

# Turf wars: conflict and cooperation in the management of Wallingfen (East Yorkshire), 1281–1781\*

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## *Abstract*

This paper explores the origins and management of Wallingfen, a large tract of waterlogged marshes and carrs near Howden in the East Riding of Yorkshire. Subject to annual flooding throughout much of its history, the area was utilized by the surrounding parishes and townships throughout the medieval and early modern period, providing a range of important resources to the neighbouring communities including fish, fowl, turves and summer grazing. In this it had much in common with wetland commons elsewhere in England and on the Continent. Yet while the East Anglian fens and the Lancashire mosses were being drained and enclosed in the seventeenth century – as too were the wetlands around the southern shore of the North Sea basin in Denmark, Germany and the Netherlands – Wallingfen remained wet, marshy and entirely unsuitable for arable agriculture long into the eighteenth century. In other ways too, Wallingfen was highly unusual. Not only was a true form of intercommoning practised here until parliamentary enclosure under an act of 1777, but there is also evidence of a cooperative system of wetland management which fell outside the direct authority of the neighbouring manors or any higher form of overlordship.

Marginal, watery landscapes have long been areas of fascination for historical geographers, archaeologists, economic historians and landscape scholars alike. The labour put into mediating the relationship between land and water over many hundreds of years – and more specifically the distinctive landscapes produced by this wresting of productive arable land from the marsh and fen – have been subjects of continued interest from the time of H. C. Darby and W. G. Hoskins onwards.<sup>1</sup> For many, this has been a story about long-term environmental

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<sup>1</sup> H. C. Darby, *The medieval fenland* (1940); W. G. Hoskins, *The making of the English landscape* (1955), pp. 95–100; J. Purseglove, *Taming the flood. A history and natural history of rivers and wetlands* (1988); H. Cook and T. Williamson (eds), *Water management in the English landscape. Field, marsh and meadow* (1999); S. Rippon, *The transformation of coastal wetlands: exploitation and management of marshland landscapes in north west Europe during the Roman and medieval period* (2000).

change, of the progressive reclamation of the land from the sea and the making of the landscape as we see it today. As Hoskins put it, ‘the successful attack on fen and marshland [had] begun well back in Saxon times’ and continued for more than a thousand years, eventually producing the characteristic pattern of straight roads, drains and field boundaries we now see in the East Anglian fens and elsewhere.<sup>2</sup>

In an English context at least, far less attention has been paid to the functioning of these landscapes in the period before their drainage and enclosure. Scholars are well aware that communities on the marshland or fenland edge utilized the resources of these ecologically rich areas. Yet we know relatively little about how common rights were managed in English wetland environments, despite a growing body of research on the governance of common-pool resources in a northern European context. This new work on the commons and communities of the North Sea littoral has important things to teach us, not least in relation to the ‘silent revolution’ by which commons governance emerged in the medieval period and about relations between community action and private property interests in flood-prone landscapes. Here we are thinking in particular of the work of Tine de Moor on commons as an example of ‘corporate collective action’ and of Tim Soens and others on the so-called ‘dyke solidarity’ which characterized parts of the Danish, German and Dutch Polders, a solidarity which was always negotiated, often contested and sometimes imposed on unwilling communities and individuals.<sup>3</sup> In bringing this work to bear on the origins and ongoing governance of English wetland commons, we go some way towards answering the call – recently voiced by Greg Bankoff – that historians must acknowledge ‘the wider history of how the risk of water has shaped both land and society in its enviro-cultural context’ across the wider North Sea Basin.<sup>4</sup>

In this paper, we present a case study from the English lowlands on the management of a large, 4500-acre wetland common close to Howden in the East Riding of Yorkshire over a

<sup>2</sup> Hoskins, *Making*, p. 79.

<sup>3</sup> T. Soens, ‘Explaining deficiencies of water management in the late medieval Flemish coastal plain, 13th–16th Centuries’, *Jaarboek voor Ecologische Geschiedenis* (2005/6), pp. 35–61; M. L. Allemeyer, ‘“The world according to Harro”: Mentalities, politics and social relations in an early modern coastal society’, *German Historical Institute Bulletin, Supp.* 3 (2006), pp. 53–77; T. de Moor, ‘The silent revolution: A new perspective on the emergence of commons, guilds, and other forms of corporate collective action in Western Europe’, *International Rev. of Social Hist.* 53 (2008), Supplement, pp. 179–212; D. R. Curtis, ‘Tine De Moor’s “Silent Revolution”. Reconsidering her theoretical framework for explaining the emergence of institutions for the collective management of resources’, *International J. of the Commons* 7 (2013), pp. 209–29; R. van Weeren and T. De Moor, ‘Controlling the commoners: Methods to prevent, detect, and punish free-riding on Dutch commons in the early modern period’, *AgHR* 62 (2014), pp. 256–77; T. Soens and P. De Graef, ‘Polder

mania or marsh fever? Risk and risk management in early modern drainage projects: the case of Kalloppolder, Flanders, 1649 to 1662’, *AgHR* 62 (2014), pp. 231–55; M. Van Tielhof, ‘Forced solidarity. Maintenance of coastal defences along the North Sea Coast in the early modern period’, *Environment and Hist.* 21 (2015), pp. 319–50; T. de Moor, *The dilemma of the commoners: Understanding the use of common-pool resources in long-term perspective* (2015); D. R. Curtis, ‘Danger and displacement in the Dollard: The 1509 flooding of the Dollard Sea (Groningen) and its impact on long-term inequality in the distribution of property’, *Environment and Hist.* 22 (2016), pp. 103–35.

<sup>4</sup> G. Bankoff, ‘The “English Lowlands” and the North Sea Basin system: A history of shared risk’, *Environment and Hist.* 19 (2013), pp. 3–37, see p. 5 for the quote. See too E. Thoen, G. J. Borger, A. M. J. de Kraker, T. Soens, D. Tys, L. Vervaeet and H. J. T. Weerts, *Landscapes or seascapes? The history of the coastal environment in the North Sea area reconsidered* (2013).

period of several hundred years. In some measure Wallingfen was no different from other marshes and wastes, providing many of the same resources to neighbouring communities including fish, fowl, rushes and turves for fuel. It flooded in winter, but provided grazing to the commoners of neighbouring communities for at least a few months every summer. It was similar in environmental terms to the wetland commons all around the Humber estuary – in the Humberhead Levels, Hatfield Chase, and the Isle of Axholme, for example – and to a greater and lesser extent to those further afield in Lancashire, Somerset and East Anglia.<sup>5</sup> Yet while the East Anglian fens and the Lancashire mosses were being drained and enclosed in the seventeenth century – as too were the wetlands around the southern shore of the North Sea Basin in Denmark, Germany and the Netherlands – Wallingfen remained wet, marshy and entirely unsuitable for arable agriculture long into the eighteenth century. In other ways too, Wallingfen was highly unusual. Not only was a true form of intercommoning practised here until parliamentary enclosure, there is evidence too of a cooperative system of wetland management which fell outside the direct authority of the neighbouring manors or any higher form of overlordship. The survival of an unusual body of late medieval and early modern documents for Wallingfen provides exciting opportunities to delve into the historical geographies of the fen, its resources and their management. This paper explores issues of cooperation and conflict in the management of the common up to its enclosure in 1781.

The paper is divided into five main sections. The first offers a brief historical geography of the fen, putting Wallingfen on the map as it were as well as charting its early history and reflecting on the question of the origins of common rights in the wetland. The second focuses on Wallingfen's medieval court and its records, exploring what they reveal about its genesis. The third examines the court's functions as they related to the management of water in the fen and the utilization of wetland resources including grazing rights, fish, fowl and turf. It also explores the court's role in managing conflict and encouraging cooperation. The fourth briefly outlines Wallingfen's later history including the details of its eventual enclosure, while the fifth offers some concluding comments.

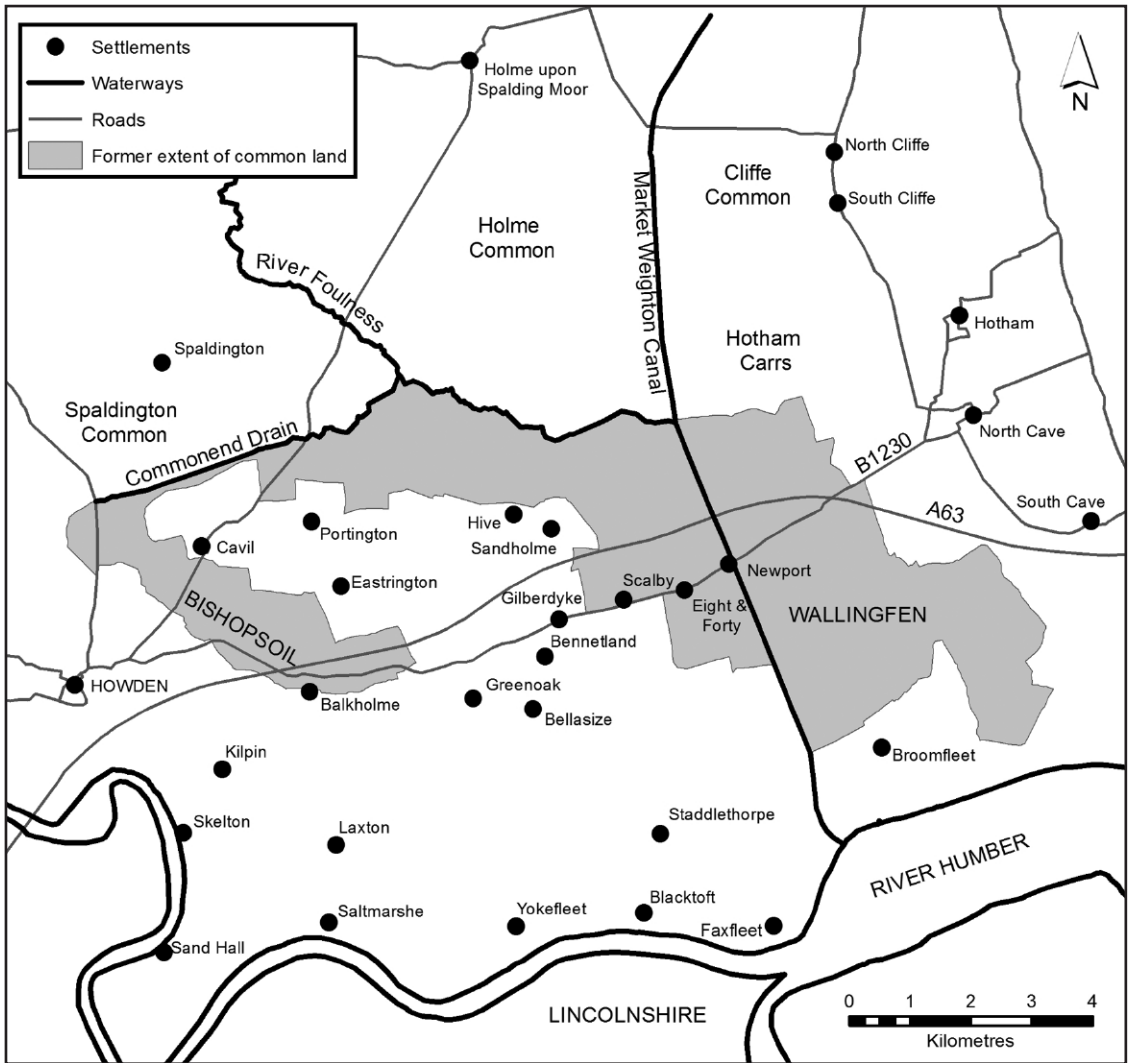
## I

Described by Arthur Young in 1769 as 'low, flat and disagreeable', Wallingfen ran in a broad arc from Howden in the west to North Cave and South Cave in the east (see Figure 1).<sup>6</sup> It was bounded on the north by the River Foulness or Foulney, which emptied into the Humber estuary at Skelfleet, a tidal creek in Broomfleet township. To the south of the fen lay the settlements and arable lands of Howdenshire – large parts of it reclaimed from the

<sup>5</sup> J. Thirsk, 'The Isle of Axholme before Vermuyden', *AgHR* 1 (1953), pp. 16–28; M. Williams, *The drainage of the Somerset Levels* (1970); K. Lindley, *Fenland riots and the English Revolution* (1982); Purseglove, *Taming the flood*, pp. 49–52; C. Taylor, 'Fenlands', in J. Thirsk (ed.) *The English rural landscape* (2000), pp. 180–81; J. Bowring, 'Between the Corporation and Captain Flood: The Fens and drainage after 1663', in R. W. Hoyle

(ed.), *Custom, improvement and the landscape in early modern Britain* (2011), pp. 235–62; W. D. Shannon, 'The survival of true intercommoning in Lancashire in the early-modern period', *Agricultural Hist.* 86 (2012), pp. 169–91.

<sup>6</sup> Cited in J. Crowther, *Descriptions of East Yorkshire: De La Pryme to Head* (East Yorkshire Local History Soc. 45, 1992), p. 25.



MAP 1. Wallingfen and the surrounding district on the eve of enclosure.

Map by T. Bettley and B. McDonagh.

wetland in the twelfth century – and the hamlets of Broomfleet, Faxfleet and Blacktoft on the alluvial levee along the banks of the Ouse. While the surrounding settlements lay on higher, drier land – the Caves on the western dip slope of the Yorkshire Wolds, Holme church on a small hill and Howden on an outcrop of sand – Wallingfen itself was lower-lying and poorly drained.

Palaeo-environmental evidence suggests that the area had once been heavily wooded, but the landscape seems to have oscillated between estuarine and drier conditions since the last Ice Age. The area was subject to marine transgressions in the fifth millennium BC and again sometime between 800 and 500 BC, creating an estuarine inlet of the River Humber fed by

a dendritic creek system.<sup>7</sup> The sea level later receded, yet much of the area was still close to or even below mean sea level and the combination of tidal inundations and the low gradient and general sluggishness of the main watercourse emptying the valley – the Foulness – meant that the area was frequently under water. Its very name indicates how difficult a landscape it had long been. The earliest form (recorded in 1228) is *Walefen*, and the ‘Wale-’ element is likely to derive from the Anglian *Wala*, the genitive plural of *Walh* interpreted (as in Wallasey near Liverpool) as ‘Britons’, or possibly otherwise as ‘outsiders’ or ‘slaves’, which suggests the ancient fen was long occupied only by marginal and dispossessed folk.<sup>8</sup> By the time of the Domesday survey – in which not being geldable, the fen received no mention – Wallingfen was an extensive area of waterlogged carrs and marshes, with outcrops of peat and at least two large meres at Oxmardike and Yapley.<sup>9</sup> The only through route across this watery landscape was by a communally maintained causeway – first documented in the fifteenth century, but probably in existence much earlier – which ran from North Cave to Gilberdyke and from there on to Howden, most likely along the route of the present B1230.<sup>10</sup>

Estimated at almost 4500 acres at the time of enclosure in 1781, the marsh and fenlands had once been even larger. To the west, Wallingfen linked up with another large area of common, a mixture of wetland, woodland and pasture, known in the seventeenth century as Bishopsoil, lying in Howden lordship and administered by officers of the bishop of Durham in his capacity as chief lord. To the north of the river Foulness lay the commons of Spaldington, Holme-on-Spalding-Moor, Market Weighton, South Cliffe and Hotham, almost certainly once part of a larger Wallingfen but detached from the area south of the Foulness by at least the mid-fifteenth century.<sup>11</sup> Further south, the settlements between the fen and the Humber had themselves been reclaimed from the marsh in the post-Conquest period when warmer, drier conditions combined with the cutting of drains to allow for an expansion of settlement and cultivation.<sup>12</sup> A series of drains leading from the fen, known as Hansardam, Thornton Dam

<sup>7</sup> P. Halkon, ‘The Holme Project’, in R. Van de Noort and S. Ellis (eds), *Wetland heritage of the Vale of York* (1999), pp. 133–8; P. Halkon and J. Innes, ‘Settlement and economy in a changing prehistoric lowland landscape: An East Yorkshire (UK) case study’, *European Journal of Archaeology* 8 (2005), pp. 225–59; P. Halkon, *Archaeology and environment in a changing East Yorkshire landscape: The Foulness Valley, c. 800 BC to c. AD 400* (British Archaeological Reports, 472, 2008); P. Halkon, J. Innes, A. Long, I. Shennan, T. Manby, G. Gaunt, A. Heath, P. Wagner, J. Schofield, D. Schreve and D. Roe, ‘Change and continuity within the prehistoric landscape of the Foulness Valley, East Yorkshire’ *East Riding Archaeologist* 12 (2009), pp. 1–66.

<sup>8</sup> A. H. Smith, *The Place-Names of the East Riding of Yorkshire and York* (1937), p. 248. The name form shift from ‘Wallefen’ to ‘Wallingfen’ is likely by local analogy with adjacent Spalding Moor or Fen.

<sup>9</sup> Oxmardike Mere lay close to where the canal and railway line cross and Yapley Mere or Yapley Marr lay

south of Sandholme Landing. A reference of 1492 talks of ‘*lez pittes aquar(ii)* in the fen’ (Hull History Centre [hereafter HHC], U DDBA/10/2, m. 1d).

<sup>10</sup> HHC, U DDBA/10/2 m. 1d.

<sup>11</sup> The 1456 admeasurement is referred to in HHC, U DDHA/4/19; J. Sheppard, *The drainage of the marshlands of South Holderness and the Vale of York* (East Yorkshire Local History Ser. 20, 1966). The Foulness’s course of ‘Langedike’ is described in the fifteenth century as demarcating Howdenshire from Spalding Moor (HHC, U DDHA/17/1).

<sup>12</sup> Warmer, drier climatic conditions from the mid-tenth century onwards – known as the Medieval Warm Period – probably helped to make the area more accessible to drainage, even whilst increased storminess in the thirteenth century may have contributed to heightened flood risks in lowland areas across the North Sea Basin including Wallingfen. See T. Williamson, *Environment, society and landscape in early medieval England. Time and topography* (2013), pp. 42–5

and Temple Dam had been cut before 1180 under the leadership of Bishop Hugh du Puiset of Durham (1153–95) whose dramatic campaign of the 1160s and 1170s drained the wetlands of southern Howdenshire from Wallingfen west as far as Kilpin.<sup>13</sup> As a result, new townships emerged along the banks and dikes at places like Bellasize, Gilberdyke, Gowthorpe, Greenoak and Sandholme, all first recorded in the thirteenth century, settlements whose need for pasture was to shape the future of neighbouring Wallingfen.<sup>14</sup>

Travelling from Hull to Howden c.1540, the antiquary John Leland described Wallingfen as follows:

From North Cave to Scalby three miles, all by low marsh and meadow ground, leaving the arm of the Humber on the left hand in sight. This fen is commonly called *Waullyng Fenne*, and hath many carrs of water in it; and it is so big that fifty-eight villages lie in and abutting on it, whereof the most part be in Howden lordship belonging to the bishop of Durham, and part in Harthill Hundred. The fen is sixteen miles in compass and is all of Howdenshire.<sup>15</sup>

In truth there were actually 48 rather than 58 townships intercommoning the fen – as the surviving medieval and early modern sources demonstrate – but Leland’s account does underline both the size of the wetland and the potential complexities of its management. Leland may not have known it, but rather than being divided between the various townships Wallingfen was subject to what William Shannon has recently called ‘true intercommoning’.<sup>16</sup> Thus the boundaries between the surrounding parishes and townships ran up to but not across the fen and each community exercised rights across the whole of the fen rather than being restricted to any one part of it. Such an arrangement was distinct from the more usual form of communing *pur cause de vicinage*, a state of affairs where the parish or township boundaries were known – if not demarcated on the ground – but neighbouring manorial lords agreed not to pursue cases of trespass against those whose animals moved across the boundary between townships.<sup>17</sup> The latter arrangement was – according to Shannon – reasonably commonplace in parts of sixteenth-century England, while true intercommoning was considerably rarer. This was especially the case after about 1600, by which time the logic of common law property had seen many intercommoned areas partitioned if not necessarily physically enclosed.

Leland was wrong too about Wallingfen lying within Howdenshire. The townships to the south of it may have been part of the bishop of Durham’s post-Conquest lordship of Howden,

Note 12 *continued*

on long-term climatic changes in the medieval period; H. H. Lamb, *Climate, history and the modern world* (1982, sec. edition, 1995), pp. 175–6 on storm risks; but also S. Rippon, ‘Human impact on the coastal wetlands of Britain in the medieval period’, in Thoen *et al.* (eds), *Landscapes of seascapes?*, pp. 333–51, who argues that the late medieval climatic deterioration had a limited impact on coastal communities, particularly where land was protected by sea walls rather than natural coastal barriers.

<sup>13</sup> Sheppard, *Marshlands*, p. 15; D. Crouch, ‘Caville manor and the enterprise of the twelfth-century

bishops of Durham,’ *Yorkshire Archaeological J.* 86 (2014), pp. 124–37.

<sup>14</sup> K. J. Allison, *The East Riding landscape* (1975), p. 73.

<sup>15</sup> L. Toulmin Smith (ed.), *Leland’s Itinerary* (4 vols, 1907–11), I, pt 1, p. 51. Leland used the term ‘carr’ in its earliest sense to refer to a pool or pond, but it is otherwise used here to refer to wetland supporting willows, alders, sedge or low-growing bushes (c.f. Oxford English Dictionary). The terms ‘seave carr’ and ‘turf carr’ also appear in the Wallingfen records.

<sup>16</sup> Shannon, ‘Intercommoning’, p. 174.

<sup>17</sup> *Ibid.*, p. 173.

but the fen lay outside the bounds both of the neighbouring manorial lordships and of the surrounding ecclesiastical parishes. In this it was highly unusual, an anomaly in the tenorial map of medieval England where notionally all land belonged to the king and under him, to a landlord of some sort.<sup>18</sup> Even intercommoned land was usually vested either in manorial lords or in some kind of overlord, but Wallingfen – at least as far as we know the situation after 1425 – had neither. Quite how such a large area of land came to lie outside the usual system of landholding is unclear, although the fact agriculture was so severely limited by the waterlogged nature of fen and the area subject to many months of seasonal inundation – especially before the thirteenth century – may partially explain this.

In its origins it may be that Wallingfen and the neighbouring areas of common land are relics of a larger Anglian shire or commote common, as Paul Vinogradoff, J. E. A. Jolliffe, Glanville Jones and William Shannon have all argued may be the case for large areas of intercommoned land in other parts of England and Wales.<sup>19</sup> Wallingfen lies at the intersection of three Domesday hundreds – Howden to the west, Weighton to the north and Cave to the east – and it may be that the common rights had been originally vested in the neighbouring multiple estates (themselves the focus of the pre-Danish hundreds) who shared access to the fen and its resources. The only surviving pre-Conquest charter for the area is suggestive in this regard. When the Anglian multiple estate of Howden was granted by King Edgar to the lady Cwen in 959, the estate had as one of its bounds the watercourse of *Fulanea*.<sup>20</sup> The Foulness, of course, was the main watercourse running through Wallingfen and it may be that some or all of the common south of Foulness lay within – or was in some way subject to – the lordship of Howden in the mid-tenth century. The tenth-century state of affairs can still be glimpsed in the fact that the Howdenshire townships of Barmby and Asselby, both of which lay outside the Howden multiple estate in 959, did not subsequently have common rights on Wallingfen nor any share in the enclosure award of 1781. It would seem then that the common rights as they were recorded in the medieval and early modern court records preserved much earlier arrangements, possibly even of pre-Danish date.

Yet if Wallingfen once lay within the Anglian multiple estate, or was in some way attached to it, it had been detached from the lordship of Howden at a relatively early date, certainly before the bishop of Durham acquired Howdenshire from the Conqueror c.1080. Thus the 1265 details of the tithing areas of the prebends of the minster of Howden reveal that the ancient church claimed no tithe from outside the bounds of the then lordship of Howden, and its parish did not then or thereafter include any part of Wallingfen. The Hundred Rolls of 1276 – the most comprehensive survey of jurisdiction and lordship undertaken in medieval England – also fail to mention this large area of wetland. The fen lay outside the liberty of Howdenshire in legal matters: Wallingfen does not appear in any Howden halmote roll and the liberty court made no presentments to the sheriff's tourn concerning it at any period between the fourteenth and the eighteenth century.

Although the jurisdiction of the Wallingfen court is described in quite ambitious terms in its own documentation as comprehending a 'liberty' – a word typically used of an honorial

<sup>18</sup> Ibid., pp. 169–71.

<sup>19</sup> Ibid., pp. 178–81.

<sup>20</sup> S. E. Kelly (ed.), *Charters of Peterborough Abbey* (Anglo-Saxon Charters, 14, 2009), pp. 240–7.

jurisdiction such as that of the bishop of Durham at Howden which excluded the sheriff of York – the reality seems to have been less pretentious. The court of Wallingfen only seems to have dealt with the offence of affray or common assault – see for example the pains detailed in a lost ordinance of 1425 with instances mentioned in 1492 and 1532 – as would any halmote or court leet, the oddity here being that the offences being tried were not being heard within a manor but in an extra-judicial area divorced from view of frankpledge. Major criminal pleas of larceny and murder committed on the fen came before the sheriff of York or his bailiffs. Thus, unlike in Howdenshire, the sheriff of York had entry to Wallingfen as is known from two fourteenth-century cases. A jury of Harthill wapentake presented a William son of Geoffrey of Balkholme for the murder of John son of Richard of Sandholme in the *mora de Walnyngfen* in August 1302. William was arrested at the sheriff of York's order and was later to die in gaol.<sup>21</sup> From this it seems that the sheriff exercised by default direct control over presentments to crown pleas on Wallingfen which – unlike Howdenshire – did not come under the intermediate jurisdiction of the bailiff of Howden even though the home township of the alleged murderer and his victim lay within the liberty. The murder took place on the fen in the summer season while the beasts were pastured there and the common was more frequented. Another medieval capital plea relating to Wallingfen is mentioned in February 1340 when the sheriff indicted one Adam Horshird (the horseherder) for the theft of an ox belonging to Hugh of Craston from *Walnyngfen*. Adam was subsequently executed by hanging.<sup>22</sup> He must have been subject to a presentment to the sheriff's tourn from the Harthill wapentake court.

In more than one sense, then, Wallingfen forms a void on the map. Not only was there little in the way of settlement or arable cultivation in the fen, but the wetland – as we can glimpse it in the earliest documents and infer from the later medieval court records – was effectively a blank within the local tenurial and parochial structure. If Wallingfen had had an overlord in the pre-Conquest period, it had certainly been long forgotten by the time the court records begin in 1425. Yet the fen was nevertheless an important resource for those residing in the surrounding townships, as the two early fourteenth-century cases mentioned above suggest. The construction of the twelfth-century dams, later followed by efforts to straighten the river Foulness and increase the speed at which the water drained into the Humber – the new canalized stream known as the Langdyke was cut sometime in the thirteenth century – had the effect of reducing the risk of flooding in the fen.

By the thirteenth century, the neighbouring communities were able to use Wallingfen for summer pasture for several weeks a year and this summer grazing season lengthened considerably over the following centuries, a reflection no doubt of continued efforts to reduce waterlogging and flooding in the fen. The fen thus provided summer grazing for cattle, sheep, horses, pigs and geese that were overwintered in the surrounding villages. Access to such a large resource of grazing land – even if only for part of the year – must have allowed the commoners of the five neighbouring parishes to keep far more stock than they might otherwise have been able to support on the grazing grounds within each parish. It was also an important source of fuel for inhabitants of the surrounding communities – specifically turves and perhaps also peat – as well as fish and wildfowl, rushes for basketwork, thatch, and rushlights, and gorse or

<sup>21</sup> TNA, JUST 1/1108, m. 13d.

<sup>22</sup> TNA, JUST 3/78, m. 3.



whins which could be directly grazed by livestock in the summer or collected for winter use as fodder or fuel. It was the need to manage these important natural resources – essential as they were to the economies of the surrounding communities – that led to the production of the documents used here to shed light on the management of the wetland in the later medieval and early modern period.

## II

Much of what we know about the nature of Wallingfen's natural resources and their management over a period of several centuries emerges from a small, but important collection of documents in Hull History Centre. These were produced by a body known variously in its records as the court, congregation or commonalty of Wallingfen. It was in existence by 1425 – and certainly earlier in some form – and its specific remit was the 'commonwealth & good government of the said common', that is, the management of the fen and its resources on behalf of the townships within the surrounding five parishes of Howden, Eastington, Blacktoft, North Cave and South Cave.<sup>23</sup> Of these documents, three are of particular significance. The first is an original roll extracting orders of the court dating between 1425 and 1543, seemingly compiled out of its annual rolls in the mid-sixteenth century by one of the clerks of Wallingfen court. The second is an eighteenth-century copy of another such Tudor book or roll of precedents, also taken from the lost medieval and early modern court rolls. Additional material and variations between this and the sixteenth-century extracts suggest this was an effort independent of the first book. Thirdly, there is a book of selected sixteenth- and seventeenth-century estreats labelled 'Antient Orders and Rules relating to Wallingfen Court' compiled by clerks to the court, probably in the 1750s.<sup>24</sup>

So while the original medieval court rolls have now been lost or destroyed, these later extracts survived because of the ongoing need to manage common rights in the fen up to its eventual enclosure under a parliamentary act of 1777. Indeed the three books are preserved among the papers of Leuyns Boldero Barnard, a successful lawyer who inherited South Cave East Hall in 1748 and was later a key proponent in the enclosure of Wallingfen.<sup>25</sup> While contemporary interests and concerns for precedent no doubt shaped exactly what the eighteenth-century clerk copied from the earlier rolls, the three books of ordinances are nevertheless valuable sources providing important insights into the functioning of the medieval and early modern court, the management of the wetland resources and their exploitation – and eventual enclosure – by the neighbouring communities. It is to the constitution of the court and the evidence of the court books themselves we now turn.

The year 1425 was selected for the beginning of his record by the Tudor clerk who extracted the earliest rolls. This was not a random decision. At that year's June meeting a gathering of local notables – including two knights and ten esquires, one of them also a royal justice – presented to the commonalty an 'ordynauce and usage' of the fen which was intended to be binding. Not only that, but it claimed that the ordinances it presented were already ancient and

<sup>23</sup> HHC, U DDBA/10/1.

going back to 1425, but seemingly not earlier.

<sup>24</sup> The clerk who copied these entries knew of records

<sup>25</sup> VCH, *East Riding*, IV, p. 44.

that it was in fact repeating 'an old record'. The ordinance outlined the rights of the inhabitants of the townships bordering the fen to cut turves and graze their cattle in the fen, while a similar ordinance of May 1430 reiterated these rights and added orders about the cutting of rushes and gathering of wool on the common. We find that the early summer court was the place where the officers of the court were elected. The commonalty or court of Wallingfen had a two-tier structure of governance which survived until the end of the court's existence in the late eighteenth century: the lords of the manors bordering the fen elected 'surveyors' from among their number while the townships elected men to a much larger body known as jurors or governors, some of whom can be identified as drawn from the yeoman class. Five surveyors were mentioned in 1425 and 1430 and in general the number of surveyors seems to have varied between four and five, though it dropped to only three at times in the seventeenth and eighteenth centuries.<sup>26</sup> The surveyors were assisted by 48 governors known as the Forty-Eight Men, a number which was said in later sources to reflect the number of townships with common rights in the fen. The surveyors and governors together formed a legal entity. While the surveyors' role was to be overseers of the common and its court, the Forty-Eight Men had a commitment towards management of the fen, notably in making presentments to the court for any trespasses committed by men of their townships and monitoring the marking, branding or ringing of livestock to be loosed on to the common. There were also five men elected to oversee forfeited goods, seemingly from amongst the Forty-Eight Men, one from each of the five parishes bordering the fen.

The Forty-Eight Men were listed by parish in 1430, when there were 12 from Howden and South Cave and eight each from Eastrington, Blacktoft and North Cave, the number probably a reflection of the parishes' respective populations. By 1467, however, the governors were listed by township rather than parish, a move almost certainly intended to make those elected answerable for constituencies rather smaller than whole parishes and thus improve monitoring.<sup>27</sup> The Forty-Eight Men were responsible for checking the brands and marks of their own particular townships so localizing their election on their home village would have assisted that. The actual executive actions of the court were, however, necessarily taken by bailiffs acting for the commonalty, who seem to have been employed on a retainer rather than being elected officials. The commonalty also employed workmen for particular works and maintenance, apart from the major works of maintenance of the fen's causeway and the dykes, which fell on various townships. There was also a clerk of the court who compiled and kept the records.

There were two annual meetings of the Court or Congregation of Wallingfen from the beginning of the record we have, which met at one of two locations in or close to the fen: 'the hill called Yald [or Yauld] Hill' (unlocated, but possibly in North Cave: dated occurrences in 1425, 1430, 1660 and 1661) and Scalby Chapel (dated occurrences in 1464, possibly 1532, 1584 and 1665).<sup>28</sup> The two court dates respected a summer season of pasturing on the common, for

<sup>26</sup> HHC, U DDBA/10/1 and DDSA/937(f).

<sup>27</sup> HHC, U DDBA/10/2 (Wallingfen Court Roll), m. 1.

<sup>28</sup> HHC, U DDBA/10/3. A place name of *Aldhall Garth* is attested in North Cave in 1310 (Bodl. Ms Top. Yorks, b 14, p. 337) and may indeed be Yald Hill. There

seems to have been no correlation between the two meeting places and the two principal courts, for they are used indifferently of the two times of the year. Note too that in November 1471 the court met at Broomfleet (Hull HC, U DDBA/10/2, m. 1d).

which there is evidence as early as 1302. By 1425 the opening of the common was understood to have long taken place on the feast of St Helen, apparently taken on Wallingfen as 21 May, which must be a local use as the Latin Church customarily placed the feast in August. The first annual meeting of the Court preceded the opening of the fen to pasture, and the second followed its closure. In the fifteenth and sixteenth centuries the latter would seem to have been held to coincide with one of the 'drifts', the driving off of livestock from the fen which occurred in mid-June for some beasts and the middle of July for others. The second court of the year was presumably intended to help adjudicate over any rival claims to stock which occurred as the beasts were driven from the common. By the end of Elizabeth's reign the second meeting was not being held until late September or early October, and an ordinance was laid down at some date in the 1590s that the first court should be held on the first Monday in May ('if it not be St Hellens day') and the second court on the second Monday in October. Clearly by then the ecclesiastical date of St Helen's feast had been forgotten. It also suggests that the summer grazing season lengthened considerably between the early fifteenth century (when it was a mere two months) and the late sixteenth century (when it lasted more than five months), although further work is needed to establish how far this was the result of ongoing drainage schemes and embankment works on the Ouse and Humber, climatic variations associated with changes in relative sea levels, rainfall and temperature, or some combination of these factors.

Importantly, the detailed evidence for the governance of the fen as it appears in the early fifteenth century clearly implies that the arrangements it records were older still. Most significant is the extract taken from a roll of 1425 which refers to precedents established at an earlier time 'as well in the tyme of Thomas Davill, John Davill and Roger Davill and others there ancestors'. The reference is to a series of lords of South Cave East Hall manor: Thomas Daiville died in 1401 and John Daiville in 1409, while a Roger Daiville held the manor in the mid-fourteenth century.<sup>29</sup> It would therefore seem likely that the earliest arrangements for the governance of the fen were administered under the presidency of the Daiville family, and that the curious arrangement of gentry surveyors forming a committee with yeoman governors came about as a result of the family's extinction in 1409. This would also account for persistent (if unsuccessful) attempts of South Cave landlords to claim overlordship of Wallingfen in the fifteenth and sixteenth centuries (on which see below).

As another indicator of the time frame in which the governance of Wallingfen emerged, the election of governors of the fen on the basis of the five surrounding ecclesiastical parishes – as was clearly the case in 1425 – can only have been an arrangement formulated after 1269 and the constitution of a parish of Eastrington out of the former larger minster parish of Howden.<sup>30</sup> It seems then that the Wallingfen court probably first came into existence sometime between 1269 and the 1320s. It is tempting therefore to further narrow the date of the first arrangements for the governance of the fen – as we find it in the rolls of 1425 – to the period of local gentry activism against the bishop of Durham in the last two decades of the thirteenth century. In 1281 no less than 11 local manorial lords and a number of other freeholders under the leadership of Master Thomas of Burland, lord of Burland (in Eastrington parish) and archdeacon of

<sup>29</sup> VCH, *East Riding*, IV, p. 43.

*of the thirteenth century* (Surtees Society, 155, 1945),

<sup>30</sup> F. Barlow (ed.), *Durham annals and documents* pp. 1–2, 164–7.

Northumberland, organized a mass trespass against Bishop Robert de Insula, coursing hares with dogs and asserting common rights 'that they and their ancestors had'.<sup>31</sup> The location of the trespass was on the moor or wood of Blackwood and Storkhawe, a part of what was later to be called Bishopsoil Common between Eastington and Howden. In the ensuing court case at Westminster some of them admitted that the land (*solum*) in question was the bishop's demesne, but they denied his right to close it off as his warren. Intriguingly amongst this group was Alexander of Cave, lord of South Cave West Hall and of North and South Cliffe, though he was not a suitor of the liberty of Howdenshire. The outbreak has to have been a reaction to the bishop's attempt to limit common rights, and perhaps also to intrude on to Wallingfen, for there is no other reason why Alexander of Cave should have been involved.

It can be argued then that the Wallingfen court emerged specifically as a reaction to attempts by the bishop of Durham to assert control over common rights in the fen. The aggression of successive bishops over their jurisdiction, from Robert Stichill (1261–74) to Anthony Bek (1284–1311), is notorious in other spheres. Its emergence was probably also related to the increased exploitation of Wallingfen in the thirteenth century as the fen became drier as a result of the cutting of Langdyke. It was thus a more valuable resource and disputes over its use probably became increasingly frequent. In this sense, both the 1281 mass trespass and the emergence of the court itself can thus be understood as determined attempts by local manorial lords and the commonalty to protect a valuable resource from over-exploitation, and specifically against the intrusion of the bishop of Durham. This may also help to explain why the court initially fell under the auspices of the Daiville family: as one of the most important landed families in the immediate area, they were the natural choice as overseers of the new institution, with the advantage of not being tenants of the bishop. Crucially, however, the court as we see it in 1425 was not a manorial structure: the gentry surveyors did not exercise manorial or proprietary rights in the fen. Instead they, the local freeholders and the tenant population were all invested with identical common rights, except as far as serving surveyors were rewarded for their office. Thus while there are clear analogies between the Wallingfen court and other wetland courts – including for example the 'Lords of the Level' who oversaw the sea defences in Romney Marsh from as early as 1250 – there are also important distinctions. The East Anglian Fen Code of 1549 was drawn up under the auspices of the Duchy of Lancaster, for example, and the Romney Marsh court reported to local manorial lords. The Wallingfen court was different in that it represented the commonalty rather than acting on behalf of an overlord, an arrangement that potentially much more akin to 'dike solidarity' seen on the other side of the North Sea in the Dutch Polders or even to the common-property regimes which existed in parts of early modern Sweden.<sup>32</sup>

<sup>31</sup> TNA, KB 27/67, m. 12.

<sup>32</sup> On common property in Sweden, see K. Sunberg, 'Nordic common lands and common rights: some interpretation of Swedish cases and debates', in M. De Moor, L. Shaw-Taylor and P. Warde (eds), *The management of*

*common land in north-west Europe 1500–1850* (2002), pp. 173–94; J. Larsson, 'Boundaries and property rights: the transformation of a common-pool resource', *AgHR* 62 (2014), pp. 40–60.

## III

While the previous section has dealt with the court's origins and constitution, this one explores its management of the common in the fifteenth and sixteenth centuries, the period for which the surviving documentation tells us most about the court and its remit. The medieval and early modern court's principal functions were two-fold: firstly, the maintenance of the system of drainage ditches and banks which drained the fen and helped mitigate the risks associated with both tidal inundations and terrestrial flood waters; and secondly, controlling access to and use of the wetland by the local communities. Local communities had no doubt exploited the wetland resources of Wallingfen from the Mesolithic period onwards, but the centuries after the Conquest were marked by ongoing modifications to the landscape aimed at increasing the opportunities for exploitation, specifically with regard to pasture for livestock. Stephen Rippon characterizes the historic exploitation of wetland resources as moving through three key stages: exploitation of existing resources; modification of those resources, typically through water management; and the transformation of the environment as a result of the erection of sea walls.<sup>33</sup> We argue here that in Wallingfen the medieval centuries witnessed a movement from the first of these broad stages to the second, though the third was not achieved until the last quarter of the eighteenth century, with the construction of the Market Weighton Canal and parliamentary enclosure.

Medieval drainage projects included the canalization of the river Foulness as Langdyke sometime in the thirteenth century and the cutting of the various other channels mentioned in the court records.<sup>34</sup> Smaller-scale projects were also documented in other early sources and flood management remained necessary throughout the medieval centuries. Indeed, the earliest reference we have that refers to Wallingfen by name comes from a dispute about the management of water in the fen. In 1228 a commission of local justices was appointed to try pleas of novel disseisin at York which William de Daiville and Alexander of Sancton had arraigned against the hospital of St Leonard (in York) 'over a dyke raised in Wallingfen to the harm of Cave'.<sup>35</sup> Sometime before 1154, Daiville's predecessor at South Cave Robert de Mowbray granted land in Broomfleet to the hospital to which he later added another 32 acres in Cave.<sup>36</sup> It was the hospital's activities on this land which seem to have been the problem in 1228, although it is difficult to be certain about exactly what was at stake. It may have been the construction of a dyke (in the sense of a raised bank to hold back the water) in order to power a watermill at Broomfleet, close to the River Humber.<sup>37</sup> This was presumably the Mill Dam mentioned by the *Victoria County History*, which perhaps lay on Skelfleet. Damming one of the main watercourses draining Wallingfen in order to power the mill would have affected the speed with which water was carried away from the wetlands further north thus increasing waterlogging on the grazing lands utilized by the lords of South and North Cave

<sup>33</sup> Rippon, *Coastal Wetlands*, p. 1.

<sup>34</sup> For an early fourteenth-century reference to Langdyke, see Bodl. Ms Top. Yorks, b 14, p. 336.

<sup>35</sup> *Calendar of Patent Rolls, 1225-32*, p. 213.

<sup>36</sup> A. Saltman, *Theobald Archbishop of Canterbury* (London, 1956), no. 285; D. E. Greenway (ed.), *Charters*

*of the Honour of Mowbray, 1107-1191* (1972), no. 308.

<sup>37</sup> A watermill was mentioned at Broomfleet in the twelfth century, but is said by VCH to have soon silted up rendering the mill useless (VCH, *East Riding*, IV, p. 53).

and Sancton, thus prompting their complaint.<sup>38</sup> Alternatively, the issue in 1228 might have been a drainage project the hospital had undertaken on Wallingfen in the vicinity of Broomfleet and Faxfleet which perhaps had the side-effect of drying out lands at Cave and further north as far as Sancton, and so in effect disseising these lords of formerly productive pasture as well as breaking common.

The events of 1228 took place long before the Wallingfen court was established – the court most likely coming into existence in the last two decades of the thirteenth century, as we have argued above – hence Daiville and Sancton were forced to turn to the royal court for resolution, no effective local legal mechanism then being available to them. Thus even this first reference to Wallingfen underlines the Daiville family's interests in the fen as well as the potentially serious implications that even small changes in one part of the catchment might have for the utilization of resources either up or downstream. It may be that the increased complexity of water management practices in the thirteenth century was yet another reason for establishing a court to oversee the fen, its watercourses and banks. Flooding was certainly an issue in 1300, when the men of Broomfleet complained that the diversion of watercourses near Portington and Eastington into the river Foulness – itself an indication of new initiatives to drain the northern part of Howdenshire – had flooded their lands, restricting cultivation and prevented them from digging turves in Wallingfen or grazing their cattle there.<sup>39</sup>

It is not known who was responsible for the construction of Langdyke, although the fact that 'the men of Eastington and Portington' were named as the defendants in the Broomfleet case of 1300 perhaps implies that at least some of the drainage works in the region were community initiatives. Yet if we cannot be sure who cut the various drainage channels, we do know that the court of Wallingfen later assumed responsibility for their maintenance. Like both the Howden liberty court and other fenland and marsh courts including the 'Lords of the Level' in Romney Marsh, the Wallingfen court had the power to order the scouring of dykes and the repair of banks.<sup>40</sup> The costs of this were spread equally between the various townships commoning in the fen: thus, for example, when in 1466 part of banks of Langdyke were found not to be adequate, each of the 48 townships was charged 2*d.* for the repairs.<sup>41</sup> The court also had responsibility for the maintenance of the one highway across the fen, the 'Cawsey' between Scalby and 'Mighelines' (presumably in North Cave).<sup>42</sup> Drainage works appear in the record with increasing regularity in the sixteenth century, and in the summer of 1532 the townships had to contribute men, carts, tools and materials (earth and sand) for the reconstruction of the causeway and the scouring and bridging of

<sup>38</sup> There is a hint too of earlier tension between the Daivilles and the hospital when in the early 1180s Roger de Daiville and other local Mowbray tenants were ordered to pay over the thraves they had been withholding from the brothers, though the issue seems to have been arable produce, perhaps tithes, rather than wetland resources (Greenway (ed.), *Charters of the Honour of Mowbray*, no. 315).

<sup>39</sup> *Calendar of Patent Rolls, 1292–1301*, 553.

<sup>40</sup> English common law assumed that the responsibility for banks and dykes to keep the land dry lay with

all those who benefited from the defences, rather than simply those on whose land the works were constructed (Bankoff, 'English Lowlands', p. 32; Darby, *Medieval fenland*, pp. 159–60).

<sup>41</sup> HHC, U DDBA/10/2, m. 2 and m. 1*d.*

<sup>42</sup> In the early sixteenth century there is a mention of the maintenance of the *pons calceti* (elevated causeway) being the responsibility of the governors who hired workmen, and in 1532 the townships were mobilized for extensive improvements, HHC, U DDBA/10/2, mm. 3, 1*d.*

certain dykes associated with it.<sup>43</sup> This was then said to be an 'olde custom'. At the June 1538 meeting of the court, a pain of 40s. was specified for anyone 'that cutt owt eny banke or syke bowndyng off Wallyngfen or other sewers where ther may ensowe great hurt unto Wallyngfen'.<sup>44</sup> The commoners were also ordered to scour Ploughfures (Ploughfurrow) Dyke and the still extant New Dykes, as well as rebuild the banks of Langdyke. Five years later, several watercourses were still in poor repair – including Skelfleet, Fresdyk, Halpenny Syke and Langdyke – and orders in that year sought both to establish the work needed and the parties responsible for it.<sup>45</sup>

Interestingly, responsibility for the watercourses of Wallingfen appears to have remained with the Wallingfen court even after the Tudor government established Courts of Sewers under a statute of 1532. Medieval Commissions of Sewers were irregular occasions, and the willingness of the Wallingfen commoners to shoulder the burden of drainage in the later middle ages almost certainly stemmed from a realization that if they wanted to avoid flooding and valuable resources being lost, they must manage the sewers themselves. The Tudor court apparently did not engage fully with its responsibility: the Vale of York fell under the River Hull commissioners who do not seem to have been very active west of the Wolds.<sup>46</sup> The Howdenshire Court of Sewers apparently had or claimed no jurisdiction in the fen: its few records show no activity in Wallingfen despite the very high risk of flooding there which would affect its own area of responsibility.<sup>47</sup>

The Wallingfen court's other principal function was concerned with managing the wetland common and its resources. The court's two chief concerns in this respect were the grazing rights in the fen and the right to cut turves, but the court also claimed jurisdiction over a number of other wetland resources including fish, wildfowl, rushes and even the wool shed by sheep grazing on the fen.<sup>48</sup> While the precise origins of the common rights on Wallingfen are obscure, by the time that the fifteenth-century ordinances were issued, 48 townships clearly had rights in the fen. As the 1430 ordinance specified, common rights were restricted to those who 'do continually dwell within the liberties of the same & so long as they be down lying & uprising within the five parishes & not otherwaies & that they dwell upon antient toft & croft or else have no common there'.<sup>49</sup> In other words, this was common 'levant and couchant': those with ancient tofts could put as many animals on to the common in summer as they could support on their holdings over winter. Thus while the court carefully protected the grazing resource from those who were not commoners and specified the months in which commoners could utilize the common for grazing, there was apparently no attempt to limit the number of animals legitimate commoners could turn into the fen.<sup>50</sup> Nor does there seem to have been any attempt to restrict exactly where those animals grazed within the fen. There is no evidence that the grazing rights attached to particular parishes or townships were restricted to certain areas

<sup>43</sup> HHC, U DDBA/10/2, m. 3.

<sup>44</sup> HHC, U DDBA/10/2, m. 4.

<sup>45</sup> HHC, U DDBA/10/2, m. 4. Carter Wath was mentioned in 1594 as in need of repair (HHC, U DDBA/10/3).

<sup>46</sup> P. Saltmarsh, 'Ancient drainage in Howdenshire', *Trans. of the East Riding Antiquarian Soc.* 23 (1920), pp. 16–27.

<sup>47</sup> East Riding Archives, DDTR/421 (a pains file); DDHM/236612 (copy of an eighteenth-century court book and regulations). The court ceased to exist in 1842.

<sup>48</sup> HHC, U DDBA/10/2 and 3.

<sup>49</sup> HHC, U DDBA/10/1, reiterated in 1635 (DDBA/10/3).

<sup>50</sup> HHC, U DDBA/10/3.

of the fen – in other words, there were no physical or notional boundaries in the fen dividing the area utilized by one township from that utilized by their neighbours. Rather it was as much every man's land as no man's land, even whilst rights were clearly restricted to certain holdings as was the usual practice in managing common resources. We are explicitly told by the record that as far as cutting turves was concerned, it was first come, first served.

In the mid-fifteenth century, commoners of the 48 townships could thus place their animals on the common in unrestricted numbers, though the animals were presumably marked or branded. The branding helped to identify animals' owners at the late summer drift – when the stock were driven from the fen and back down the broad greenways that connected it to the southern townships of Howdenshire – as well as to identify cattle, sheep and horses which had no right to graze in the fen. Thus at the mid-June drift of 1466 stray animals were impounded, and individuals who wrongfully put their animals into Wallingfen were amerced.<sup>51</sup> Branding is first explicitly mentioned in the later sixteenth century, when the beasts were to be branded with both a township mark and an owner's mark.<sup>52</sup> In 1588, the branding was to be done before the beast entered the common in May and again at midsummer, presumably in order to ensure that the mark did not fade and become illegible.<sup>53</sup> By 1635, the branding was supervised by the 48 governors who were required to keep an account of the animals they marked and submit it to the court.<sup>54</sup> Forged marks were mentioned in the same year, at a time when the practice of falsely branding animals in order to turn them into the common had seemingly come to the attention of the court.<sup>55</sup> Thus as well as the court houses – assuming that Yauld Hill had one – another structure relating to the management of the fen implied in the record is a pinfold, where stray livestock found on the common and contested beasts were impounded. This was no doubt overseen by the wardens of confiscated stock mentioned as the officers of the commonalty in the fifteenth century.<sup>56</sup>

Turves or peats were another key wetland resource which the court sought to manage carefully. The early fifteenth-century ordinances specified that commoners could cut turves in the common on St Helen's Eve, when each commoner might send one man (and the surveyors, two men) to claim a place in the turf carr from which he would then cut the turves. Turves, unlike grazing, were thus stinted. No one was to cut more than one turf deep or within 40 feet of the highways and cartgates, and no turves were to be cut after midsummer or between sunset and sunrise.<sup>57</sup> The fine for each default was 3s. 4d. in 1425, a sum which seems still to have been current in 1532.<sup>58</sup> Through issuing orders and fining those who acted against them, the court thus sought to manage this resource and safeguard against its long-term degradation.<sup>59</sup> The ordinances also carefully distinguished between turves (pale-coloured, dry material from near the surface of the ground) and peats (dark, long-decayed matter) specifying that only the former might be cut. Those that dug peats were to be fined a shilling as well as forfeit the peats.<sup>60</sup>

<sup>51</sup> HHC, U DDBA/10/2.

<sup>52</sup> HHC, U DDBA/10/3, reiterated in 1635 (ibid).

<sup>53</sup> HHC, U DDBA/10/3 [1588].

<sup>54</sup> HHC, U DDBA/10/3.

<sup>55</sup> HHC, U DDBA/10/3.

<sup>56</sup> HHC, U DDBA/10/2.

<sup>57</sup> HHC, U DDBA/10/1, 1430 Ordinance and Usage.

<sup>58</sup> HHC, U DDBA/10/2, mm. 1 and 3.

<sup>59</sup> For instances of ameracements issued for cutting turves 'against the custom', see HHC, DDBA/10/2, m. 2.

<sup>60</sup> HHC, U DDBA/10/1; DDBA/10/2, m. 1. See the *Oxford English Dictionary* for the distinction between turves and peats.



The court also worked to police the boundaries of the fen and exclude those from outside the named townships – and thus without rights – from utilizing the common. It issued orders which specified the fines for ‘outen men’ who put animals on the common – set at between *4d.* and *12d.* in 1425 – and regularly presented and prosecuted those who wrongfully turned their stock into Wallingfen. Thus in 1461 the poor of Ferriby were amerced 14s. for pasturing 40 beasts in Wallingfen, as was at least one individual from Hotham in 1466.<sup>61</sup> Presentments were still being made as late as 1730 when several individuals were fined up to £1 19s. *11d.* for turning animals into the common where the court judged they had no right.<sup>62</sup> The question of demarcating and policing the boundaries of the common was made difficult by the fact that Wallingfen bordered at least two other large areas of wasteland or common: Bishopsoil to the west and south and the commons of Spaldington, Holme and several other parishes to the north. At least some, but not all, of those with common rights in Wallingfen also had rights in Bishopsoil – and vice versa – a situation which no doubt complicated matters still further. In 1461, the Wallingfen court issued an order affirming that ‘none about Potterbrygge shall haue any commons wyth the said commonaltye’.<sup>63</sup> Howden Potterbridge was mentioned in the accounts of the bishop of Durham’s receiver in both 1477–78 and 1493–4, and was located on Flatgate on the east side of Howden town.<sup>64</sup> Thus the 1461 order was specifically intended to exclude the inhabitants of Howden (with the exception of those living in the far eastern suburb of Flatgate) from commoning on Wallingfen. Like those living in Barmby and Asselby, the majority of the population of Howden township had no rights in Wallingfen and relied instead on the grazing resources available on Bishopsoil.<sup>65</sup> It is unclear whether there was a physical boundary – a fence, bank or ditch – between Wallingfen and Bishopsoil, but beasts which strayed between the two commons were sometimes a problem, as were occasional attempts by the bishops of Durham to claim waifs and strays found in Wallingfen.<sup>66</sup> In 1466, the court reported that Thomas Parke of Howden Dyke (in Howden township) had taken two waifs from Wallingfen and given them to the bailiff of Bishopsoil. The Forty-Eight Men strongly objected to this attempt by the bishop to claim proprietary rights, arguing that this being ‘never seen afore in great preiudice off the seid common and aganst the ordinaunce and custome’, they distrained three of Parke’s animals in recompense.<sup>67</sup>

The court also made efforts in the fifteenth century to reaffirm the boundary between the intercommoned wetland and the commons belonging to the parishes of Spaldington, Holme on

<sup>61</sup> HHC, U DDBA/10/2.

<sup>62</sup> East Riding Archives, DDHM 236740.

<sup>63</sup> HHC, U DDBA/10/2.

<sup>64</sup> Durham University Library, Archives and Special Collections, CCB B/93/2. Note too that the township of Howden provided only one forty-eight man, and that only 1466 and 1525. In 1543, he was listed specifically as representing Flatgate, HHC, U DDBA/10/2, m. 4.

<sup>65</sup> This is reiterated in the Wallingfen enclosure act where the only commoners in Howden town to receive land were those living in the township known as ‘Flatgate in Howden’.

<sup>66</sup> A fence between Bishopsoil and Wallingfen was

mentioned in the Wallingfen enclosure award of 1781, but little is known about the period before the late eighteenth century. That there was an obligation on the bishop’s tenants at Eastington to maintain a fence or hedge with Bishopsoil Common is however known in 1470 (TNA, SC 2/211/61) and there was mention in 1589 to fences between the common and the townships (HHC, U DDBA/10/3 p. 3).

<sup>67</sup> HHC, U DDBA/10/2. The mass trespass of 1281, mentioned above, is another example of action by the commonalty aimed at fending off the bishop of Durham’s claim to proprietary rights in Wallingfen.

Spalding Moor, Market Weighton, South Cliffe (actually a township of North Cave) and Hotham which lay to the north. The area north of the Foulness had probably once been part of a larger waste, but had been separated from Wallingfen by 1425, perhaps much earlier: the ordinance of that year clearly restricted grazing and other common rights in Wallingfen to the 48 townships lying to the south and east of the Foulness, and specifically noted that the owners of any animals straying from the Holme on Spalding Moor, Hotham or Bursea (in Holme parish) into Wallingfen were to pay a penny to the individuals that drove them out.<sup>68</sup> It may be that the cutting of Langdyke in the thirteenth century effectively cut off the northern townships' access to the area south of the dyke and that a decision was taken at that point or soon after to divide the higher, drier common lands north of the Langdyke between the neighbouring townships and parishes, and so split up the original, larger Wallingfen. This would have ended any earlier arrangements for intercommoning that existed in the area north of Langdyke. The common land north of the Foulness had certainly been divided up and portions of it attached to the individual parishes between Spaldington and Hotham by 1456, as an admeasurement of the pastures of Holme Moor taken in that year suggests.<sup>69</sup> Interestingly, the communities at North Cave and South Cave – which lay north or east of the Foulness and were later referred to as 'Highside' or 'Woldside' towns – seem to have chosen not to follow the example of their northern neighbours and instead to remain part of the intercommoned Wallingfen. Exactly why this was the case is unclear, other than because the early Daiville lords of North and South Cave were obviously much invested in the use and management of the fen as their early presidency of the court implies.

External threats to the common came not only from 'outen men' who turned cattle into the fen and thus threatened to overstock it and diminish the value of the resource to the rightful commoners, but also in the form of more fundamental attacks on the authority of the commonalty to manage the fen. Undoubtedly the biggest source of conflict in this respect was a long-running dispute between the commonalty and various lords of South Cave over the latter's rights in the fen. As noted above, the court may have initially operated under the Daiville family's auspices and the Yauld Hill or Hall mentioned as the early meeting place of the court may well have been the family's manorial complex at North Cave. This is not to suggest, however, that the family also had proprietorial rights over the fen or rights other than those conferred on them as commoners and – on occasion – as surveyors. As the court asserted in 1666, Wallingfen had by then operated in excess of 240 years 'without impeachment or controulment of any person or persons whatsoever as by the ancient rowles, books and proceeds at every court will appear'.<sup>70</sup> Yet lords of North and South Cave repeatedly attempted to claim superior jurisdiction and rights in Wallingfen. Thus the later fifteenth and early sixteenth century was marked by at least four attempts to do so, and there were apparently also earlier incidents. Peter d'Eyville's 1310 complaint that men of the neighbouring parishes and townships dug his turves at South Cave almost certainly referred to Wallingfen, and may represent an early attempt by the lords of South Cave to assert a jurisdiction over the marsh.<sup>71</sup>

<sup>68</sup> HHC, U DDBA/10/1.

<sup>69</sup> HHC, U DDHA/4/19. Note, however, that while the boundaries between the various parochial moors and commons had been fixed by 1456, as late as the

eighteenth century there were still no fences between Holme and South Cliffe commons (HHC, U DDHA/4/4).

<sup>70</sup> HHC, U DDBA/10/3, p. i.

<sup>71</sup> *Calendar of Patent Rolls, 1307–13*, p. 261.

We hear nothing further until 1464, when Henry Lounde, lord of South Cave West Hall was charged by his fellow gentry and the governors that he had ‘presumptuously pretendyd a tytyle and clamyd for to have bene the cheyff lord of Wallynfen wher he no ryght hadd’.<sup>72</sup> They alleged a long history of his violent trespass on the common rights, saying that he had driven the common and wrongfully impounded cattle, illegally charged for passage over a bridge over Skelfeet, demanded duty for every unringed swine and claimed the ameracements from those who cut turves after midsummer. Lounde was apparently found guilty by the court for he bound himself to it, saying ‘that he should never pretend any title to the said Common ... [and] did openly there desire all the said commoners to forgive him the offence he had done for he was very sorry for the same & that they would accept him as a commoner & no otherwaies’.<sup>73</sup> This was a very public statement of his wrongs: three men ‘in the name off the seid Henry Lounde desyryd and prayd oppenly all the commons to pretende but repent hym off the wrong that he hath done etc’.<sup>74</sup>

Yet it apparently did little to end the attempts by the lords of Cave to claim superior jurisdiction in the fen. In 1497 another Henry Lounde – most likely his grandson – sued 19 individual yeoman of the Wallingfen townships by name and township for digging turves, grazing his pasture and fishing his fisheries, claiming they had done £36-worth of damage. This can only be an example of a local landlord attempting to restrict the activities of the commoners, claiming they were operating within his lands.<sup>75</sup> A few decades later John London, the lord of South Cave East Hall, sued Sir Robert Constable and other surveyors and governors of Wallingfen in Chancery claiming that he and the lords of the manor before him had had strays, fishing, fowling, drift of cattle, tolls and the profits of all trespasses in the fen. He said that the tenants had recently put him out of the same and chosen surveyors and governors to manage the fen. This was clearly untrue – the Wallingfen court having by then existed for at least 100 years, and more likely in excess of two centuries – but represented another attempt by the lord of South Cave to claim superior rights.<sup>76</sup> London was then the new lord of the manor – having acquired it from the Daiville’s successors sometime around 1513 – and no doubt saw the opportunity to potentially increase his manorial profits.<sup>77</sup> Unsurprisingly, given the considerable organizational might of the Wallingfen commonalty backed by the court, he was unsuccessful in his claim, but a few years later common rights in Wallingfen were again an issue of dispute between London’s lessee – a man named Smetheley who was much hated by the locals – and the commoners of South Cave.<sup>78</sup> Once again, the commonalty was apparently successful in fighting off this threat, organizing a mass ploughing and lodging various equity court cases in their efforts to curb Smetheley’s ambitions to enclose and convert arable to pasture.<sup>79</sup>

<sup>72</sup> HHC, U DDBA/10/2, m. 2.

<sup>73</sup> HHC, U DDBA/10/1.

<sup>74</sup> HHC, U DDBA/10/2.

<sup>75</sup> TNA, CP 40/939, m. 259d.

<sup>76</sup> TNA, C 1/535/21. The Chancery bill was filed sometime between 1518 and 1529. See also TNA, STAC 2/30/38 for a Star Chamber suit lodged before 1513 in which London denied being ‘an extorcioner and oppressor of his neybor’s’ and that presumably also related to the

long-running dispute about rights in Wallingfen.

<sup>77</sup> VCH, *East Riding*, IV, p. 43.

<sup>78</sup> TNA, C 1/845/35-6.

<sup>79</sup> See B. McDonagh, ‘Negotiating enclosure in sixteenth-century Yorkshire: the South Cave dispute, 1530–1536’, in J. Whittle (ed.), *Landlords and tenants in Britain, 1440–1660* (2013), pp. 52–66 for a fuller discussion of events at South Cave in the 1530s.

## IV

While the early ordinances are concerned to restrict common rights to those dwelling on ancient tofts in the named townships – and thus limit the number of commoners and exclude those with from outside the five parishes – there is no suggestion in the records that the common was otherwise stinted or limited, other than in the cutting of turves. But all this changed in the early decades of the seventeenth century. In 1600 it was specified that commoners must be resident in the liberties of Wallingfen – that is, in one of the 48 townships – for ‘the space of eight months of the year att the least’ with a stiff 39s. 11¾*d.* fine for every forfeit, but no specific limits to the number of beasts that might be depastured by each commoner were recorded.<sup>80</sup> Stints were not explicitly mentioned until 1635, when the number of animals each commoner could turn into the fen was recorded for the first time. An order of that year specified that no commoner should have more than 160 sheep gates in the common, one half stocked with sheep and the other with horses and cattle (at seven sheep gates to a horse, and five sheep gates to a cow). Two foals counted for one horse and two calves as one cow, and lambs were not accounted at all until ‘Michaelmass next after they be lambd’. This was a determined attempt to restrict the number of animals utilizing the common and, in 1637, the fines were raised to 6s. 8*d.* a horse, 5s. a cow and 11*d.* a sheep (between 33 and 50 per cent higher than the fines set just two years earlier). Nor was it only grazing rights to which these stints were applied. 1635 was also the year that the stinting of rushes was mentioned for the first time with each commoner restricted to gathering no more than four loads in the Seave (viz. ‘Rush’) Carr or elsewhere in Wallingfen. Twelve years later, the court ordered that no commoner could kill wildfowl on the common without order of the court, specifying a fine of almost 40s. for each default.<sup>81</sup>

Yet even after the introduction of stints and the ramping up of fines, Wallingfen survived as an intercommoned wetland for close to another 150 years, far later than many of the intercommoned Lancashire mosses recently documented by William Shannon.<sup>82</sup> The court or commonalty continued to function in that time, holding twice-yearly courts, issuing orders and dealing with presentments about encroachments on the common. Thus for example in 1730 the court fined more than 30 individuals for turning unmarked animals into the common (at 1s. per animal), for turning in animals where they had no right, or for failing to attend the court.<sup>83</sup> There is little here to suggest that Wallingfen had been over-exploited by the surrounding communities or that it witnessed anything akin to a ‘tragedy of the commons’.<sup>84</sup> The dismantling of the centuries-old governance of Wallingfen did not take place until the enclosure process began and the eventual enclosure of the common probably stemmed primarily from the realization that agricultural improvement in Wallingfen was dependent on more effective drainage, itself reliant on the extinguishing of common rights and the partitioning of the fen between the townships. Enclosure took place at the height of the first

<sup>80</sup> HHC, U DDBA/10/3.

<sup>81</sup> HHC, U DDBA/10/3.

<sup>82</sup> Shannon, ‘Intercommoning’, *passim*.

<sup>83</sup> East Riding Archives, DDHM 236740. See also HHC, U DDBA/10/3 for three mid-eighteenth-century orders.

<sup>84</sup> The classic text on this is G. Hardin, ‘The tragedy of the commons’, *Science* 162 (issue 3859) (1968), pp. 1243–48. For recent work challenging Hardin’s ideas, see E. Ostrom, *Governing the commons: The evolution of institutions for collective action* (1990) and de Moor, *Dilemma of the commoners*.

great wave of parliamentary enclosures in England and the widespread belief, amongst the landowning classes at least, that enclosure was a profitable and morally desirable improvement to the agrarian landscape, no doubt also played a part in the decision to enclose the fen.<sup>85</sup>

The potential for the manorial lords and freeholders associated with Wallingfen to profit from township enclosure was appreciated at least two generations before the enclosure of the fen itself was canvassed. In 1707 Heyrick Athorpe (d. 1745), a lawyer and the principal landowner in Kilpin, south east of Howden, pushed through the enclosure of the township's common fields, with the compliance of his neighbours and tenants. The manor of Duncotes in the same township may have been enclosed as early as the 1670s.<sup>86</sup> Much of the riverside township of Cotness was privately enclosed around 1750 through the initiative of Dr Gideon Wells (d. 1761), the dominant landowner there after 1745. As in much of the rest of champion England, enclosure by parliamentary act really got going from the 1760s onwards.<sup>87</sup> Holme, Market Weighton, Hotham and North Cave were all enclosed in the mid-1760s and 1770s, eventually followed by South Cave under an act of 1785. The immediate context for enclosing Wallingfen, however, must have been the successful parliamentary enclosure of neighbouring Bishopsoil Common achieved under a parliamentary act of 1767. Since this large ancient common had a chief lord in the bishop of Durham, unlike Wallingfen, the process over Bishopsoil was comparatively easy to manage, for all it was technically complex, and it seems that the manorial lords with rights on this common were compliant in it. These included the same gentry landowners who would combine to push through the enclosure of Wallingfen over the next few years.

The complex process by which Wallingfen was eventually enclosed and drained must necessarily be a story for another outing, but it can be briefly summarized here. The same year as the Bishopsoil award was published in 1777 the act for Wallingfen received the royal assent and the commission to divide it up was sworn.<sup>88</sup> Acquiring the necessary act to enclose the common was in part made possible by a legal sleight of hand 50 years earlier: in 1723, the justices of the East Riding Quarter Sessions decided that Wallingfen could be considered a manor, with the surveyors described as its joint lords.<sup>89</sup> Fifty years later, the strategy of Leuyns Boldero Barnard and his colleagues was to follow the logic of their fellow justices of the Quarter Sessions and argue that Wallingfen fell within the several neighbouring manors of which they were the lords. Thus Wallingfen was described in the act's preamble as lying 'within the several parishes of Howden, Eastington, North Cave and South Cave, and the parish or parochial chapelry of Blacktoft' and the lordship of Howden was described as 'extend[ing] over the said common or stinted pasture, except such parts thereof as lie within the parishes of North Cave and South Cave'. This had certainly not been the case throughout the medieval and

<sup>85</sup> This is not to suggest that the enclosure was uncontested: the parliamentary debate on the bill reveals that the proprietors of 93 of 858 common rights in Wallingfen (that is, 10 per cent) were still resisting the scheme by refusing to sign the bill in 1777.

<sup>86</sup> A process known only from Athorpe's pre-enclosure survey, HHC, U DDKG/1, 264.

<sup>87</sup> W. E. Tate and M. E. Turner, *A domesday of English enclosure acts and awards* (1978); Tom Williamson, *The*

*transformation of rural England: farming and the landscape, 1700–1870* (2002).

<sup>88</sup> For the Bishopsoil Award, East Riding Archives, Deeds Register RDB/1/2, AX, pp. 184–354. For the Wallingfen Award, RDB/1/2, BE, pp. 3–56. The corresponding award map is IA/170.

<sup>89</sup> East Riding Archives, QSV/1/2(A) *notitia*. See also another such reference from the 1750 order book, QSV/1/4(C).



FIGURE 1. Common Farm, North Cave. The names of several of the post-enclosure farmsteads on the former Wallingfen preserve evidence of their origins.

early modern centuries, but the act listed eight lords of the neighbouring manors – crucially, now seen as extending over Wallingfen – as the proprietors of the common. This effectively resolved the jurisdictional anomaly that was Wallingfen and made enclosure possible. When the award was made four years later, the commissioners carefully identified both the township and the manor in which each of plot of newly enclosed land was ‘declared and deemed to be situate’: the more than 500 individual plots of land were assigned to one of eight main manors and more than 45 different townships and constabularies.<sup>90</sup> Thus the enclosure not only extinguished common rights, but for the first time also divided up the fen between the neighbouring townships that had previously intercommoned it. It also of course dismantled the centuries-old institution of the commonalty or court of Wallingfen, there no longer being any need for community oversight of the now privately owned plots of land.

To medieval eyes, the view from the main road from the Caves to Howden would have been almost unrecognizable by the early years of the nineteenth century. The landscape was by then one of large arable fields scattered with isolated post-enclosure farmsteads, many of which took on names that either signalled their township identities – for example, Laxton Grange and Skelton Grange, both more than 10 kilometres from the township hamlet – or monikers like North America and Nova Scotia which underlined their isolated locations (Figure 1). The new industrial settlement of Newport – initially three groups of houses known as New Gilberdyke,

<sup>90</sup> East Riding Archives, RDB BE/3/2. A small number of plots were also assigned to Osbalwick manor, North Newbald manor and Hushwaite manor in North Newbald.

Newport and New Village which were later amalgamated – also quickly grew up in the heart of the former fen on the banks of the Market Weighton Canal. Yet while the landscape was rapidly transformed in the post-enclosure period, the earlier medieval arrangements nevertheless had their legacy. The chapel at Scalby in which the medieval court met which later came to be known as the Forty-Eight House – after the congregation of 48 governors which made up the court – eventually gave its name to the surrounding scatter of cottages, so that the name Eight & Forty was used from the late nineteenth century onwards to refer to part of Newport village.<sup>91</sup> Moreover, the complexity of intercommoning arrangements and the sheer number of townships and individuals claiming rights in Wallingfen (and to a lesser extent, Bishopsoil) presented the parliamentary enclosure commissioners with the difficult task of allocating the new plots not only to new owners, but also by parish and township. The result was a fine-grained patchwork of detached portions of townships so complicated and confusing that it had to be rationalized a century later in 1880, when the new civil parishes of Bishopsoil and Wallingfen were created by uniting the previously detached portions of the neighbouring 40 plus townships.

## V

The story told here is a complex one spanning more than a thousand years stretching from a time before the Anglo-Scandinavian settlement of East Yorkshire to the creation of the civil township known as Wallingfen in 1880. Yet what we present here is not a simple landscape history of this once-waterlogged corner of the East Riding; rather the paper is concerned specifically with the management and governance of the fen as revealed in the medieval and early modern records of the court or commonalty of Wallingfen. Rather than being a top-down solution to the problem of the fen, the court seems to have derived its existence and authority from the local communities themselves, with the gentry and yeomen acting in concert to offer a cooperative system of wetland management that fell outside the authority of the neighbouring manors or any higher form of overlordship. As we have argued, it governed the fen for several hundred years between 1425 (or possibly even as early as c.1281) and the last quarter of the eighteenth century, managing the resources on behalf of the many neighbouring communities who used the wetland for grazing, fuel and foodstuffs. In a context in which the threat of flooding was ever-present, the court maintained the all-important drainage works and organized levies for repairs, and its success here can be measured by the gradual extension of the commoning season from two to five months between the fifteenth and seventeenth century. The court also monitored the use of the fen for grazing and fuel gathering and imposed sanctions on those who overstocked or otherwise encroached on the common, as well as introducing stints in the seventeenth century to reduce the risks of resource degradation in response to rising populations of humans and animals. And it provided a mechanism for cooperation and collective decision making – by the election of the surveyors and governors as representatives of the townships – as well as a forum for conflict resolution, the latter being crucial in an area in which no identifiable overlordship existed.

<sup>91</sup> T. Bulmer, *History, topography and directory of East Yorkshire (with Hull)* (1892); Ordnance Survey 1:50,000, sheet 106 (1974).

That the court existed is not, of course, to suggest that the utilization and management of the fen was always trouble-free nor that the commonalty represented some kind of ideal community. Indeed we have suggested that the court came about specifically as a defence against aggressive measures by thirteenth-century bishops of Durham to appropriate as much wetland pasture into their demesne as they could. As the later records of the court reveal there were other 'turf wars' too, not least those begun by various lords of South Cave on the tenuous grounds of the sometime presidency of the Daiville family over the common. In this long-running dispute, we see how the court might act both as a forum for resistance and as stage for formal and elaborate submission to, and reconciliation with, the commoners. Nor was the court untouched by the politics and power relations which underpinned medieval and early modern society: the surveyors were drawn from the gentry families of the surrounding townships and to be elected one was to affirm one's social place within the local elite. In some cases the office of surveyor passed through as many as eight generations of the same family, as it may well have done in the case of the Saltmarshes and Portingtons. To serve in it was an acknowledgement of local eminence. The court was thus a forum which served to moderate inevitable local tensions. This was not just at the gentry level, for the court worked to discipline and mobilize the yeomen and husbandmen of the townships where they might otherwise compete over a valuable resource. This is at its most surprising where we see the Wallingfen court taking upon itself the powers usually associated with a manorial halmote: hearing presentments from jurors, electing pinders, judging cases of affray and trespass in the fen, and imposing pains. But since the surveyors were themselves mostly manorial lords, it might well have seemed natural that any court they presided over should have the same powers as they had on their own manors.

The court of Wallingfen thus delivered against many of the key attributes of 'stable local common pool resource management' outlined by Elinor Ostrom.<sup>92</sup> Herein lay the secret of its survival. We argue in this paper that effective management of grazing and other resources over a period of many centuries, combined with the legal difficulties posed by the lack of identifiable overlord or 'owner' and the sheer number of commoners exercising rights, together explain why Wallingfen survived so much later as an intercommoned waste than comparable examples in Lancashire and East Anglia, or indeed further afield on the eastern coast of the North Sea. When the end came, however, it was abrupt and the centuries-old institution of the court was quickly dismantled just as the commoners were barred from the common and the landscape drained, hedged and divided up. Thus ended the complex intercommoning arrangements that governed the common for hundreds of years and even at its termination involved more than 850 recognized commoners – and earlier many more – from almost 50 local communities. It is the size of fen and its large body of commoners, the longevity of the court, its anomalous tenurial and jurisdictional history in relation to the surrounding lordships, and the survival of such a valuable body of material relating to its early management that all make Wallingfen such a compelling case study through which to explore important questions about conflict, cooperation and the management of common-pool resources in the period before the enclosure of the commons.

<sup>92</sup> Ostrom, *Governing the commons*.