hinc* (says Spelman) *in jure nostro disparagare idem est quod impares sanguine et nataliciis connectere.* Thus, for one of good family to marry a burgess, was disparagement. By the statute of Merton 20 Hen. III. (1235) it was provided that if the lords married their wards to villeins or others, such as burgesses, whereby they should be disparaged, the lords, on the intervention of the wards' relatives should lose their wardship. If the ward refused a marriage of equality, he forfeited to the guardian "the value of the marriage," that is so much as a jury would assess, or anyone would *bonâ fide* give to the guardian for such an alliance; and if the ward married without the guardian's consent he forfeited double the value.

Wardship and marriage were fruitful sources of revenue to the crown.

"This year" (1075), writes the *Saxon Chronicler*, "King William gave the daughter of William Osbearn's son in marriage to Earl Ralph, the said Ralph was a Welchman on his mother's side." As to the sum which the earl paid for the fair lady, the Saxon if he knew, is discreetly silent, but the King was not in the habit of giving anything without a consideration.

The following is an entry in the Pipe Roll of the Exchequer, 31st Henry I.:—"William de Hocton renders account of ten marks of gold that he may have the wife of Geoffrey de Faucre in marriage with her land, and may have her son in custody until he is of age to become a knight; he paid into the Exchequer ten marks of gold and is discharged."

They adopted in those days, a much more direct course for obtaining an office, or a partner for life, than at present. In the fifth year of King Stephen, Geoffrey, the King's Chancellor, paid £3006. 13*s.* 4*d.* for the Great Seal; and shortly

afterwards, the Pipe Rolls contain the following entry in the same reign:—"Robert Fitz Seward renders account of fifteen marks of silver for the office and wife of Hugh Chivill." Robert was apparently not a man of capital, as the record goes on to state, that he paid into the Exchequer four pounds, and he "owes six pounds." Gilbert de Maisnil gave to King Stephen ten marks of silver for leave to take a wife. Walter de Cancy gave £15. for leave to marry when or whom he pleased. Wiverone of Ipswich, gave £4. and a silver mark that she might not be married to any one except to her own good liking. Lucy, Countess of Chester, gave five hundred silver marks that she might not be married within five years.

Philip Fitz Robert gave to King John £200. and one hundred bacons, and one hundred cheeses, to have the wardship of the heir of Ivo de Munby with his lands, until the heir should come to full age, and that the heir should be married by the advice and consent of the King and the Archbishop of Canterbury. John, Earl of Lincoln, gave Henry III. 3000 marks to have the marriage of Richard de Clare for the benefit of Matilda, his eldest daughter; and Simon de Montfort gave the same king 10,000 marks to have the custody of the lands and heir of Gilbert de Unfranville, with the heir's marriage.

Geoffrey de Mandeville gave to the same King 20,000 marks that he might have to wife Isabel, Countess of Gloucester, with all her lands and knights' fees, a sum equal to £200,000 at present. Alice Bertram, a Sussex lady, gave to Edward I. twenty marks that she might not be compelled to marry; and another Sussex lady, Margaret de Camoys, gave to the same king 100 marks that she might marry whom she pleased.

It is scarcely credible that (although in practice much modified,) the old feudal law should have continued to be the law of this country down to 1660. Reading these old stories now, one would suppose that that accurate historian and extensive traveller Baron Munchausen must have been a Baron of the Exchequer.

On attaining twenty-one or sixteen, as the case might be, the heir or heiress might sue for the delivery of the land out of the guardian's hands, *Ousterlemain*, as it was called. For this the applicant was obliged to pay half a year's profits. In order to enable the Crown to ascertain the profits arising from

these sources, and to grant to the heir his "livery," writs issued and inquiries were held concerning them, by a jury. The process was commonly called *Inquisitio post mortem*. It was instituted to inquire, on the death of a man of fortune, as to the value of his estate, the tenure by which it was held, and who and of what age his heir was; to ascertain what was the relief and primer seizin, or the wardship and livery accruing to the King. This proceeding became grossly abused, and an intolerable grievance.[1]

By statute of 32 Henry VIII., a *Court of Wards and Liveries* was established for conducting such inquiries in a more solemn and honest manner. The Queen's mandate to deliver possession of Nylande and Hillande to Edward Culpeper issued under the direction of the Court of Wards and Liveries. An old Act of Parliament of 17 Edward II., enacts, that the King shall have ward of the lands of "natural fools."

Fines for Alienation. These were also consequences of tenure by knight service. The tenant could not sell or make over his land to another without a license of alienation, for which a fine of one-third of the yearly value was to be paid to the lord.

Escheat was the last consequence of tenure in chivalry. It was "the determination or dissolution of the mutual bond between the lord and tenant, from the extinction of the blood of the latter either by natural or civil means, death without heirs, or corruption or attainder by felony or treason." In the 31st year of King Henry II., and in 1st Richard I., the Honors of Arundel and Petworth were as escheats in the hands of the Crown. The Escheator to whom the Queen's mandate to give to Edward Culpeper possession of Nyland and Hillande was directed, was an officer of the Crown, appointed annually for each county and some towns by the Great Treasurer to search for and take possession of lands held of the Crown as they fell in. Some great lords had also an officer of this description. The Escheator was not a popular functionary. Spelman says of him, in his quaint way, "*Fisco militat et piscatur.*" Having served the office for one year, he could not in early times again be appointed within three years.

The feudal system was intended to form in its origin a

[1] Blackst. *Com.* II., 69.

national militia, composed of barons, knights, and gentlemen, with their retainers and dependants. It answered the purpose at the time; a body of men was always forthcoming, bound by their interest as well as by their honour to defend their king and their country. It was the foundation of our aristocracy, as involving the principle of primogeniture, and the consequent devolution of real estate to one heir instead of to all children; and we owe to it much of that which is most valuable in our constitution.

But the system in course of time degenerated. The spirit of chivalry which for a time threw a halo of military glory over it, and covered the exactions to which the more humble classes were subjected, was gone, and little but the hardships remained. The imposts on the landed proprietors were frequently still regulated only on the principle of the right of the stronger; and our landed gentry groaned under the burthens which had been fastened on their ancestors. As Parliament and the interests of the people began from time to time slowly to exercise influence and to control prerogative, the rigours, and more particularly the uncertainties of the system, were mitigated. It is difficult at the present time, when ambitious mayors and stout gentlemen go up with addresses to the Crown, to understand that no farther back than the time of Charles I., it could be necessary to pass an Act of Parliament to declare (16 Car. I.), that no person should be distrained or compelled by any writ or process of Chancery, Exchequer, or otherwise, to take on him the dignity of knighthood, nor should suffer any fine or molestation for default thereof.

Military tenures were during the Commonwealth suspended, and after the Restoration they were by an Act of 12 Charles II., destroyed at a blow, and a revenue was settled on the Crown in their place. By that act the Court of Wards and Liveries, and all wardships, liveries, primer seizins, ousterlemains, values and forfeitures of marriage, by reason of any tenure from the Crown or of any other, by knight service, and all charges incident to such wardship, &c., were taken away, and all fines for alienation, seizures, and pardons for alienation, and aides *pur file marrier*, and *pur fair fitz chivaler*, were abolished; and the land held of the Crown by knight service was converted into freehold, or, as the legal expression is, free

and common socage. This Act was almost as great an acquisition to the property of the country as Magna Charta.

Thus it was that the feudal oppressions which had subsisted for six hundred years came to an end. The primer seizins and ousterlemains, "black, white, and grey, with all their trumpery," became matter of history. The extermination of them must be regarded as a memorable passage in the rise and progress of our liberties.

The immediate bearing of the Act of Charles II. on the subject of this paper is, that if the ancient tenure had remained until the year of grace, 1858, Hillande would have been called upon for an "aid" towards the *trousseau* of that excellent young lady, the Princess Royal; and the possessor of the property might, to the discomfort of his family and friends, have possibly been called to serve his sovereign lady paramount, against her rebellious subjects in Oude.

The days of coercion have long since passed away, but the old spirit remains. Free institutions have caused the ancient fire of patriotism to burn still more brightly, not in the breasts of barons and knights and their retainers only, but among all classes of the community. We have fallen on days in which free-born Englishmen on a mere hint of possible danger, have risen as one man; and have heard from the lips of the best of Queens, that Her Majesty accepts with pride and satisfaction their Voluntary Services in Defence of her Crown and their Liberty.

I am indebted principally to Mark Antony Lower, Esq., for the following particulars with reference to Nayland:—

The estate was originally called Nelond, and it gave name to a family of some distinction, which produced Thomas Nelond, Prior of Lewes in 1459, whose magnificent brass is preserved in Cowfold church. In the reign of Henry VIII. Neelond belonged to the family of Michelbourn. It was in

1542 in the occupation of George Culpeper, of Balcombe, and was in June in that year conveyed by John Michelbourn to the same George Culpeper, to hold to him, and Alice, his wife, and the heirs of George. George Culpeper made his will, dated January 30th, 1542-3. He directs his body to be buried in the church of Balcombe "before the alter or memoriall of our Lady," and that all his land which he purchased in the parish of Balcombe called Neelond shall remain wholly to William his son, and gives his goods to his wife, Alice, and his son William, equally.

Alice Culpeper made her will, January 12th, 1571-2—she mentions her children, Alice, wife of George Nyn—her son and heir, William Culpeper, of Worth, deceased, and his daughter Jane, and sons Charles and Edward; her son, Thomas Culpeper, and her youngest son, Richard Culpeper. This will was written by the Testatrix's cousin (John) Culpeper, parson of Erdingly, and the witnesses were, Richard Culpeper of Onstye, and Charles and Edward Culpeper, before mentioned. By deed, 18th June, 1574, George Culpeper of Balcombe, gentleman, conveyed Neelond and other lands to Thomas Culpeper of Claverham, in the parish of Arlington. Possession was delivered in the presence of Richard Culpeper, Thomas Culpeper, Richard Culpeper, and two others.

By a deed, (*penes me*) relating to other property, dated 24th September, 1572, George Culpeper, (who is in such deed described as George Culpeper gentleman, son and heir of William Culpeper, deceased), conveyed land in Balcombe, to John Newnam.

It would appear, therefore, that although not mentioned in the will of Alice, there was a George, the grandson of George who purchased from Michelbourn in 1542.

Elizabeth Fynes of Balcombe, widow, (*née* Culpeper), in her will dated 28th of February, 1587, mentions her cousin, Richard Culpeper of Balcombe, and gives to his son Thomas, "a grogrin Jerkin," she then mentions her son Thomas Culpeper, and Joane his wife.

John Culpeper, parson of Erdingleigh, by his will dated in 1589, appoints as one of his Overseers his cousin Thomas Culpeper of Neland.

The writ of livery of seizin which is the subject of the

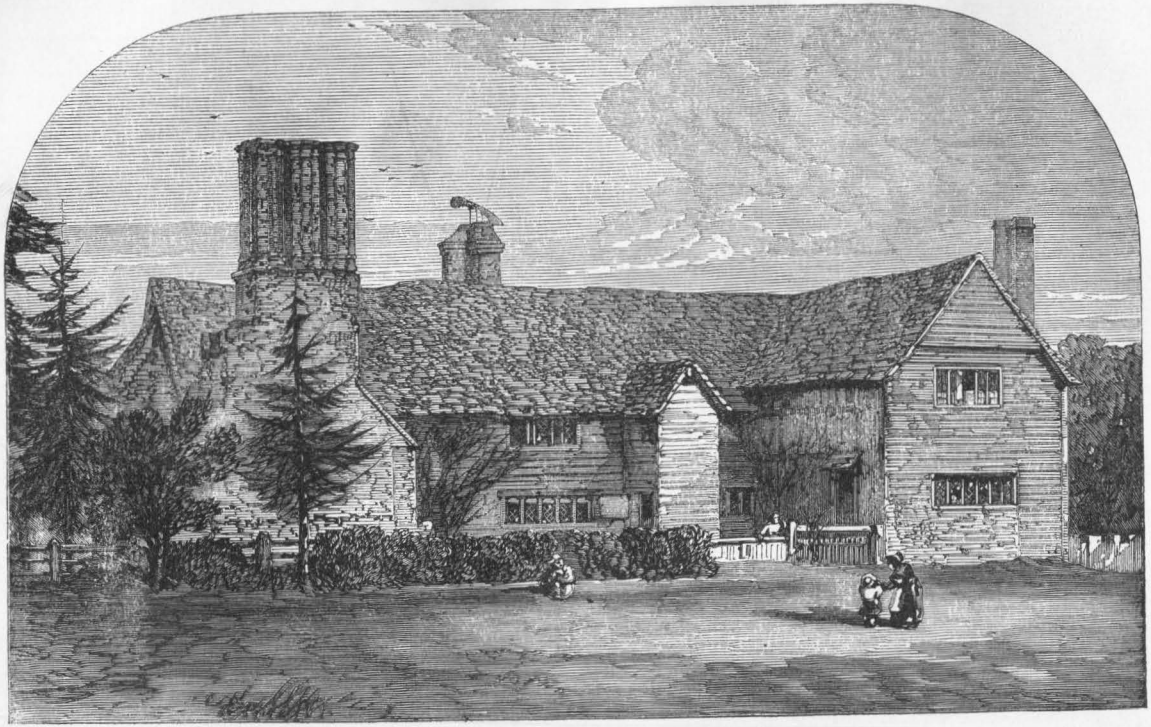
above paper, shows the devolution of the estate in 1602 from Thomas to Edward Culpeper.

By deed of 4th November, 1604, Joane Culpeper who is described in the deed as widow, late wife of Thomas Culpeper of Balcombe, Esquire, conveyed her interest in Nyland to Sir Edward Culpeper of Wakehurst, Knight, and others—covenanting to levy a fine. The property was in 1620 sold by Sir Edward to Robert Spence, Esq., who died in 1656, and was buried in Balcombe Church, from him it passed to the Liddells of Wakehurst and thence through the Clitherows of Boston House, Middlesex, to the Rev. Henry Chatfield.

The Culpepers were a most prolific race—the arrangement of this vast family in all its Kent and Sussex branches, has puzzled Genealogists. Philipot, the Editor of *Camden's Remains*, makes this remark, "I have noted that at one time there were twelve knights and baronets alive of this House together."

Nayland House, of which an engraving is here given, from a photograph kindly executed for the Society by Edward Nicholson Esq., was evidently of the Elizabethan period and style.

The existing building is apparently only one wing of the original house, which, when entire, must have been of large dimensions. It is in a state of irremediable decay and dilapidation, and it will shortly be pulled down, with the exception of the fine chimney-stack, which the proprietor intends to retain as a memento of Old Nayland, in connection with a cottage to be built on part of the site.



NYLAND, 1860.