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THE STRIFE OF TWO GREAT TIDES; THE HARLAKENDEN CASE (1)

Alan Macfarlane, May 1990 (rough draft of a talk given on two or three occasions)

Introduction

The philosopher and lawyer Sir Francis Bacon published in his works a set of his speeches entitled "The Arguments in Law of Sir Francis Bacon, knight, the King's Solicitor-General, In certain great and difficult cases'. He chose as his first example "The Case of Impeachment of Waste, Argued before all the Judges in the Exchequer Chamber". The case concerned the issue of who owned the standing timber on land after it had been artificially severed from the rest of the estate by a lease. Bacon, aware of the rising value of the shrinking acres of woodland in the English countryside, stressed that this was a case of "great weight" and a question of "great difficulty". Weighty because "it doth concern all the lands in England", difficult because it lay exactly "in the meeting or strife of two great tides". There was "a strong current of practice and opinion on the one side, and there is a more strong current (as I conceive) of authorities, both ancient and land on the other side." It was "high time", Bacon said that "the question receive an end, the law a rule, and men's conveyances a direction".

Bacon then proceeded to a long discourse on the subject, drawing on statutes and cases. One of the most important of the cases used in his argument was "Herlakenden's case", referred to four times. This case, he argued for example, showed that once trees had been divided from the land they did not automatically "drown" when re-united in a single person's hands, but "subsist as a chattel divided". Thus trees were absolutely different from corn, for example, which if "a man buy corn standing upon the ground, and take a lease of the same ground, where the corn stands, I say plainly it is re-affixed...".

If we decided to learn more about a case which would set an important precedent for English land law for three centuries, and is still cited (Holdsworth,1966) as a precedent for procedure at Common Law, we have to enter the Great Hall of Westminster in London in 1587.

In Star Chamber

Anthropologists who are interested in ritual and symbolism would have found much of both if they had entered Westminster Hall at just before nine o'clock in the morning on a Wednesday or Friday during the law terms (Tanner,p.284: see portrait). A procession would enter the great medieval building. The Lord High Chancellor of England, Sir Christopher Hatton with the mace and the Great Seal of England carried before him (Tanner; p.254) would move in great pomp towards the stairs on the left of the entrance which led up to the Court Chamber. He would be accompanied by many of the greatest dignitaries of the land, including the Queen. The judges of the Court "are the grandees of the realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the lords spiritual, temporal and others of the king's most honourable Privy Council and the principal Judges of the Realm and such other Lords of Parliament as the King shall name, perhaps thirty to forty persons in all.

The eminent judges always included the Lord Chief Justice of the King's and Common Bench.

The scene as they sat down in the chamber was a splendid and awe-inspiring one. "It was a glorious sight upon a Star-day, when the Knights of the Garter appear with the stars on their garments, and the Judges in their scarlet". (Tanner; p.254) The room added to the solemnity, perhaps giving its name to the whole court (Star Chamber) "either because it is full of windows" or because the roof was covered in golden stars.

The Court was of great antiquity and seen by many as the noblest and most ancient court in the land after Parliament. Bacon himself described it as "one of the sagest and noblest institutions of this kingdom", trying the most serious criminal offences against the commonwealth (Bacon:288-9). Sir Edward Coke described it as "the most honourable Court (our Parliament excepted) that is in the Christian World...this Court, the right institution and ancient order thereof being observed, doth keep all England in quiet". (Ibid; 292-3) William Hudson added to the praise; it was the greatest court in Christendom, the greatest since the Roman Senate. (ibid, 295).

The purpose of all this dignity and pomp, the flower of wisdom and the elaborate costumes, was openly admitted to be in order to awe the subjects, to humble the mighty. Its special purpose was to force those who took the law into their own hands, who acted as if they were above the law, to accept that they were living under law and must appeal not to might but right. Its special preserve was the containment of physical force, riot, rout, affrays and breaking of the peace by the mighty. Riots, Sir Thomas Smith pointed out, were not usually instigated by "mean men" but by such as be "of power and force". Such men cannot be dealt with by "every man" or even by mean gentlemen". Yet such mighty subject, if complained of to the King's Council, must appear before it in its judicial guise, which is what Star Chamber was. Here a great man seeing "as it were the majesty of the whole realm before him, being never so stout he will be abashed". Whatever his degree he must answer and there he will be charged with such gravity, with such reason and remonstrance, and of those chief personages of England, as after another handling him in that sort, that, what courage soever he hath, his heart will fall to the ground". If he refuses to make a reasonable answer, he will be sent to the Fleet prison where he will lie until he is weary of restraint, of the expenses, and where he is for a time forgotten, until "after long suit of his friends" he "will be glad to be ordered by reason". Thus it is "the effect of this Court, to bridle such stout noblemen or gentleman which would offer wrong by force to any meaner men, and cannot be content to demand or defend the right by order of law." (Smith,p.285).

If we had managed to squeeze into the court, for it was always crowded and "it was usual for those that came to be auditors at the sentence given in weighty cases to be there by three in the morning to get convenient places and standing..."(p.297) on a certain day in 1587 we would have caught glimpses of a case of a series of alleged riots involving various gentry families in Essex. The names of Harlakenden as the plaintiff and of timber as the subject, might have suggested that the case was somehow connected to "Harlakenden's case" referred to by Bacon.

The case that was being tried concerned a certain Roger Harlakenden, lord of the manor of Earls Colne, and a family called Ives. Harlakenden claimed that he had sold some timber trees to Thomas Kelton, gentleman and a certain Robert Reade. Their men

had sawn these down but when they had loaded them up ready to take them away on Tuesday 11th April, Robert Ives, Fynet his wife and their two sons Eliachim and Simon had "riotously, routously, forcible and in warlike manner" assembled, arrayed with various weapons including "clubs, forest bills, pitchforks, bows and arrows" and had assaulted and badly treated the workmen, specifically "beating down" and "sore hurting" Robert Reade. Reade and the workmen had only been able to escape with difficulty and had not dared to return for the timber. On the 8th June, Harlakenden continued, Eliachim and Simon had again come to the place where Reade was working with "divers warlike weapons in their hands and about them, with the one of them a sword and dagger and the other a long pikestaff, besides bows and arrows lying not far from them". Others were lurking nearby, ready to aid them. The Ives brothers had used foul language and tried to goad the workmen into a fight. The workmen had refused to fight but later the Ives brothers had boasted that Reade would have fought "if any manhood or courage had been in them". Harlakenden was in the process of bringing a serious charge of riot against the Ives brothers. The confused listener with charges and counter-charges ringing in his ears might then have wandered downstairs into the Great Hall of Westminster itself, through which the Judges had processed to reach the Star Chamber.
- see Portrait of Westminster Hall in Inderwick

In Chancery

The undivided Great Hall of Westminster was simultaneously used for the meeting of the three other most important courts in the land. The Court of Common Pleas, which tried civil matters concerning land and contracts, sat near the entry on the right hand side. at the upper end on the right sat the court of King's Bench, the supreme criminal court; at the upper end on the left sat the Lord Chancellor hearing matters concerning the breach of trust and confidence which fell within that system known as equity.

If we had stood near the area reserved for Chancery on precisely the right day of 1588, we would have found the same Lord Chancellor, Christopher Hatton again hearing accusations and counter-accusations concerning Harlakenden, the Ives and Kelton. (But cf. Hatton,p.338). A bill of complaint from Harlakenden asked the Chancellor for redress because Robert Ives of Earls Colne does "most violently wrongfully and unjustly contrary to all equity and conscience....cut down, waste and destroy and sell and carry away" the timber trees in a wood owned by Harlakenden and had "utterly defaced and spoiled the orchard" there. Furthermore, Robert's son John and another man "have most fraudulently and subtlely and upon malice without any just cause devised and conspired and practised between themselves" attempted to defraud Harlakenden of his rents and refused to pay the rent for their land in Colne Park. (Chancery: C2 ElizH.22/55).

In King's Bench

If an observer had then chosen to stand about ten feet to the right in the Great Hall, he or she would then have been in the Court of King's Bench. On the right day in 1587 he would have found complex actions being fought at Common Law concerning the same trees and park. This time Robert Ives had also brought a case, an action against Roger Harlakenden for trespass and "for breaking his close", namely 38O acres in Colne Park and for illegally "cutting down 3OO oaks, 3OO ashes, 3OO maples, and 1OO beeches there" and taking them away. The case was heard before Lord Chief Justice Sir Christopher Wray, who had also been present in the Star Chamber Case. The 'counsel'

for Harlakenden were the two men who would within a few years become the most eminent lawyers of their generation, the Queen's Solicitor, Sir Thomas Egerton, later Lord Chancellor, and Sir Edward Coke, later Chief Justice of the Common Pleas. Coke's presence and the important issues raised by the case has led to a report published by Coke on 'Harlakenden's Case, which would give the precedents concerning the law of waste and process at Common Law for the next three centuries (Coke's Reports, 4, 62a). (This Report has made it possible to penetrate to some of the legal arguments which are never revealed in the actual records of the court).

In Common Pleas

The same observer might then have walked back towards the internees and found at the other corner, the Court of Common Pleas, which on several other days in the same year tried a number of pleas of debt. Roger Harlakenden, in the names of Thomas Barfoot and Anthony Luter, brought an action of debt against the Ives family "in her majesties court of the pleas" for recovery of the rent. This action "there depending undecided" Harlakenden had brought an action in Chancery for the very same rent which, Ives claimed, was manifestly unjust. (C2 Eliz H. 22/55) (Unfortunately, as yet, it has not been possible to find any trace of this case in the unwieldy records of the Common Pleas.)

In the County Courts

Intrigued by the disputes in Westminster Hall, the observer might have decided to try to find out about the background to the case at the local level by travelling down to Earls Colne, where the supposed riots and trespasses took place. One the way he would probably have passed through the county town of Chelmsford. If he had done so on a day when the Justices of the Peace were holding their sessions, he would have received further impressions of the dissensions in Earls Colne. The trouble now appeared to centre round Thomas Kelton, Harlakenden's brother-in-law and the leaser of the wood. Kelton was accused of being "a common barrator (i.e. bringer of unnecessary actions), disturber of the peace and oppressor of his neighbours and a common malefactor, calumniator and spreader of strifes and discord between his neighbours". (QSR,102/27). He was further accused, with George Kelton, "for breaking into the house of Richard Heyward at the same, armed with swords and sticks and other weapons and for assaulting, beating and wounding the said Richard and Martha his wife so that they despaired of their lives" as well as "other enormities" (3O/8/1587).

In Earls Colne

The visitor to Earls Colne would have had to travel a total of about forty-five miles from Westminster Hall in London in order to reach this parish in northern Essex. He would come upon houses spread along the main Colchester to Cambridge road, set within a parish of just under three thousand acres. In 1587 there lived in the parish approximately 600 persons in the less than 140 houses. The location of the houses and the shape of the hedged fields would gradually have become familiar to him. Fortunately for us, we can reconstruct the village with great accuracy thanks to the very detailed map and survey of the parish carried out by Israel Ames in 1598.

Earls Colne is a parish at a height of between one and four hundred feet above sea level, in a rolling countryside of small hills and valley. Most of the old forest had

disappeared, except for one large medieval woodland in the north called Chalkney Wood. The major crops growing in the late Elizabethan period included barley, wheat and rye, hops for making beer, fruit and vegetable and sheep, cows, and other livestock for home consumption. Much of the produce of the village was carried to the market town of Colchester where it was shipped to fairs and markets in other parts of England. Apart from agriculture, the main occupations were shop-keeping and petty manufacturing. There was a fair on March 25th and numerous shops, inns and alehouses were dotted through the village street. There was a market place in the central street with open stalls. As well as smiths, tanners, millers and other artisans there were large numbers of persons involved with the new cloth industry which had been stimulated by the influx of Dutch immigrants. Roger Harlakenden whom we encountered in Westminster Hall, as a local Justice of the Peace, described how "the parish of Earls Colne and divers other parishes thereabouts being much charged with great numbers of poor people the said people have of a long time been set on work by spinning wool of Dutchmen, which they have delivered to the poor people weekly at the town of Earls Colne and there received the same from them again being spun whereby many of the poor people have been and yet are relieved and maintained in good sort". (QSR 13O/42a) Though many had small gardens, less than half the population of the village were directly involved in agriculture. Most of the inhabitants only spent part of their lives in Earls Colne and there were only a few families present in 1587 who had been there a hundred years before. The parish boundaries were easily crossed, with kinship, commercial and religious ties spreading out over all of the county.

The control of behaviour in the parish was mainly in the hands of three sets of institutions. The Church, with its physical presence in the parish church of St Andrew and its representatives in the vicar, churchwardens and sidemen, attempted to control moral behaviour. The State, through the system of Justices of the Peace and village constables, both unpaid and amateur offices, maintained the physical peace. The lords of the two major manors in the parish, called Earls Colne and Colne Priory, through their courts leet and baron and through their officials, the bailiff, steward and assisted by the homage jury, controlled many aspects of economic life.

The power struggle in Earls Colne

If we has arrived in 1586 we would have found the inhabitants aware that the economic and political structure of the village was being rapidly eroded. The consequences of this change was beginning to throw the village into confusion. One of the many reflections of this was the set of cases which were to be observed in Westminster Hall. The "strife of Two tides", in the local context meant something rather different; two powerful political currents in collision.

Earls Colne had for centuries been the preserve of one of the most powerful families in the land. In 1137 the land in the parish had been vested as an estate in the family of De Vere, hereditary Lord High Chamberlains of England, and Earls of Oxford. They had given the adjective 'Earls' to the town, and for over four hundred years they had centred their power on this parish and the nearby one of Hedingham Castle. They had built a large mansion in Earls Colne and commemorated their ancestors in a marvellous set of alabaster monuments housed in the parish. De Vere connections were reinforced by an earlier association for in about the year 1100 they had endowed a small Benedictine Priory in the parish. This held land in Earls Colne and elsewhere and the wealth

supported twelve monks among whose main duties was that of praying for the souls of the Earls of Oxford.

Four hundred years of domination by the Earls of Oxford were suddenly undermined in the 158O's. This added further stress to the adjustments needed to deal with the fact that the Priory had been abolished in 1534. The manor and tithes which it had held were turned over into lay hands and had finally also been purchased by the De Veres. Edward de Vere seventeenth Earl of Oxford, was aged thirty-three in 1583 when he decided to sell the lordship of the manor of Earls Colne to his steward Roger Harlakenden, son of an old Kent family. De Vere, often described as the most spendthrift, aggressive and wayward of all the Elizabethans (and credited by others with writing the works attributed to 'Shakespear'), had started to sell off his estates in earnest in 1579, with five sales in that year, thirteen in 158O and nine in the next three years.

Thus he sold off to Harlakenden with the Queen's permission the manor of Earls Colne, namely one hundred messuages, one hundred gardens, one hundred orchards, three hundred acres of land, 1OO acres of meadow, 2OO acres of pasture, 2OO acres of woodland and 1OO acres of open fields and heath, as well as the rights to hold courts and views of frankpledge, the total bundle of rights over places and people which constituted a 'manor'. All this was sold for the very small sum of four or five hundred pounds. Later the Earl would, in his desperation, sell off to Harlakenden the other manor of Colne Priory and then, feeling himself cheated, would demand the manor back and fight a long and bitter set of lawsuits with the Harlakenden family, carried on into the next generation by both families. But well before this, he had taken steps to raise money in Earls Colne in two further ways which were complex and, in the opinion of lawyers, both absurd and intriguing. These desperate moves lay behind the bitter disputes at Westminster.

But before we go into these matters, we ought to look at the main protagonists in the drama more carefully. Who besides the Earl were involved?

On one side was the Harlakenden family and its associates. On the other side the central protagonists were the Ives family As yet, all we know much about is Simon Ives the son. From the court cases he appears to have been at New Inn in London at some point and many years later was styled as gentleman. His son Simon was a well-known musician who collaborated with the famous Henry Lawes and his grandson was also a musician.

The specific tenurial background

Piecing together all the claims and counter-claims and local deeds and other documents, and talking to local inhabitants, we would probably have arrived at the following understanding of the situation (simplified for this talk). The young Earl of Oxford, in his search for money, when about to leave for a long tour on the Continent in 1575, had split up his traditional manor of Earls Colne. The most valuable part of it, the disparked and enclosed park part of the demesne (see map) consisting of "five messuages, five tofts, five gardens, 3OO acres of land, 2OO acres of meadow, 7O acres of pasture, 2OO acres of wood" etc. he treated as a separate entity called "Colne Park". He had then decided further to split off some of the valuable timber from the Park, including two hundred large oak trees. He had started to sell off the right in these trees as

early as 1574. The rights in the timber had finally been bought up by Roger Harlakenden who in 1586 sold some of the trees to Thomas Kelton his brother-in-law and Robert Reade of Earls Colne. It was when they tried to cut down and take away the trees in 1587 that the violence had escalated.

The pretext for the violence lay in the fact that the land across which the sawn timber had to be transplanted had a separate history from that of the trees. The Earl had let the park in 1575 for 21 years and then a part of that had been sub-let for a shorter time to Robert Bragg and by him to Robert Ives. So in 1586 Robert Ives and his family were living at the Great Lodge as tenants holding 38O acres of land and pasture, part of the park. The chain of sub-letting was thus: Earl....Luter and co...Bragg....Ives.

The situation had been further complicated by the fact that in his manoeuvres to establish himself in Earls Colne, Harlakenden had also bought the lordship over the park from the Earl of Oxford for the large sum of £2,OOO in 1583. This meant that not only did he own the timber but he had the right to collect the rents from the Ives and would have their land as soon as the lease expired in 1595.

But Harlakenden's position as landlord had been further complicated by another quirk of the case. Through other dealings, Harlakenden himself had brought the last half-year's lease of Colne Park. That meant that if he accepted the lordship before the lease ended he would be both lord and tenant, paying himself rents. He foresaw complications and disputes arising out of this and as a way out of the problems decided to resort to a fiction. He made his brother-in-law Henry Josselin the nominal owner, trusting that Josselin would pass the rents on to him and also the ownership. But it was this move which gave the Ives and Bragg faction room for dispute, for they claimed that they knew nothing of the arrangement so that when people came round demanding rent in Josselin's name they refused to pay. Harlakenden maintained that they had paid Josselin once, thus accepting the principle, but had then refused to do so again.

The events of Tuesday 11th April 1587: In Colne Wood

We are now in a position to understand a few of the pressures which lay behind a confrontation in Colne Park wood on Tuesday 11th April 1587. Naturally the parties put an entirely different interpretation on the gestures and speeches and actions, but by piecing together the accounts of the two sides, what appears to have happened was as follows.

Robert Reade and three other men had arrived in the wood at Colne Park on Tuesday 11th April with a cart and some tools to collect sawn wood which had lain therefore over two years. These tools could not only be used for wood-trimming, but also for aggression or for breaking down a gate on the side of the wood, kept locked with a padlock and key by the Ives family. It was claimed by the Ives family that rumours had been heard that Reade and his men, perhaps with the encouragement of the Lord of Earls Colne manor, would indeed break down the gate and take their cart over a field path.

Eliachim Ives, probably by pre-arrangement, was ploughing a field on the land nearby, either then or later armed with a dagger. Robert Reade came up to him and asked him to open the gate. The Ives had agreed, it appears, not to let the cart through. They claimed that there were two other perfectly good ways out of the wood and if

Harlakenden had decided to close one by ditching it up, that was a strategy to create a new right of way. The original agreement had specified that the owners of the wood should do their best not to damage the standing corn in moving their wood, and, so they first claimed, taking the cart out this way would do so. They agreed that the path had often been used in the past for carrying wood, but it was not a right of way and could only be used at the "sufferance" or with the permission of the person who was working the land. They refused such permission and so Eliachim replied that he would not open the gate, "neither should they come that way, seeing that there were two other sufficient and convenient ways for them".

Eliachim then went home for reinforcements, fetching his father, a small man of 68 years old, who happened to be carrying a pitchfork "which he did oftentimes use for his necessary business", according to Ives, and also his brother Simon who was carrying a "pikestaff". Shortly afterwards their mother, a woman of about 68 also arrived. Along came Read and the three others with the laden cart, on top of which was laid a pikestaff, a pitchfork and an axe. Reade asked again that the gate be opened, but Robert Ives refused to do so. At first Reade, according to the Ives, 'seemed to encourage those that were with him to take down the weapons from the cart saying "come, let us stand to our tacklings'". (OED: 'to stand to one's tacklings' - defines as figuratively meaning 'to stand to one's guns', to hold one's ground, to maintain one's position or attitude') Thus Ives claimed that Reade was threatening to start physical aggression, to take the law into his hands.

At this tense point, a strange thing happened. Another figure stepped up and intervened to arbitrate. Indeed the coincidental presence of a certain Mr Wordsworth, a servant of Sir Christopher Hatton, changed the whole situation. Sir Christopher Hatton was very shortly to become Lord Chancellor, the man who would try the cases (it was on the 12th April that his predecessor died). Sir Christopher Hatton's home was in Northamptonshire, but he also had an interest in the area for he had bought the manor of Sheriffs in Colne Engaine from the Earl of Oxford. Hatton's servant Bowser was in a dispute with Harlakenden elsewhere. Hatton, himself, was an intimate confidant of the Queen.

Anyway, Hatton's servant happened to be standing beside the gate at this crucial point. Robert Ives said he was there 'by chance as he thinks'. But that he was standing there at a time shortly before the whole case would erupt in Star Chamber and Chancery before Hatton, makes one wonder about the contrived nature of the events. Instead of a random outbreak of anger, the whole event appears to be a carefully planned drama, staged to test out rights and power. We begin to see that behind Reade were the figures of Kelton and Harlakenden, and behind them the even larger figure of Lord Burleigh, the most powerful man in England, Lord Treasurer, and a sworn enemy of the Earl of Oxford. Behind the Ives already stood more powerful interests, probably those of the Earl of Oxford. This was denied by Simon Ives who replied to a question which asked at whose instructions the Ives had come to the gate, saying that they had come of their own wills "and not upon procurement as is supposed".

Reade and Robert Ives talked together for a while and Mr Wordsworth asked Robert Ives "that he would suffer them to pass for that time, seeing that the cart was come there to the gate." So Robert Ives sent off one of the workmen to fetch the key from his house and the cart passed peacefully through the gate.

Subsequent questioning lends an even stronger impression that what was at issue was power, not material damage. The Ives later admitted that no corn had in fact been harmed or was likely to be harmed since there was already a cart track. What they were testing was their power as tenants against the growingly powerful Harlakenden. Furthermore, the prepared nature of the event is shown by later admissions that weapons had been stored for the occasion. A bow and some arrows had been hidden in a nearby field though they were never used. Fynet Ives had prepared a pile of stones near the gate and this had led to the one physical assault. Two of the Ives admitted that they had seen or heard that Fynet had thrown a stone at Reade, but they claimed that they did not know whether it had hit him.

This was just one incident among many. There were later charges of further threats, of attempts by Harlakenden to get the manor court which he held in the village to present the Ives as rioters, and the accusations against Kelton at the Quarter Sessions, all of which appear to be connected. The enmity between the Harlakenden and Ives family would continue and grow over more than forty years. Simon Ives with his training in law would become one of the major agents of the Earls of Oxford in their battle with the Harlakendens which caught up the whole village, the schoolmasters, the clergy, the churchwardens and the tenants over the next two generations.

Back in Westminster Hall

As for the resolution of the particular issue of the rights in Colne Park, the litigants were driven to take their fight away from the village and up into Westminster Hall. Star Chamber could only try one limited issue, was there a riot committed or not? A riot was defined (Hale, 1678,p.137) as follows: "When above the number of two meet to do some unlawful act, and do act it; but if they meet and act it not, an unlawful assembly". Thus the presence of four persons on each side could have led to a riot on whichever side was considered unlawful. Although we do not know the verdict in this case, it seems likely that since only one stone was thrown, the suggestion of riot would not have been proven. But the power of the law would have been demonstrated and the litigants forced to find recourse in the Common Law and equity courts.

As yet we do not know the outcome of the cases in two of the other courts. In Common Pleas the action over the non-payment of the rent for part of Colne Park against the Ives would be fought out. In Chancery Harlakenden would be able to complain to the Lord Chancellor that the Ives were not merely taking the small wood for repairs of fences and other necessary purposes, but cutting down and laying waste large timber and orchards. He would also ask for help with reclaiming the rent, a matter he could bring within equity by stating that his making of Henry Josselin the nominal landlord was a matter of trust and conscience, which trust had been broken.

In the King's Bench it is clear that both sides decided to enter a different kind of action, this time of trespass. In the roll for Michaelmas 1589, the sheriff of Essex was ordered to take Robert and Eliachim Ives and another and to bring them to the King's Bench to reply to Roger Harlakenden on a plea of trespass. It was stated that Robert and Simon Ives had escaped from arrest. What happened in this case we do not yet know. Robert Ives himself had brought the same action against Harlakenden. In his report on the case, Coke stated the question to be this. Was the cutting down of the trees lawful or

not? The issue was as follows. If a man leases his land for years, excepting the wood (as the Earl did), and afterwards grants the wood to another person, whether if the first tenants makes a lease of the land (as Bragg did to Ives) whether the wood should pass to his lessee (i.e. Ives). Out of this case various points were resolved which would set precedents until the nineteenth century in English law.

The first legal point established was that when a man makes a lease for life or years, the "lessee has but a special interest or property in the trees, being timber, as things annexed to the land, so long as they are annexed to it." But if the lessee or another severs them from the land , then the property and interest of the lessee is ended and the lessor may have them again. So far, Harlakenden won. Other findings supported the lessee. The lessor "should not have an action of waste at the common law against the lessee, because it was his own act, and it was his folly to make a lease to him who ought to do him fealty, and yet will commit waste.' Furthermore, "it was also his folly that in his lease he would not provide by condition or covenant, that he should not commit waste" In other words, the Earl, and indirectly Harlakenden should have protected themselves more carefully. There was a stalemate in the complex legal chess game.

Several other legal points were also resolved. One of these was that if an estate was split, namely timber and land, then it could be rejoined under certain circumstances. But in this particular case, because the interests in the land and the timber were so different and diverse, the two would not automatically come together again,. The case had wider implications for it affected the whole question of what among the movable assets on an estate is integral to it, and what can be split off from it. For example, the question arose of whether the fittings of a house, the glass in the windows or the wainscot wood on the walls, could be treated like the timber and sold off separately, or whether they were integral and inseparable. It was resolved in another case that they were integral and unlike the timber; a house would not be a house without the glass and the wainscot.

An important procedural point concerning the necessity to answer to pleadings was also settled and the case was cited as a precedent for this by Sir William Holdsworth. (1966; p.288).

Thus out of the clash of personalities and of principles, and the land situation in Earls Colne , was forged that law which could provide the basis for a legal system just beginning to spread over half the world.

NOTE

1. This is the text of a talk given to the Earls Colne Society in May 1990. I am grateful to the Society for inviting me to talk and especially to Rachel Hales for her help in improving this written version. It is still a preliminary account of a complex set of events and should be treated as a working draft which will be expanded at a later point. The full documents from which the texts are abstracted are published in 'Records of an English Village, Earls Colne 1400-1750', (Chadwyck-Healey Microfiche, 1984). The references to 'Q/SR' are to the Quarter Sessions Rolls in the Essex Record Office; references to 'C2' and other 'C' numbers are references to the Chancery records in the Public Record Office, Chancery Lane, London.

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