THE COURT OF WARDS AND LIVERIES

BY

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THESIS

FOR THE

DEGREE OF MASTER OF ARTS

IN THE

GRADUATE SCHOOL

OF THE

UNIVERSITY OF ILLINOIS

PRESENTED JUNE, 1905
THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

CLARENCE WILBERT HUGHES, A. B., 1900

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OF

MASTER OF ARTS

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HISTORY
CONTENTS

Introduction

Chapter I.
Establishment of the Court.
1. Events Resulting in the Establishment of the Court. 2. Composition and Jurisdiction of the Court. Sammes's Case

Chapter II.
Early Attempts to Abolish the Court of Wards and Liveries.

Chapter III.
Abolition of the Court of Wards and Liveries.
THE COURT OF WARDS AND LIVERIES

Introduction

Historians who have written of the sixteenth and seventeenth centuries in English history, such as Froude and Gardiner, have either made brief references to the Court of Wards and Liveries or have neglected it altogether, and all have failed to point out just what that court was. In fact no one has ever given any adequate account of the origin and purpose of this court, and of the causes which led to its abolition, first de facto and then de jure.

The subject is of importance not only because thru this court the king derived a large part of his income during more than a century, but also because the abolition of this court is closely connected with that of military tenures.

This study will concern itself, firstly, with a brief explanation of the origin and powers of the Court of Wards and Liveries; secondly, with a consideration of the causes which led to its abolition in fact; and thirdly, with a determination of the reasons which made it seem advisable to the parliament of 1660 legally to recognize this de facto abolition. It is not intended to include any discussion of the origin and development of wardship and liveries. One who is interested in that subject should consult
Pollock and Maitland, for a discussion of the hypothetical history of the origin and development of wardship previous to the twelfth century; the coronation oath of Henry I.; the coronation charter of Henry I.; Glanville; the Magna Carta of John; and the new Magna Carta of Henry III. These various citations include some reference to Purveyance as well as to Wardship and Liveries, because when the Court of Wards and Liveries was abolished by the first parliament of Charles II., Purveyance was abolished by the same Act.


2 The exact words of this oath are quoted in Stubbs Documents Illustrative of English History, p. 99 (cf. Maskell, Mon. Rit. III., 5,6)


"Treatise on the Laws and Customs of the kingdom of England" (published between 1187 and 1189) lib. 7, c. 9 to 13.

4 Magna Carta of John, Chapters 2 - 9, 37, 28, 30, 31, (translated in various places, one translation being found in Hosmer's Anglo Saxon Freedom, App. A.)


7 Blackstone, in his Commentaries, (I., 287), says that Purveyance (from pourvoir, to provide) was a prerogative enjoyed by the crown "of buying up its provisions and other necessaries for the use of his royal household, at an appraised valuation, in preference to all others, and even without the consent of the owner, and also of forcibly impressing the carriages and horses of the subject to do the king's business on the public road . . . upon paying of a settled price; a prerogative which prevailed pretty generally thruout Europe."
The Act of 12 Charles II., c. 24, abolishing the Court of Wards and Liveries, deals as well with military tenures, and an explanatory reference may be made therefore to the feudal system of which these tenures formed a part. The feudal system, in its complete form, may be described as a system of government, including a personal relation of overlord and vassal, and a system of land tenure. Feudal government and feudal land tenure are to be kept distinct; the latter was completely organized in England by the time Henry I. came to the throne, the former, as found on the Continent, was never established in England. One essential difference between the Continental and the English feudalism was affected by William the Conqueror at the Great Council held at Salisbury in 1086. Under the Continental system of feudal government every member of the system owed primary allegiance to his immediate superior; in England, after the Council of Salisbury, William the First, and his Norman successors, required all free tenants, of whatever grade, to swear allegiance directly to the king, and in case of insurrection or civil war to serve under him. As a system of government, then, one of the chief objects of the feudal system was to furnish an army for the king. In the course of a century, however, this method of raising troops became inadequate. In 1159 Henry II. laid claim to the country of Toulouse in southern Gaul; and declared war in order to enforce his claim. The great barons of England refused to furnish troops to fight outside of the country; and Henry wisely compromised the matter by agreeing to accept from each knight
a sum of money in lieu of service, called scutage or shield money, with which mercenary troops could be hired for foreign wars. From this time on, the feudal system gradually came to be depended upon less and less by the kings of England as a means of raising armies, until by the opening of the fourteenth century scutage ceased to be collected, and the feudal system no longer was used as a source of national troops. Tenure in knight's service, however, continued to exist, the returns of the overlord being limited to the incidents of the military tenures.

An Act of Parliament, the date of which is uncertain, but which is referred to as Prerogativa Regis (Of the King's prerogative) 17 Edward II., enumerates the various dues and reliefs which made up the feudal incidents to which the king, as head of the English system of feudal land tenures, was entitled, in the early part of the fourteenth century; and states the position reached in the development of wardship before the establishment of the Court of Wards and Liveries in the reign of Henry VIII. This act was intended to be declaratory of the existing law and provided that the King, by his prerogative, should have wardship of the heirs of such as held their lands of him in chief by knight's service, (except in the case of the fees of the Archbishop of Canterbury, and one or two others specifically designated); supervision of, and a fee for,

For a good discussion of the origin of the English feudal system, see Round's Feudal England.


Edward II., 1307 - 1327.
the marriage of such heirs of his tenants as were his wards; primer seisin of the lands of his tenants in chief; the assignment of dower to the widows of his tenants; supervision of, and a fee for, the remarriage of such widows; a similar supervision and fee in the case of the marriage of heiresses of his tenants in chief; homage for lands, held of the king, and descending to coparceners; and wardship of women married before the death of the ancestor, and before they reached the marriageable age prescribed by law.

In addition this Act limited the alienation of lands held in chief to such part of the lands as was not required by the tenant to perform his feudal services, except where the king licensed further alienation.

The custody of the lands of idiots and of lunatics was declared to belong to the king; as was also the escheat of lands descending to aliens.

This Act of 17 Edward II. declared the law with regard to the feudal prerogatives of the crown, for more than three hundred years. These prerogatives were administered in various ways at various times during those three centuries, but they were not legally abolished until the year 1660. Henry VIII. caused them to be placed within the jurisdiction of a new court known as the Court

At this time and for several hundred years following, aliens were not allowed to inherit lands in England. Similar laws have existed in various parts of the United States.
of Wards and Liveries', which continued to administer them until the close of the first Civil War.¹

³2 Hen. VIII., c. 46; Stat. of the Realm III., 302 ff; 33 Hen. VIII., c. 22; Stat. of the Realm, Vol. III., pp. 860 - 863⁴

¹ Military tenures and their incidents, and the Court of Wards and Liveries were finally abolished in 1660 by Act of 12 Charles II., c. 24; Stat. of the Realm, V., pp. 259 - 266.
Chapter I.

Establishment of the Court of Wards and Liveries.

1. Events Resulting in the Establishment of the Court.

The defeat and death of Richard III. at the Battle of Bosworth Field, (1485), and the crowning of his adversary, Henry Tudor, on the battlefield, marks the opening of the modern age of English history. The thirty preceding years, during which England was experiencing the Wars of the Roses, exhibit evidences of those decentralizing elements which usually result, in the government of a country that is disrupted by civil war. Henry VII., however, immediately upon his coronation, began to check this decentralizing tendency, and succeeded during his reign in greatly increasing the power and wealth of the crown.

The incidents of the feudal tenures, which the Act of 17 Edward II. had declared to belong to the king by virtue of his prerogative, furnished a considerable part of this increased wealth of the crown. The process of centralizing the power of the crown, however, led Henry VII. to retain in his own hands the control of these feudal prerogatives. By the close of the reign of Henry VII. the authority of the sovereign had become so extensive and so well established, that the new king, Henry VIII., felt justified in delegating the administration of some of his manifold powers to agencies of one kind or another. As one step in this process of relieving the king of some of his administrative duties, an act was passed by
Parliament in 1540 creating a court of record to be known as the Court of Wards, the duties of which consisted in securing to the king the revenues arising from the various feudal prerogatives mentioned in the Act of 17 Edward II.

2. Composition and Jurisdiction of the Court.

The chief officer of this Court was known as the Master of the Wards. He was assisted in the exercise of the functions of the Court, by an Attorney, a Receiver General, Two Auditors, Two Clerks, a Messenger, and an Usher. These various officers were all appointed by the king. The several officers were required to take an oath upon entering office, the Lord Chancellor administering the oath to the Master, and he in turn administering an oath to each of the other officers. The Master made oath as follows: "You shall swear that you well and truly shall serve the King in the office of Master of the King's Wards, and shall administer equal justice to rich and poor to the best of your cunning wit and power; and that you shall diligently procure all things which may honestly and justly be to the King's advantage and profit and to the augmentation of the rights and prerogatives of the Crown, and truly use the King's seal appointed to your office, and also endeavor yourself to the uttermost of your power to see the King truly and justly answered yearly of all such rents revenues and profits which shall or may arise, grow, or be due to the King in

32 Hen. VIII., c.46.

32 Hen. VIII., c.46. Art. II., III., IV., V., VI., VII.

Art. VII.
your office, and from time to time deliver with speed such as shall have to do before you; and that you shall not take more receive of any person any gift or reward in any case or matter depending before you or wherein the King's Highness shall be a party whereby any prejudice, loss, hindrance, or disherison, shall grow or be to the King's Highness: So help you God and all Saints." The oath administered by the Master to the other officers was similar in character to the above:

The Court of Wards usually held four terms of Court annually at Westminster; and in general its jurisdiction extended over the King's wards, and their lands. The matters thus placed under the survey of the Court of Wards had formerly belonged to the Exchequer, but under this Act the latter Court was forbidden longer to take cognizance of such matters.

The duties and privileges of the several officers, in the exercise of the jurisdiction of the Court of Wards, are outlined in this Act, and may be summarized as follows:

The Master of the Wards, Attorney, Receiver-General, and Auditors or any three of them of whom the Master must be one, could sell and grant wardships and land of the wards during their minority, by means of a warrant known as the King's bill, and this bill in each case conferred upon the Chancellor of England full power to issue to the purchaser the King's free patent under the Great Seal. The

'Art. VII. 9 "Art. XXII., XXX.
'Art. XIV. 95 Art. IX.
'Art. VIII., XXVI.
Master, with the advice of the Attorney and Receiver-General, or one of them, could make sales of wood and leases of underwood, belonging to the King's wards. The same officers were also authorized to exercise their discretion in compounding with widows under the King's control for fines due to the Sovereign because they remarried without his consent.

In order to facilitate the work of the Court, the Master was empowered to appoint particular or special receivers, surveyors, etc., for each shire or county in the country, such officers to be removable at the discretion of the Court. All officers thus appointed by the Court were to be allowed certain amounts by the Master for their necessary expenses, and certain fees as compensation for their services. The Master in all places, and the Attorney, Receiver-General, and Auditors, or two of them in said Court, the Master being absent, were authorized to take security from the special receivers, to insure the proper fulfilment of their duties.

The Attorneys and other officers were required to attend the Court during each of the four regular terms held at Westminster; and the clerks and other lesser officials had to be present for duty at all times and places to which they were summoned.

Various safeguards were provided to secure from each officer a faithful discharge of his duties. For negligence of officers, a penalty was to be exacted equal to double the amount lost thru such negligence. All accounts of the several officers were to be ex-
amined by the Auditors General, the special receivers paying over their money collected, once a year. In settling up accounts the acquaintance of the Receiver-General was to be a sufficient discharge of all claims by the King and his successors for the payment of money due from the Court, as well as to the auditor for making proper allowance of such claims. On or before March 20th of each year, the Receiver-General was required to account to the Attorney and to one or both of the Auditors-General. These officers had to pass upon the Receiver-General's accounts before the following July 31st. Whereupon the Receiver-General was given one month within which to pay over the money thus found due by him to the King. All money received under this Act was to be paid yearly to the Treasurer of the King's Chamber, or to a commissioner appointed by the King, and the receipt of such Treasurer or commissioner was to serve as a discharge to the Master and Receiver-General upon the several payments. These latter two officers were required to accompany their payment with an annual report to the King of the profits of their offices.

Persons to whom the custody and wardship of the King's wards had been granted, had to sue out their patents within four months after the assignment of the wardship or such assignment became void. Liveries of wards were not to be passed by the Master of

Art. XVII. Art. XXIII.
Art. XVIII. Art. XXVIII.
Art. XIX.
the King's liveries without a reference to the Court of Wards to discover how the lands of the ward stood with the King; and every ward was compelled within six months after receiving his livery to have it enrolled in the Court of Wards. The Master, with the advice of the Attorney and Receiver-General, was given authority to institute proceedings against wards who entered on their lands before suing out their livery.

Persons summoned to testify before the Court concerning any matter within the jurisdiction of the Court, who refused to give their testimony could be fined for contempt, whatever amount the discretion of the Master, Attorney, and Receiver-General, or two of them should dictate, to be levied on the property of the offender.

The Act prescribed a definite tariff of fees to be charged by the officers of the Court for issuing process, and performing their other duties. It also provided that the fees and expenses of the Receiver General and the Chief Auditors should be allowed according to the discretion of the Master and the Attorney, and gave the Auditors power to allow such sums from time to time.

The terms during which the several officers were to serve were not specified in the Act. The last Article, however, says that "John Peryn is continued in office as one of the two Auditors during his life", so the inference may be drawn that the principal officers were to serve either during good behavior, or during the pleasure of the King,- probably the latter.

1Art. XXVII.
2Art. XXI.
3Art. XXXII.
4Art. XXIV., XXIX.
5Art. XXXIII.
After the creation of the Court of Wards in 1540, it seemed expedient that the enrolling of Indentures of Livery should be committed to the same court. Accordingly, Parliament, in the following year passed an act for that purpose. The office of Master of the Liveries was united to the Court of Wards and the whole now became known as the Court of Wards and Liveries. The other officers of the Court, who should conduct the business of the liveries, were the Surveyor of the Liveries, the King's Attorney, the Clerk of the Liveries for making Indentures, etc. The several officers were required to take an oath of office. All liveries were placed within the survey of this court; and none were allowed to sue livery of lands above £5 per annum before an inquest of office was found, or a Warrant issued from the Court of wards and Liveries. These Inquests of Office had to be duly returned and transcripts made into the Court of Wards and Liveries. The Master of the Wards with the consent of certain other officers of the Court might agree with the parties interested and take security for liveries. The warrant of the officers of the Court was to be sufficient to authorize the Chancellor or other proper officers to make out, seal, and deliver any livery. The several officers thru whose hands the livery passed were to be entitled to the customary fees. What was called a general livery could be sued out of lands not exceeding £20 a year.

'Livery, as here used, means release from wardship.

"An Act concerning the Order of Wardes and Lyveries," 33 Hen. VIII. c. 22.
Certain fees and penalties were prescribed to fit the various cases arising from the subject of liveries in this court, either in the case of conduct of the patrons of the court or in the case of the conduct of its officers.

The Master of the Court of Wards and Liveries was given the right to take recognisances, and, with the advice of the Court, to mitigate the same, if forfeited, and to set fines, leviable by scire facias, as under statute 27 Hen. VIII., c.27; and to commit an offender for contempt; also to cancel recognisances.

Patents for a livery had to be sued out within three months after a warrant was issued for the same.

Just what was the method of procedure in the conduct of trials in the Court of Wards and Liveries, does not appear; but from the reports of cases tried there, it may be inferred that the trials were conducted much as in the other courts of the realm. The reports of these cases that have come down to us, indicate that the court held regular sessions at least until the reign of Charles I.

3. Sammes's Case.

Of these various cases one may be quoted from the report, by way of illustration of the kind of cases that came before the Court.


For examples of cases tried in the Court of Wards reference may be made to Tyrrel's Case decided in 1557 (Reported Dyer, 155; or Gray's Cases on Property, I., 510); Mildway's Case, decided in 1582 (Reported, 1 Co. 175; or Gray, I., 498); Sammes's Case, decided in 1609, (Reported, 12 Co. 54; or Gray, I., 511); Lutwich v. Mitton, decided in 1620, (Reported, Cro. Jac. 604; or Gray, I., 491).
Sammes's Case. 1609. (Reported 13 Co. 54).
Gray's Cases on Property, I., 311.

"John Sammes being seised of Granny Mead by copy of court roll of the manor of Tollesham the Great of which Sir Thomas Beckingham was lord, and held the same of the king by knight's service in capite; Sir Thomas by his deed indented, dated the 22d of December, in the first year of King James, made between him of the one part, and the said John Sammes and George Sammes son and heir apparent of the said John of the other part, did bargain, sell, grant, enfeoff, release, and confirm unto the said John Sammes the said mead called Granny Mead, to have and to hold the said mead unto the said John Sammes and George Sammes, and their heirs and assigns, to the only use and behoof of the said John Sammes and George Sammes, their heirs and assigns forever; and by the same indenture Sir Thomas did covenant with John and George to make further assurance to John and George, and their heirs, to the use of them and their heirs, and livery and seizin were made and delivered, according to the true intent of the said indentures, of the within mentioned premises to the uses within mentioned.

"John Sammes the father dieth, George Sammes his son and heir being within age; the question was, Whether George Sammes should be in ward to the king or no? And in this case three points were resolved:- . . . .
"But the third was of greater doubt, if in the case the father and son were joint-tenants, or tenants in common? . . . .

" . . . . And upon the whole matter it was resolved, that because in the principal case the father and son were joint-tenants by the original purchase, that the son having the land by survivor, should not be in ward: and accordingly it was so decreed."
Chapter II.

Early Attempts to Abolish the Court of Wards and Liveries


One of the characteristics usually ascribed to the Tudor period in English history, is that of centralization of power in the Crown. Such a characterization, in general, is correct; but applies with less force to the latter part of the reign of Elizabeth. For various reasons, the most important being the more general adoption, by the English people, of the doctrines of the Reformation, it became continually harder for Elizabeth to control her parliament; and more and more she was compelled to change her demands of that body into requests, which even then were not always granted. This increase in the power of parliament led the representatives of the people to seek reforms wherever reforms seemed desirable. For example, when the commercial monopolies, created by the Queen, became oppressive parliament forced the repeal of their franchises.

Such was the temper of the House of Commons when, in 1603, James VI. of Scotland became king of England. The new king claimed the right to override the nation's will and the rights of Parliament, and based his preposterous claims on two theories, which represented to him the foundations of a sovereign's power. The first was his "prerogative"; the second, the theory of "divine hereditary kingship". Notwithstanding the antagonism between the increased power of the House of Commons on the one hand, and the
desire of the King, on the other, to encroach upon the constitution, all England seemed disposed to give to James every chance to prove himself a capable ruler. Every one was glad to see the succession question settled without a war, and all parties hoped to gain the new king's favor.

This spirit of fair play, however, did not prevent the House of Commons from seeking further reforms. The administration of the Court of Wards and Liveries, and the enforcement of the sovereign's right of Purveyance apparently had worked hardship. At least the first Parliament of James I. undertook to provide some other source of income for the king in lieu of that coming from these institutions. On May 19th (1604) Sir Edwin Sandys and others were sent from the Lower House to the House of Lords with a message, asking for a conference concerning wardship, respite of hommage, tenures in capite, licence of alienation, premier seisins; and the amount of compensation to be given to the king in lieu of the above institutions. The Lords, on May 21, agreed to this conference and appointed a committee of thirty for that purpose. The result of this conference was the conclusion that the matter should be dropped, both on account of the character of the legislation and because such subjects, in good taste, should not be discussed in the first Parliament of the new sovereign.

Sir Edwin Sandys, born about 1561; died 1629. Son of the Archbishop of York. Associated with Bacon in drawing up the "Remonstrance" of 1604. Treasurer of Second Virginia Company in 1619. (Century)


Lords' Journals, May 26, 1604.
The Lords' Journals for the remainder of the session contain various references to a supply to be voted to the king. The grievances arising from purveyance also were considered; but inasmuch as this was a long established part of the royal prerogative, it had to be tenderly dealt with. Many conferences were held about it, between the two houses, and at last the Commons passed a bill, entitled "An Act for the better execution of sundry statutes touching Purveyors and Cart-Takers", and sent it up to the Lords, where it was referred to a committee. On April 10, the archbishop of Canterbury reported that the Attorney General had made it appear to the committee that the bill was very defective and inconvenient; whereupon it was voted to proceed no further with it. But it seems that the Lower House was not willing to let the matter drop so easily for later in the session a new bill to the same purpose was passed and sent to the Lords. After a long debate the latter body rejected the bill on the ground that one bill on the subject having been voted down, a second of the same nature could not be considered in the same session of Parliament.


Thus in the very first Parliament of James I, the independent spirit of the House of Commons revealed itself, and from that time on threatened to cause trouble between the King and Parliament.

'Eg. Lords' Journals, Feb. 12, 1605.

Cobbett, Parl. Hist. I., col. 1064 ff. This ruling of the Lords, that a second bill concerning a certain subject could not be introduced during the session in which a former bill touching the same subject had been considered and rejected, was entered on the Journal as a precedent to be followed in the future.
The question of taxation furnished one great source of dispute. Notwithstanding the economy of the chief councillor, the younger Cecil, the king piled up an enormous debt, and exceeded his revenue year after year. To provide more money, he raised the scale of the customs-duties, in accordance with a decision of the judges' but without the consent of Parliament (1608); and then for two years refrained from calling the houses together. But in 1610, lack of money forced him to summon them, and the session opened with a sharp dispute about the legality of the increased customs. On February 21, a conference was desired by the Commons, in which some action could be taken concerning wardships and tenures. A week later a long debate began concerning the income of the king. For almost a year this matter of an annual support in lieu of wardships and tenures was the subject of debates in the respective Houses of Parliament, of conference between the two Houses, and of conference between the lords and the king. The whole matter came to bear the name of the Great Contract. The delay in reaching an agreement was caused by the king demanding too high an annual income and by the commons continually adding to their demand. One additional demand is of interest. On May 26, 1610, the lords' journals inform us that Purveyance was to be included among the grievous institutions to be abolished in consideration of giving an

'This change in the customs was based upon the decision in Bates' Case (1606). 11 State Trials, 30-32; Prothero, 340-342; Adams and Stephens, 329-331.
annual supply to the King. This discussion lasting for several months resulted in two memorials, one prepared by the Commons, another by the House of Lords:

"Martil 26,1610. Memorial concerning the Great Contract with his majesty, touching Tenures with the Dependants, Purveyance, etc., delivered by the Committees of the Commons House unto the Lords.

"Demands in matters of Tenures, etc.- The desire, in general, is to have all Knights Service turned into free and common Soccage. In particular some Tenures more properly concern the Person, some the Possession.

"Concerning the Person, viz.- Grand Serjeanty, wherein though the Tenure be taken away, yet the service of Honour to be saved, and the Tenure per Baroniam, as it may concern bishops or parsons, or men in Parl. to be considered. Petty Serjeanty, escuage certain and uncertain, to be taken away. That castle Guard which rests in rent to be saved. All Knights Services general, both of king and common persons. Homage ancestral and ordinary, with the respite of them; both these to be taken away, only the Coronation Homage to be saved, not in respect of Tenure but of Honour. The Form of doing Fealty not yet resolved of Wardship of body, marriage of the heir, of the widow, to be taken away. Respite of Fealty to be taken away.

"Concerning the Possession, viz. - Wardships and Custody of Lands to be taken away. Primier Seisin to cease. Livery Ouster le main, to be taken away so far as they concern Tenures, other
than for escheats, Licence of Alienation, Pleading, "diem clausit extremum, Mandamus, quae plura devenerunt, offices post mortem, inquisitiones ex officio" except for escheats. Also all concealed Wards "de futuro", all Instructions, all Alienations past, all Bonds and covenants for Performance of what tends to Knights Service; all these to be determined. The like for Wards of common persons, viz. All Wards now in being or found by office, or which shall be found by office before the conclusion of this Contract, and whose ancestors died within three years before, these to be saved. Relief upon Knights' Service to cease. Patentees that pay a sum, or pay 10ths of Fee-Farms. These not to double their rent upon a relief to be paid. Escheats Heriots, Suit of Court rent, workdays and such Services; these all to remain. Aid to the king to remain but limited in a certain (sum) to 25,000l, "cum acciderit". Aids to common persons to cease.' . . . . . "6. All purveyance and takings of his maj.'s use, the queen, the prince, and all other the king's children, and for all officers, courts, councils, and societies whatsoever, to be utterly taken away, as well purveyance and taking of household, stable, navy, servants, labourers, and all other provisions; and also for carts, horses and carriages, both by land and water; and, generally, all purveyances and takings for whomsoever, whatsoever, of what name or nature soever, to be forever extinguished; the composition for the same to be all dissolved and released; the clerk of the market and all others, to be disabled for setting any prices; the power
and prerogative of pre-emption to be determined not intending hereby the pre-emption of Tin. What regard shall be had to the merchant-stranger in this point, to be left to further consideration.

On July 18, 1610 a series of resolutions were passed by the House of Commons, of which the fifth provided that the Lords should be asked "to join with the Commons in Petition to his maj. for recompense to be made by his maj. to all such officers of courts, as are damnified by the Contract in point of Tenures."

The memorial prepared by the House of Lords was as follows:

"Memorial concerning the Great Contract with his Maj. touching Tenures, with the Dependents, Conveyance, etc., conceived by the direction of the Lords of the High House of Parliament, viz. -

"Whereas the knights, citizens, and burgesses of the Lower House of Parl. have this day by committee, delivered to the Lords' Committee of this House, a memorial by them conceived and put in writing, containing certain articles concerning the Great Contract with his maj. which during this session hath long and often been in speech and debate between their lordships and them, as well as on his maj.'s, as for the interest of their lordships, and of the said knights, citizens, and burgesses; by which contract they are tied to assure unto his maj., his heirs and successors the sum of 200,000l. in yearly revenue, in satisfaction of the great yearly

2Idem.
profits which his maj. hath or may make, as well in respect of the wardships of the bodies and lands of his subjects, and all other incidents to Tenures, as of the benefits arising by post fines, defective titles, assarts, and many other immunities and privileges, together with the extinguishing of purveyances, (all tending to the profit and ease of his maj.'s subjects), in the conclusion whereof there is this clause inserted, viz.: 'that the extent of every Article that is desired for the good of the commons, in this great Contract with his maj. should be explained and expounded in all clauses doubtful, by the Commons, according to their true meaning'. . . . And whereas . . . they (the Lower House) did desire their lordships to remain assured, that it was their full intention and resolution that his maj.'s revenue, depending upon this Contract, should have these two qualities; one that it should be a revenue firm and stable; another that it should not be difficult in the levy . . . . The Lords also who are likewise in their own particular estates and possession (beside the case of the public good) no less interested in the great Contract than they, . . . . have now, upon good advice and deliberation, thought fit and necessary, not only to acknowledge their personal consent to the substantial parts of this great Contract, but with the privity of his maj. as an argument of his consent, given order likewise for an entry to be made of the same memorial, in manner as is aforesaid: that is to say, with the same reservation which was verbally desired by them in these words "addendo,
minuendo, et interpretando" (when Common's Memorial was present to House of Lords); and, with that reservation which is contained in the latter clause of their Memorial, viz., "That the extent of every Article, that is desired for the good of the Commons, in this great contract with his maj. should be expounded in all cases doubtful, by the Lords of the Higher House, for the good of his maj. and themselves."

This was the condition in which the Great Contract was left at the end of this session of Parliament. During the greater part of the session the commons had held out for the proposition that £180,000 per annum should be paid the king in return for the new liberties desired; but finally they had consented to grant £200,000 annually, which however, was not accepted. The same Parliament met again the 16th of October (1610), and again took up the business of the Great Contract; but before anything was accomplished this Parliament was at first prorogued, and then dissolved.3

2 Journals of the House of Lords, Oct. 23, 1610.
3 Cobbett, (Parl. Hist. I., col. 1144 ff.) in discussing the events of this Parliament, quotes the message of the King, dissolving the Parliament, and gives the date of dissolution as Dec. 31, 1610.
Chapter III.

Abolition of the Court of Wards and Liveries.


From the dissolution of the Parliament of 1610 until the year 1645 there seems to have been no serious effort made either to reform or to abolish the Court of Wards and Liveries. Meanwhile the first two Stuart kings had so conducted themselves as sovereigns that England was driven into civil war. The battles of Marston Moor (1644) and Naseby (1645) decided the fate of the struggle, and the decision was against King Charles I. Parliament, thus placed in power, proceeded to work a variety of changes in the institutions of England. During the early years of the Long Parliament the judiciary branch of the government was given an overhauling. The Court of the Star Chamber was abolished (1641); the Court of the High Commission ceased to exist, by virtue of the same act. Numerous other judicial bodies were legislated out of office; and among these other courts abolished was the Court of Wards and Liveries.

Whitelocke, in his Memorials, under date of February 24, 1645/6, says that "an ordinance was debated for discharging the wardship of the heirs male of Sir Christopher Wren, late member of the house, according to a former vote for discharging the wardship of those who died in this war in the Parliament's service." The entry con-

Whitelocke's Memorials, p. 194. Whitelocke was a member of the Long Parliament. He published his "Memorials of English Affairs" in 1682. (Century)
tinuous, "Selden, Maynard, St. John, and myself opened the debate on the origin of wardships and their misapplication and the present oppression to the families of noblemen and gentlemen." Reference to the Commons' Journals shows that after some debate the House voted to abolish wardships. A record of this vote was sent to the House of Lords and was there concurred in by them. The Lords' Journals record that "A message was brought from the commons. . . . That, in this time of great distraction wherein the lords and the commons, and the whole kingdom have ventured their lives and fortunes, for a recompense to the whole kingdom, they have a right to take away a great burden; therefore they have made a vote wherein the Commons desire their lordships' concurrence." The vote was read "That the Court of Wards and Liveries, and all wardships, liveries, premier-seisins andoustre les manies be from this day taken away; and that all tenures by knights service, either of his majesty or others, or by knights service or socage in capite of his majesty, be turned into free and common socage." The question was carried without a single negative vote.

The above quotations from Whitelocke's Memorials and from the Journals of Parliament suggest that the Act of 1645/6, abolishing the Court of Wards, may have been passed for any one or all of several reasons. Firstly, the administration of the Court had been oppressive, and when Parliament won in the Civil War and secured control of the government, it removed this cause of oppression. Secondly, in order to encourage people to enter the Parliamentary

1 Commons' Journals, Feb. 24, 1645/6.
3 Idem.
army, Parliament voted to discharge "the wardship of those who died in this war" in its service; and when the war was over extended this relief "for a recompense to the whole kingdom" after the "great distraction" of the civil struggle. Thirdly, the nobility and the landed classes were most interested in the abolition of the Court of Wards and of Wardship; and Parliament may have been bidding for their support, when it passed this Act.

An act, abolishing the Court of Wards and Liveries, was printed by Henry Hills and John Field in 1656, it being signed by Henry Scobel, Clerk of Parliament. This act does not state when it was passed; but it purports to be passed by Protector and Parliament, hence must have been passed after the establishment of the Protectorate in 1653. This act, printed in 1656, was but a repetition of the former act of 1645, and follows the language of the act as given in the Journals of the House of Commons for Feb. 24, 1645/6.

The Act of 1645/6 makes no provision for recompensing the officers who were deprived of their places by the abolition of the Court of Wards. On March 4, 1645/6 Parliament ordered satisfaction to be made to them; but in November following the matter was reconsidered and referred to a committee. The committee reported from time to time until November 1654, when the subject seems to have been dropped.

7. Restoration of Charles II.

Fourteen years elapsed after the abolition of the Court of Wards and Liveries, before the Restoration brought back the monarchy in the

From a Brief of the Officers, published in a contemporary pamphlet, now kept in the British Museum.
person of Charles II. During those fourteen years no sessions of the Court of Wards were held, and no income from wardships was collected. After the expiration of so long a period, during which there must have been many transfers of land from ancestor to heir, the enforcement of wardship became a question of great difficulty. The people had learned from the experience of these fourteen years from how great a burden the Act of 1645/6 had relieved them. Any attempt to restore this burden would necessarily meet with a storm of protest from those to whom land had descended during the fourteen years. All England joyfully welcomed King Charles II.; everyone desired an end of military rule. Charles had a favorable opportunity to become really popular with his subjects. Nevertheless his position immediately upon his return, was unstable. A false move, an unpopular act, might drive him again into exile. The restored monarchy did not recognize as legal any of the acts of Parliament passed during the Commonwealth; it had, however, to recognize the de facto existence of many of the results of those acts. One of the great problems of the first Parliament of Charles II. was to decide how many of these de facto results should be overthrown and how many legalized by re-enactment. Every consideration made it seem advisable to Charles' supporters to legalize the abolition of the Court of Wards and Liveries and of Wardship, provided the revenue thereby lost could be secured in some other way. Accordingly this was one of the first matters considered by the Restoration Parliament.
3. Action of the Parliament of 1660, during its First Session.

On May 3d, 1660, eight days after the opening of Parliament, a committee of the Commons was appointed to consider the King's letter and the Declaration of Breda. This committee was given power to prepare a bill for taking away Tenures in Capite, and by Knights' service, and socage in Capite, and also the Court of Wards, and to consider how £100,000 a year may be raised and settled on the King, as compensation for Wardship and Liveries, and the Court of Wards.

On the 22d of May, 1660, Mr. Peirpont reported in the House of Commons a bill for taking away the Court of Wards and Liveries, and all Tenures by Knights' Service in Capite; or of Mesne Lands held by Knights' Service. The bill passed its first reading as soon as reported. On the 25th the bill was read a second time and committed to the whole House. The question was there put that the sum of £100,000 a year, to be settled on the King, his heirs and successors, in lieu of taking away the Court of Wards, and Liveries, and Tenures in Capite, and by Knights' Service, be generally charged upon all lands, and was passed in the affirmative.

A petition from the late officers of the Court of Wards and Liveries, asking for satisfaction for the loss of their offices was read, and referred to the committee having in charge the abolition of the Court.

1 Commons' Journals, May 3, 1660.
2 Commons' Journals, May 22, 1660.
3 Commons' Journals, May 24, 25, 1660.
4 Commons' Journals, May 25, 1660.
On June 22, 1660 the Lower House resolved that it be resolved into a grand committee to consider the bill for abolishing the Court of Wards. Mr. Peirpont acted as chairman of this committee. To it was referred from time to time petitions of various individuals who had loaned Charles I. money, the loans being charged on the Court of Wards. The Grand Committee was ordered to report on June 14 on the bill for taking away the Court of Wards; but the Committee did not report as ordered. For more than two weeks the House of Commons was considering other matters, notably the Act of Subsidy of Tonnage and Poundage, entitled "A Subsidy granted to the King of Tonnage and Poundage, and other sums of Money, payable upon the Merchandize exported and imported"; and the Excise Bill, entitled "An Act for the Continuance of the Excise, until the 20th Day of August, 1660."

On July 23th Mr. Peirpont reported some amendments to the bill for taking away the Court of Wards, which were twice read, and, upon the question, agreed to.

Meanwhile the Upper House had been busy preparing an act entitled "An Act of free and general Pardon, Indemnity, and Ablivion." This act mentioned the various sums of money in arrears in the Court of Wards. A message was sent to the King to ascertain what he wished Parliament to take action with reference to these arrears. On July 30th the King replied in writing, releasing all arrears due to the Crown.

1 Commons' Journals, June 22, 1660.
2 Commons' Journals, June 26, July 12, 1660.
3 Commons Journals, July 12, 1660.
4 Commons' Journals, July 28, 1660.
This answer was communicated to the Commons; this body immediately appointed a large committee to sit and consider the settling of such a revenue on the King "as should maintain the splendour and grandeur of his kingly office and preserve the crown from want and from being undervalued by his neighbors."

The debate in the Commons on the Bill for taking away the Court of Wards was adjourned from time to time until August 4th. On this day the debate on the Bill was resumed, and it was resolved that it be referred to a select committee to take consideration of the whole debate and thereupon to apportion a rate upon the several counties for the raising of the £100,000 per annum in lieu of wardships, etc, the committee to consist of the members of the Commons who belong to the King's Privy Council. This committee, to whom was referred the burden of the distribution of the £100,000 continued to meet from time to time during the month of August.

On September 4, the Commons passed a resolution asking the king to refrain from exercising his prerogative concerning tenures, until the House had settled a revenue in lieu thereof; and three days later passed another resolution asking that the king suspend the sessions of the Court of Wards and the transaction of all of its business, until December 25th. The king assented to these requests.


On September 13, Parliament adjourned to meet again on the sixth of November. Two days after re-assembling a paper was read, containing an apportionment of the £100,000 per annum to be settled.
on the king, as compensation for the abolition of the Court of Wards, this report being made by the committee to whom the apportionment had been referred. This report became the regular order of business for November 19, when the matter was debated at length. Sir Henry Cholmley was of opinion that if the king's present revenue was increased to £1,200,000 a year, the Court of Wards might be spared without any further trouble. Sir Samuel Jones and Sir Thomas Waddington moved to raise it by the excise.

Mr. Knight favored levying 2d. in the pound on all the lands in England. Mr. Peirpont, chairman of the Grand Committee on the Court of Wards, opposed a land rate, and advocated raising the money thru an excise on ale and beer. Sir Thomas Bludworth took issue with Mr. Peirpont's view, and argued against the excise, stating that a land tax was preferable. Mr. Annesley agreed with Sir Thomas Bludworth that a land tax was fairer, since an excise would be paid by the poorer classes who ought not to bear the burden. Sir Heneage Finch moved to refer it to a committee, to propose a method for raising the sum required. Mr. Knightley and Sir Walter Erle spoke in favor of a land rate, which was objected to by Serjeant Charlton who said that he never heard of a land rate that was perpetual, as this one must be. Sir George Reeves was in favor of regulating

Comm. Journals, Nov. 8, 1660.
The excise was an innovation of the period of the Commonwealth and was borrowed from the revenue system of Holland.
Sir Heneage Finch, Born at Eastwell, Kent, Dec. 23, 1621; died Dec. 18, 1692. An English statesman and jurist, created earl of Nottingham in 1661. He became solicitor-general in June, 1660; was one of the prosecuting counsel in the trial of the regicides; was made lord keeper of the seals in Nov. 1673; and became lord chancellor in 1674. (Century)
the Court of Wards, rather than burden the people with new taxes. Sir John Frederick argued that the burden should fall upon the land and hence favored a land rate rather than an excise. Upon the whole it was deemed best to adjourn the debate for a couple of days.

On November 21, the Commons resumed the debate concerning the compensation to be granted the king in lieu of the Court of Wards. Sir Heneage Finch opened the debate by moving that the annual income to be settled on the king for this purpose, be raised by an excise tax on beer and ale, and that Purveyance be included among the institutions abolished; also that half of the excise might be settled on the king for life, and the other half on the crown in fee. This motion was seconded by Mr. Bunckley and Mr. Peirpont; but was opposed by Sir John Frederick, Mr. Jolliffe, Sir William Vincent, Mr. Annesley, and some others. Mr. Annesley said that if this bill was carried, every man who earns his bread by the sweat of his brow must pay excise, to excuse the Court of Wards, which would be a greater grievance upon all, than the Court of Wards was to a few. Sir. A. A. Cooper spoke against the Court of Wards and in

Anthony Ashley Cooper. Born at Wimborne St. Giles, Dorsetshire, July 22, 1621; died at Amsterdam, Jan. 21, 1663. A noted English statesman, son of Sir John Cooper of Rockborne, Hampshire; created Baron Ashley in 1661, and first earl of Shaftesbury and Baron Cooper of Pawlet in 1672. At first he supported the cause of Charles I., but in 1644 went over to the Parliamentary side, was appointed field marshall with the command of a brigade of horse and foot, Aug. 3, 1644, and took an active part in the struggle, capturing Corfe Castle, April, 1646. He was an adherent of Cromwell in the parliaments of 1653 and 1654, but soon broke with him and remained an active supporter of the Parliamentary cause, opposing Lambert and Fleetwood, and aiding Monk. After the Restoration he continued to take a prominent part in political affairs, was a member of the "Cabal" and became lord chancellor in 1672, but was dismissed from office, Nov. 9, 1673. From that time he was the leader of the Parliamentary opposition (continued on page 35)
favor of the excise. Mr. Prynne, on the other hand, objected to an excise, because, in his opinion, "it was not fit to make all housekeepers hold in capite", in order to free the nobility. He made an impassioned speech in support of his objections, reaching the conclusion that those lands which at that time furnished part of the king's income, because held in capite, should continue to bear the burden. Mr. Bainfield agreed that an everlasting excise should not be adopted, and preferred a tax on lands held in capite. Mr.

William Prynne. Born at Swainswick, near Bath, 1600; died at London, Oct. 24, 1669. An English Presbyterian lawyer, pamphleteer, and statesman. He graduated at Oxford in 1621, entered Lincoln's Inn in the same year, and was afterwards called to the bar. In 1633 he published "Histriomastrix". For indirectly criticizing the king and queen in this book he was sentenced by the Star Chamber to be imprisoned and fined £5000, expelled from his profession, degraded from his university degree, and set in the pillory, where he lost both his ears. In 1640 he was released by the Long Parliament. In 1643 he entered upon the prosecution of Archbishop Laud. On Nov. 7, 1648, he obtained a seat in the House of Commons. At once he took the part of the king, and was included in Pride's Purge (Dec. 6, 1648). He was arrested by Bradshaw July 1, 1650, and imprisoned. He was released Feb. 13, 1652. He was appointed by Charles II. keeper of the records in the Tower. In 1668 he published the "Vindication of the Ecclesiastical Jurisdiction of the English Kings." (Century)
Bainton, in opposing the excise, warned the House that the common people might indulge in "strange commotions" if an excise were imposed; and added that he preferred the Court of Wards, regulated as it should be, to an excise which it would require an army to enforce. Sir Thomas Clarges remarked that a rebellion in Naples had been caused by the levying of impositions and excises. This debate was closed by Serjeant Maynard and Mr. Trevor, who both spoke in favor of an excise, altho the latter gentleman explained that nothing but the abolition of the Court of Wards should have made him advocate such a measure. When the question was at last called for, the vote stood 151 to 149 against giving to the king half the excise on Beer, Ale, Cider, Perry, and strong water, for life, as part of a proposed income of £1,200,000 per year. It was, however, resolved to give the other half of this excise to the crown in fee "in full Recompence and Satisfaction of all Tenures in Capite and by Knights' Service; and of the Court of Wards and Liveries; and all Emoluments and Profits thereby accruing and in full Satisfaction of all Purveyance." Further consideration of the King's revenue was adjourned until November 23d.

In this connection there naturally arises the question: why, when the Commons, after long deliberation, had decided to settle upon the Crown, in lieu of the Court of Wards, the sum of £100,000 a year to be raised by a tax on land, and when a committee of the Commons, after taking great pains, had agreed upon a rate of taxation for the several counties, did they change the whole plan by

"Commons' Journals, Nov. 21, 1660.
The writer of this tract was not the John Hampden who was defendant in the Ship Money Case. The latter was mortally wounded at Chalgrove Field, June 18, 1643, and died six days later. (Century) The John Hampden, who wrote this tract, was a grandson of the other John Hampden. The younger man was born about 1656 and died 1696. He sat in the House of Commons during several sessions; and was a well-educated man. Previous to 1682 Hampden played a very insignificant part in Parliament; but after that time he was intimately associated with the leaders of the opposition, being one of those arrested on the charge of complicity in the Rye House plot (July 8, 1683). He was finally released after he had pleaded guilty and paid a fine of £6000. His plea of guilty caused him to lose influence in his party and this made him so despondent that eventually he committed suicide.

The date of his tract is not given; but since he was born in 1656 only four years before the Restoration the tract must have been written after the events there recorded took place. Dictionary of National Biography, XXIV., 262-264.

Cf. Cobbett, Parl. Hist., IV., col. 149, note, for text of this tract.
upon one, and reported it to the house, and it is entered in the Journal. But while they were taking all these pains, the Court was privately informed, by some self-designing men, that it would be of much greater advantage to them, to get a Grant of the Excise upon Beer and Ale, since the value of that was unknown; and they assured them, that it would amount to a sum vastly beyond what the Parliament intended them in lieu of the Court of Wards. These men encouraged the court to undertake this work, and promised their assistance and endeavours for the success of the proposal: hereupon the court resolved to push for the settling of the whole Excise, and by threatening privately the members of that house with a dissolution; and by giving to some considerable places, they got a question put, to settle one Moiety of the Excise (which had been invented and raised on evident necessity, in the time of civil war, and not granted longer than a few months) upon the crown in fee, in lieu of the Court of Wards, and the other moiety on the king for his life. The former part, to give the moiety in fee in recompense of the Wardships, was carried in the affirmative, though in truth, it was the giving 300,000 l. a year for one, for which that house is justly blamed, and will be so, as ill husbands for the kingdom, and unfaithful to their trust. A great parliament-man, late deceased, undertook to make out, it was the giving away of the Barley-Land of England. The other part, viz., to give the other Moiety for Life (as much as that house was influenced by the court) was first carried in the negative, which enraged them to such a degree, that, the next day, a Message was sent to the house, to let them know
they were to be dissolved a month after. This was a strange and unusual message; they might have been quickened to dispatch public Bills, and told, the session would be but short; but the message as sent, put men throughout the kingdom on supplanting them. If the members staid in town (and go they could not without leave of the house) their several interests in their counties were endangered. If they went down, the settling the Excise, for life, might be carried in their absence. This was the dilemma the court had brought them to, and accordingly it was granted before that session ended."

On November 22d the message, to which Mr. John Hampden refers, was sent from the Lords to the Commons, having been delivered to the Lords on the previous day. The text of this message was as follows; viz.:

"Charles R.

"In consideration of the Season of the Year, and the Approach of Christmas, when the Members of Parliament will desire to be at their Houses in the Country; and, in regard of His Majesty's Coronation within a Month after Christmas, the Preparation for which will take up much of His Majesty's Thoughts and Time; and the Time of His Servants, which therefore should be vacant from other Business; his Majesty hath thought fit to declare, That he resolves to dissolve this Parliament, on the Twentieth Day of next Month; and to call another with convenient Speed; and that this His Purpose may be forthwith communicated to His Houses of Parliament; that they may the more vigorously apply themselves to the Dispatch of the most Commons' Journals, November 22, 1660.
important Business that depends before them.

"Given at our Court at Whitehall, the 20th day of November, 1660."

Immediately after receiving the king's message the Commons ordered the Grand Committee on the abolition of the Court of Wards to be ready to report their bill on the following Monday, November 26. A special committee, of which Mr. Peirpont was chairman, was appointed to draw up and insert in this bill additional clauses providing for the settling on the Crown in fee of a moiety of the excise, as provided by the vote of the Commons taken on the 21st.

The state of the king's revenue, and the compensation in lieu of the Court of Wards were again taken up in the Commons on November 27. Mr. Prynne began the debate, by moving the house to consider what might legally be offered to make up the king's revenue, before they took up the excise; he named the Customs of Ireland and Scotland, the Postoffice, and several others, as possible sources

1 Commons Journals, Nov. 22, 1660.

(a) In considering the statement in John Hampden's tract that, "The other part, viz., to give the other moiety for life. . . . was first carried in the negative, which enraged them to such a degree, that on the next day, a Message was sent to the house to let them know they were to be dissolved a month after", it should be noted that the King's message is dated November 20, and was sent to the Lords on Nov. 21, while the vote which "was carried in the negative", was taken in the Commons on the 21st. The debate in the Commons began on Nov. 19; and it may have been the tone of this debate, rather than the actual negative vote, which called forth the King's message.

2 Commons' Journals, Nov. 22, 1660.

3 Commons Journals, Nov. 23, 1660.
of income. Sir George Downing said that the customs did not amount to £400,000 a year; and that part of this already had been granted by Charles I. for the improvement of the royal parks, and that the part not already granted could not speedily be ascertained; therefore he moved to settle the other moiety of the excise upon the king. Colonel King and Mr. Boscawen moved that an inquiry be first made into the state of the king's present revenue, to ascertain what was wanting there, before they voted an addition. Serjeant Charlton replied that it was almost impossible to learn exactly the value of the king's revenue; and therefore he moved that the question of the excise be put to vote. Hereupon an estimate of the value of the king's revenue was read, the total amount being £819,000. Col. Birch doubted this estimate, and said that by his computation it could not amount to more than £110,000; therefore he moved that the estimate be referred to a committee for examination. Sir John Northcot thought that the king's revenue was underrated; and moved

'Sir George Downing, (1623? - 1684), soldier and politician, son of Emmanuel Downing of the Inner Temple, afterwards of Salem, Massachusetts, and of Lucy, sister of Governor John Winthrop, went out to New England with his parents in 1638, and completed his education at Harvard College of which he was the second graduate. Later he returned to England where he became prominent as a politician and soldier. His rise was much forwarded by his marriage with Frances, fourth daughter of Sir W. Howard of Naworth, Cumberland, and sister of Colonel Charles Howard, afterwards Earl of Carlisle. Downing was a member of both the parliaments called by Cromwell (1654, 1656); but, at the time of the Restoration, was able to make his peace with Charles II; in whose favor he remained until he died in 1684. Downing, while a very able man, allowed his reputation to be stained by servility, treachery, and avarice, and it is difficult to find a good word for him in any contemporary author. An American author, (Hutchinson, apud Sibley, p.72), says: "It became a proverbial expression with his countrymen in New England to say of a false man who betrayed his trust that he was an arrant George Downing." (Dictionary of National Biography, XV., 399-401.)
that the excise be settled in full on the king for his income. Sir Heneage Finch considered it immaterial whether the words "in full" or "in part" were inserted; and moved for the question. Thereupon the House, without dividing, voted "That the other moiety... be settled upon the king during his life, in full of the £1,200,000 per annum revenue resolved to be settled on his majesty." A resolution stated that this clause should become effective December 25, 1660. The members of the Commons who sat in the king's Privy Council were instructed to inform the king of provision thus made to secure him his income.

On December 1, Mr. Peirpont reported several amendments to the bill for the abolition of the Court of Wards, which were referred to the Grand Committee which had that bill under consideration. During the following ten days bills concerning the Militia, the Postoffice, the Poll tax, and other important matters occupied the attention of the House; but on the 11th the amendments were again reported by the Grand Committee, and several of them agreed to. As a result of this debate the House ordered a special committee to prepare a clause for repealing the acts of 32, 33 Henry VIII. which created the Court of Wards and Liveries. The special committee having under consideration the petition of the officers of the

1 Cobbett, Parl. Hist., IV., col. 151.
2 Commons' Journals, Nov. 27, 1660.
3 Commons' Journals, Dec. 1, 1660.
4 Commons' Journals, Dec. 6, 1, 1660.
5 Commons' Journals, Dec. 10, 11, 1660.
6 32 Hen. VIII., c. 46; 33 Hen. VIII., c. 22.
the Court of Wards, was made a standing committee, and was ordered to prepare a report on the cases of the respective officers.

On the 12th Mr. Montague reported for the special committee, appointed on the previous day, a clause repealing the acts of 32, 33 Henry VIII., concerning the Court of Wards and Liveries; and also suggested numerous changes in the wording of clauses already in the bill.

A bill for settling on the king for life the other half of the excise on beer, ale, and other liquors, was reported by Sir Heneage Finch, and after being read twice was referred to a Grand Committee. This committee, on the day following, reported several amendments to the bill. After the rate of excise had been fixed at 2s.6 d. per hogshead, the bill, with its alterations and amendments, was ordered engrossed.

The engrossed bill for abolishing the Court of Wards and Liveries came to its third reading on the 15th, but before a vote was taken several provisos to the bill were considered. Several of these related to private claims that already had been charged either upon the Court of Wards or upon the Excise; the most prominent of these claims being one of Edward Backwell, Alderman of London, for £28,450, which had been charged upon the excise. After deciding that the bill should be entitled "An Act for taking away the Court of Wards and Liveries, and Tenures in Capite, and by Knights' Ser-

'Commons' Journals, Dec. 11,1660.
'Commons' Journals, Dec. 12,1660.
'Commons' Journals, Dec. 14,1660.
vice, and Purveyance; and for settling a Revenue on his Majesty, in Lieu thereof," the bill, with its amendments, was passed in the affirmative, and Mr. Peirpont was ordered to carry it to the Lords.

On Monday the 17th, the engrossed bill, for settling on the king for life, the other half of the excise, was read the third time. After attaching to the bill a proviso to protect the claim of Alderman Backwell; it was resolved that the bill be entitled, "A Grant of certain Impositions upon Beer, Ale, and other Liquors, for the Increase of his Majesty's Revenue, during his Life." The bill, with its proviso attached, was passed in the affirmative and Mr. Peirpont was ordered to carry it to the Lords.

In the House of Lords these two bills were each read for the first time on the 17th, and a second time on the 18th. The following day the bill of Impositions upon Beer, Ale, etc. was reported favorably by the committee to which it had been referred; and after a third reading, it was passed by the Lords, without any alterations.

The bill for taking away the Court of Wards, however, did not have such clear sailing. It was reported by the committee, on the 20th, together with several alterations. After these changes had been read twice, and the bill with the alterations had been read a third time, it was passed in the affirmative. Having been amended

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1 For detailed account of the various amendments here referred to, cf. Commons' Journals, Dec. 15, 1660.
2 Commons' Journals, Dec. 17, 1660.
3 Lords' Journals, Dec. 17, 1660.
4 Lords' Journals, Dec. 18, 1660.
5 Lords' Journals, Dec. 19, 1660.
the bill had to be returned to the Commons, for their concurrence in the amendments.

Part of the alterations were reported favorably by the Commons' committee; but were voted in the negative; others of the alterations were made the subject of a conference between the two houses. This conference resulted in the mutual adoption of the two following provisos:

1. "Provided always, and be it enacted, That anything herein contained shall not take away, nor be construed to take away, any Fines for alienation, due by particular Customs, of particular Manors or Places, other than Fines for Alienations of Lands or Tenements holden immediately of the King in Capite."

2. "That neither this Act, nor anything therein contained, shall infringe or hurt any Title of Honour, Feodal or other, by which any Person hath, or may have, Right to sit in the Lords' House of Parliament, as to his or their Title of Honour, or sitting in Parliament; and the Privilege belonging to them as Peers; this Act, or anything therein contained to the contrary in any wise notwithstanding."

The Commons, on Dec. 22d ordered these two provisos to be engrossed into the bill, which, with the two provisos, was then agreed to, and returned to the Lords.

On the afternoon of that day the Lords received from the King a

1 Commons' Journals, Dec. 21, 1660.
2 Commons' Journals, Dec. 22, 1660.
3 Lords' Journals, Dec. 22, 1660.
message, urging haste in the passing of public bills, and announcing that he would visit Parliament on the 24th for the purpose of signing such bills as had passed both Houses, and that the Parliament would be dissolved on the 29th. Between the receipt of this message and the arrival of the King, on the 24th, several conferences were held between the two Houses, concerning various bills, among them the one for the abolition of the Court of Wards; but these conferences did not result in any further alterations to the bill. At the audience of the King, on the 24th, the bill settling half the excise on the crown in fee in lieu of the Court of Wards, and the bill settling the other half of the excise on the king for life, were presented to the King and received his sanction, thus becoming laws.

On Dec. 21st, Mr. Streete, to whose committee the petition of the officers of the Court of Wards were referred, reported the yearly value of their respective offices; and the recompense which the committee recommended should be allowed in each case. The yearly value of the several offices, according to this report, ranged from £300 for the Usher, to £7000 for the Clerk of Reversion; and the compensation recommended varied from one to two and a half years' salary, the largest single recompense being £8000 for the Clerk of Reversion. It was put to vote whether, in case the bill for abolishing the Court of Wards passed, the officers mentioned in Mr. Streete's report should receive the compensation recommended in that report; and the vote passed in the negative.

'Lords' Journals, Dec. 24, 1660.
'Commons' Journals, Dec. 21, 1660.
Nothing further seems to have been done for these officers by the House of Commons. A petition for their relief had been presented to the House of Lords during this same session; but seems never to have been reported out of the committee to which it was referred.

10. Scope of the Act, 12 Charles II., c. 24, Abolishing the Court of Wards and Liveries.

The Act, as finally passed, "for taking away the Court of Wards and Liveries, and Tenures in Capite, and by Knights' Service, and Purveyance; and for settling a Revenue on his Majesty in Lieu thereof", has been considered of very great importance by English lawyers, jurists, and public men generally. Blackstone even goes so far as to say that this Act worked a greater reform in England than did Magna Carta.

The introduction to the Act, in which is given the reason for its passage, says that "Whereas it hath beene found by former experience that the Courts of Wards and Liveries, and Tenures by Knights' service in Capite or Socage in Capite of the King, and the consequents upon the same have beene much more burthensome, grievous, and prejudiciall to the Kingdome than they have beene beneficiall to the King, And whereas since the Intermission of the said Court which hath beene from the fower and twentieth day of February which was in the yeare of our Lord One thousand six hundred

*Lords' Journals, Dec. 19, 1660.*

*12 Chas. II., c. 24; Stat. of the Realm, V., pp. 259 - 266.*
forty and five, many persons have by Will and otherwise made disposall of their lands held by Knight service whereupon divers Questions might possibly arise unless some seasonable remedy be taken to prevent the same, Bee it therefore enacted by the King our Sovereigne Lord that the Court of Wards and Liveries, Primier Seisins, etc. be taken away. Fines for Alienation, and all the burdens incident to tenure by Knights' service were abolished. It was further enacted "that all Tenures by Knights' service of the King, or any other person and by Knights' service in Capite, and by Soccage on Capite of the King, and the fruits and consequents thereof happened or which shall or may hereafter happen or arise thereupon or thereby, be taken away and discharged, Any Law, Statute, Custome, or Usage to the contrary hereof any wise notwithstanding. And all Tenures of any Honours, Mannours, Lands, Tenements, or Hereditaments of any Estate of Inheritance at the Common Law held either of the King or of any other person or persons, Bodyes Politique or Corporate, are hereby Enacted to be turned into free and common Soccage to all intents and purposes from the said (twenty-fourth) day of February, One thousand six hundred forty five, and shall be soe construed, adjudged and deemed to be from the said twenty-fourth day of February, One thousand, six hundred forty five, and forever

The statute creating the right of disposal of property by will was passed in 1540; 32 Hen. VIII., c. 1. This statute of 1540 was superceded by certain clauses in the Statute of Frauds (1670), 29 Chas. II, c. 3; and by the Wills Acts of 1837 (7 Wm. IV., and 1 Vict., c. 26), with its amendment of 1852 (15 & 16 Vict. c. 24).
thereafter turned into free and common Soccage, Any Law, Statute, Custome, or Usage to the contrary hereof, (any wise) notwithstanding."

All the incidents of tenure by Knights' service arising since February 24, 1645, are abolished; and all conveyances of land made since that date are to be held of the same effect as tho the land had been held by the grantor in free and common socage.

The acts of 32 Hen. VIII., c. 46, and 33 Hen. VIII., c. 22, establishing the Court of Wards and Liveries, are expressly repealed. All tenures, created in the future by the king, are to be in free and common socage. The Act expressly excepts from its operation rents, heriots, and other burdens due from tenants in socage; fines for alienation due by customs of particular manors, other than fines for alienation of lands held immediately of the King in Capite; tenures in Frankalmoigne, tenures by Copy of Court Roll, and the honorary services of Grand Serjeantry; and further provides that nothing in this act shall be construed to weaken or invalidate an act of this same Parliament entitled "An Act of Free and General Pardon, Indemnity, and Oblivion."

Fathers are given the right to dispose by will of the custody of their children, the property of the children after the death of the ancestor to be placed in the control of the guardians thus appointed, during the minority of the wards. The guardian in each

Art. I.

Art. II.

Art. III.

Art. IV.

Art. V.

Art. VI.

Art. VII.

Art. XLI.
case is given an action of trespass, known as Ravishment of Ward, to gain possession of the ward against any one resisting the right of the guardian to such custody. In addition, the guardian may bring whatever actions, concerning the ward's property, could be maintained by a guardian in socage. The Act excepts from the provisions of this paragraph popish recusants; and enacts that the customs of London and other cities, touching orphans and apprentices, shall not be repealed by this act.

Titles of honor by virtue of which any person is entitled to a seat in Parliament shall not be changed by anything here enacted.

After reciting the various laws that had been passed from time to time to remedy the mischiefs of Purveyance, and after stating that in spite of these laws regulating that institution, many oppressive features still remain, the Act provides that Purveyances and Provisions for the King's household, and Purveyances of timber, carts, carriages, etc. for the personal use of the King, Queen, and members of their family, shall be abolished. Every person in England is given the right to sell to whomsoever he pleases, without first offering his wares to the royal family. Persons collecting Purveyance may be indicted and tried for the offense; and in no case shall such an action be stayed by an injunction or order issuing from any authority other than the Court where the action is commenced. The punishment, in case of conviction for this offense, shall be such as is provided by the Statute of Provision and Praemunire.

'Art. VIII., IX.  
'Art. X.  
°Art. XI.  
°Art. XII.  
°Statute, 16 Rich. II.
A saving clause enacts that this Act shall not prejudice the rights of the King in the tin mines of Devon and Cornwall.

In return for the prerogatives abolished by this Act, an excise on Ale, Beer, and certain other liquors is to be levied, and half of the income thus derived is settled on the King, his heirs, and successors. The Act gives the rate of excise on the various articles, in explicit detail; and provides a system for administering the excise, including provisions for the punishment of those who try to evade or escape payment of its taxes.

The Act concludes with a proviso concerning the payment to Edward Backwell, Alderman of London, the sum of £28,450, advanced by him on the credit of several orders of this Parliament.

"Art. XIII.
"Art. Xv. - XL. inclusive.
"Art. XLII.

Clarence W. Hughes,
May 5, 1905.