

William Lambard
A perambulation of Kent
London
1576

388

The Customes of Kent.

Although good order would haue borne the rehersall of the Auncient Customes of this Shyre, in that generall discourse whiche we had in the beginning as touching the estate of this whole Countie, the rather for that it was there shewed by what meanes and policie they were conserued: yet, least the recitall of the same (being of themselues large and manyfolde) might haue beene thought too great a Parenthesis, or rather an interruption of the Hystorie, wherein we were as then but newly entred, I thought it better to reserue them for this place, to the end, that bothe the one and the other, might appeare, without breache, or confusion.

These Customes, therefore, being (for the most part) discrepant from the common lawes of our Realme, and annexed to suche landes within this Shyre, as beare the name of Gauelkinde, are commonly called Gauelkinde Customes, for that they preuaile and haue place, in lands of Gauelkinde nature. In whiche respect, it shall not be amisse to shewe, for what reason those landes were at the first so termed, and why they do yet hitherto continue the name.

Two coniectures I haue of the reason of this name, the one grounded vpon the nature of the discent, and inheritance of these landes themselues: the other founded vpon the manner of the duetie and seruices, that they yeald: bothe whiche I will not sticke to recite, and yet leaue to eache man free choice, to receaue either, or to refuse bothe, as it shall best lyke him.

I gather by Cornelius Tacitus, and others, that the auncient Germans, (whose ofspring we be) suffred their landes to descend, not to the Eldest Sonne alone, but to the whole number of their male Children: and I finde in the 75. Chap. of Canutus law (a King of this Realme before

389

the Conquest) that after the death of the father, his heires shoulde diuide bothe his goods, and his landes amongst them. Nowe, for as muche as all the nexte of the kinred did this inherite together, I coniecture, that therfore the land was called, eyther Gauelkyn, in meaning Giueall kyn, bycause it was giuen to all the nexte in one line of kinred: or Giue all kynd, that is, to all the male children: for kynd, in Dutche, signifieth yet a male childe: Besides this, the Welshmen also (who but now lately lost this custome) doe in their language call this discent, Gwele, and in their Latine Recordes, Lectus, progenies, & gauella, of their owne worde, Gefeilled, whiche signifieth Twyns, or suche as be borne together, bicause they doe all inherite together, and make (as it were) but one heire, and not many. And here (by the way) I cannot omit to shew, that they of this our Kentish cuntry, do yet cal their partition of land (shifting) euen by

The name Gauelkinde, wherof it arose.

To shift land is an olde terme.

†<thus>

the very same worde that the lawe of Canutus many yeares since termed it, namely (*Scyftan*) in Latine, *Herciscere*, that is, to shift, depart, or diuide lande.

My other coniecture, is rayseed vpon the consideration of the rent and seruices going out of these landes: for it is wel knowne, that as Knights seruice lande, required the presence of the tenant, in warfare and battaile abroad: So this lande (being of Socage tenure) commaunded his attendance at the ploughe, and other the Lordes affaires of husbandry, at home: the one by manhoode defending his Lords life and person, the other by industrie mainteining with rent, corne, and victuall, his estate and familie. This rent, and customarie payment of works, the Saxons called, *gafol*, and therof (as I think) they named the lande that yealded it, *gafollette*, or *gafolcyn*. that is to saye, lande Letten for rent, or of the kinde to yealde rent. In this sense I am sure, that the

390

rents, customes, and seruices, whiche the tenants of London pay to their land lords, were wont (and yet are) to be recouered, by a writ, thereof called *Gauellet*, as by an auncient statute, made in the tenth yeare of King Edward the second, intituled, '*Statutum de Gauelito*,' in London, and by dayly experience there, it may well appeare. Thus much then, as concerning the Etymon of this word *Gauelkind*, being said, let vs proceed further.

The anti=quitie of *Gauelkind* custome.

It hath already appeared, how the Kentishmen, immediately after the Conquest, obtained the continuation of their customes: and it is very manyfest by auncient writers, that the same (for the more part) haue bene in vre and exercise euer since. For (omitting that which Thomas Spot hath written concerning the same matter, for as much as it is already recited at large) *Glanuile*, a learned man, that flourished in the reigne of king Henrie the second, in his seuenth booke, and third chapter: *Bracton*, that liued in the time of King Henrie the third, in his seconde booke, '*De acquirendo rerum dominio*:' And *Bretton*, that wrate vnder King Edward the first, and by his commaundement: haue all expresse mention, of landes partible amongst the males by vsage of the place, and some of them recite the very name of *Gauelkind* it selfe. But most plainely of all, an auncient treatise, receiued by tradition from the hands of our elders (wherof I my self haue one exemplar, written out as I suppose, in the time of King Edward the firste) agreeing with the dayly practise of these customes, pro- ueth the continuance of them, to stande with good lawe and liking. And therefore, forbearing (as needlesse) further testimonie in that behalfe, I will descende to the disclosing of the customes them selues: not numbring them by order as they lye in that treatise, but drawing them foorth as they shall concerne, eyther the lande

The diuision of this discourse.

391

it selfe, or the persons that I will orderly speake of, that is to say, particularly the Lorde and the Tenant: The husband and the wife: The child and the gardien, and so after addition of a fewe other things incident to this purpose, I will drawe to an end.

What lands be of *Gauelkind* nature

As touching the land it self, in which these customes haue place, it is to be vnderstanded, that all the landes within this Shyre, which be of ancient Socage tenure,

Some Knight fee is Gauelkinde.

be also of the nature of Gauelkind. For, as for the lands holden by auncient tenure of Knights seruice, they be at the common lawe, and are not departible after the order of this custome, except certeine, which being holden of olde time by Knightes seruice of the Archebishop of Canterbury, are neuerthelesse departible, as it may appeare by an opinion of the Iudges in the Kings benche. 26. H. 8. fol. 4. And that grewe by reason of a graunt, made by King Iohn, to Hubert the Archebishop, the tenor wherof (being exemplified out of an auncient roll, remayning in the handes of the Reuerende father, Mathewe, the Archebishop nowe liuing) hereafter followeth.

‘Ioannes dei gratia, Rex Angliæ, Dominus Hiberniæ, Dux Normaniæ, Aquitaniæ, & comes Andegauen. Archiepiscopus, Episcopus, Abbatibus, Comitibus, Baronibus, Iusticiariis, Vicecomitibus, Præpositis ministris, & omnibus Balliuis, & fidelibus suis: Salutem. Sciatis nos concessisse, & præsentis charta nostra confirmasse, venerabili patri nostro ac Chro. Huberto, Cantuar. Archiepiscopo, & successoribus suis in perpetuum, quod liceat eis terras, quas homines de feodo Ecclesiæ Cantuar. tenent in Gauelkind, conuertere in feoda militum. Et quod idem Episcopus & successores sui, eandem in omnibus potestatem, & libertatem habeant in perpetuum, in homines illos qui terras easdem ita in feodo militum conuersas tenebunt, & in hæredes eorum quam ipse Archiepiscopus habet, & successores sui post eum habebunt, in alios milites de feodo Ecclesiæ Cantuar. & in hæredes.

†r. ‘feoda’

392

Et homines illi, & hæredes eorum, eandem & omnem libertatem habeant in perpetuum, quam alii milites de feodo Ecclesiæ Cantuar. & hæredes eorum habent. Ita tamen, quod nihilominus consuetus redditus denariorum, reddatur integre de terris suis, sicut prius, xenia, aueragia, & alia opera, quæ fiebant de terris iisdem, conuertantur in redditum denariorum æquiualentem. Et redditus ille reddatur, sicut alius redditus denariorum. Quare volumus, & firmiter præcipimus, quod quicquid prædictus Archiepiscopus & successores sui post eum, de terris illis in feodo militum secundum præscriptam formam conuertendis fecerint, ratum in perpetuum & stabile permaneat. Et prohibemus ne quis contra factum ipsius Archiepiscopi, vel successorum suorum, in hac parte venire præsumat. Teste E. Eliense, & S. Bathon, Episcopis. G. filio Petri, comite Essex. Willmo Marescallo, comite de Penbroc. Roberto de Harocort. Garino, filio Gerald. Petro de Stoke. Ric. de Reuerus. Roberto de Tateshal. Datum per manum S. Archid. Willielmi apud Rupem auriual. 4. die Maii Anno regni nostri tertio.’ But nowe for as muche as it is disputable, whether this Chartre of the King be of sufficient vertue to change the nature of the Gauelkynd lande or no, and for that the certaintie of the landes so conuerted into Knight fee, dothe not any where (that I haue seene) appeare, (saue onely that in the booke of Aide, leuied in this Shire, Anno. 20. E. 3 it is foure or fiue times noted, that certeine landes there, be holden in Knights seruice, ‘Per nouam licentiam Archiepiscopi’) I will leaue this, and proceede to proue, that all the landes of auncient tenure in Knights seruice, be subiect to the ordinarie course of discent at the common lawe. And that may I (as me thinketh) sufficiently doe, both by the expresse wordes of a note. 9. H. 3 in the title of Præscription. 63. in Fitzherbert: by the resolution of the same Fitzherbert, and Norwiche, Iustices, 26. H. 8. 5. And by plaine recital in

†r. ‘feoda’

the acte of Parleament, made. 31. H. 8. Ca. 3. by whiche statute, the possessions of certeine Gentlemen (there named) were deliuered from this customarie discent, and incorporated to the common lawe. For (amongst other things) in that acte it is sayde, 'That from thencefoorth, such their lands shal be changed from the said custome, and shall descend as lands at the common lawe, and as other lands being in the said countie of Kent, which neuer were holden by seruice of Socage, but always haue bene holden by Knightes seruice, doe descend.' By whiche wordes it is very euident, that the makers of that estatute, vnderstoode all landes holden by Knightes seruice, to be of their proper nature descendable after the common lawe, and that Socage tenure was the onely subiect in whiche this our custome of Gauelkynd discent preuailed, and helde place.

Auncient Knight fee. is not of the nature of Gauelkynd.

But when I thus speake of Socage, and Knights fee, I must alwayes be vnderstanded to meane of a tenure long since, and of auncient time continued, and not now newly, or lately created: for so it may fall out otherwise then is already reported. As for example. If land aunciently holden by Knights seruice, come to the Princes hande, who afterwarde giueth the same out againe to a common person, to be holden of his Manor of Eastgrene- wiche in Socage, I suppose that this land (notwithstanding the alteration of the tenure) remaineth descendable to the eldest sonne only, as it was before: As also, in like sorte, if landes of auncient Socage seruice come to the crowne, and be deliuered out againe, to be holden eyther of the Prince in Capite, or by Knightes seruice of any Manor, I thinke it ought to descende according to the custome, notwithstanding that the tenure be altered. And if this be true, in the graunt of the King him selfe, then much lesse (sauing the reuerence due to king lohns

The change of Gauel-kind tenure is no change of the nature of Gauelkind.

Chartre) may the Archebishop by a newe creation of tenure, make to his tenants any alteration, of this olde custome and manner. For, as the pleading is, 'Quod terræ prædictæ sunt de tenura & natura de Gauelkind:' euen so the trueth is, that the present tenure onely guideth not the discent, but that the tenure and the nature together, do gouerne it. And therefore, as on the one side, the custome can not attache, or take holde of that which was not before in nature subiect to the custome, that is to say, accidentally departed: So on the other side, the practise of the custome, long time continued, may not be interrupted, by a bare alteration of the tenure. And this is not my fantasie, but the resolution of all the lustices (as ludge Dalison him selfe hath left reported) 4. & 5. Philippi & Mariæ: And also of the Court 26. H. 8. 5. where it was affirmed, that if a man being seised of Gauelkind lande, holden in Socage, make a gift in tayle, and create a tenure in Knightes seruice, that yet this land must descend after the custome, as it did before the chaunge of the tenure.

A contrarie vsage, changeth not the nature of Gauelkinde.

Moreouer, as the chaunge of the tenure can not preuaile against this custome: So neither the continuance of a contrary vsage, may alter this prescription. For it is holden. 16. E. 2. Præscription. 52. in Fitzherbert, that albeit the eldest sonne onely hath (and that for manye discentes together) entered into Gauelkynde lande,

and occupied it without any contradiction of the younger brothers, that yet the lande remayneth partible betweene them, when so euer they will put to theyr claime. Againste whiche assertion, that whiche is sayde. 10. H. 3. in the title of Præscription. 64. name=ly of the issue taken thus, 'Si terra illa fuit partita nec ne,' is not greatly forceable. For although it be so, that the lande were neuer departed in deede, yet if it re=mayne partible in nature, it may be departed when so

395

euer occasion shall be ministred. And therefore, euen in the forme of pleading vsed at this day (Quod terra illa, a toto tempore &c. partibilis fuit, & partita) it is plainly ta=ken, that the worde (partibilis) onely is of substaunce, and that the worde (partita) is but a word of forme, and not materiall, or trauersable at all. Yea, so insepara=ble is this custome from the lande in whiche it obtey=neth, that a contrarie descent (continued in the case of the Crowne it selfe) can not hinder, but that (after such time as the lande shall resorte agayne to a common person) the former inueterate custome shall gouerne it. As for the purpose. Landes of Gauelkynde na=ture come to the Queenes handes, by purchase, or by eschete, as holden of her Manor of. A. Nowe after her deathe, all her sonnes shall inherite and diuide them: But if they come to her by forfayture in Treason, or by gifte in Parleament, so that her grace is seised of them in 'lure Coronæ:' then her eldest sonne onely (whiche shall be King after her) shall inioye them. In whiche case, although those landes whiche the eldest sonne (being King) did possesse, doe come to his eldest sonne after him (being King also) and so from one to another, by sundry descents: Yet the opinion of Syr Anthonie Browne was. 7. Elizab. that if at any time after, the same landes be graunted to a common person, they shall reuolte to their former nature of Gauelkynde, and be partible amongst his heyres males, notwith=standing, that they haue runne a contrarie course, in diuers the descents of the Kings before. But muche lesse maye the vnitie of possession in the Lorde, frustrate the custome of Gauelkynde descent, as it may appeare 14. H. 4. in the long Recordare. Only therefore these two cases I doubt of, concerning this point, and there=vpon iudge them meete to be inquired of.

396

That is to say, first, if a tenancie in Gauelkynd eschete to the Lord, by reason of a Ceasser (as hereafter it shall appeare that it may) or if it be graunted vnto the Lord by the tenant, without any reseruatiō, which Lord holdeth ouer by fee of Haubert, or by Serieancie (both which I take to be Knights seruice) whether now this tenancy be partible amongst the heires males of the Lord, or no. For the auncient treatise of the Kentishe Customes so determineth, but I wote not whether experience so al=loweth. The other dout is this, if it be so that any whole towne, or village in Kent, hath not at any time (that can be shewed) bene acquainted with the exercise of Gauel=kynde descent, whether yet the custome of Gauelkinde shal haue place there or no. Towarde the resolution of which later ambiguities, it shal tende somewhat to shew, how farre this custome extendeth it self within this our

heahbe=org, in Sax on, is a high defence: and the customs of Norman= die †that cal fiefe or fee, de Haubert whiche ow= eth to de= fend the land by full ar= mes, that is, by horse, haubert, target, sword, or

†r. 'call that'

helme: and
it consisteth
of. 300 a=
cres of land
which is the
same (as I
suppose)
that we cal=
led a whole
Knights fee

* The
custome
of Gauen=
kind is vni=
uersall in
Kent.

country.

* It is commonly taken therefore, that the custome of Gauenkind is generally, and spreadeth it selfe throughout the whole Shyre, into all landes subiect by auncient tenure vnto the same, such places only excepted, where it is altered by acte of Parleament. And therefore. 5. E. 4. 18. and 14. H. 4. 8. it is sayd, that the custome of Gauenkind is (as it were) a common law in Kent. And the booke. 22. E. 4. 19. affirmeth, that in demaunding Gauenkind lande, a man shall not neede to prescribe in certeine, and to shew, 'That the Towne, Borowe, or Citie, where the landes be, is an auncient towne, borowe, or citie, and that the custome hath bene there (time out of mynd) that the lands within the same towne, borow, or citie, shuld descend to al the heires males. &c.' But that is sufficient inoughe, to shewe the custome at large, and to say, 'That the land lyeth in Kent, and that all the landes there be of the nature of Gauenkynde.' For,

<397> 379

a writte of partition of Landes in Gauenkinde (sai the Maister Litleton) shalbe as generally, as if the landes were at the Common lawe, although the declaration ought specially to conteine mention of the Custome of the Countrie. This vniuersalitie therefore considered, as also the straitte bonde (whereby the custome is so inseparably knit to the land, as in manner nothing but an acte of Parleament can clearely disseuer them) I see not, how any Citie, Towne, or Borowe, can be exempted, for the only default of putting the Custome in vre, more then the Eldest Sonne (in the case before) may for the like reason prescribe against his yonger Brethren.

But here, before I conclude this part, I thinke good first to make Maister Litletons aunswere to suche as happely wil demaund, what reason this custome, of Gauenkinde discent hath, thus to diuide land amongst al the Males, contrarie to the manner of the whole Realme besides. The younger sonnes (saith he) be as good gentlemen, as the Elder, and they (being alike deare to theyr common auncestor, from whom they claim) haue so much the more neede of their friendes helpe, as (through their minoritie) they be lesse able then the elder Brother to help them selues: secondly to put you in remembrance also of the statute of Prærogatiua Regis, Ca. 16. Where it is said, that 'Fæminæ non participabunt cum Masculis;' The Females, shall not diuide with the Males: whiche is to be vnderstoode, of such as be in equall degree of kinred, as Brother and Sisters. &c. For, if a man haue issue three Sonnes, and the Eldest haue issue a daughter, and dye in the lyfe of his Father, and the Father dyeth: In this case (it is holden) that the daughter shall ioyne with the two other Brethren her Vncles, for that she is not in equall degree with them, as her Father was, whose heire she neuerthelesse must be of necessitie.

398

What
things shal
ensue the
nature of
the land.

And nowe, thus muche being spoken, touching the name, tenure, nature, generalitie, necessitie, reason, and order of Gauenkinde, it is woorthie the labour, to shew of what qualitie the Rents, Remainders, Conditions, Vouchers, Actions, and such other things (of the which some be issuing out of these landes, some be annexed vnto them, and some be raised by reason of them) shalbe.

Rent.	<p>In whiche behalfe, it may generally be said, that some of them shal ensue the nature of the Land, and some shal keepe the same course that common Lawe hathe appointed. But in particular, it is to be vnderstoode, that if a Rent be graunted in Fee out of Gauelkinde land, it shal descend to all the Males, as the land it self shall do.</p> <p>And, Ald. and Chart. in 7. E. 3. were of opinion, that albeit a tenancie be of Gauelkinde nature, yet the rent seruice, by whiche that tenancie is holden, might well be descendable at the common Lawe. The like shalbe</p>	
Remainder.	<p>of a Remainder of Gauelkinde land: for if it be tayled to the Heires Males, they altogether shall inherite it, as Fitzherb. and Norwiche two Iustices, thought. 26. H. 8. 8.</p> <p>But that is to be vnderstoode of a discent only: for if landes of Gauelkind nature be leassed for life, the Remainder to the righte Heires of l. at Stile. Which hath issue foure Sonnes and dieth, and after the Lessee for life dieth nowe the Eldest Sonne onely of l. at Stile shall haue this land, for he is right Heire, and that is a good name of purchase. 37. H. 8. Done. 42. en Maister Brook: But if the lands had been giuen to l. at Stile for life, the remainder to his next Heire Male, this had been an estate taile in l. S. himselfe, and then the Land (as I take it) should haue descended to all his Sonnes, in so muche as in that case the wordes (next Heire Male) be not a name of purchase. Howbeit, it was greatly doubted 3. & 4. Phil. & Mariæ (as Iustice Dalison reporteth) if a remainder be deuised by Testament (Proximo</p>	
		399
Voucher.	<p>hæredi masculino) whether in that case the Eldest Brother only shall haue it, in so muche as (in the vnderstanding of the Lawe, whiche is a Iudge ouer all Customes) he is the next Heire Male: and therefore inquire of it.</p> <p>As touching Vouchers, it appeareth. 11. E. 3. that all the Heires in Gauelkind shalbe vouched for the warrantie of their auncestour, and not the eldest only. But the opinion of Maister Littleton, and of the Iustices. 22. E. 4. is clearely: that the Eldest Sonne only shalbe rebutted, or barred, by the warrantie of the auncestour.</p>	
Condition.	<p>To be short, the Eldest Sonne only shall entree for the breach of a condition: but the rest of the Brethren shall be ioyned with him in suing a writte of Attaint, to reforme a false verdit, or error to reuerse an erroneous iudgement: And they all shalbe charged for the debte of their auncestour, if so be that they all haue Assetz in their handes: But if the eldest only haue Assetz remaining, and the residue haue aliened their partes, then he only shalbe charged after the minde of the Book. 11. E. 3. Det. 7. And this also for this part, at this time shall suffice. Now a word or twain, touching the trial of right in this Gauelkind land, and then forward to the rest of my purpose. There be at the common law, two sorts of trial in a writ of Right, by Battaile, and by the Graund Assise:</p>	tr. 'enter'
Attaint, and Error.	<p>of the which two, this Custome excludeth the one, and altereth the other. For, Battail it admitteth not at all, and the Graund assise it receaueth, not by the election of 4. Knights, but of 4. Tenants in Gauelkind, as it may be read in the auncient treatise of the Customes of this Countrie. But when I speake of the treatise of the Customes (you must know) I mean not that which was lately imprinted, but an other with much more faith and diligence long since exemplified: a Copie wherof you shall finde, at</p>	
No battail nor graund Assise in gauelkinde		<Tottell 1556>

the end of this Booke.

400

For, not only in this part, the wordes (Ne soient prises per battail) be cleane omitted in the imprinted Booke, but in sundrie other places also the wordes be mangled, the sentences be curtailed, and the meaning is obscured, as by conferrence of the variations, it may to any skilfull reader moste easily appeare. But all that, I will referre to the sight and iudgement of suche, as will searche and examine it, and (retourning to my purpose) shewe you, what belongeth to the Lorde of this Gauelkinde land, by reason of this Custome. And, for bicause the Prince is chiefe Lorde of all the Realme, (as of whome all landes within the same be either mediatly or immediatly holden) let vs first see what right (by reason of this custome) belongeth vnto him.

Forfaiture
in Felonie.

If Tenant in Fee simple, of Landes in Gauelkinde, commit felonie, and suffer the iudgement of death therefore, the Prince shall haue all his Chattels for a forfeiture: But as touching the Land, he shall neither haue the Eschete of it, though it be immediatly holden of himself, nor the Day, Yeare, and Wast, if it be holden of any other. For in that case, the Heire, notwithstanding the offence of his auncestour, shall enter immediatly, and enioye the landes, after the same Customes and seruices, by whiche they were before holden: in assurance whereof, it is commonly saide,

The Father to the Boughe,
The Sonne to the Ploughe.

But this rule holdeth in case of Felonie, and of murder only, and †in case not of treason at all: And it holdeth also in case where the offendour is †iustified by order of Law, and not where he withdraweth himselfe after the faulte committed, and will not abide his lawfull triall.

†r. 'not in case'
†r. 'iustised'

401 <sig 3E>

For if suche a one absent himselfe (after proclamation made for him in the Countie) and be outlawed: or otherwise, if he take Sanctuarie, and doe abiure the Realme, then shall his Heire reape no benefite by this Custome, but the Prince or the Lorde, shall take their forfeiture in suche degree, as if the Landes were at the common lawe. Whiche thing is apparant, both by the Booke. 8. E. 2 abridged by Maister Fitzherbert, in his title of prescription. 50. And by 22. E. 3. fol. Where it is saide, that this Custome shall not be construed by equity: but, by a straight and literal interpretation. And also by the plaine rehearsal of the saide treatise of the Customes it selfe. And in this behalfe also, some haue doubted, whether the Brother or Vncle shall haue the aduantage of this Custome, bicause the wordes thereof extend to the Sonne only: but let vs proceede.

There belongeth moreouer, due by the Tenant, to each common person, being his Lord of Land in Gauelkind, Suite to his Court, the oathe of fidelitie, and the true doing and payment, of all accustomed Rents, Dueties, and Seruices. Also if the Tenant dye, leauing his Heire, within the age of fifteene yeares: the Lorde hath the authoritie to committe the nouriture of the body, and the custodie of the goods, and landes of the infant, to the next of the kinred, to whome the inheritance cannot

descend. But, as neither the Lorde ought to take any thing for the custody, neither to tender to the Heire any marriage at all: So must he take good heede, that he credit not the custodie to any person, that shall not be able to answeere therefore. For if the Heire, at his full age of fiteene yeares, shall come to the Lordes Court, and demaunde his inheritance, although the Lord may distreine the Gardien to yeelde his accompt (as it appeareth. 18. E. 2. Auowrie. 220. Yet in de=

402

faulte of his abilitie, the Lord himselfe, and his Heires, remaine charged to the Heire for the the same.

Furthermore, if the Tenant shall withdrawe from the Lord his due rents, and seruices, the custome of this Countrie giueth to the Lorde, a speciall, and solemne kinde of Cessauit, and that after this manner.

Cessauit, in
Gauelkind.

The Lorde, after suche a Cessing, ought by award of his three weekes Courte, to seeke (from Courte to Court, vntill the fourth Court) in the presence of good witsnesse, whether any distresse may be found vpon the Tenement, or No: And if he can finde none, then at the fourth Courte it shalbe awarded, that he shall take the Tenement into his handes, as a distresse, or pledge, for the Rents and seruices, withdrawne, and that he shall deteine it one yeare and a day, without manuring it: within whiche time, if the tenant come, and make agreement with the Lord for his arrerage, he shall enter into his tenement againe: but if he come not within that space, then at the next Countie Courte the Lord ought openly to declare all that his former proceeding, to the end that it may be notorious: which being done, at his owne Courte, next following the saide Countie, it shalbe finally awarded, that he may enter into that Tenement, and manure it as his pro= per demeane.

And that the forfeiture, due to the Lord for this ceasser of his Tenant, was fiue pounds (at the least) besides the arrerages, it doeth well appeare by the olde Kentishe byword, recited in the often remembred treatise of these Customes.

Neg he syth seald and Neg he syth geld.

And fiue pound for the were, er he become heald

403

That is to say, 'Hathe he not since any thing giuen? nor hathe he not sence any thing payd? Then let him pay fiue pound for his were, before he become tenant, or holder againe:' But some copies haue the first verse thus.

'Nigond sithe seld, and nigon sithe gelde.' That is, 'Let him nine times pay, and nine times repay.' And here (by the way) it is to be noted, that this word (were) in olde time signified, the value, or price of a mans lyfe, estimation, or countenance: For, before the Conquest, each man in the Realme was valued at a certain summe of money, hauing regarde to his degree, condition, and woorthinesse, as is more at large shewed in the Table to the translation of the Saxon lawes, wherevnto for this purpose I will send you. This Custome of Cessauit, is set forth in the treatise of Customes, and hathe bene allowed of (as Maister Frowike. 21. H. 7. 15. re

ported) in time passed, but whether it be also at this day put in vre, I cannot certainly affirme.

But nowe, as these aduantages arise to the Lorde from his Tenant: So on the other side, the Lord also ought to suffer his Tenant to enioy the benefite of such customes as make for his auaille. And therefore, first he ought to let him alien his land at his owne pleasure, without suing to him for licence: He ought also to be contented with one suite to his Court for one tenement althoughe the same happen to be diuided amongst many: of verie right also he ought to admit an Essoine, if any be cast for the Tenant, whether it be in a cause of Plainte, or for common suite to his Courte: And lastlie he may not exacte of him any manner of othe, other then that of Fidelitie, whiche groweth due by reason of his Tenure.

Tenant by
the Courtesie.

And thus leauing the Lorde and his Tenant, let vs

404

come to the husband and the wife, and first shew what courtesie the husband shal finde by order of this custome after the death of his wife that was seised of landes of Gauelkind tenure: and then what benefite the wife may haue after the decease of her Husband dying seised of Landes of the same kinde and nature.

The Husband (saith our treatise of Gauelkind Custome) shall haue the one halfe of suche Gauelkind land, wherein his wife had estate of inheritance, whether he had issue by her or no: And shall holde the same during so long time, as he wil keepe him selfe widower, and vnmarried. For if he marrie, he looseth all. Neither may he committe any waste, more then Tenant by the courtesie at the common lawe, may. So that one way (namely, in that he shall haue his wiues land for lyfe though he neuer had issue by her) this our Custome is more courteous then the common lawe: but an other way, (I meane in that he shall haue but the one halfe, and that with a prohibition of second marriage) it is lesse beneficiall. Howsoever it be, it holdeth place, and is put in practise at this day.

Tenant in
Dower,
The difference
betweene
common Lawe,
and Custome
therin.

The wyfe likewise, after the death of her Husband, shall haue for her lyfe, the one moitie of all such landes of Gauelkind tenure, whereof her Husband was seised of any estate of inheritance during the couerture betweene them. Of whiche Custome also, though it exceede common measure, the common lawe of the Realm (bearing alwaies speciall fauour to Dower) hath euer more euen hitherto shewed good allowance: Neuertheless, as tenant by the courtesie after this Custome, had his conditions annexed: so tenant in Dower, by the same Custome, wanteth not some conditions following her estate. One, that she may not marrie at all: and an other, that she must take diligent heede, that she be not found with Childe, begotten in fornication. For in either case she must

405

loose her Dower: But yet so, that lawful matrimonie is by a meane (contrarie to the Apostolique permission) vterly forbidden, And the sinne of secret Lecherie (according to the Popishe Paradoxe, 'Si non caste tamen caute') is in a sorte borne and abidden, Seeing that by this custome, she forfeiteth not in this later case, vnlesse the childe be borne, and heard to crye, and that of the coun=

trey people, assembled by hue and crye: For then (sayth the custome) Se that his wende,
Se his lende:

But corruptly, for in true Saxon letters it standeth thus

Se that hire wenSe.

Se hire lenSe. That is to say,

He that dothe turne, or wende her:

Let him also giue vnto her, or lende her.

And thus the custome, making like estimation of both the cases, depriueth her of her liuing, as well for honest marriage, as for filthy fornication. In whiche behalfe, as I must needes confesse, that the later condition hath reason, bycause it tendeth (though not fully) to the correction of sinne and wickednesse: So yet dare I affirme, that the former is not onely not reasonable, but meerely leud and irreligious also. For, although the Ethnikes did so much magnifie wydowhood, that (as Valerius reciteth) 'Fæminas, quæ vno matrimonio contentæ erant, corona pudicitiaë honorabant,' and although that the common law also (being directed by the Popishe Clergie, whiche therein followed the error of Ierome) dothe in another case, by the name of Bigamie, dislike of a womans seconde marriage: Yet Saint Paule sayth plainely, 'Mulier, si dormierit maritus eius, libera est, vt cui vult nubat, modo in Domino.' But yet for all this, seeing that our treatise of vsages reciteth it, seeing also that common experience of the countrey approueth it, and that the common lawe

406

of the Realme (as it may be read, Prærogatiua Regis Cap. 16. & 2. H. 3. in Præscription. 59.) admitteth it: let vs also for this place and purpose, be contented to number it amongst our customes, and so proceed with the residue. It appeareth, by that whiche is already sayde, that the common lawe, and this custome, differ in two things concerning Dower: One, in that the common lawe giueth but a thirde parte, whereas the custome vouchsafeth the halfe: Another, in that this custome giueth conditionally, whereas the gifte of the common lawe, is free and absolute. Nowe therefore, there remaine to be shewed, certeine other pointes, wherein they varie also. As, if the husband commit Felonie: at the common law, his wife hath lost her title of Dower, but by the custome of this countrey, she shall not loose her Dower for the faulte of her husbände, but only in suche case, where the heire shall loose his inheritance, for the offence of his father. Which thing is manifest, both by the treatise of our Kentishe customes, and by the opinion of the Court 8. H. 3. Præscription. 60. At the common lawe also, the wife shall be endowed of a possession in lawe, but (as me thinketh) she shall haue no Dower by this custome, but onely of suche landes, whereof her husband was actually and really seised. For the wordes be (Des tene-ments, dount son Baron morust †seiset, et vestu,) which word (vestu) being cleane omitted in the imprinted booke, inforceth a possession in deede, and not in lawe only. And therefore, if landes in Gauelkinde descend to a married man, whiche dyeth before he make his entrie into the same, inquire whether it be the manner to endowe his wife therof, or no: for vse is the only Oracle that in this case I can sende you vnto. Againe, at the common law, a woman shal be endowed of a faire, or of any such other profit. But, (for as muche as the wordes of this

†r. 'seisei'

customarie Dower, be (terres & tenements) and for that all customes shall finde a literall and streight interpretation) the opinion of Maister Parkins is, that no Dower lyeth of a faire, by this custome. Furthermore, if the wife recouer her Dower at the common law, she ought of necessitie to be endowed by metes and boundes: But in Dower after this custome (sayth the same outhour) she may very well be endowed of a moitie, to be holden in common with the heire, that inioyeth the other half. Lastly, this custome, besides Dower of the one halfe of the husbandes lande, prouideth Dower of the moitie of suche goods also, as he dyed possessed of, if he had no children, and of the thirde part, though he leaue issue: whereas the common lawe (at the least in common practise at this day) hath no consideration of any suche endowment. These then be the differences, betweene the common lawe of the Realme, and the particular custome of this countrey concerning Dower: the comparison whereof, and whether sort of Dower is more beneficiall, I will not now attempt, and much lesse take vpon me, to determine, least I my selfe might seeme rashly to preiudicate in another thing, wherein I most gladly desire to be iudged by other men: namely, whether a woman, intituled to Dower in Gauelkind, may [†]waine her Dower of the moitie after this custome, and bring her action to be endowed of the thirde at the common lawe, and so exempt her selfe from all danger of these customarie conditions, or no? The Resolution of whiche doubt, will depend chiefly vpon comparison, whether it be more aduantage to her, to haue the thirde at the common lawe absolutely, or the moitie by the custome conditionally. For if the Dower at the common law be better for her, then it seemeth reasonable that she should stande to the worse, whiche is the custome: euen as tenant by the

<Perkins>

Dower of chattels.

†r. 'waieue'

curtesie, must take the moitie that the custome giueth, and not aske the whole, as Common lawe appointeth. And yet thereto it may be replied, that the cases be not like: for so muche as that of Dower is much more to be fauoured. I my selfe once heard two reuerend Iudges of opinion, that the woman was at libertie, to aske her Dower of the Thirde, or of the Moitie: But bycause it was vttered by them in a passage of soudaine speache, and not spoken vpon studied argument, I will not vse the authoritie of their names, to get the matter credite with all, but leaue it at large, to be better inquired of.

Partition of chattels.

After the husbande and the wife, there followeth next in order of our diuision, the childe and his Gardein, whom also (since they be Relatiues, as the other be, and that their interests carrie a mutuall, and Reciproque eye, eche hauing respect to other) we will likewise couple together in one treatise. And bycause the custome was wont to commit the custodie, not of the landes only (as the common lawe doth) but of the goods and chattels also, we will first shewe, what portion of goods did growe to the childe, by the death of his parent.

Partition of chattels.

The manner of this countrey sometime was (as it appeareth by our olde treatise) that after the funeralles of the deade man perfourmed, and his debts discharged, the goods should be diuided into three equall portions, if

he lefte any lawfull issue behinde him: of whiche three, one parte was allotted to the deade, for performance of his legacies: another to the children, for their education: and the thirde to the wife for her sustentation and maintenance: But if he had no children left on liue, then was the diuision into two partes onely: of whiche, the one belonged to the wife for her endowment, and the other to her departed husbände, to be bestowed by his executors, if he made a testament, or by the discretion of

409 <sig 3F>

London.

the ordinarie, if he died intestate. The selfe same order is at this day obserued in the Citie of London, and the same in effect, was long since vsed throughout the whole Realme. For it is euident, bothe by the lawe of King Canutus before remembred, by Maister Glanuille in his booke Ca. 18. and by the wordes of Magna Carta, that the wyfe and Children had their reasonable partes of the goods by the common lawe of the Realme, howsoever it came to passe at the length, that it was admitted for law but in such Countries only, where it was continued by daily vsage (as it is holden. 17. E. 2. and in many other bookes) and that al the writs in the Register 'De rationabili parte bonorum,' haue mention of the speciall Custome of the Shyre, in whiche the part is demaunded. But as in deede at this day, partition of Chattels is not vsed (though in the meane time it hath not lost the force of common lawe as many thinke) through out the whole Realme: so is it (so far as I can learne) vanished quite out of all vre within this Countrie also. And therefore, seeing the Gardein is deliuered of this charge, we also wil leaue to speake further of the goods, and come to the partition and custodie of the land of this Infant.

Partition,
of Gavel=
kinde lands

If a man die seised of landes in Gavelkinde, of any estate of inheritance, al his Sonnes shal haue equal portion: and if he haue no Sonnes, then ought it equally to be diuided amongst his daughters: But yet so, that the eldest Sonne or Daughter, hath by the Custome a preeminence of election, and the youngest Sonne or Daughter, a preferment in the partition. For as of auncient time, there ought to be graunted to the eldest, the firste choice after the diuision: so to the parte of the youngest, there ought to be allotted in the diuision, that peice of the Mesuage, whiche our treatise calleth Astre. By whiche

(Astre)
what it
meaneth.

410

word is ment, (as I coniecture, for otherwise I haue not learned) either the Hall, or chiefe roome of the house, either els the well for water, or the Southe side of the building. For (Astre) being sounded without (s) may come of the Latine woord Atrium, whiche signifieth a Hall, or of Hastrum, whiche betokeneth the Bucket of a well, or of Austrum, the Southe side: euery of whiche haue their particular commodities about the rest of the house or tenement. Or otherwyse (if that shal like any man better) being sounded with (s) it may be deduced from the Frenche word (Asistre) by contraction (Astre) whiche is as much, as a site, or situation, and with the Article (le) before it (Lestre) a Churchyard, or Court about a house. But whatsoever the woord meane, I will not longer labour in it, seing that at this day there is no suche regarde made in the partition, but only consideration had that the partes them selues be equall

and indifferent. Now therefore, if the Childe be vnder the age of 15. yeres, the next Cousin, to whom the inheritance may not descend, shal haue the education, and order of his body, and landes, vntill suche time as he shall attaine to that age, euen as the Gardein in socage at the common law shall keepe his vntill the warde aspire to foureteene. And in all other things also, this customarie Gardein is to be charged and to haue allowance, in suche sorte, and none other, then as the Gardein in socage at the common law is: Saue only (as it is partly remembred already) that he is bothe chargeable to the Heire in accompt for his receipt, and subiect also to the distresse of the Lord for the same cause. Yet doe I not heare, that the Lordes take vpon them (at this day) to committe the custodie of these Infants, but that they leaue it altogether to the order of the next of the Kinne, the rather (belike) for that they

Gardein, after the custome.

411

them selues (if they intermedle) stande chargeable, in default of the abilitie of suche as happely they might create therewithall. So that vpon the whole matter, the oddes consisteth only in this, that Gardein in Socage at the common Lawe shall keepe the land till the Infant be foureteene yeares of age, and Gardein by this custome till he haue attained fully fifteene: whiche diuersitie, ariseseth not without great reason: For whereas the Infant in Socage at the common law, cannot make alienation of his land vntill he haue reached to the full age of 21. yeares (although he be long before that, free from all wardship) The Infant in Socage by this Custome, may giue and sell his land so sone as he is crept out of this Custodie.

Sale is at 15. yeares

And therefore it was expedient (at the leaste) to adde one yeare to the common Lawe, before he should be of power to depart with his inheritance, which otherwise (being vnadvisedly made away) might worke his owne impouerishment and ouerthrowe. And truly it seemeth to me, that the Custome it selfe hath a watchefull eye vpon the same matter, in so much as it licenceth him at fifteene yeares, 'Not to giue his Land' (for that he might doe for nothing) 'But to giue and sell his Land,' whiche it meaneth he should not doe without sufficient recompence. Suche like interpretation, the common Lawe also seemeth to make of this custome both by the opinion of Vauasor. 5. H. 7. who said that it was adiudged that a release made by such an Infant was void: by the sentence of the Booke. 21. E. 4. 24. where it was said, that an infant cannot declare his will vpon such a Feoffment: and by the iudgement of Hank. 11. H. 4. who also helde, that a warrantie, or graunt of a reuersion made at suche age, was to no purpose

412

at all, although a lease with release might happely be good by the Custome, bicause that amounteth to a Feoffment. And, in my simple iudgement, it is not fit that this Custome should be construed by equitie, for as muche as it standeth not with any equitie, to enable an infant, of litle discretion, and lesse experience, to sell his land, and not to prouide withal that he should haue, 'Quid pro quo,' and some reasonable recompence for the same: for that were, not to defend the Pupill and Fatherles, but to lay him wyde open to euery slye deceit,

Sale good
at. 15. yeares

and circumvention. In whiche respect, I cannot but very well like of their opinion, who holde, that if an Infant in Gavelkinde, at this day will sell at xv. yeares of age, these three things ought of necessitie to concurre, if he will haue the sale good and effectuell. The firste, that he be an heire, and not a Purchasour, of the land that he departeth withall: The second, that he haue recompence for it: and the third, that he do it with liuerie of seison by his owne hand, and not by warrant of Attourney, nor by any other manner of assurance. And these men for prooffe of the first and second point of their assertion, doe builde vpon the wordes of our written Custome, where it is saide 'Del heure que ceux heirs de Gavelkinde, soient, ou ount passe lage de. 15. ans, list a eux, lour terres & tenementes, Doner & Vender)' in whiche, the wordes (Ceux Heires) doe restraine the Infant that commeth in by Purchase: And (Doner & Vender) in the copulatiue, (for so they lye in deede, though the imprinted booke haue them disiunctiuely) doe of necessitie implie a recompence, for as muche as, 'Vendere,' cannot be 'Sine precio.' And for maintenance of the third matter, they haue on their part, besides the common vsage of their owne Countrie, the common lawe of the whole Realme also: which expoundeth the word (Doner) to meane a Feoffment (as

413

I haue before shewed) and whiche not onely disalloweth of any gifte made by an infant, but also punisheth the taker in trespas, vnlesse he haue it by liuerie from the infantes owne handes.

Thus haue I runne ouer suche customes, as by meane of this Gavelkinde tenure doe apperteine, eyther to the Lorde or the Tenant, the husbände or the wife, the childe or the Gardein: To these I will adde (as I promised) confusedly, a fewe other things, of the whiche, some belong generally to the Kentishe man throughout the whole Shyre: Some to the inhabitants of some particular quarter of the countrie: and some to the tenants in Gavelkinde onely, and to none other.

No villains
in Kent.

It appeareth, by claime made in our auncient treatise, that the bodies of all Kentishe persons be of free condition, whiche also is confessed to be true. 30. E. 1. in the title of Villenage. 46. in Fitzherbert: Where it is holden sufficient for a man to auoide the obiection of bondage, to say, that his father was borne in the Shyre of Kent: But whether it will serue in that case to saye, that him selfe was borne in Kent, I haue knowne it (for good reason) doubted.

Apparance.

It seemeth by the same treatise, that suche persons as helde none other lande then of Gavelkinde nature, be not bounde to appeare (vpon Sommons) before the lustices in Eire, otherwise then by their Borsholder, and foure others of the Borowe, a fewe places only excepted. The like to this Priuilege is inioyed at this day in the Sherifes Lathe, where many whole Borowes be excused by the onely apparance of a Borsholder, and two, foure, or sixe other of the inhabitants.

Commen.

Furthermore, I haue read in a case of a written report at large of. 16. E. 2. whiche also is partly abridged by Fitzherbert, in his title of Præscription, that it was

414

tried by verdite, that no man ought to haue commen in

landes of Gauelkinde, Howbeit, the contrarie is well knowne at this day, and that in many places.

Chase and driue out.

The same booke sayeth, that the vsage in Gauelkind is, that a man maye lawfully in chase, or driue out into the highe way to their aduenture, the beastes of any other person, that he shal finde doing damage in his land, and that he is not compellable to impounde them, which custome seemeth to me directly against the rule of the common lawe, But yet it is practised till this present daye.

Attaint.

The Parleament 15. H. 6. 3. minding to amplifie the Priuileges of Gauelkinde, graunted to the tenants of that lande, exemption in Attaints, in suche sort as the inhabitants of auncient demeane, and of the Fiue Ports before had: But within three yeares after, vpon the complaint of some of the Gentz of the Countrie (whiche informed the Parleament house that there was not in the whole Shyre aboute the number of 30, or 40. persons, that helde to the value of 20. li. land, out of Gauelkinde, who in default of others, and by reason of that exemption, were continually molested by returnes in Attaintes) that Acte was vtterly repealed.

Chaunging of wayes.

The [†]Satute. 14. H. 8. Cap. 6. giueth libertie to euery man, hauing high way (through his Land in the Weald) that is worne deepe, and incommodious for passage, to lay out an other way, in some suche other place of his land, as shalbe thought meete by the viewe of two Iustices of the Peace, and twelue other men of wisdom and discretion. Finally, the generall Lawe, made 35. H. 8. 17. For the preseruacion of Copies woodes, thorough out the Realme, maketh plaine exception of all woodes within this Weald, vnlesse it be of suche as be common.

[†]Goppies.

415

Thus muche, concerning the customes of this oure Countrie, I thought good to discourse, not so cunningly (I confesse) as the matter required, nor so ampie as the argument would beare (for so to doe, it asketh more art and iudgement, then I haue attained) But yet sufficiently (I truste) for vnderstanding the olde treatise that handleth them, and summarily inough for comprehending (in manner) whatsoever the common, or Statute, lawe of the Realme hath litterally, touching them, whiche is as muche as I desired. Now therefore, to the end that neither any man be further bound to this my discourse vpon these customes, then shalbe warranted by the Customes themselues, neither yet the same customes be henceforth so corruptly caried about as hitherto they haue beene, but that they may at the length be restored to their auncient light and integritie, I will set downe a true and iust transcript of the very text of them, taken out of an auncient and faire written roll, that was giuen to me by Maister George Multon my Father in lawe, and whiche some time belonged to Baron Hales of this Countrie. I wil adioyne also, mine owne interpretation in the English, not of any purpose to binde the learned vnto it, but of a desire to infourme the vnlearned by it.

416

Kent.

These are the vsages,
417 <sig 3G>
due out of the same
418
seruices and customes,
419
shall haue their Eschetes
420
let them be departed
421
And if there be
422
cation. And this is to be
423
and the countrie be assembled,
424
rendred (giuen vp) by his tenaunt
425 <sig 3H>
tenement, whereby he may
426
rehaue his tenements, and hold them
427
Henry the 3 father of King E.
since till now.
428
The names of such persons, as pro=
cured their possessions to be altered from the na=
ture of Gauelkinde, by acte of Parleament
made. 31. H. 8. Cap. 3.
Thomas Lord Cromwell.
Thomas Lord Burghe.
George Lord Cobham.
Andrew Lord Windsore.
Syr Thomas Cheyne.
Syr Christopher Hales.
S. Thomas Willoughbie.
S. Anthonie Seintleger.
S. Edward Wootton.
S. Edward Bowton.
S. Roger Cholmley.
S. Iohn Champneys.
Iohn Baker Esquier.
Reignold Scot.
Iohn Guldeford.
Thomas Kempe.
Edward Thwaites.
William Roper.
Anthonie Sandes.
Edwarde Isaac.
Perciuall Harte.

Edward Monyns.
William Whetnall.
Iohn Fogg.
Edmund Fetiplace.
Thomas Hardres.
William Waller.
Thomas Wilforde.
Thomas Moyle.
Thomas Harlakenden.
Geffrey Lee.
Iames Hales.
Henrie Hussey.
Thomas Roydon.

The names of suche, as be
likewise prouided
for. . E. 6. Ca.

Syr Robert Southwell.
S. Iames Hales.
S. Walter Hendley.
S. George Harper.
S. Henrie Isley.
S. George Blage.
Thomas Colepeper of
Bedgebirie.
Iohn Colepeper of Ailes=
forde.
William Twisden.
Tho. Darrell of Scotney.
Robert Rudston.
Thomas Roberts.
Stephan Darrell.
Richard Couarte.
Christopher Blower.
Thomas Hendley.
Thomas Harman.
Thomas Louelace.
Thomas Colepeper.

429

The names of suche, as be specified
in the acte made for the like cause,
5. Elizabeth. Cap.

Thomas Browne of Westbecheworthe
in Surrey.
George Browne.

It were right woorthie the la=
bour, to learne the particu=
lars and certeintie, (if it may
be) of all suche possessions, as
these men had, at the times
of these seuerall Statutes, for
that also wilbe seruiceable
in time to come.

<Though a version of the 'Customs of Kent' had already appeared in print (Tottell 1556), Lambard decided to produce a new and better edition (based, as he says, on a manuscript given to him by his father-in-law, George Multon), with a translation (from thirteenth-century French into sixteenth-century English) inserted between the lines. He also decided to supply his own introduction, commenting on the points of difference between Kent and the rest of England. A draft of this introduction, dated Feb 1572, is one of the additions in Lambard's working manuscript (CKS-U47-48, fos 160r-9v); having only skimmed through it, I cannot say how far the published version diverges from it. The present file is just an extract from my transcription of Lambard's book; except for adjusting the position of some of the notes in the margin, I have made no changes at all. I do not reproduce the French text itself; anyone who wants to see it will find it reprinted and annotated by Robinson (1741) at the address given below. – C.F. August 2010.>

<http://www.archive.org/stream/commonlawkentor02robigoog#page/n305/mode/2up>