

William Lambard
A perambulation of Kent (second edition)
London
1596

A Perambulation
of Kent:

Conteining the Description, Hystorie, and
Customes of that
Shyre.

Written in the yeere 1570 by
William Lambarde of Lincolnes
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The Customes of Kent.

Although good order mighte
haue borne the rehearsall of the
ancient Customes of this shire,
in that generall discourse which
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 manifold) might
haue beene thought too great a Parenthesis, or rather
an interruption of the Historie, wherein wee
were as then but newly entred, I thought it better
to reserue them for this place: to the ende, that
both the one and the other, might appeere, without
breach, or confusion.

These Customes, therefore, being (for the most
part) discrepant from the common lawes of our

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Realme, and annexed to such landes within this
Shyre, as beare the name of Gavelkinde, are commonly
called Gavelkinde Customes, for that they preuaile
and haue place, in landes of Gavelkinde nature.
In which respect, it shall not be amisse to shew,
for what reason those landes were at the first so
termed, and why they doe 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 dutie
and seruices, that they yeelde: bothe which I will
not sticke to recite, and yet leaue to each man
free choice, to receiue either, or to refuse both,
as it shall best like him.

The name
Gauelkind,
whereof it
arose.

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I gather by Cornelius Tacitus, and others, that the auncient Germans, (whose ofspring we be) suffered their landes to descende, not to the Eldest Sonne alone, but to the whole number of their male Children: and I finde in the 75 Chapter of Canutus lawe (a King of this Realme before the Conquest) that after the death of the father, his heires shoulde diuide both his goods, and his lands amongst them.

Now, for as much as all the next of the kinred did this inherite together, I coniecture, that therefore the land was called, either Gauelkyn, in meaning Giue all kyn, because it was giuen to all the next in one line of kindred: or Giue all kynd, that is, to all the male children: for kynd, in Dutche, signifi-

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eth yet a male childe. Besides this, the Welshmen also (who but now lately lost this custome) do in their language call this discent, Gwele, and in their Latine Recordes, Lectus, progenies, & gauella, of their own woord, Gefeilled, which signifieth Twins, or such as be borne together, because 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 countrie, do yet call their partition of lande (shifting) euen by the very same woord that the lawe of Canutus many yeeres since termed it, namely (Scyftan) in Latine, Herisciscere, that is, to shift, depart, or diuide land.

My other coniecture, is raised vpon the consideration of the rent and seruices going out of these landes: for it is well knowen, that as Knights seruice lande, required the presence of the tenant, in warfare and battaile abroad: So this land (being of Socage tenure) commaunded his attendance at the plough, and other the Lordes affaires of husbandry, at home: the one by manhoode defending his Lordes life and person, the other by industrie mainteining with rent, corne, and victual, his estate and familie.

This rent, and customarie paiment of woorkes, the Saxons called, gafol, and thereof (as I thinke) they named the lande that yeelded it gafollete, or gafolcynd. that is to say, lande Letten for rent, or of the kinde to yeelde rent. In this sense I am sure, that the rents, customes, and seruices, which the

To shift land,
is an olde
terme,

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tenants of London pay to their lande lordes, were wont (and yet are) to be recouered, by a Writ, thereof called Gauellet, as by an auncient statute, made in the tenth yeere of king Edward the second, intituled, 'Statutum de Gaeleto,' in London, and by daily experience there, it may well appeere. Thus much then concerning the Etymon of this woorde Gauelkinde, being said, let vs proceede further.

It hath already appeered, how the Kentishmen, immediatly after the Conquest, obtained the continuation of their customes: and it is very manifest by auncient writers, that the same (for the more part) haue beene in vre and exercise euer since. For

The antiqui=
tie of Gauel=
kind custome.

(omitting that which Thomas Spot hath written concerning the same matter, for as much as it is already recited at large) Glanville, a learned man, that flourished in the reigne of king Henrie the second, in his seuenth booke, and thirde chapter: Bracton, that liued in the time of king Henrie the third, in his second booke, 'De acquirendo rerum domino.' And Bretton, that wrate vnder king Edwarde the first, and by his commandement: haue all expresse mention, of landes partible amongst the males by vsage of the place, and some of them recite the very name of Gavelkind it selfe. But most plainly of all, an auncient Treatise, receiued by tradition from the handes of our elders (whereof I my selfe haue one exemplar, written out, as I suppose, in the time of King Edwarde the first) agreeing with the daily practise of these customes, prooueth the continuance of them, to stand with good lawe and

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The diuision of this discourse.

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What lands be of Gavelkind nature.

Some Knight fee, is Gavelkind.

liking. And therefore, forbearing (as needlesse) further testimonie in that behalfe, I will descende to the disclosing of the customes themselues: not numbring them by order as they lye in that treatise, but drawing them forth as they shal concerne, either the lande it selfe, or the persons that I will orderly speake of, that is to say, particularly the Lord and the Tenant: The husband and the wife: The childe and the gardien, and so after addition of a few other things incident to this purpose, I will drawe to an end.

As touching the lande it selfe, in which these customes haue place, it is to be vnderstanded, that all the lands within this Shyre, which be of auncient Socage tenure, be also of the nature of Gavelkind. 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 Knights seruice of the Archbishop of Canterbury, are neuerthelesse departible, as it may appeere by an opinion of the Iudges in the Kings Benche, 26. H. 8. fol. 4. And that grew by reason of a graunt, made by King Iohn, to Hubert the Archbishop, the tenor whereof (being exemplified out of an auncient roll, late remaining in the handes of the deceased Reuerend father, Mathew, the Archbishop) hereafter followeth.

'Ioannes Dei gratia, Rex Angliæ, Dominus Hiberniæ, Dux Normaniæ, Aquitaniæ, & Comes Andegauen. Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baro-

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nibus, Iusticiariis, Vicecomitibus, Præpositis ministris, & omnibus Balliuis, & fidelibus suis: Salutem. Sciatis nos concessisse, & præsentis charta nostra confirmasse, venabili patri nostro ac Chro. Huberto, Cantuar. Archiepiscopo, & successoribus suis in perpetuum, quod liceat eis terras, quas homines de feodo Ecclesiæ Cantua. tenent in Gavelkind, conuertere in feodo militum. Et quod idem Episcop. & 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. Et homines illi, & hæredes eorum, eandem & omnem libertatem habeant in perpetuum, quam alii milites de feodo Ecclesiæ Cantuar. & hæredes eorum habent. Ita tamen, quod nihilo minus 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

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S. Archid. Willielmi apud Rupem auriual. 4. die Maii Anno regni nostri tertio.' **And I finde a Note of a Recorde, within 4. yeeres after, to this effect:** 'Henricus Pratt dat Regi. 2. palfredos, pro habenda confirmatione Domini Regis de 4. iugatis & 5. acris terræ, in villa de Bradborne in Gauelkynd ad tenendum de cætero in dimidio feodi militis, sicut Charta Baldwini de Betun Comitis Albemarlæ testatur: Fyn. Reg. Ioannis, memb. 8.' But now for as much as it is disputable, whether **these actes** of the King and other men be of sufficient vertue to chaunge the nature of the Gauelkynd land or no, and for that the certeintie of **all** the landes so conuerted into Knight fee, doth not anywhere (that I haue seene) appeere (onely in **a copie** of the booke of Aide, leuied in this Shire, Anno. 20. Edward. 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 prooue, 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 the acte of Parleament, made. 31. H. 8. Ca. 3. by which statute, the possessions of certeine Gentlemen (there named) were deliuered from this custome discent, and incorporated to the common lawe. For (amongst other things) in that acte it is

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saide, 'That from thencefoorth, such their landes shall be changed from the said Custome, and shall descend as lands at the common lawe, and as other lands being in the saide countie of Kent, which neuer were holden by seruice of Socage, but alwaies haue beene holden by Knights seruice, do descend.' By which words it is verie euident, that the makers of that

estatute, vnderstood all lands holden by Knights ser= uice, to be of their proper nature descendable after the common lawe, and that Socage tenure was the onely subiect in which this our custome of Gauel= kynd discent **had place and** preuailed.

Auncient Knight fee, is not of the nature of Gavelkind.

But when I thus speake of Socage, and Knights fee, I must alwaies 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 hand, who afterwarde giueth the same out againe to a common person, to be holden of his Manor of Eastgrenewiche in Socage, I suppose that this land (notwithstanding the alteration of the tenure) remaineth descendable to the eldest son 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 either of the Prince in Capite, or by Knights seruice of any Manor, I thinke it ought to descend according to the custome, notwithstanding that the tenure be altered.

And if this be true, in the graunt of the King

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The change of Gavelkind tenure, is no change of the nature of Gavelkind.

himselfe, then much lesse (sauing the reuerence due to King Iohns Chartre) **might the Archbishop or any other** by a new creation of tenure, make to his tenants any alteration, of this olde custome and maner. For, as the pleading is, 'Quod terræ prædictæ sunt de tenura & natura de Gavelkind.' Euen so the truth is, that the present tenure only guideth not the discent, but that the tenure and the nature together, do gouerne it. And therefore, as on the one side, the custome cannot attache, or take holde of that which was not before in nature subiect to the custome, that is to say, accustomedly 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 Iustices (as Iudge Dalison himselfe 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 Gavelkind lande, holden in Socage, make a gift in taile, and create a tenure in Knights seruice, that yet this land must descend after the custome, as it did before the change of the tenure.

A contrarie vsage, changeth not the nature of Gavelkind.

Moreouer, as the change of the tenure cannot preuaile against this custome: So neither the continuance of a contrarie vsage, may alter this prescription. For it is holden. 16. E. 2, Præscription. 52. in Fitzherbert, that albeit the eldest sonne only hath (and that for many discentes together) entered into Gavelkynde land, and occupied it without any contradiction of the younger brothers, that yet the

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lande remaineth partible betweene them, when so euer they will put to their claime. Against which assertion, that which is saide 10. H. 3. in the title of Præscription. 64. namely of the issue taken thus, 'Si

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terra illa fuit **partibilis, & partita, nec ne,** is not greatly forceable. For it is not expressly there spoken of Kent (where the custome is most generally) and although it were so that the lande were neuer departed in deede, yet if it remaine partible in nature, it may be departed when so 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 taken, that the woord (partibilis) onely is of substance, and that the woorde (partita) is but of forme, and not materiall, or trauersable at all. **And this caused them of the Parlement (31. H. 8. cap. 3.) to speake in the disiunctiue, 'that haue beene departed, or bee departible.'**

Yea, so inseparable is this custome from the land in which it obtaineth, 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 resort againe to a common person) the former inueterate custome shall gouerne it. As for the purpose. Landes of Guelkynde nature come to the Queenes handes, by purchase, or by eschete, as holden of h<e>r Manor of A. **which she purchased.** Now after her death, all her sonnes shall inherite and diuide them: But if they come to her by forfeiture in Treason, or by gifte in Parlement, so

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that her Grace is seised of them in 'lure Coronæ,' then her eldest sonne onely (which shall be King after her) shall enjoye them. In which case, although those lands which 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 sundrie descents: Yet the opinion of Sir Anthonie Browne was 7. Elizab. that if at any time after, the same lands be graunted to a common person, they shall reuolt to their former nature of Guelkynde, and be partible amongst his heires males, notwithstanding, that they haue runne a contrarie course, in diuers the descents of the Kings before. But much lesse **then** may the vnite of possession in the Lorde, frustrate the custome of Guelkynd descent, as it may appeere 14. H. 4. in the long Recordare. Onely therefore these two cases I doubt of, concerning this point, and thereupon iudge them meete to be inquired of. That is to say, first, if a tenancie in Guelkynde eschete to the Lord, by reason of a Ceasser (as heereafter it shall appeere, that it may) or if it be graunted vnto the Lorde by the tenant, without any reseruatiou, which Lorde holdeth ouer by fee of Haubert, or by Serieancie (both which I take to be Knights seruice) whether now this tenancie be partible amongst the heires males of the Lord or no. For the auncient treatise of the Kentish Customes so determineth, but I wot not whether experience so alloweth. The other doubt is this, if it be so that any whole towne, or village in Kent, hath not at any time (that can be

heahberg, in Saxon is a high defence: and the customes of Normandie call that fiefe, <396> or fee, de Haubert, which oweth to defend the land by full armes, that is, by horse, haubert, target, sworde, or helme: and it consisteth of 300. acres of land, which is the same (as I suppose) that we called a whole knights fee.

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shewed) beene acquainted with the exercise of Ga-

uelkynde discent, whether yet the custome of Gauelkynde shall haue place there or no. Toward the resolution of which later ambiguitie, it shall tende somewhat to shewe, how farre this custome extendeth it selfe within this our countrey.

The custome of Gauelkind is vniuersall in Kent.

It is commonly taken therefore, that the custome of Gauelkynde is generall, and spreadeth it selfe throughout the whole Shyre, into all landes subject by auncient tenure vnto the same, such places onely excepted, where it is altered by acte of Parleament. And therefore 5. E. 4. 8. and 14. H. 4. 8. it is saide, that the custome of Gauelkynde is (as it were) a common law in Kent. And the book 2. E. 4. 19. affirmeth, that in demaunding Gauelkynde lande, a man shall not neede to prescribe in certaine, 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 been there (time out of minde) that the lands within the same towne, borow, or citie, should descend to all the heires males.' But that it is sufficiently ynough, to shew the custome at large, and to say, 'That the lande lieth in Kent, and that all the landes there be of the nature of Gauelkinde.' For, a Writ of partition of Landes in Gauelkynde (saith Maister Litleton) shall be as generall, as if the lands were at the Common lawe, although the declaration ought specially to conteine mention of the Custome of the Countrey. This vniuersalitie therefore considered, as also the strait bond (whereby the Custome is so inseparably knit to the land,

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as in manner nothing but an acte of Parleament can cleerly disseuer them) I see not, how any City, Towne, or Borow, can be exempted, for the onely default of putting the Custome in vre, more than the Eldest Sonne (in the case before) may for the like reason prescribe against his yonger brethren.

This was the resolute and settled opinion, not onely of the best professors and practizers, but also of the Moderne Iustices and Iudges of the Law, at such time as I first published this Customal of our Shyre: and accordingly was this custome of Gauelkynde discent then put in vre, without any reclaime in the Countrey, as a great many yet alieue can testifie with me.

Howbeit, knowing that of latter yeeres there hath beene some strong opposition, and seeing that now at this day some doe incline, and others doe stagger therein, I hold it necessarie, to let the reader knowe, both what they say, and what I reade, that may enforme his vnderstanding in that point also.

'Graunting therfore (say they) that all the lands of Gauelkynde nature be of the Tenure in Socage: yet is it not therefore to be graunted, that on the other side, that all the landes of Socage Tenure be of the nature of Gauelkynde. For, as there be two sortes of Socage, the one Free, the other Base, So is the nature of their Discent diuers also: the Free Socage descending to the eldest alone, the Base falling in diuision betweene him and all his Brethren.'

Socage, of two sorts.

This distinction and difference of Tenure and Discent, they faile not to iustifie by a great number of Inquisitions, remaining of Recorde in the Tower of London, whereof my louing friend, Master Michael Henneage (the worthy keeper of them) hath shewed sundrie vnto my selfe. Amongst them all, one hath fallen into my handes, whereof bothe this and further vse may be made, and to that end I will exemplifie it vnto you, as it lieth before me.

Ex Bundello Eschaet. de Anno Primo Edwardi tertii.

Inquisitio facta apud Thonebregge, coram Eschaetore Domini Regis, in Comitatu Kanc, xxv. die Februarii, Anno Regni Regis Edwardi tertii post conquestum primo, Per sacramentum Ioannis Pieres, Thom. Grigory, Richardi de Clyue, Thom. Polteman, Alexandri at Bourne, Martin. Prikell, Walteri Partriche, Thom. de Beltring, Wilhelmi Flishert, Daniel de Ryddenne, Thom. at Longe broke, & Clementis de Pikel: Qui dicunt per Sacramentum suum, quod Walterus Colpeper (qui obiit tempore Domini nuper Regis Angliæ patris Domini Regis nunc) tenuit Coniunctim cum Iohanna vxore eius die quo obiit in villis de Langelegh & Bokton Monchency in eodem comitatu, Duas partes vnus Mesuagii, vnus carucat. terr. quindecem solidorum annui redditus, & redditus quindecem gallinarum & quinquaginta ouorum, de Agnete Domina de Leybourne per seruicium vnus paris Calcarium, vel trium Denariorum per Annum pro omni seruicio: Et dicunt quod prædict. Duæ partes valent per Annum in omnibus exitibus xxxiiii s. iiii. d.

Langley & Boughton.

Item dicunt quod prædictus Walterus tenuit in Guelkinde in dominico suo vt de Feodo die quo obiit quædam tenementa in E. Farlegh in eodem comitatu de Priore Ecclesiæ Christi Cantuariæ per seruicium xx. s. per Annum, & faciend. sectam a<d> Curiam dicti Prioris de E. Farlegh, de tribus septimanis, in tres septimanas. Et dicunt quod sunt ibi vnum capitale Mesuagium, lxx. acr. terr. arabilis quæ valent per annum in omnibus exitibus xxxv.s. Item sunt ibi redditus per Annum xxx. s. ad quatuor terminos principales soluend. Item sunt ibi de redditu ad terminum dictum xii. gallinæ, quæ valent per annum xviii. d. Item dicunt quod idem Walterus tenuit in Guelkinde, in Dominico suo vt de feodo die prædicto v. s. redditus, & redditus ii. gallinarum, prec. iii. d. in West Farlegh in eodem comitatu, de prædicto Priore per seruicium prædict. Item, dicunt quod prædictus Walterus tenuit in Guelkinde die quo obiit in villa de Elding in eodem comitatu quendam annum Redditum, vnus galli & xiii. gallinarum quæ valent per Annum xix. d. de Hugone Dandele, absque aliquo seruicio inde faciend. Item dicunt quod prædictus Walterus tenuit in Guelkinde in dominico suo vt de feodo die quo obiit vnum Mesuagium in villa de Malling, quod valet per annum ii. s. iiii. d. de Wilhelmo Large per seruicium ii. d. per Annum. Item dicunt quod prædict. Walterus tenuit in Guelkinde die quo obiit quædam tenementa in villa de Brenchesley, vocat. Marescales de Domino Hugone de Audele, vt de honore de Thonebregge, per seruicium reddend. ad lardarium

East Farleigh.

West Earleigh.

Yealding.

Malling.

Brencheley.

Tunbridge.

dicti Hugonis viii. porc, & dimid. ad Festum Omnium
Sanctorum per annum prec. xv. s. Et de Wilhelmo de Ore
millite, per seruicium v. s. ix. d. per annum. Et dicunt quod

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sunt ibidem in eisdem tenementis vnum Mesuagium
nullius valoris vltra reprec, lxxx. acre terr. arabilis quæ
valent per annum xx. s. prec. acr. iii. s. iii. d. xx. acr. pa=
sturæ, quæ valent per annum xx. d. prec. acr. i. d. xiiii. acr.
prati, quæ valent per annum iii. s. viii. d. prec. acr. iii. d.
Item tenuit ibidem in Gauelkinde xviii. acras terræ ara=
bilis quas adquisiuit de Matil Salmon, quæ valent per
annum iii. s. vi. d. prec. acr. iii. d. De Galfrido atte Hole=
dene per seruitium v. s. per annum. Item tenuit in Gauel=
kinde in eadem villa de Brenchesle, die quo obiit ix acras
terræ arabilis, quæ valent per annum ii. s. iii. d. prec. acr.
iii. d. De Richardo de Sheyfelle, per seruicium iii. d. per
annum pro omni seruicio: Item dicunt quod prædictus
Walterus tenuit in Gauelkinde die quo obiit, quædam te=
namenta in villa de Est Peckam, in eodem comitatu de
lohanne de la Chekere, vt de Manerio suo de Adynton
per seruicium i. d. per annum, pro omni seruicio, & red=
dendo per annum Domino de Cosinton vii. s. Et sunt in
eisdem tenementis, vnum Mesuagium nullius valoris vl=
tra reprisas, xxvii. acr. terræ arabilis, quæ valent per
annum ix. s. iii. d. prec. acr. iii. d. ii. acr. prati qui va=
lent per annum xx. d. prec. acr. x. d. Item tenuit con=
iunctim cum lohanna vxore eius in liberum Feodum in
Shybourne in eodem comitatu quendam annuum reddi=
tum xxvi s. & vnus galli prec. i. d. & iii. gallinarum,
prec. iii. d. ob. De Rogero Bauent absque aliquo seruicio
inde faciend. Item dicunt quod Thomas Colpeper filius
prædicti Walteri quoad liberum feodum est eius heres pro=
pinquior & xx. annorum & amplius: Et quoad tene=
menta in Gauelkinde, prædictus Thomas, Galfridus, &
lohannes fratres eiusdem Thomæ sunt heredes ipsius Wal=

East Peckam.

Liberum
feodum.
Shirborne.

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teri propinquiores. Et prædictus Galfridus est ætatis
decem annorum, & lohannes est ætatis ix. annorum. In
cuius rei Testimonium prædicti Iuratores huic Inquisi=
tioni sigilla sua apposuerunt.

To this, I thinke it agreeable, to adioine, what
I reade first in the Booke, commonly ascribed to
Glanuille, and then in the Woorke of Master Brac=
ton also.

Si quis (saith Glanuille fol. 46.) hæreditatem habens,
moriatur, & plures reliquerit filios, tunc distinguitur
vtrum ille fuerit Miles (siue per feodum militare te=
nens) aut liber Socmannus: Quia si Miles fuerit (vel per
militiam tenens) tunc secundum ius Regni Angliæ pri=
mogenitus filius patri succedet in totum, ita quod nullus
fratrum suorum partem inde de iure petere potest. Si
vero fuerit liber Socmannus, tunc quidem diuidetur hæ=
reditas inter omnes filios (quotquot sunt) per partes æqua=
les, si fuerit Socagium, & id antiquitus diuisum: Si uero
non fuerit antiquitus diuisum, tunc primogenitus (secun=
dum quorundam consuetudinem) totam hæreditatem ob=
tinebit: secundum autem quorundam consuetudinem, post=
natus filius hæres est.

To the like intent, and almost in the like words,

writeth Master Bracton, fol. 75.

Si liber Socmannus moriatur, pluribus relictis hæredibus & participibus, si hæreditas partibilis sit & ab antiquo diuisa, hæredes (quotquot erunt) habeant partes suas æquales. Si autem non fuerit hæreditas ab antiquo diuisa, tunc tota remaneat primogenito. Si autem fuerit Socagium villanum, tunc consuetudo loci erit obseruanda. Est enim consuetudo in quibusdam partibus, quod post-

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natus præfertur primogenito, & e contra.

And that you may knowe, what he meaneth by Socagium villanum, take these his woords (fol. 77.)

Tenementum aliud dicitur per Seruitium Militare, aliud per Serieantiam: Et de hiis Homagium faciendum est. Aliud tenetur in libero Socagio, vbi fit seruitium in denariis: aliud in Socagio villano: Et in hiis fidelitatis sacramentum requiritur.

It seemeth plaine, by this Harmonie of these Writers, that in Socage lande, (whether free, or base) the diuision of the inheritance stode wholly vpon the practize of the Custome: So as, no Gavelkinde partition could be challenged, but onely, where the custome of Diuision had preuailed. And likewise, this Inquisition (found after the death of Walter Colpeper) most cleerely distinguisheth free Socage from the Gavelkinde: but yet mainteineth not Bractons difference of them, by which the one should consist of money, and the other of base seruices, which were called 'Manu opera.' For, in this Inquisition some lands are denoted to be of Gavelkinde nature, which neuerthelesse doe yeelde none other but money alone: So as thereby also, it seemeth, that Gavelkynde was not tried by the manner of the Socage seruices, but only by the touch of some former partition. Yea, the very Customall of Gavelkinde it selfe vseth neuer a woord of Socage tenure, but of Gavelkynders, tenants in Gavelkynd, tenements of Gavelkynde, heritage in Gavelkynd, and such like.

How befalleth it then (may a man well say) that

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this seuerance of Socage tenure, holding force in the time of King Henry the second when Glanuille liued, and so downward till the daies, not onely of King Edward the third (as this Inquisition bewraith) but sundrie yeeres after his reigne also (as many other the like offices do conuince) shoulde thus growe into disuse and obliuion, so as the way hath beene opened to that vniuersalitie, by which all Socage seruice was clothed with the apparell of Gavelkynde? To say what I thinke, I must say, that this latter declination from that elder vsage, was not any chaunge at all, but rather a restitution of the first custome, and a recourse to the right Originall. For, by the Custome of Normannie, from whence we receaued our Gavelkynde, by the deliuerie of Odo (Earle of Kent, and bastarde brother to King William the Conquerour) the landes there be of two like sundry discents and natures,

as be our Knights seruice and Socage, whereof the first they call 'Fife de Heaubert,' that descendeth to the eldest sonne onely, the other they terme 'Fife de roturier' (the plowmans fee) which falleth vpon all the Sons together, without any distinction of Free, or Base. I suppose moreouer, that the sundrie fauours of our Gauelkynde custome enticed many to creepe into it, and by one and one (vpon occasion of the intestine troubles that ensued the depriuation of king Richarde the second) to shrowde and couer themselues vnder the safetie and shadowe of the priuileges that do waite vpon it, as not to forfeite landes for Felonie, not to be subiect to seruices be=

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fore the lustices, not to be challenged for villanies, and many others that landes of other nature did not afoorde.

By these meanes (as I gesse) the custome was spred, and growne to such generalitie, that the statute (made 18. H. 6. cap. 3.) taketh knowledge, that 'There were not at that day within the Shyre aboue 40. persons at the most, which had lands to the yeerely value of xx. pounds without the tenure of Gauelkynde; and that the greater partie of this Countie, or well nigh all, was then within that Tenure.'

Thus much I had to say of this matter Academically, and without taking any part, leauing to the consideration of the learned and ludiciall sort, whether it be now more tolerable, that the country be yet lulled asleepe in this Error (if it be any) or otherwise to awake so many questions, and to moue so many Suites (as will ensue) of the contrarie.

The reason of
Gauelkynde
Custome.

But here, before I conclude this part, I thinke good, first to make maister Litletons answer to such as happily will demaund, what reason this custome, of Gauelkinde descent hath, thus to diuide land amongst all the Males, contrarie to the manner of the whole Realme besides. The yoonger sonnes (saith he) be as good gentlemen, as the Elder, and they (being alike deare to their common auncestor, from whom they claime) haue so much the more neede of their friends helpe, as (through their minoritie) they be lesse able then the Elder Brother to helpe themselues: secondly to put you

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in remembrance also of the statute of Prærogatiua Regis, Ca. 16. Where it is saide, that 'Fæminæ non participabunt cum Masculis,' The Females, shall not diuide with the Males, which is to be vnderstoode, of such as be in equall degree of kinred, as Brothers and Sisters, &c. **But** if a man haue issue three Sonnes, and the Eldest haue issue a daughter, and die in the life of his Father, and the Father dyeth: In this case (it is holden) that the daughter shall ioine 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.

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And nowe, thus much being spoken, touching the name, tenure, nature, generality, necessity, reason,

What thinges
shal ensue the
nature of the
land.

and order of Gavelkind, 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) shall be. In which be=halfe, it may generally be saide, that some of them shall ensue the nature of the Lande, and some shall keepe the same course that common Law hath ap=pointed. But in particular, it is to be vnderstoode, that if a Rent be graunted in Fee out of Gavel=kinde land, it shall descende to all the males, as the land it selfe shall doe, **as Fitzherbert helde, against the opinion of Shelley, who mainteined that the Custome extended, not to rentes, but to landes onely.**

Rent.

Vide collect.
Dyar, fol. 5.

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And, Ald. and Chart. in 7. E. 3. were of opinion, that albeit a tenancie be of Gavelkynde nature, yet the rent seruice, by which that tenancie is holden, might well be descendable at the common Lawe.

Remainder.

The like shall be of a Remainder of Gavelkynd land: for if it be tailed to the Heires Males, they altogither shall inherite it, as Fitzherbert and Nor=liche two Iustices, thought. 26. H. 8. 8. But that is to be vnderstoode of a discent only: for if lands of Gavelkinde nature be leassed for life, the Remain=der to the right Heires of I. at Stile, Which hath issue four sonnes and dieth, and after the Leassee for life dieth, now the Eldest Sonne onely of I. 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 Brooke: But if the lands had beene **De=uised** to I. at Stile for life, the remainder to his next Heire Male, this had beene **in the opinion of some** an estate taile in I. S. himselfe, and then the Land (as I take it) should haue descended to al his Sonnes, in so much as in that case the woordes (Next Heire Male) be not a name of purchase, **but of limitation.**

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Howbeit, it was greatly doubted 3. & 4. Philip. & Mariæ (as Iustice Dalison reporteth) if **Lande in Gavelkinde** be deuised by Testament to S. for life, **the remainder** (proximo hæredi masculino de corpore eius procreato, and the devisee hath diuers sonnes) whe=ther in that case the Eldest Brother only shall haue it, in so much as (in the vnderstanding of the Law, which is a Iudge ouer all Customes) he is the next Heire Male: and therefore inquire of it.

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Voucher.

As touching Vouchers, it appeereth 11. E. 3. that all the Heires in Gavelkinde shall be vouched for the warrantie of their auncestour, and not the eldest onely. But the opinion of Maister Littleton, and of the Iustices. 22. E. 4. is cleerely: that the Eldest Sonne onely shall be rebutted, or barred, by the warrantie of the auncestour. To be short, the

Condition.

Eldest Son only shall enter for the breach of a con=dition: but the rest of the Brethren shall be ioyned with him in suing a Writ of Attaint, to reforme a false verdite, or **in** error to reuerse a iudgement: And they all shall be charged for the debt of their

Attaint, and
Error.

auncestour, if so be that they all haue Assetz in their handes: But if the eldest onely haue Assetz remaining, and the residue haue aliened their parts, then he onely shall bee charged after the minde of the Booke. 11. E. 3. Fitz. Det. 7. And this also for this part, at this time shall suffice.

No Battaile
nor graund
Assise in Ga=
uelkinde.

Now a woorde or twaine, touching the triall of right in this Gauelkinde land, and then forward to the rest of my purpose. There be at the common Lawe, two sorts of triall in a Writ of Right, by Battaile, and by the Graund Assise: of the which two, this Custome excludeth the one, and altereth the other. For, Battaile it admitteth not at all, and the graund Assise it receiueh, not by the election of foure Knightes, but of foure Tenants in Gauelkinde, 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 knowe) I meane not that which was lately

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imprinted, but an other with much more faith and diligence long since exemplified: a Copie whereof you shall finde, at the end of this Booke. For, not onely in this part, the woordes (Ne soient prises per battail) be cleane omitted in the imprinted Booke, but in sundry other places also the woordes be mangled, the sentences be curtailed, and the meaning is obscured, as by conference of the variations, it may to any skilfull reader most easily appeere. But all that, I will referre to the sight and iudgement of such, as will search and examine it, and (returning to my purpose) shewe you, what belongeth to the Lord of this Gauelkinde land, by reason of this Custome. And, for bicause the Prince is chiefe Lorde of all the Realme (as of whom all lands 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 fellonie, and suffer the iudgement of death therfore, the Prince shall haue all his Chattels for a forfaiture: But as touching the Lande, he shall neither haue the Eschete of it, though it be immediatly holden of himselfe, nor the Day, Yeere and Waste, if it be holden of any other. For in that case, the Heire, notwithstanding the offence of his auncestour, shall enter immediatly, and enioy the landes, after the same Customes and seruices, by which they were before holden: in assurance whereof, it is commonly said,

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

But this rule holdeth in case of Felonie, and of murder onely, and **not** in case of treason at all: **nor (peradventure) in Piracie, and other Felonies made by Statutes of later times, bicause the Custome cannot take holde of that, which then was not at all.** It holdeth **moreouer**, in case where the offender is iusticed by order of Lawe, and not where hee

withdraweth himselfe after the fault committed, and will not abide his lawfull triall.

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For if such a one absent himselfe (after proclamation made for him in the Countie) and be outlawed: or otherwise, if he take Sanctuarie, and do abiure the Realme, then shall his Heire reape no benefite by this Custome, but the Prince or the Lorde, shall take their forfeiture in such degree, as if the Landes were at the common law. Which thing is apparant, both by the Booke 8. Edward 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 equitie: but, by a straight and literall 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: **But, seeing that the woordes of our Customal extend to the Heire, and be not restrained to the Sonne, they bee aunswered, and we may proceede.**

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Duties, of the Tenant, to his Lord.

There belongeth moreouer, due by the Tenant, to each common person, being his Lorde of Lande in Gauelkinde, Suite to his Court, the othe of fidelitie, and the true doing and paiement, of all accustomed Rents, Duties, and Seruices. Also if the Tenant die, leauing his heire, within the age of fifteene yeeres: the Lord hath authoritie to commit the nouriture of the body, and the custodie of the goods, and lands of the infant, to the next of the kinred, to whome the inheritance cannot descende. But, as neither the Lorde ought to take any thing for the custodie, neither to tender to the Heire any marriage at all: So must he take good heede, that he credite not the custodie to any person, that shall not be able to answere therefore. For if the Heire, at his full age of fifteene yeeres, shall come to the Lordes Court, and demaund his inheritance, although the Lorde may distreine the Gardein to yeelde his accompt (as it appeereth. 18. E. 2. Auowrie 220.) Yet in default of his ability, the Lord himselfe, and his Heires, remaine charged to the Heire for the same. **For which onely feare (as I thinke) the Lordes at these daies do not enterpose themselves in this businesse.**

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

Cessauit, in Gauelkinde.

The Lord, after such a Cessing, ought by award of his three weekes Court, to seeke (from Courte

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to Court, vntill the fourth Court) in the presence of good witnes, whether any distresse may be found vpon the Tenement, or No: And if he can finde none, then at the fourth Court it shal be awarded, that he shall take the Tenement into his handes, as a distresse, or pledge, for the Rent and seruices,

withdrawne, and that he shall deteine it one yeere and a day, without manuring it: within which 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 Court the Lorde ought openly to declare all that his former proceeding, to the end that it may be notorious: which being done, at his owne Court, next following the said Countie, it shall be finally awarded, that hee may enter into that Tenement, and manure it as his proper demeane.

And that the forfeiture, due to the Lord for this Ceasser of his Tenant, was fiue poundes (at the least) besides the arrerages: it doth well appeere by the olde Kentish bywoorde, 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.

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

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Were, is the price of a mans life.

'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 woorde (were) in olde time signified, the value, or price of a mans life, estimation, or countenance: For, before the Conquest, each man in the Realme was valued at a certaine 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, whereunto for this purpose I will send you. This custome of Cessait, is set forth in the treatise of Customes, and hath beene allowed of (as Maister Frowike 21. H. 7. 15. reported) in time passed, but whether it be also at this day put in vre, I cannot certainly affirme.

But now, as these aduantages arise to the Lord 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 lande 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, although the same happen to be diuided amongst many: of very right also he ought to admit an Essoine, if any be cast for the Tenant, whether it be in a cause of Plaint, or for common suite to his Court: And lastly, he may not exact of him any maner of oth, other than that of Fidelitie, which groweth due by reason of his Tenure.

And thus leauing the Lord and his Tenant, let

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Tenant by the Courtesie.

vs come to the husband and the wife, and first shew what courtesie the husband shall finde by order of this custome after the death of his wife that was

seised of landes of Gavelkinde tenure: and then what benefite the wife may haue after the decease of her Husband dying seased of Lands of the same kinde and nature.

The Husband (saith our treatise of Gavelkinde Custome) shall haue the one halfe of such Gavelkinde lande, 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 will keepe himselfe widower, and vnmarried. For if he marrie, he looseth all. Neither may he commit any waste, more than Tenant by the courtesie at the common lawe, may. So that one way (namely, in that he shall haue his wiues land for life though he neuer had issue by her) this our Custome is more courteous than the common lawe: but another 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 therein.

The wife likewise, after the death of her Husband, shall haue for her life, the one moitie of all such lands of Gavelkinde tenure, whereof her Husband was seised of any estate of inheritance during the couerture betweene them. Of which Custome also, though it exceede common measure, the common lawe of the Realm (bearing alwaies speciall fauour to Dower) hath euermore euen hitherto

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shewed good allowance: Neuerthelesse, as tenant by the courtesie after this custome, had his conditions annexed: so tenant in Dower, by the same Custome, wanteth not some conditions **waiting vpon** her estate. One, that she may not marrie at all: and another, that she must take diligent heede, that shee be not found with childe, begotten in fornication.

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For in either case she must loose her Dower: But yet so, that lawful matrimonie is by a meane (contrarie to the Apostolique permission) vtterly forbidden, And the sinne of secret Lecherie (according to the Popish Paradoxe, 'Si non caste tamen caute') is in a sort borne and abidden, Seeing that by this custome, she forfeiteth not in this later case, vnlesse the childe be borne, and heard to crie, and that of the cuntry people, assembled by hue and crie: For then (saith the custome)

Se that his wende,
Se his lende:

But corruptly, for in true Saxon letters it standeth thus,

Se pat hire wende,
Se hire lende.

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, **no lesse** for honest marriage, **than** for filthie fornication. In which behalfe, as I must needes confesse, that the

later condition hath reason, because it tendeth

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Single life,
much magnified.

(though not fully) to the correction of sinne and wickednesse: So yet dare I affirme, that the former is not onely not reasonable, but meereley lewde and irreligious also. For, although the Ethnickes did so much magnifie widowhood, that (as Valerius reciteth) 'Fæminas, quæ vno matrimonio contentæ erant, corona pudicitiaë honorabant,' and although that the common Lawe also (being directed by the Popish Clergie, which therein followed the error of Ierome) doth in another case, by the name of Bigamie, dislike of a womans second marriage: Yet Saint Paule saith plainly, 'Mulier, si dormierit maritus eius, libera est, vt cui vult nubat, modo in Domino.' But for all this, seeing that our treatise of vsages reciteth it, seeing also that common experience of the countrie approoueth it, and that the common lawe 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 proceede with the residue.

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Differences,
betweene the
common law,
and this custome,
for
Dower.

It appeereth, by that which is already said, that the common lawe, and this custome, differ in two things concerning Dower: One, in that the common lawe giueth but a third part, whereas the custome vouchsafeth the halfe: Another, in that this custome giueth conditionally, whereas the gift of the common law, is free and absolute. Now therefore, there remaine to be shewed, certaine other pointes, wherein they varie also. As, if the husband commit Felonie: at the common Lawe, his wife

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hath lost her title of Dower, but by the custome of this countrie, she shall not loose her Dower for the fault of her husband, but onely in such case, where the heire shall loose his inheritance, for the offence of his father. Which thing is manifest, both by the treatise of our Kentish 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 law, but (as me thinketh) she shall haue no Dower by this custome, but only of such lands, whereof her husband was actually and really seised. For the woordes be (Des tenements, dount son Baron morust seisei, et vestu,) which woord (vestu) being cleane omitted in the imprinted booke, inforceth a possession in deede, and not in law onely. And therefore, if landes in Gauelkinde descende to a married man, which dieth before he make his entrie into the same, inquire whether it be the manner to endowe his wife thereof, or no: for vse is the onely Oracle that in this case I can sende you vnto. Againe, it may seeme, that the conditions laide vpon the Dower, do runne onely to those lands whereof he died seised: and that of such as he aliened, she is at libertie both for demaunde of Dower at the common lawe, and otherwise.

Moreouer, at the common lawe, a woman shall be endowed of a faire, or bailywike, or of any such

<407> other profite. But (for as much as the wordes of this customarie Dower, be (terres et tenements) and for that all customs shal finde a literall and streight interpretation) the opinion of Maister Parkins is,

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Dower of
Chattels.

that no Dower lieth of a faire, &c. by this custome, vnlesse it be appendant to lande. Furthermore, if the wife recouer her Dower at the common law, she ought of necessitie to be endowed by metes and bounds: But in Dower after this custome (saith the same Authour) she may very well be endowed †a of moitie, to be holden in common with the heire, that enioieth the other halfe. Lastly, this custome, besides Dower of the one halfe of the husbandes lande, prouideth Dower of the moitie of suche goods also, as he died possessed of, if he had no children, and of the third part, though he leaue issue: whereas the common lawe (at the least in common practise at this day) hath no consideration of any such endowment. These then be the differences, betweene the common lawe of the Realme, and the particular custome of this countrie 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 predicate in another thing, wherein I most gladly desire to be iudged by other men: namely, whether a woman, intituled to Dower in Gavelkinde, may wayue her Dower of the moity 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 which doubt, wil depend partly vpon comparison, whether it be more aduantage to her, to haue the thirde at the common lawe absolutely,

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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 stand to the worse, which is the custome: euen as tenant by the 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 much 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 Third, or of the Moitie: But bicause it was vttered by them in a passage of sudden speech, and not spoken vpon studied argument, I will not vse the authoritie of their names, to encounter the opinion of the Court 2. E. 4. 19. onely this I repeate (and that with Master Bracton) that if she marrie before Dower assigned, she is not afterwarde to be endowed.

The childe,
and the gardian.

After the husband and the wife, there followeth next in order of our diuision, the childe and his Gardian, whom also (since they be Relatiues, as the other be, and that their interestes carrie a mutuall, and Reciproque eie, each hauing respect to other)

we will likewise couple together in one treatise. And because the custome was woont to commit the custodie, not of the landes only (as the common lawe doth) but of the goods and chattels also, we will first shew, what portion of goods did growe to the childe, by the death of his parent.

The manner of this cuntry sometime was (as

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Partition of
chattels.

it appeereth by our olde treatise) that after the funerals of the dead man performed, and his debts discharged, the goodes should be diuided into three equall portions, if he left any lawfull issue behinde him: of which three, one part was allotted to the dead, for performance of his legacies: another to the children (**that were not his heires, nor aduanced**) 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 which, the one belonged to the wife for her endowment, and the other to her departed husband, to be bestowed by his executors, if he made a testament, or by the discretion of the ordinarie, if he died intestate. **To this effect soundeth the recorde (claus. 9. H. 3. memb. 13.) where it is saide thus: 'Rex mandauit vicecomiti Kancie, quod omnia Catallia quæ fuerunt Roberti Nereford in Heyham, Borham &c. faceret esse in pace donec sciatur, vtrum filius & hæres dicti Roberti ea habere debeat, aut alii pueri dicti Roberti vna cum eo, vel sine eo.'**

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London.

The selfesame 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, both by the lawe of King Canutus before remembred, by Maister Glanuille in his booke Cap. 18. and by the woordes of Magna Carta, that the wife and children had their reasonable partes of the goods by the common lawe of the Realme, howsoeuer it came to passe at the length, that it was admitted for lawe but in such Countries only,

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where it was continued by daily vsage (as it is holden 17. E. 2. and in many other bookes) and that all the Writs in the Register 'De rationabili parte bonorum,' haue **now** mention of the special Custome of the Shyre, in which 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 law as many thinke) throughout the whole Realme: so is it (so far as I can learne) vanished quite out of all vre within this Cuntry also. And therefore, seeing the Gardian is deliuered of this charge, wee also will leaue to speake further of the goods, and come to the partition and custodie of the land of this Infant.

Partition, of
Gauelkinde
lands.

If a man die seised of landes in Gauelkinde, of any estate of inheritance, all his Sonnes shal haue equall 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 yoongest Sonne or Daughter, a prefer-

Astre. ment in the partition. For as of ancient time, there ought to be graunted to the eldest, the first choice after the diuision: so to the part of the yoongest, there ought to be allotted in the diuision, that piece of the Mesuage, which our treatise calleth Astre, that is to say, the stocke, harth, or chimney, for fire: which woord (as I thinke) was deriued of the Latine Astrum, a starre, bicause the fire shineth in the house, as the Starre therof: and which, though it be not now commonly vnderstood in Kent; yet do they of

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<410> Shropshyre and other parts reteine it in the same signification till this day, euen as the first case (23. lib. Assis.) doth interpret it. I knowe, that Master Bracton in the place before cited, writeth that the eldest ought to haue the Capital Messuage: But at this day there is no regarde of either in making the partition: onely consideration is had that the parts be equall and indifferent.

Gardein by this custome.

Now therefore, if the Childe be vnder the age of fifteene yeeres, the next Cousin to whom the inheritance may not descend, shall (by appointment of the Lord if diuers be in equall degree of kinred) haue the education, and order of his bodie, and landes, vntill such time as he shall attaine to that age: euen as the Gardein in Socage at the common Lawe 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 such sort, and none other, than as the Gardein in Socage at the common lawe is: Saue onely (as it is partly remembered already) that he is both chargeable to the Heire in accompt for his receipt, and subiect also to the distresse of the Lorde for the same cause: Yet doe I not heare, that the Lordes take vpon them (at this day) to commit the custodie of these infants, but that they leaue it altogether to the order of the common lawe, the rather (belike) for that they themselues (if they intermedle) stand chargeable (as I saide) in default of the abilitie of such as happily they might credit therewithall: Euen as by Iustinians ordinaunce,

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such as appoint Datiue tutours, must do it at their owne perils. So that vpon the whole matter, the oddes consisteth onely in this, that Gardein in Socage at the common Lawe shall keepe the land till the Infant be foureteene yeeres of age, and Gardein by this custome till he haue attained fully fifteene: whiche diuersitie, ariseth not without great reason: For whereas the Infant in Socage at the common law, cannot make alienation of his lande vntill he haue reached to the full age of one and twenty yeeres (although he be long before that, free from al wardship.) The Infant in Socage by this Custome, may giue and sell his land so soon as he is crept out of this Custodie.

Sale, at fifteen yeeres of age.

And therefore it was expedient to adde one yeere (at the least) to the common Law, before he should be of power to depart with his inheritance, which otherwise (being vnaduisedly made away) might

worke his owne impouerishment and ouerthrowe. And truly it seemeth to me, that the Custome it selfe hath a watchfull eie vpon the same matter, in so much as it licenceth him at fifteene yeeres, 'Not to giue his Lande' (for that he might doe for nothing) 'But to giue and sell his land,' which it meaneth he should not doe without sufficient recompence. Such 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. Ed. 4. 24. where it was saide, that an Infant cannot declare

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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 such age, was to no purpose at all, although a lease with release might happily be good by the Custome, because that amounteth to a Feoffment. And in my simple iudgement, it is not fit that this Custome should be construed by equitie, for as much as it standeth not with any equitie, to enable an Infant, of little discretion, and lesse experience, to sell his lande, and not to prouide withall that hee should haue, 'Quid pro quo,' and some reasonable recompence for the same: for that were, not to defend the Pupill and Fatherlesse, but to lay him wide open to euerie slie deceit, and circumuention.

In which respect, I cannot but very well like of their opinion, who hold, that if an Infant in Gauelkinde, at this day will sell at fifteene yeeres of age, these three things ought of necessitie to concurre, if he will haue the sale good and effectuell. The first, that he be an Heire, and not a Purchasour, of the lande that he departeth withall: The seconde, that he haue recompence for it: And the third: that he doe it with liuerie of seison by his owne hande, and not by warrant of Attourney, nor by any other manner of assurance.

And these men for prooue of the first and seconde point of their assertion, doe builde vpon the words of our written Custome, where it is saide, 'Del heure que ceux heirs de Gauelkinde, soient, ou out passe lage de

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15. ans, list a eux, lour terres & tenementes, Doner & Vender)' in which, the woordes (Ceux Heires) doe restraine the Infant that commeth in by Purchase: And (Doner & Vender) in the copulatiue (for so they lie in deede, though the imprinted booke haue them disiunctiuely) do of necessitie implie a recompence, for as much as, 'Vendere,' cannot be 'Sine precio.'

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And for maintenance of the thirde 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 worde (Doner) to meane a Feoffment (as I haue before shewed) which not onely disalloweth of any gifte made by an Infant, but also punisheth the taker in trespasse, vnlesse he haue it by liuerie from the

Infants owne hands.

Thus haue I **lightly** run ouer suche Customes, as by meane of this Gauelkinde tenure doe apper= teine, either to the Lorde or the Tenant, the Hus= band or the Wife, the Childe or the Gardein: To these I will adde (as I promised) confusedly, a few other things, of the which, some belong gene= rally to the Kentishe man throughout the whole Shyre: Some to the inhabitants of some parti= cular quarter of the Countrie: and some to the tenants in Gauelkinde onely, and to none other.

No villains in Kent.

It appeereth, by claime made in our auncient treatise, that the bodies of all Kentish persons be of free condition, which 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

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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 say, that himselfe was borne in Kent, I haue knowne it (for good reason) doubted.

Apparance

It seemeth by the same treatise, that such persons as helde none other lande than of Gauelkinde nature, be not bound to appeere (vpon Sommons) before the lustices in Eire, otherwise than by their Borsholder, and foure others of the Borowe, a few 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 ap= parance 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. which also is partly abridged by Fitzherbert, in his title of Præscription, that it was 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.

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Chase and driue out.

The same booke saith, that the vsage in Gauel= kinde is, that a man may lawfully inchase, or driue out into the high way to their aduenture, the beastes of any other person, that he shall finde doo= ing damage in his land, and that he is not compel= lable to impound them, which custome seemeth to me directly against the rule of the common Lawe, But yet practised it is till this present day.

Attaint.

The Parleament (15. H. 6. 3. **which I touched**

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before) mynding to amplifie the Priuileges of Ga= uelkinde, graunted to the Tenants of that lande, exemption in Attaints, in such sort as the inhabi= tants of ancient demeane, and of the Fieue Ports had before **enjoyed**: But within three yeeres after (**18. H. 6. cap. 2.**) vpon the complaint of the Country (which informed the Parleament house that there was not in the whole Shyre aboute the number of thirtie or fortie persons, that held to the value of twenty pound lande, out of Gauelkinde, who in de= fault of others, and by reason of that exemption, were continually molested by returns in Attaints)

that Acte was vtterly repealed.

Chaunging of waies. The Statute <1>4. H. 8. Cap. 6. giueth libertie to euerie man, hauing high way (through his Lande in the Weald) that is worne deepe, and incommo= dious for passage, to lay out another way, in some such other place of his lande, as shall be thought meete by the view of two Iustices of the Peace, and twelue other men of wisdom and discre= tion. Finally, the generall Lawe, made 35. H.

Coppies. 8. 17. for the preseruacion of Coppies woods, tho= rough out the Realme, maketh plaine exception of al woods within this Weald, vnlesse it be of such as be common.

<415> Thus much concerning the Customes of this our Countrie, I thought good to discourse, not so cunningly (I confesse) as the matter required, nor so amply as the argument would beare (for so to doe, it asketh more art and iudgement, than I haue attained) But yet sufficiently (I trust) for vnder=

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standing the olde treatise that handeleth them, and summarily ynough for comprehending (in man= ner) whatsoever the common, or Statute Lawe of the Realme hath literally touching them, which is as much as I desired. Now therefore, to the ende that neither any man be further bound to this my discourse vpon these Customes, then shall be war= ranted by the Customes themselues: neither yet the same Customes bee hencefoorth so corruptly caried about, as hitherto they haue beene, but that they may at the length be restored to their aunci= ent 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 Fa= ther in lawe, and which sometime belonged to Ba= ron Hales of this Countrie. I will adioine also, mine owne interpretation in the English, not of any purpose to bind the learned vnto it, but of a desire to infourme the vnlearned by it.

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<416> Kent.

These are the vsages,

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him in that which

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townes, which ought

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which her husband held

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their Eschetes of those

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then let the eldest

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before accustomed: But

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taunce can not

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that from such time

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the ancient vsage:

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strippe, or waste,

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their fees, fermes, and

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tenement into his hande,

583 <sig 2P>

tenements, as in his

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the crowne of our

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graund assises, let

. . . Idots since till now.

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Sir Henrie Wiat, Knight, procured his possessions to be changed from the nature of Gauelkynd Discent, by one acte of the Parlement holden 15. H. 8.

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The names of such persons, as procured their possessions to be altered from the nature of Gauelkinde, by acte of Parlement made. 31. H. 8. cap. 3.

Thomas Lord Cromwell.

Thomas Lord Burghe.

George Lord Cobham.

Andrew Lord Windsore.

Sir Thomas Cheyne.

Sir Christopher Hales.

S. Thomas Willoughby.

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.

Edward Isaac.

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

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The names of such as be likewise
prouided for 2. & 3. E. 6.

Sir Thomas Cheyney.
Sir Anthonie Seintleger.
S. Robert Sowthwell.
S. Iohn Baker.
S. Edward Wootton.
S. Roger Cholmley.
S. Thomas Moyle.
S. Iohn Gate.
S. Edmund Walsingham.
S. Iohn Guldforde.
S. Humfrey Style.
S. Thomas Kempe.
S. Martyn Bowes.
S. Iames Hales.
S. Walter Hendley.
S. George Harpar.
S. Henry Isley.
S. George Blage.
William Roper.
Thomas Wylforde.
Thomas Harlakenden.
Thomas Colepeper of
Bedgebury.
Iohn Colepeper of Ailes=
forde.
Thomas Colepeper, son
of the said Iohn.
William Twisenden.
Thomas Darrell of Scot=
ney.
Robert Rudstone.
Thomas Robertes.
Stephen Darrell.
Richard Couarte.
Christopher Blower.
Thomas Hendley.
Thomas Harman.
Thomas Louelace.
Reignald Peckam.
Herbert Fynche.
William Colepeper.
Iohn Mayne.
Walter Mayne.
Thomas Watton.

John Tufton.
Thomas White.
Peter Hayman.
Thomas Argal.

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

Sir Thomas Browne, of Westbecheworthe
in Surrey.
George Browne.

It were right woorthie the labour,
to learne the particulars and
certeintie, (if it may be) of all
such possessions, as these men
had, at the times of these seue=
rall Statutes, for that also will
be seruiceable in time to come.

<This is the revised version of Lambard's discussion of the 'Customs of Kent', as published in the second edition of his 'Perambulation'. The present file is just an excerpt from my transcription of the whole book: I have made no adjustments at all. – C.F. October 2010.>