

KENT ARCHAEOLOGICAL SOCIETY

**PROJECT
CUSTUMAL OF KENT**

PAPER No 2

NORMAN FRENCH:

Transcription from the Norman French text reproduced in William Lambarde, *A Perambulation of Kent*, London 1576 said to be a copy of a document in the possession of George Multon (Lambarde's father-in-law) once owned by Baron Hales of Kent.

MODERN ENGLISH:

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1) Ces sont les usages, e les custumes, les ques le communaute de Kent cleiment auer en tenementz de gauylekende e en gentz de gauilekendeys:

2) Allowes en eire Iohn de Berewike e ses compagnions, iustices en eire en Kent, le xxi an le Roy Ed[ward] fitz le Roy Henrie.

3) Cest a scauoir, que toutes les cors de Kenteyz seynt fracz, auxi come les autres fraunz cors degleterre.

4) Et que ilz ne duiuent le eschetour le roy elire, ne unkes en nul temps ne fesoient, mes le roy prengne, ou face prendre, tiel come tuy plerra, de ceo qui soit mistier a luy seuir.]

5) Et quilz puent lour terres et leurs tenementz doner et uender, saunz conge demaunder a lour seignerages, sauues a seignorages les rentz e les seruices dues des mesmes le tenementz. Et que touz e chescun puseit per bref le roy, ou per pleynt, pleder pur lour droit purchaser, auxibien de lour seignerages, come des autres gentz.

6) Et clament auxi, que la commune de gauylekendeys que ne tenent mes que tenementz gauylekendeys, ne deuiuent uenir a la commune somonse del eire, mes ke per borgesaldre et iiii homes de la borghe; hors pris les uillees que deuiuent responder per xii homes en le eire.

1) These are the usages and customs for holdings by Gavelkind and for Gavelkind folk, claimed by the populace of Kent:

2) Allowed during the circuit of John of Berewike and his companions, travelling Justices for Kent, in the 21st year of King Edward, son of King Henry [i.e. 1293]

3) That is to say, that all the bodies of Kentings are free, just as the other free bodies of England.

4) But that they ought not to choose the King's Escheator, nor ever did so in times past, but that the King may choose, or cause to be chosen, anyone he pleases, to serve him as necessary.

5) And that they may give or sell their holdings, without asking leave of their lords, saving to the lords the rents and services due from those holdings. And that each and every one of them may plead to obtain their right, from their lords as well as from other folk, both by royal writ or by plaint.

6) They also claim that the community of Gavelkinders, who hold no lands other than by Gavelkind, need not come to the common summons of the travelling Justices, but only the Borsholder and four other men of the borh; except from the towns, which should respond by sending twelve men to the circuit court.

7) Et clament auxi, que sil nul tenant en gauylekend seit atteint de felonie, per que il suffre iuyse de mort, eit le roy touz ses chateux, e son eir maintenant apres sa mort seit enherite de touz ses terres et tenemenz, que il tient en gauylekende en fee, e en heritage, e les tiendra per mesmes les seruices et customes sicome ses auncestres les tyndront; dont est dist en Kenteis:
Pe faðer to Pe boughe
and Pe son to Pe logh

8) Et si il eit femme, maintenant seit dowe per le heir, sil seit dage, de la meytie de touz les terres e tenemenz que son baroun tint de gauylekend en fee, a auer e a tener solonc la fourme de suthdyte. Et de tiels terres le roy ne auera an ne wast, mes tant soulmet les chateux, sicome il est auant dit.

9) Et si nul gauylekendeis pur felonie, ou pur ret de felonie, se suthrei de la pees, et seit en counte demande com il appent e puis utlaghe; ou sil se met en seinte eglise et foriure la terre oue le reaume, le roy auera lan e le wast de ces terres, et le touz ses tenemenz ensemblement oue touz ces chateus; issint quæ apres lan e le iour, le plus procheyn seig[neur] ou seigneurs eyent leur eschetes de celes terres e tenemenz, chescun seigneur ceo que de luy est tenu sans men.

7) They also claim that if any Gavelkind tenant is convicted of felony, and put to death, then let the King take all his household goods; but immediately after his death, his heir shall inherit all the lands and holdings which he held under Gavelkind, by fee or by inheritance, and shall hold them by the same services and customs as his ancestors held them; as it is said in Kent:
The father to the bough [i.e. the gallows]
and the son to the logh [i.e. possession of the land].

8) And if the dead man has a wife, the heir - if he is of age [15 years old] - shall immediately give her half of all the lands and holdings that her husband held by fee in Gavelkind, to have and to hold in the manner set out below.

And for these lands the King shall not have the year and the waste, but only the household goods, as already said.

9) But if a Gavelkinder flees the land because of felony, or on suspicion of felony, and is called for in the County, as he ought to be, and afterward outlawed; or if he takes himself to Holy Church, and forswears the land and realm, the King shall have the year and the waste of his lands and holdings, and all of his household goods; and after a year and a day, the lands and holdings shall revert to the next lord or lords, each lord having what is held from him.

10) E clament auxi, que si ascun tenant en gauylekende murt, et seit inherite de terres e de tenemenz de gauylekende, que touz ses fitz partent cel heritage per ouele porcioun. Et si nul heir made ne seit, seit la partye fait entre les females sicome entres les freres. E la mesuage seit autreci entre eux reparti, mes le astre demorra al pune, ou al punee, et la ualue seit de ceo liure a chescun des parceners de cel heritage a xl pes de cel astre, si le tenement le peut souffrir. E donkz le eyne frere eit la primere electioun, et les autres apres per degree. Ensement de mesons que serront trouets en tieus mesuages soient repartie entre les heirs per ouele porcioun, ceo est asauoir per peies sil est mistier, sauue le couert del astre que remeynt al pune, ou al punee sicome il est auandist, issi que nequedont que le pune face renable gre a ces parceners de la partye que a eux appent per agard de bone gentz.

11) E des auaunditz tenemenz dot un soule sute tant seulement soleit estre fait auant, ne seit per la resoun de la partye fors un soule sute faite sicome soleit auant, mais que touz les parceners facent contributioun a celui que face la sute pur eux.

10) And they claim, too, that if a Gavelkind tenant, one who has inherited lands and holdings in Gavelkind, should die, all his sons are to evenly divide that inheritance between them (and if there is no male heir, let it be divided among the female heirs, just as between brothers). And they are to divide the home farm between them, too, but the hearth and forty feet around it - if the holding is large enough to permit it - shall remain for the youngest son or daughter, and in lieu, its value is to be shared between the co-heirs. And let the eldest brother have first choice, and the others afterward, according to age.

Likewise, the buildings on the home farm are to be partitioned evenly among the heirs, and measured out by the foot if necessary, except for the building with the hearth, which remains with the youngest son or daughter, as already said. But let the youngest make amends to his co-heirs, as would be judged reasonable by good men, for the part which would have belonged to them.

11) And these aforesaid holdings need make only one suit as before, nor by virtue of the division need more than one suit be made; but all the co-heirs should contribute to the one who appears in suit for them.

12) Ensement seient les chateus de gauylekendeys parteis en treis apres les exequies e les dettes rendues, si il y eit issue mulier en uye, issi que la mort eyt la une partie, e les fitz e les filles muliers lautre partie, et la femme la tierce partie. Et si nul issue mulier en uie ne seit, eit la mort la meite, e la femme en uye lautre meytie.

13) E si le heir, ou lez heirs, seit ou seyent de deins le age de xv ans, seit la nourriture de eux baille per le seig[neur] al plus procheyn de sank, a qui heritage ne peut descendre, issi que le seign[eur] pur le bail rein ne prengne. E quil ne seit marie per le seign[eur] mes per sa uolunte demeine et per le conseil de ses amys sil ueut. Et quant cel heir, ou ceux heirs, sont de plener age de xv auns, seient a eux lour terres e lour tenemenz liures, ensemblement oue lour chateaux, et oue les enprowemenz de celes terre outre renable sustinance: de quel enprouement e chateux, seit tenu a respondre celui qui de luy auera la nourriture, ou le seigneur ou ses heires que cel nourriture auera baille.

14) Et ceo fet a sauoir que del houre que ceux heirs gauylekende seient, ou out passe le age de xv auns, list a eux lour terres ou tenemenz doner e uendre a lour uolunte, sauues les seruices au chefz seignorages com it est deuant dit.

12) In the same way, if he have legitimate children surviving, let the household goods of a Gavelkinder be divided into three parts after the funeral and after the debts have been paid, so that the dead man has one part, his legitimate sons and daughters the second part, and his wife the third. If he does not have legitimate children surviving him, let the dead man have half and his living wife the other half.

13) And if the heir, or heirs, are under fifteen years of age, let their lord commit their upbringing to the nearest blood relative who is unable to inherit. But the lord must take nothing for committing this care, nor must he force an heir into marriage, unless he freely wills it, and if he wishes, is counselled by his friends.

And when the heir or heirs are of full age at fifteen years, let their holdings, together with their household goods be delivered up to them, and any profits which have accrued on the lands, less the reasonable costs of their maintenance. And let the man who had care of their upbringing, or the lord who committed it to him or his heirs, give account of those profits and household goods.

14) And from the very hour when the heir or heirs pass the age of fifteen years, they may give or sell their holdings at will, saving to the chief lords their services, as said beforehand.

15) Et si nul tiel tenant en gauylekend meurt, e eit femme que suruiue, seit cele femme maintenant douwe de la meite des tenementz dont son baroun morust uestu e seisi, per les heirs sil seient de age, ou per les seigneures si les heirs ne seient pas de age, issi que ele eyt la meite de celes terres e tenemenz, a tener tant com ele se tyent ueue, ou de enfanter seit atteint per le auncienne usage, ce est a sauoir, que quant ele enfaunte, e lenfant seit oy crier, e que le hu e le cry seit leue e le pais ensemble, e eyent weue de lenfant ensi faunte, e de la mere, adonks perde son dowere enterement, e autrement nyent, tant come ele se tient ueue, dont il est dist en Kenteis:
Si þat is wedew
si is leuedi.

16) E clament auxi, que homme que prent femme que eit heritage de gauylekend, e la femme murge auant luy, eit e baroun le meite de celes terres et tenemenz, tant come il se tient ueuers (dont il morust seisei) saunz estrepement, ou wast, ou exile fere, le quel kil y eit heir entre eux ou noun. Et sil prent femme, trestout perde.

15) And if a tenant in Gavelkind dies, and has a wife surviving him, let that wife immediately be given a half of the holdings which her husband possessed, by the heirs if they are of age, or by the lords if the heirs are not yet of age. And she shall have a half those lands and holdings, to hold whilst she remains a widow, or is convicted of childbearing by the ancient custom, that is to say: when she bears a child, and the child begins to cry, and the hue and cry is raised, and the populace assembles and sees the child which is born and the mother, she shall lose her dowry entirely; but not otherwise, so long as she keeps herself a widow, as it is said in Kent:
Whilst she is a widow,
She is the lady [of the household]

16) They also claim that if a man marries a female heir in Gavelkind, and his wife dies before him, her husband shall have half the lands and holdings which she possessed at death, so long as he continue a widower, without making strip, or waste or exile, whether or not there were children between them. But if he takes a wife, he shall lose everything.

17) E si nul tenement de gauylekend eschete (et ceo eschete seit a nul seigneur que tiene per fee de hawberk, ou per seriauncye) per mort our per gavelate sicome il est suthdite, ou li seit rendu de son tenant que de li auant le tynt per quiteclamaunce de ceo fete, ou seit sa eschete per gavelate sicome il est de suthdit, remeyne cele terre as heirs impartable. Et ceo fet asavoir, la ou le tenant ensi rendant, nule service retent deuers sey, sauuet nequedent as autres seigneurages fees, fermes e les rentes dont les auant diz tenemenz de gauylekend ensi rendus auant furent charges per ceux, ou per celuy, que le charger poent, ou poeyt.

17) But if a Gavelkind holding reverts to a lord who holds land by "Hauberk" or by "Serjeancy" [i.e. military service, that is, by the ordinary feudal system], whether by death or by Gavellate as described below, or if a tenant who holds land by virtue of "quitclaim" [i.e. by its being handed back to him] surrenders it to the lord, or loses it to him by Gavellate, as set out below, then that land shall remain as indivisible inheritance [i.e. no longer Gavelkind]. And this to be understood, that even where the tenant who makes such a surrender keeps no services for himself, nonetheless all the fees, farms and rents which were formerly charged on this holding in Gavelkind, are retained for the other lords who used to charge them.

18) E clamant auxi, que si nul tenant en gauylekende reteine sa rente e son seruice del tenement quil tient de son seigneur, querge le seign[eur] per agard de sa court de treys semeynes en treys semeynes truae destresse sur cel tenement tant que a la quart court, a tofefet per tescmoynage, et si dedans cel temps ne trusse destresse en cel tenement per queux il puisse son tenant iustiser, donc a la quart court seit agard, quil pregne cel tenement en sa mein en noum de destress, ausi come boef ou uache, e le tiene un an e un iour en sa mein sance meyn ouerir, dens quel terme, si le tenant uent e rend ses arrerages, e fait renables amendes de la detenue, a donc eit e ioise son tenement sicom ses auncestors e ly auant le tyndront. E sil ne uent deuant lan e le iour passe, donc auge le seigneur al prochein counte suiant oue tescmoynage de sa court, e face la pronuncier cel proces pur tescmoynage auer. Et per agard de sa court, apres ceo counte tenue, entra e meynouera en celes terres e tenemenz, sicome en son demeyne. E si le tenent uent apres e uoille ces tenemenz reauer e tener sicome il fist deuaunt, face gree al seigneur, sicmoe il est auncienement dist:
Neghe sybe selde
and neghe sybe gelde
and fif pond for þe were
er he bicom he alder

18) Also they claim, that if a Gavelkind tenant withholds from his lord the rents and services for his landholding, then let the lord seek to find something in the holding to distrain by the award of his [own] court every three weeks, until the fourth court, always with witnesses. And if during that time he can find nothing in the holding to distrain, so that he may have justice from his tenant, then at the fourth court, let it be awarded that he take the holding into his own hands, naming it as a distraint, just like a bull or cow. And for a year and a day's duration, let him not manure it, and if in this time the tenant comes to pay his arrears and makes reasonable amends for withholding them, then let him enjoy the holding, just as ancestors held it.

But if the year and the day pass, then let the lord take the witnesses of his own court to the next County court and there declare the legal process, so as to have a testimony. And after the holding of the County court, by the award of the net sitting of his own court, he may enter and manure the lands and holdings, just as if they were part of his own desmene.

And if the tenant comes afterward, and desires to have the tenements returned, to hold as he did before, then let him come to an agreement with his lord, as it is said from of old:

Nine times to pay,
And nine times to yield,
And five pounds for his wer,
Before he become holder.

19) Aussi il cleyment que nul homme deit serment sur liure fere, per destress, ne per poer de seigneur, ne de baylif, encountre sa uolunte saunz bref le roy (sinon pur feaute fere a son seigneur) meske per deuaunt coronner, ou auter minister le roy, que real poer eyont de enquerer de trespas fet encountre la coronne nostre seigneur le roy.

20) E cleyment auxi, que checun Kentey's put autre assonier en la court le roy, en counte, en hundreth e en la court son seigneur, la ou assoigne gist, aussi bien de commune sute, come de play.

21) Estre ceo il cleyment per especial fet le Roy Henrie, pere le Roy Edward, que ore est, que Dieu garde, que de tenementz que sont tenus en gauylekende ne seit prise bataille, ne grand assise per xii chiuallers, sicome aillours est prise en le raume, ceo est a sauoir la ou tenant e le demaundat tenant per gauylekende, mes en lu de ces grandes assises seient prises iurees per xii homes tenantz en gauylekend, issi que quatre tenantz de gauylekend elisent xii tenantz de gauylekend iurours.

22) E le chartre le roy de ceste especiate est en la garde Sire Iohan de Norwode, le iour S. Elphegh en Canterbyre, le an le Roy Edward, le fiz le Roy Henrie, xxi.

23) Ces sont les usages de gauylekend, e de gauylekendeys en Kent, que furent deuaunt le conquest e en la conquest e totes heures ieskes en ca.

19) Also they claim that, except by his own free will, no man should be made to swear on a book, neither by threat, nor by lordly power, nor by a bailiff, without a writ from the King (except to give an oath of fealty to his lord), or in front of the coroner or some other royal official who has royal authority to enquire into offences against our lord, the King.

20) They also claim that every Kenting may excuse another to the King's court, in the County, the hundred or his lord's court, wherever the essoign lies, both for common suits and pleas.

21) Moreover, they claim that, by special Act of King Henry [i.e. Henry III], father of the present King Edward, whom God defend, that no battle shall be joined for Gavelkind holdings, nor the grand assize of twelve knights be held, as elsewhere in the realm, but where both the tenant and the accuser are Gavelkind tenants, instead of the Grand Assize a jury of twelve Gavelkind tenants shall be empanelled, that is four Gavelkind tenants shall choose twelve Gavelkind tenants as jurors.

22) And this special charter of the King is in the care of Sir John de Norwode, as of the feast of St Alphege of Canterbury, in the twenty-first year of King Edward, son of King Henry [i.e. 19 April 1293].

23) These are the Usages of Gavelkind and of the Gavelkinders of Kent, which existed before the Conquest, at the Conquest, and ever since until now.