A KENTISH REGISTER.

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THE interest taken in local history was never so intense as at the present time, and as regards public records facilities for tracing such history have never been greater. But reference to ancient records in private hands remains, in spite of the labours of the Historical Manuscripts Commission, a matter of no little difficulty.

The Society has therefore decided to establish, as far as the County of Kent is concerned, a Register of ancient private records, and to invite all parties in whose hands any such may be to contribute their quota to the Register in question. The majority of early records are found without any endorsement, and the whole document may have to be carefully perused before the correct description can be set down in the Register. In view of this it may be of interest to consider, and to some extent explain, the nature of the records commonly found in private hands. They fall most conveniently into three classes: Wills, Conveyances by matter of record, and Conveyances *in pais* as the lawyers style them.

I. As to *Wills*. These may be originals on paper or parchment, or parchment copies extracted from some court or office authorised to grant probate.

As to originals. It should be borne in mind that probate was and is needed primarily to enable the personal representative to get in the testator's personal estate by process of law, and that prior to the Finance Act of 1894 wills solely affecting realty, on which there was no probate duty payable, and in which the Crown had less interest at stake, were commonly not proved.

From the commencement of the 12th century until the year 1858 the right to grant probates of wills was vested in the Church, and therefore such documents during this period are found to have annexed to them the seal of the Prerogative Court of the Archbishop of Canterbury or some other episcopal court.

In Hone's *Manor and Manorial Records* will be found a list of forty Manorial Courts, the lords of which formerly claimed the right to grant probate. The writer has, however, not met with any instance of this.

By the Court of Probate Act passed in the year 1857 all jurisdiction as to granting of probates was vested in the newly constituted court of probate, since styled the Probate Division of the High Court of Justice.

The 'Probate' consists of a parchment copy of the Will with the sealed 'Act' annexed to it.

The seals of all the above named authorities are usually composed of two sheets of thin paper about the size of a playing card held together by a thin layer of wafer.

In default of an available executor the grant of probate may be found to have been made to an administrator, or in default of any Will being found the document may be simply a grant of 'Letters of Administration.'

II. As to *Conveyances by matter of record.* These may be Private Acts of Parliament, Royal Grants framed as Charters or Letters Patent, and Fines and Recoveries.

Private Acts were largely resorted to in the year succeeding the Restoration, the object being to set aside conveyances made, or alleged to have been made, to screen estates from forfeiture during Cromwell's ascendency. They are still found useful when the title to estates has become much involved by intricate family settlements.

The Acts themselves are always to be found enrolled, but the possession of the printed copies is of interest.

As to *Royal Grants.* Prior to 1851 Letters Patent passed by Bill prepared on a Royal Warrant. The Bill was then superscribed at the top with the Sovereign's sign manual and sealed with the privy signet. It then immediately passed under the Great Seal and was subscribed in these words: *per ipsem Regem* or *per ipsam Reginam* as the case might be. Alternatively an Extract of the Bill was carried to the keeper of the Privy Seal, who made out a Warrant thereupon to the Chancery, whence the Letters Patent were issued under the Great Seal subscribed *per breve de privato sigillo.*

In 1534 the procedure was regulated by an Act of that year. This statute was repealed in 1851 by an Act which provided that

the Sovereign by warrant under the Royal sign manual addressed to the Lord Chancellor should command him to cause Letters Patent to be passed under the Great Seal. This course is still followed, except in the case of Letters Patent previously passed with less authority, including appointments issuing from certain Government offices.

'Letters Patent' are commonly found amongst the documents of title of estates which have at one time or another been forfeited to the Crown after an attainder or otherwise, and immense numbers of such grants were made after the confiscation of the Church lands in the 16th century. The grant may be for life or a number of lives only, or in fee tail or in fee simple.*

The document commences with the name and titles of the Sovereign, often engrossed in a most elaborate text. Grants of the 16th to 18th centuries commonly include a portrait of the Sovereign in the top left-hand corner. In earlier grants the initial letter of the Sovereign's name is sometimes elaborated to occupy a space of twenty or thirty square inches, or more frequently the blank space for such an elaborated letter is found but the letter is missing; *e.g.*, the first word may then read 'enricus' for 'Henricus.' Following the Sovereign's description comes a general enumeration of the subjects or the classes of subjects of the Crown to whom the grant is addressed.

The grants are usually expressed to be made *de gratia nostra speciali ac ex mero motu et certa scientia nostris.* This was done to protect the grantee and rebut the legal presumption that they must be construed most strictly against him.

The record is generally voluminous in every respect except the description of the property, which frequently is limited to its name or names followed by numerous general expressions which would apply to any similar manorial or other estate, and which cannot be relied on as proving that the estate in question actually included the franchises and privileges thus enumerated.

The document may be of large size, limited only to the largest natural measurements of the animal from whose skin it was prepared. The texture is frequently fine and soft vellum. The seals are composed of a large quantity of beeswax, often larger and

* Fee-simple (as opposed to fee-tail) = an estate in land, etc., belonging to the owner and his heirs for ever, without limitation to any particular class of heirs. Fee-tail = an estate of inheritance entailed or limited to some particular class of heirs to whom it is granted.—Murray, *New Eng. Dict.*

thicker than the palm of the hand, and beautifully moulded. The ligature by which the seal is annexed may be of thick coloured silks plaited together.

Copies of all such Letters Patent may be found enrolled at the Record Office.

As to *Fines and Recoveries.* These consisted of fictitious suits in the Court of Common Pleas at Westminster, and were used as a convenient escape from the Statute *de Donis* of 1285. This Act was passed to prevent the persons enjoying a limited interest in settled land from selling their estates, and thus not only defeating those ultimately entitled under the restricted grant or settlement, but tending to deprive the superior lord of his rights of escheat. The practice was also resorted to in conveying lands belonging to married women. It was not abolished until 1833.

'Fines' were of the older origin and are believed to have been in use prior to the Conquest. They were regulated by a statute passed in 1289 and directed in 1403 to be enrolled, and in 1488 to be proclaimed in open court sixteen times. This number was in 1588 reduced to four. The proclamations were endorsed on the back of the record.

The practice was shortly as follows. The intending purchaser commenced a fictitious suit at law against the intending vendor, who he alleged had agreed to sell him the land. By leave of the court the dispute was made up, the action abandoned on payment of certain fines to the Crown, and judgment entered for the purchaser. A record of the whole transaction was made out and delivered to the Chirographer's Office, who engrossed two indentures thereof and delivered one part to the purchaser, called in the suit first the 'Plaintiff' and afterwards the 'Cognizor,' and the other part to the vendor, similarly called the 'Deforciant' and the 'Cognizee.' There were four kinds of Fine used according to the class of interest intended to be conveyed. The result of the transaction was to give a conclusive title to the purchaser.

The indentures above mentioned were both written on the same piece of parchment, measuring say fifteen inches wide and ten inches from top to bottom. The upper document was upside down and along the intervening space a wavy line was cut with a knife. The two indentures then fitted together. Both parts are sometimes found with the title deeds of a property. Each commences *Hæc est finalis concordia*, or later in English, "This is the final

Agreement." The description of the property is peculiar and exaggerated.

Thus an ordinary twenty-acre farm with a homestead and a few cottages and buildings may be described as five messuages, four stables, three dove-houses, two orchards, four gardens, ten acres of pasture, ten acres of meadow, ten acres of arable land, ten acres of woodland, etc., etc. All details being considerably in excess of actual facts. There is no seal on a Fine.

'Recoveries' were more complicated in their nature, as they necessitated the Suit being carried on through every stage of the proceedings. They were most frequently used in cases where the estate was in settlement and the vendor had only what is called an estate tail, and wished to convey the fee simple to a purchaser or otherwise bar all entails. In this case the purchaser or other intended grantee (called the 'Demandant') alleged in his suit that the vendor or 'Defendant' (called 'the Tenant') had no interest in the land, having come into possession only after a third party had turned the purchaser out. Whereupon the vendor called upon a fourth, and only nominal, individual (called the 'Vouchee'), who he said had warranted the vendor's title, and who was thereupon joined as a party to the suit and thereafter made default, and judgment was then given for the intending purchaser (the 'Demandant'), who was adjudged to recover the lands against the vendor (the 'Tenant'). The crier of the court usually acted as vouchee. Generally two, and sometimes three, successive vouchees were introduced into the suit for the better protection of the intending purchaser. And this was done by first conveying an estate of freehold in the land to an indifferent person against whom the action was first brought. He was called the 'Tenant to the *Præcipe*'* and he vouched the actual vendor, who in turn vouched the common vouchee. Some friend of the family would accept the position of tenant to the *præcipe*, and conveyances with this object in view are often found amongst title deeds and cause some confusion to the lay mind.

Before or immediately after the commencement of either suit another deed was often prepared. This was called the Deed to 'lead' or to 'declare' the uses of the intended fine or recovery.

* *Tenant al Præcipe* is he against whom the Writ *Præcipe* is brought. Blount, *Law Dictionary*. The first words of the writ were *Præcipe quod reddat*, Enjoin (him) that he render.

And by this means a complicated family settlement could be engrafted on the fictitious suit.

Both Fines and Recoveries were abolished as from 31st December, 1833, special provisions being also made as to married women as explained below. The desired effect is now achieved by enrolling the deed of conveyance or the deed to bar the entail.

In form a Recovery is a judgment of the court engrossed on open parchment commencing with the name and style of the Sovereign in large letters right across the top of the parchment. The initial letter may include the Sovereign's portrait. The text is commonly very tall and upright and very difficult to read. The description of the property in question is most meagre and as unsatisfactory as that found in the Fine. The seal, generally very large and pendent, and affixed by flat parchment strips, is perhaps the most interesting feature. In the later Recoveries the seal is generally very fragile and is poorly protected by a circular tin case about six inches in diameter in which it lies loosely.

Recoveries were sometimes suffered in the Courts Baron of a manor, and the procedure may be found fully set out in the court rolls.

III. As to *Conveyances in pais*.* This is the legal description of all assurances made so to speak on the spot or 'in the Country.'

The earliest method of effecting such assurances was by the ceremony of 'Feoffment with livery of seisin.'† The term feoffment is also applied to the instrument in writing prepared as a permanent record of the performance of the ceremony. This proceeded as follows:—The vendor and purchaser, called the 'feoffor' and 'feoffee,' with others as witnesses, attended before the vacant land or house and the feoffor took from the land a turf or twig or the latch or key of the house and handed the same over in the name of all the property to the feoffee with the appropriate words. These were *do* or *dedi*, or in a modern feoffment may be "I deliver this key, etc., to you in the name of seisin of all the lands in this deed." After the ceremony the feoffment was made out and sealed by the feoffor. In later instances it was also signed. The feoffment nearly always commences with the words *Sciant presentes et futuri*

* Old French for *pays*, country.
† Delivery of possession.

quod ego . . . dedi concessi et hac presenti carta confirmavi, or some similar expression, and concludes with a list of the names of the witnesses present. The whole (except the signature of the feoffor if appended) is in the one handwriting. In modern instances the deed is prepared first and after seisin has been delivered a memorandum to that effect is endorsed. The ceremony survives in the induction of a rector or vicar, and is sometimes used in the alienation of Kentish gavelkind lands by persons over the age of sixteen and under twenty-one.

A Surrender and Admittance by the rod of Copyholds is a parallel survival.

In the 14th and 15th centuries the parchments were often but ten inches wide and half that depth, or even smaller. The description of the property was often limited to perhaps a dozen words. The size of the deeds grew with the advancing years. The feoffor's signature as well as his seal appears, and the general appearance of the deed approximates to that of the ordinary conveyance.

The feoffment is only appropriate to the transfer of an estate of freehold in possession. The instrument of transfer sometimes took the form of a feoffment and concluded with a power of attorney to certain named persons to make livery of seisin. The performance of the livery would then be evidenced by a second document. Sometimes the power of attorney was comprised in a separate document.

A 'Grant' is the appropriate description of a deed used to transfer incorporeal hereditaments such as rights, franchises, rents, etc. The appropriate words are *dedi et concessi*. No ceremony such as in a feoffment was necessary.

A Grant was also appropriate to transfer an estate in remainder. If the grantee was already the owner of the prior particular estate this Grant was more correctly described as a 'Release.' As to which see below.

Early Grants commonly commence either as feoffments or releases, and are similarly worded in the first person. Later Grants may be framed as Deeds Poll, still in the first person singular and often commencing "To all christian people to whom these presents shall come, etc.," or may approximate to the form of more modern indentures of conveyance. They were commonly sealed. Since the 1st October, 1845, this form of transfer has been effective to pass all kinds of hereditaments and it has practically

supplanted all other methods of conveyance, and from the same date sealing has been compulsory in any event.

Sometimes the feoffment was made by one party to a second, who was directed and who agreed to hold the land to the use of a third. This was called 'a feoffment to uses.' The form and effect of the transaction was regulated by the Statute of Uses of 1535, but the practice fell into disuse as from 1845.

There were two other early methods of transferring the beneficial interest in land. The first was called 'A Covenant to stand seised.' It was used in cases where the parties were nearly related and the consideration was always natural love and affection. The completion of the transaction left the covenantor in the position of a trustee for the covenantee. The appropriate operative words are "covenant to stand seised."

The second method was called 'A Bargain and Sale.' This transaction had the same effect as the last named, but was adapted to the case where the consideration was a money payment. Here also the vendor became trustee for the purchaser. The appropriate words were 'bargain and sale.'

By the Statute of Uses of 1535, however, the effect of both transactions was to vest the property absolutely in the purchaser without the publicity of livery of seisin. Accordingly, in pursuance of the strong discouragement given by the early law to secret conveyances, a statute was passed in the same year enacting that no bargain and sale should enure to pass a freehold unless the same were by deed indented and enrolled within six months. Equally with the necessity for livery of seisin or actual entry on the land, the publicity of enrolment was just what the parties frequently most desired to avoid, and the lawyers of the day quickly noticed that terms of years were not affected by this Statute of Inrolments, while the Statute of Uses of the same year effectually vested in the purchaser any leasehold interest assured without the necessity for actual entry.

A fresh method of conveyance was therefore evolved, called a 'Lease and Release.' This transaction was effected by two documents. By the first the vendor was expressed to bargain and sell or lease the property to the purchaser for say one year. By the second he released to the purchaser the freehold reversion. The deeds were dated on successive days, and the practice, though rather cumbersome, was found so convenient that nearly all conveyances were so framed from 1535 to 1841. In the latter year the

Release alone, without the Lease, was by statute made effective, and in 1845 the more modern form of Grant superseded the Release. Both in the Release and the Grant a "use" was commonly engrafted. But it was not essential.

A 'Lease' or 'Demise' is the proper description of a grant of lands for a term of years, being a less interest than that belonging to the lessor. If the lease were for a life or lives, which is a freehold interest, a feoffment was prior to 1845 necessary. Since 1677 leases have been required to be in writing, and since 1845 under seal. Prior to 1845 mortgages of freeholds were often framed as a lease for a long term. Early leases were commonly framed in the first person singular as grants, but the appropriate words were *demisi concessi et ad firmam tradidi*, or some of them. The later English equivalent was "demise grant and to farm let." Anyone paying rent was a 'Farmer,' whether the property was say the Crown rights in a whole county or but one cottage. The present limited meaning of a 'Farm' is comparatively modern.

An 'Assignment' is a transfer of a person's whole interest to another, as opposed to a lease when a less interest passes. It is commonly used to describe the deed assigning leasehold land for the residue of the term granted by the existing lease. The appropriate words are "assign transfer and set over," or nowadays "assign" only.

A 'Release' is a conveyance of a further interest in the land to a party who already has a particular or limited interest. There are sometimes a large number of these releases or 'Quit claims' amongst documents of title of the 14th to 16th centuries. The commencement may be *Omnibus Christi fidelibus ad quos presens scriptum pervenerit A. B. salutem in domino sempiternam, sciatis*, etc., or some similar phrase such as *Universis et singulis ad quos*, etc.

The appropriate words are often *Remisisse relaxisse et . . . omnino quiet. clamasse.* The modern English equivalent is 'Release.'

The document is under the releasor's seal, and in later instances his signature is added. The presence of the seal obviates any necessity for witnesses, who are commonly not named. Sometimes, however, a memorandum is found to have been added that the document was sealed in the presence of so and so, but the witness does not sign.

A 'Surrender' is the opposite of a release, and consists of the

merging of a less estate in a greater, as when a lessee transfers his lease back to the lessor. The appropriate words are "hath surrendered granted and yielded up," or "surrender" only.

A 'Confirmation' speaks for itself. The appropriate words are "have given granted ratified approved and confirmed."

A 'Settlement' indicates a deed by which land is tied up or assured to a number of persons in succession. Sometimes a purchase deed is so drawn that the property purchased is limited to the purchaser and his wife and then to the survivor and thereafter to their children or others; but the expression is more commonly applied to the deed executed prior to an intended marriage in order to make provision for the expected children. In form it may be a feoffment, grant, declaration or other form of assurance, but the recitals and the string of limitations enumerated in the deed make its true nature clear.

A 'Deed to bar an entail' is the converse of a settlement. This object was formerly effected by levying a fine and suffering a common recovery, but since 31st December, 1833, as explained above, these latter have been abolished.

An 'Exchange' of lands may be effected by one deed. In the earliest times no livery of seisin was needed. The word "exchange" is appropriate and necessary. Peculiar technicalities as to title attach to exchanges. Such transactions are now more usually effected by mutual grants. The same remarks as to writing and sealing apply.

A 'Partition' is where two or more joint tenants, coparceners or tenants in common, agree to divide their land so that each holds but a distinct part in severalty. Coparceners, that is co-heiresses, were by common law compellable to make partition and might make it by parole only accompanied by livery of seisin. Joint tenants or tenants in common never had this privilege, though if they made partition by deed with livery the deed might be sealed only, not signed. Male co-heirs in gavelkind are coparceners.

Nowadays a partition is usually effected by all parties joining to convey the whole property to the family solicitor or someone else, who is named as trustee for uses, the deed indicating which distinct part of the land is to go to each party. The deed operates under the Statute of Uses so as to vest in each party each intended part.

An 'Enfranchisement' speaks for itself. The transaction is used to convert copyhold estates into freehold or to discharge the

manorial incidents affecting lands held as freehold of a manor. Prior to the Copyhold Acts of the 19th century such deeds are rarely found, at least in Kent.

A 'Defeasance' was a deed, made at the same time as a feoffment or other grant, containing certain conditions upon the performance of which the estate conferred by the feoffment or grant would be defeated. Mortgages were thus usually made. The practice is obsolete.

A 'Conveyance to make a Tenant to the præcipe' and a 'Deed to lead the Uses of a Recovery' are explained above.

A 'Mortgage' explains itself. It may be effected by any of the above forms of conveyance. The proviso for reconveyance found in the deed makes its nature clear.

As to 'Copyhold' Estates. Here the old world ceremony of feoffment has survived as practically the only method of alienation. The land has remained theoretically so much the property of the lord of the manor that the copyholder cannot sell it. He can only hand it back to the lord, who in turn hands it to the purchaser. The ceremony is still performed by the 'rod' being handed by the vendor to the lord's steward in token that he surrenders the land to the lord, and the steward in turn delivers it to the purchaser and thereby admits him as the lord's tenant. 'Surrenders and Admittances' are often found amongst other title deeds. No abbreviation of these documents has been effected. The surrender may be "conditional" if by way of mortgage.

A word as to Married Women. By the old law a wife's lands became practically her husband's during the marriage, and her husband's concurrence was necessary to give effect not only to a sale but also to a purchase by his wife. If not joined he could avoid both. Even the wife herself could avoid her own purchase unless she ratified it when a widow, while, as regards her sales, prior to 1833 the recognized method was to proceed by fine and recovery as explained above. As from this year the husband's concurrence coupled with the wife's separate acknowledgment sufficed, and a memorandum of such acknowledgment will be found endorsed on the deed. The year 1882 saw a further improvement, abolishing (with certain exceptions) both these latter necessities.

Lastly as to the care of deeds. And first I would say let there be as few folds as possible. The deeds should be numbered either in the margin or by an attached tab, and then laid flat in groups in shallow drawers or trays. If possible the index number should be

on the same part on every deed. In addition to the number a small slip of paper may be attached with appropriate words inscribed, *e.g.*, "1630. Smith to Brown. Conveyance. Maidstone." This may often save a lot of trouble. Small deeds can conveniently be kept in order by pasting a strip of new parchment along the left side margin and then binding the left-hand edges of the new strips together in book form. If the deeds can be laid so that the seals at their bottom margins do not quite coincide, the results will be flatter and better. But this permanent binding prevents the deeds being separated when occasion requires. If the trays are not forthcoming for the larger deeds they can be laid together according to parishes and lightly rolled together, but not so tightly that they do not immediately lie flat when unrolled. Metal grips or clips may be used to keep groups of open deeds together, placed along their top edge. This is useful, but the least dampness will produce rust and permanently disfigure the parchment next the clip. A little paper inserted next the metal will avoid this.

As regards the appended form of Register, filled up as a specimen, these forms in blank, measuring ten inches by fourteen inches, can be obtained in quantities from the Society's Hon. Registrar, to whom they should be returned when filled up. The form is not well adapted for wills and some matters of record. For these, and for cases where the documents affect too great number of separate properties to be entered in the form, separate blank sheets are supplied. The contributor should furnish such short details as to the wills as are obviously of most interest.