

The Customs of Gavelkind Tenure in Kent, and some Reflections on Proposed Legislation

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As it is understood that there will be an attempt to abolish, in the forthcoming session of Parliament, by means of legislation, one of the distinctive customs of gavelkind tenure, a few words on the subject may be useful.

For some reason or other, the reason has never been satisfactorily explained, the early Norman kings allowed their Kentish subjects to retain their old Saxon customs, although these customs were totally at variance with feudal polity. Why we of Kent were permitted to extort this favour from Norman rulers is, as I have said before, not known. Speaking for myself, I imagine the reason to be all that the great London to Dover road stood for; there was also the rising power of the Five Ports, and perhaps also the preference for the old ways by the great ecclesiastical landowners. The Weald of Kent also seems in some way or other to have been a factor in the reassertion of the ancient liberties, and certain phrases in the Assize Rolls of Henry III bear out the fact that gavelkind liberties flourished in a special degree in that secluded region.

The position therefore is as follows: We find that in the time of the real stress and oppression of the Saxon population that followed in the early days of the Norman Conquest, that in the County of Kent, without any futile rebellion or fuss of any kind, alone of all England was allowed to retain its beloved system of land tenure. And it does not matter in this connection whether this system of land tenure be good or evil, Kentish people loved their old customs, and being a strong people, they got what they wanted.

We will next very briefly consider what these old customs were, and incidentally we will note how they have fared in modern times.

The principal privilege of Kent was that the lands and bodies of its inhabitants were free. All that was meant by these expressions of liberties we can now neither understand nor appreciate. In practice it probably came to this: The yeoman tenantry of Kent paid a fixed rent in discharge of *all obligations* on their lands, such rent being either produce or money — this is of the essence of the old Kentish liberties as is shown by the word gavelkind being the collective name for the customs — on the other hand the peasantry most probably worked out their rent by performing some certain specific work, or by working on specified days. I must emphasise this point of certainty with regard to money rent or money's worth of rent, as it is of the essence, as stated above, of real liberty of tenure. I have never, for example, noticed in any custumal of a Kentish manor the hateful and ominous phrase "the tenants shall plough (such and such lands) *or as their Lord may will.*" Nor, similarly, have I ever seen in any Kentish custumal such phrases as: "nor shall the tenant or his sons take a wife, nor sell a bull or horse, *unless their Lord do assent thereto.*" I also gather that even in manors held by military service, that the under tenants enjoyed all the privileges of gavelkind customs, in fact gavelkind liberties were inherent to the soil, and disgavelling Acts of Parliament became waste paper almost as soon as passed. As the centuries rolled on, the rest of England "lifted," if I may be allowed the expression, this our custom of what we now call freehold tenure.

Lands of gavelkind tenure were not subject to forfeiture for felony. This was a most valuable privilege, and this privilege again has been “lifted” by the other English counties.

Gavelkind lands had the usual incidents of dower, tenancy by the courtesy of England, and so on, but no special comment is called for.

Gavelkind lands could apparently be devised by will from very early times. This privilege again has been enacted by statute for the rest of England.

Boys of fifteen years of age could lawfully dispose of their lands of gavelkind tenure. As a fact, this is the privilege most strongly asserted in the Assize Rolls. I suspect this privilege grew up as a kind of cure for the too great division of estates. The younger brothers of a family could thereby sell their share of a holding and keep the estate reasonably compact.

In Kent the guardianship of an infant belonged to a relative who could not inherit the infant’s lands. This was a great privilege, and is again and again, asserted in the Assize Rolls. In tenures by military service, infants were plundered to a most cruel extent.

We now come to that custom of gavelkind which, it is understood, is threatened by proposed legislation, we mean of course the custom by which gavelkind lands are, in an intestacy, divisible among all of the sons equally. This, as we have seen, was not the most important of the Kentish liberties, its singularity now is chiefly due to it not having been adopted by the rest of England. Now we of Kent want to know why this custom should be abolished. There has been no agitation in the county for its abandonment. It is perfectly well known — and of course appreciated — by all natives of the county. Its practice has for centuries been familiar to all, either lawyers or others, who deal in real property in Kent. Should a “foreigner” acquire landed property in our county, and violently disapprove of the old custom of the soil, he has only to make a will, and leave his lands to whom he prefers. Speaking for myself, I should imagine that the clause in the proposed bill, in as far as it deals with gavelkind in Kent, is more or less of an oversight. Let pressure be applied by the Parliamentary representatives of the county, and I suspect the clause will disappear. I have no fancies touching land reform, but I might add that it seems to me to savour less of feudalism that all brothers should share alike, than that the eldest son should get the whole inheritance. Therefore let our sentence be: *Nolumus consuetudines Kancie mutari.*

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