

Some of the documents relating to the paper by Richard Grove (Yale and ANU Canberra) on ‘Fighting for the Fakenham Commons: the legacy of Sir Thomas More, his Utopia and the last rural rebellion in England’. Sunday 4 June 9-11 am Common Property Conference.

[For more info and sources write richardgrove@hotmail.com]

“Our fenceless fields the sons of wealth divide
and e’ en the bare-worn common is denied”
Oliver Goldsmith

Document 1

“Manor of Fakenham

Case for the opinion of
Judge W. Joshua Williams (who gives it in his own handwriting on 30
July 1871 at the end of the case document)

Case of The Commons Preservation Society

The town and parish of Fakenham, Norfolk, are situated in the Hundred of Gallow in the County of Norfolk - the town being built on a declivity north of the river Wensum, the ancient name was Fakenham Lancaster but the adjunct is not now used. The manor (of the same name) which is coextensive with the Parish belonged in the reign of Henry VI and probably from a much earlier time to the Duchy of Lancaster and became with the other Duchy possessions vested in the crown by the Act of 1 Edward 4. From the date of this Act to the year 1631 the manor remained in the Crown. But in that year upon the petition of Sir Thomas Cecil and Sir Francis Ashby the Manor was on the 26th July granted by Charles Ist to Richard Knightley and others (who it is believed were the Trustees of Lady Coke the wife of Sir Edward Coke) by way of exchange for the manors of Croft and Whittlesey. In 1647 it passed into the hands of James Calthorpe esq. in whose family it continued for a long period of time. In 1803 the Manor was purchased by Mr Daniel Jones a solicitor of large practice in the County and from him it descended in 1827 to his

nephew John Thomas Jones esq and ultimately to the present owner Sir Willoughby Jones Bart. of Cranmer about 4 miles from Fakenham.

The whole of the lands within the Manor of Fakenham are either freehold or Copyhold of the manor the copyhold land being held at nominal rents on death or alienation. The freeholds are but trifling in extent - in fact there are not more than 5 or 6 small freeholds within the manor.

The Rolls of the Manor commence in the year 1546 and continue in up to the present time. Some of the earlier Rolls have not been produced for inspection. It appears that 2 Courts Leet and Courts Baron (termed in the Rolls General Courts) were held for the manor in each year, the Ist Court in March or April and the 2nd Court in August or September. At the former Court the Homage is generally essoined the absent Chief pledges (or Jury) and Headboroughs and fined them 6d each. The Chief pledges then nominated the following officers:-

Clerk of Markets

Mill Reeve

Ale Founders

Head Silver gatherers

Leather sealers

Swine Reeve

Constables

and there are a few instances of Licenses to certain persons to carry on the business of Innholders and beer sellers. Then follow presentments by the Chief pledges of offences in connection with the Manor.

About a quarter of a mile from the town but within the parish and Manor of Fakenham there was until recently a large tract of waste unenclosed land containing in the whole upwards of 150 acres. This tract is distinguished by natural bounds into three parts - the largest (about 90 acres) is locally known as "The Heath" - the other two known as "Malt Mill Common" and "Mill Common" respectively contain 62 acres. (62-0-3) Malt Mill Common was formerly (within living memory) known as the "Heymore". It is so repeatedly described on the Court Rolls. Mill Common appears also to have had another name in early days which we shall presently notice.

The Heath is partly covered with large quantities of Gorse, or (what is locally termed) "Whins" which the inhabitants of Fakenham

have from time immemorial cut and carried home for their use as fuel and other purposes. Malt Mill Common and Mill Common have little or no Gorse upon them but they afford rich herbage for grazing cattle. There are many entries on the court rolls of presentments and fines against persons for cutting the Herbage and turning out cattle on the first names Common (then called the Heymore) before a certain day each year.

About a quarter of a mile from the last names Commons and the same distance from the Town is another tract of land called "Back Common" containing about nine acres of which also until recently was unenclosed. It is a beautiful piece of tableland producing rich and valuable herbage for cattle.

It has always been the custom of the inhabitants to turn out their Cattle to graze on these commons. According to the evidence of many of the oldest inhabitants any person who was the occupier of a house or cottage with or without land, exercised what was always understood to"

Document 2 etc.

from James L Flaxman.

From Heath House

Fakenham

May 25th 1870

Memo of John McDonagh record agent.

Fakenham is a market town and parish in the Hundred of Gallow in Norfolk. Its ancient name was Fakenham Lancaster but the adjunct is not used. The town is situated on a declivity north of the river Yare. It is mentioned in Domesday and appears to have been chiefly in the possession of the King. It was granted by Patent 8 Edward 11 to David Strabolgy of Athol. In 1351 King Edward 111 with the assent of Parliament granted by letters patent to Henry Earl of Lancaster the title of Duke, together with Palatinate rights etc. He died in 1361 leaving two daughters Maude and Blanche. The former died without issue; the latter married John of Gaunt, the Kings son, and the earldom was granted to

him in 1364. By an indenture dated Westminster 25th June 13/2 between the King and his son John, King of Castile and Leon, and Duke of Lancaster, it was agreed that the latter should resign the Dukedom, receiving in lieu thereof certain manors, including the manor of Fakenham, to hold to him and his heirs for ever. By an inquisition dated 12 Henry 4th it was found that the manor contained 260 acres of arable land, 200 acres of wood, 30 acres of meadow cut and 60 acres of furze etc. The manor is mentioned in the Parliament Rolls of the 38th-39th of Henry 6th in connection with certain arrangements under the King's will and is included undoubtedly in the Act of 1st of Edward IV, wherein the duchy possessions are vested in the King. In the seventh year of his reign the same monarch granted the manor to Elizabeth his Queen for term of her life in part of her dower, together with all rights etc. From this period down to the reign of Charles 1st it remained parcel of the Duchy, and during the reigns of Elizabeth and James 1st was leased out for term of years to various persons. In 6 James 1st a commission and return was ordered touching tenure in the County of Norfolk appertaining to the Duchy in which Fakenham is thus mentioned:-

“The jury say that the manor of Fakenham with the appurtenances in Althorpe and Thorplande is parcell of the same Duchy of Lancaster in the hands of the Lord the king. And that Richard Gwynne esq is farmer of the same manner.”.

in the reign of Car, 1 1631 the manor was upon petition of Sir Thomas Cecil and Sir Francis Ashley granted to them in exchange for the manors of Croft and Whittlesey (see Sign Manuals, State Papers) The duchy records contain a draft warrant of this date authorising the delivery of all court rolls and other documents relating to Fakenham to the above grantees.

In 1670 Charles 11 granted a charter to the town of which a draft copy exists in the office. This I have examined with the translated copy obtained from Fakenham. Beyond a single Court roll and a few early rentals (and) ministers accounts there appears to be little additional informatiob in the office respecting the manor.

The Duchy Proceedings , Depositions, decrees, from Hen 7 to end of Elizabeth have been examined after this it would be necessary to search through all the original bundles, as no indices locorum exist, a task which would occupy considerable time.

Document 3

Duchy of Lancaster Proceedings Henry 8 Vol 3 7.1.a

Sir Thomas More Knyght

The Duchy of Lancaster

.....orator and

bedmen Walter Monyment Robte

.....yng and all other the Kynge tenants and inhabi.....

.....well for the selfes as all other the Kynge term.....

oble and genytore ys and tyme out of mynd whereof.....

runyth to the contr....have been seised of and in a certen pcell of ground in Norton in the seyde counte called Ernehyll conteyning by estymation lx acres or ther aboute as pte and pcell of the seyde orale and ther awncestere beyng tennte to the seyde man by the tyme beyng and resyant wythein the seyde town of Fakenham have by all the seyde tyme used to have comon of turbary wythein the seyde grownd for to gett and dygg flagge and turfes for ther necessary ffewell to burn wythein the said houses paying evy on of them on peny yerly for the same to owre seyde Sov'eyene lord and hys noble genytore and also to have suffycyent rushes and segge for the covryng and thachyng of ther seyde houses and strowyng of the same at all tymes in the yere at ther plesure ev'y of them paying for the same yerly an....and the resydew of the fyle of the same ground to the use of oure seyde sovreeygne lord so yt ys that on wyllm Shaw pretending to dysenheryte ower seyde Sovrayne lord of and in the same grownd called the Ernehill dothe not only exclude seyde sovreigne lord of the seyde Grownd and having any ryte (?) thereof but also do put your seyde besechere from the seyde comon of Turbary and other the prvylage of and in the same also have unlawfully procured and indyted your seyde Subjects for comyng uppon the seyde comon as afore they have don ne owre seyde Sovreygne lord to have the ffyll thereof.

[The remainder of this bill refers to the closing of a certain open way and the overflow of water at Hempton Mill.---

In the defendants answer it is alleged that the inhabitants of Fakenham by grace of arms forcibly entered upon the Ernehill about the 28th of June last, and took rushes etc.]

2. 16 February 18 Henry 8th (1527)

Duchy of Lancaster Commission Book Henrius 8 fol 92

For COLN 9counsel?)) For the tenants of Fakenham

Henry () To our trusty and welbeloved Sir Roger Townesend Knyght Sir Edmund Dedyngfield Knyght th Priour of Cokkerffar and Sir William Baugh clerke pson of Fakenham and to evry of theym gretnyg. Whereas complaynt ys made unto us on the behalf of Walter Monymont and other our tennts and inhabitants wythein our towne ad lordshipe of Fakenham pcell of our duchie of Lancaster in our countie of Norrff agenst Willm Shaw for that he shuld intrupte theym of their comen in a pcell of ground called Ernehill and otherwise should wrong them as in their saied Complaint apperethe mor at large. Whereunto the saied William Shawe hath made hys answer which bill and answer we send hereunto annexed we willyng to be ascertayned of the saied complaint and answer Well and desir you at tyme convenyent by you to be limit by all wayes and meanes indifferent ye de enquier of the saied complaint and answer of the circumstance of theym as well by viewe othe evidence Wytnes examinacion as otherwise. So that by your mean and wysdomes ye may atteign to the fit knowledge of all the prmysse and what ye shall preceve and understand in the prymys We woll and desir you that ye be your Wrytynge under your seales wt theis our bies and bill do certifie our Chancellor and Counsell of our saied Duchie thereof at our palays of Westminster in the xvme of the holy trinitie next comyng. Not fayling hereof as we trust you yeven at our saied palays under our seale of our saied duchie the xvithe day of Fenruary the xviii yer of our Reyne.

Duchy of Lancaster Proceedings Hen 8 Vol 3 F.D. 1

Certificate of the Commissioners datd May 28th 21st Henry 8th (1530)

paragraph 2. First the inhabitants of the towne of Fakenham cleymeth to have graving and sharing in a grownde called Ernehill lying on the Est pte of Hempton Abbey alled palmers brigge on the south pte of the said Abbey. And so from the said brigge estwarde in a waie leading to an other brigge and a causey called Stongate on the North pte of the said waie. And rom the same Stongate northwarde by the dreyne rennyng from the said Stongate to a spring stille northwarde unto the mayne River, this is the seying of the inhabitants of Fakenham

Depositions of the pte of the inhabitants of Fakenham touching the drye ground called Ernehill above named.

John Whytney of Wissingsett of the age of lv yere sworn and examined deposeth and seith that he waswith son John Williamson of Fakenham above XXXtie yeres passed and at that tyme he waswith the said Williamson the buttes in Fakenham were decayed and then the said Townshipp of Fakenham spake together to know where they might have flagge for the making ageyn of the seid buttes, and so they agreed to grave flagge upon Ernehill and there did grave flge upon Ernehill in any place there they myght fynde best flagge without stonys and so sowte thorowowte the said Ernehill that is to saye from a brigge called Palmers brigge unto an other brigge and causey called Stongate before mentioned in the said bownde. And so within the same lymmites he seith that the inhabitants of Fakenham ded grave flagge att that tyme and peassibly had them awaie withoute eny lett or gaynsaying of any man.

Robert Chamberleyn of Fakenham of the age of IIII and XV years, leaving of almes in the seid Towne of Fakenham sworned and examyned depositth that he have had ling flagge upon the the light grownde called Ernehill withoute interupcion or lett of any man by the space of XXXth years and above by his estymacion. And that he had also turffe upon the said low grow de in likewise att the said tyme And also he seith that he knew oon John Deen, Peers Golding and Henry Aleyerd being laborers in Fakenham had pte of ther leving with graving of Flagge for the inhabitants of fakenhma as well upon the light grownde as upon the said

low grownde without lett or interupcion paying 1,06 for a spade and ()
for a sickill.

Duchy of Lancaster Commission Book Hnery 8 fol 110.

Norff. To suffer th tennatts of Fakenham to digg turves.

Henry etc. To our wellbelved William Shawe of Norton gretyng whereas we perfectly understand by the depositions comprised in the certificatt of our late Commissioners in thoes pties that o tennatts and inhabitants of our Lordshipp of Fakenham parcell of the Duchye of Lancasternot in our Counte of Norff tyme oute of mynd have usyd to dyg turves garve fflags and to ffell Whyndde and brake and to shere tak and ruhes in and upon a place called Ernehyll wt. thea lenggeth from the p"our of of Hempton usyd to dyg Turves grave palmer brigge and from thence to Stonegate And so to the River and streme ther and thys notw'standyng ye wt our subiette of the seyde Towne of Norton by yo procurment and Abettment our seyde tenntt and inhabitants of Fakenham aforseyd to dyg Turves grave fflags and off user of al other the prmyses contrary to ryght and good consciences not only to the grete hurte and damage But also to our dysheryson if it shuld be so suffred. We consydering th prmyses and for as moche as ye aperyd not thys trinite time at the day of the seyde sertyfyat before our Chauncellor and Counsell of the seyde Duchy e.....howe ye prosede yo answere hertofo made to the byll of complaint of our seyde tennants concerning the prmyses. Woll and charge you that ffromhensforth ye do suffer our sayed tennants and inhabitants of our seyde Towne of fakenham and every of theym pesibly to dig turves grave flagge and to fell whynde and also to take and rushes and upon the the seyde Ernehyll and other the prmyses in tghe place byfor rehersed without lett or interupcion of you or any other by your commandement as ye and such as wyll attempt to the contrary hereof woll answer unto us at your uttmost perille unto such tyme as ye have shewed bifor our Chancellor and Counsell of our seyde duchie sufficient matter why they ought not so to do. Yeven etc at Westminster xii die July Hen. XX1 (1530)

