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**GAVELKIND AND THE LAND MARKET IN SOMERDEN HUNDRED,
KENT
1550-1700**



This dissertation is submitted for the degree of Doctor of Philosophy

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Declaration

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text.

It is not substantially the same as any that I have submitted, or is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text.

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Imogen Kathleen Wedd

GAVELKIND AND THE LAND MARKET IN SOMERDEN HUNDRED, KENT, 1550-1700

Abstract

Gavelkind was the default system of land-holding in Kent from the early middle ages until the reform of property law in 1925-26. The research examines how far it still influenced the lives of landowners in the late sixteenth and seventeenth centuries, whether it was avoided using wills and settlements, its impact on the market in land, and the ability of yeomen to raise capital. It looks at land ownership, and whether the consequences of gavelkind were small plots and family decline as often suggested. The difficulty of sources has led in the past to a bias in the historiography in favour of customary tenants, and the research shows how far a community of freeholders can be reconstructed from the available sources, in particular title deeds.

Chapter 1: Research and Sources describes the research objectives, the area studied, the sources available and their limitations. The historiography of Kent and gavelkind is introduced.

Chapter 2: Gavelkind in Practice illustrates through the experience of reconstructed families the principles of gavelkind: freehold tenure, partible inheritance of sons, no escheat for felony, dower of a half, inheritance at 15, and wardship. The role of manor and royal courts in its administration is described, deductions made on the extent of gavelkind and disgavelling Acts.

Chapter 3: Social, Economic, and Political Context sets out the impact on the Somerden area of demographic change, urbanisation, the rural economy, trade and industry, and political events.

Chapter 4: Gavelkind Partition and Inheritance Practice analyses wills, settlements and deeds of partition to establish the extent to which the rules of inheritance and dower were set aside.

Chapter 5: Gavelkind and the Land Market analyses conveyances to establish the nature of the market, and whether the influence of outsiders and commercial attitudes can be identified.

Chapter 6: Finance looks at the role of mortgages in providing capital, whether this was available to rural landowners, and the consequences for family land.

Chapter 7: Land Ownership maps land ownership on a sample area of 2,800 acres, comparing 1600 with 1700, to identify engrossment or fragmentation, family continuity or decline.

Chapter 8: Conclusions summarises the findings, and the implications for the historiography of agrarian change, with an explanatory paradigm and suggestions for further research.

The research finds that gavelkind was still influential in family outcomes. Although the ability to devise was established, only a minority of yeomen directed their land to an eldest son. Most tried to provide land for all their sons, or a money portion of equal or nearly equal value. Daughters' portions were more generous than other areas. However, widows' rights were commonly over-ridden through a settlement, although where dower applied by default they were more favourable than elsewhere. It finds no association between partition and the loss of property, a disadvantage of which it was often accused. While the market was active it was notable for its local nature. Yeomen and local gentry were overall purchasers at the expense of aristocracy and tradesmen, but yeomen prospered more in the late sixteenth century, and were losing ground to gentry at the end of the seventeenth. There was a rise in mortgage transactions after 1630, coinciding with legal changes. Except for the largest loans the market was local. Yeomen were net lenders before 1670. Although borrowing could lead to loss of property, through re-mortgages and assignments loans could be kept rolling for many years. Some borrowing was a response to financial stress or family demands, but capital could be used for investment. Mapping land ownership shows continuity of families between 1600 and 1700, although there is evidence of coming change. Freehold tenure and partible inheritance stimulated leasing. Social stratification was already evident by 1600. Successive subdivision of holdings is not found, but yeomen were being eclipsed by the gentry by the end of the period, although the gentry families of 1700 were drawn from the yeomen families of 1600.

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Archives

KHLC	Kent Record Office, located at the Kent History and Library Centre
LPL	Lambeth Palace Library
NUL	Nottingham University Library Manuscripts and Special Collections
TNA	The National Archives

Journals

AC	Archaeologia Cantiana
AgHR	Agricultural History Review
C&C	Continuity and Change
EcHR	Economic History Review
EHR	English Historical Review
JECh	The Journal of Economic History
JLegH	The Journal of Legal History
LPS	Local Population Studies
P&P	Past and Present
TRHS	Transactions of the Royal Historical society

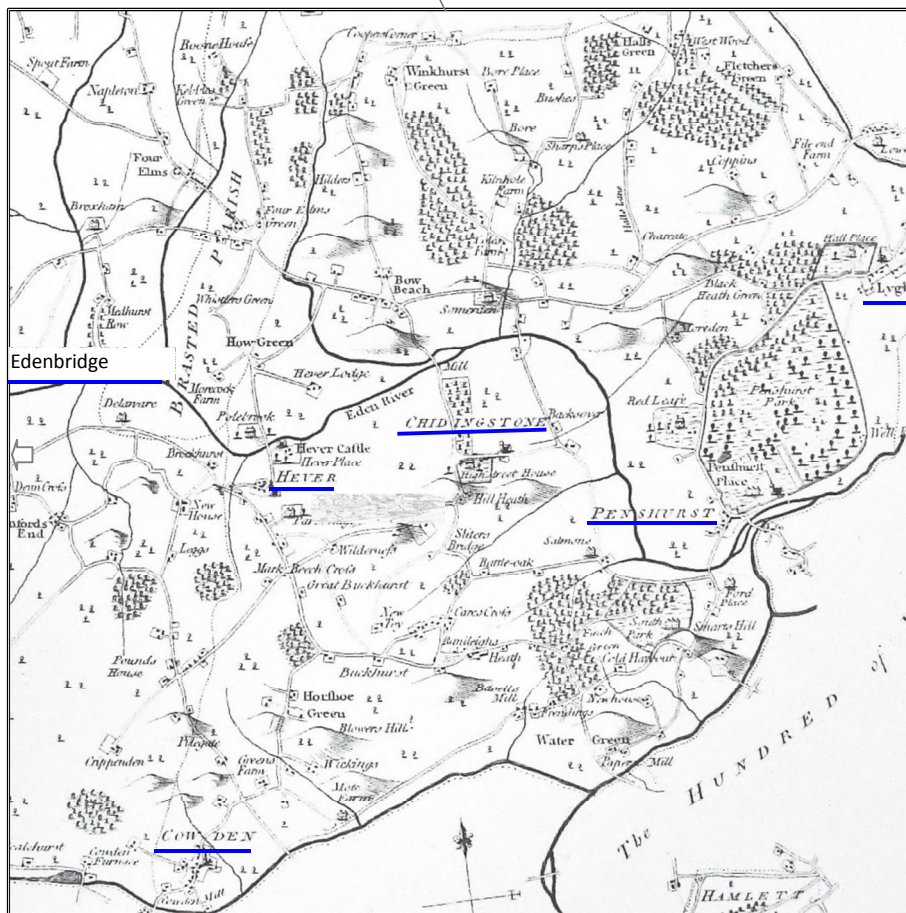
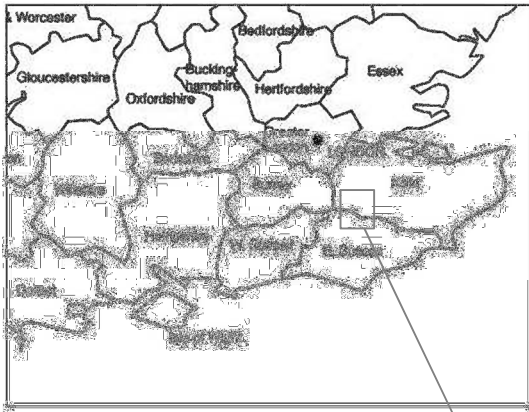
Other

DNB	Dictionary of National Biography
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Notes

Dates	All dates have been modernised with the start of the year being 1st January. 1 st January 1551/2 is therefore shown as 1 st January 1552.
Personal Names	Proper names are spelt in a variety of ways in the documents; for consistency they have been modernised, except where an original text is being quoted.
Place Names	Place names have been modernised as to spelling, but the old identities have been retained to avoid confusion. Thus Rennedesleigh Hoathe becomes Rendsley Hoath but not its modern identity of Chiddingstone Hoath, and High Street House is not given its modern name of Chiddingstone Castle.
References	Page numbers for articles are given in the form '121-130'; references to a specific page as 'p.121'.
Numbers	Numbers under twenty are written out in full except for currency and percentages, or where part of a title, label, or a sequence of numbers and this would give rise to inconsistency.

Map 1: Location: Somerden



Based on the map in E. Hasted's *History and Topographical Survey of the County of Kent* (1775)

CHAPTER 1 : RESEARCH AND SOURCES

I. Introduction

Until 1925 Kent had a county-wide customary tenurial law known as gavelkind, best known for partible inheritance among sons but including rules on alienability, dower, wardship, age of majority, and protection from forfeiture. J.E.A. Jolliffe, writing in 1933, considered the impact on medieval Kent to have been underestimated: *'Gavelkind, the partible inheritance of land, which was the custom of the peasantry of Kent before the Norman Conquest, became the common law of Kent after it, and as such was pleadable in the king's courts. So much is recognized in every law-book and is a commonplace of every economic history. Yet it is doubtful if the full implications of the fact have been realized.'*¹

There were other views, not least because by early modern times evasion was facilitated by the establishment of the right to devise by will, the development of 'uses' (predecessors of the trust), and private disgavelling Acts (converting partible inheritance to primogeniture). Peter Clark said *'while partible inheritance was probably more widespread and important in Kent than any other county before 1640, it would be wrong to see it providing a central clue to other peculiarities of the county's agrarian economy, even less to view it as a central motif in the community's social or political life'*.² Cicely Howell in her work on Kibworth Harcourt said: *'Too much has been made of Kentish gavelkind'*, although she thought partitioning of holdings might inhibit marriage.³ By contrast, Alan Everitt saw gavelkind as a factor not only in the agrarian economy, but in forming, in Joan Thirsk's words, *'a socially distinctive county in which kinship and the rule of partible inheritance shaped local loyalties and significantly affected the course of events'* in the political situation of the seventeenth century.⁴

The distinctive features attributed to Kent included the dominance of the yeoman, the

1 J.E.A. Jolliffe, *Pre-Feudal England: The Jutes* (Oxford, 1933), p.2.

2 P. Clark, *English Provincial Society from the Reformation to the Revolution* (Sussex, 1977), p.7.

3 C. Howell, *Land, Family and Inheritance in Transition: Kibworth Harcourt 1280-1600* (Cambridge, 1983), p.204n.

4 J. Thirsk, 'Obituary: Alan Everitt', *AC* 129 (2009), p.435.

existence of strong clans and family networks, a flatter social structure with less variation in wealth and status, small enclosed farms, scattered settlement, lack of common fields, upland manors and weak lordship, the persistence of old land measures such as the lathe, and by-employments (especially in Wealden areas), these features contributing in turn to independence and dissent.⁵ Three questions are raised: an explanation for the origins of gavelkind, the reasons for its survival, and its role in the economy and society of Kent and in fostering these features.

The research project set out to test the proposition made by historians, but never by contemporaries, that gavelkind was by the late sixteenth century a backstop which took effect only on the rare occasions in which it was not overridden by wills and settlements. It is argued that this is far from the case, for three reasons. Firstly, this is based on the idea that gavelkind was purely a system of inheritance, ignoring its other features, not least its alienability and rights in the common law courts (which latter it shared with socage). Secondly, it is unduly based on what would apply to gentry and aristocratic families, whereas the holders were predominantly yeomen; this is exemplified in the suggestion that it provided difficulties for (London) lawyers.⁶ Thirdly, it does not take account of how the different elements of the custom, not least the county-wide presumption in its favour, interacted with the demographic, economic and social conditions of Kent.

Next the research tests the criticism of contemporaries that it produced small, non-viable holdings, and the decline of family property. It does this by examining the sale and purchase of land, the buyers and sellers, the nature of land sold, and the role of mortgages in family survival. It ends by considering the nature and distribution of land ownership at the end of the sixteenth century and the end of the seventeenth.

The study concludes that although wills and settlements were routinely used their purpose was generally not to override partible inheritance; however they did commonly override dower. It also demonstrates that a major effect of gavelkind was the holding of property in common. It is argued that in the right economic and social conditions gavelkind acted as a distributive system which counteracted engrossment, and (importantly) that the concept of equal distribution altered the social dynamics of

5 A. Everitt, *The Community of Kent and the Great Rebellion 1640-60* (Leicester, 1966), pp.46, 228.

6 Clark, *Provincial Society*, p.290.

property. Most of all as a whole system rather than just a way of identifying an heir, it was perceived as a privileged form of holding, peculiarly free, which its proponents successfully defended on many occasions, and which was a significant factor in the social features attributed to the county.

Finally, the study sets out a method of investigating the small freeholder for whom manorial records are unavailable or inadequate. This uses the techniques of reconstruction using estate records supplemented with probate and parish records. Although the sources have limitations, this methodology demonstrates how much can be recovered through detailed and meticulous reconstruction of families and properties.

Gavelkind

Much early antiquarian discussion was on the origins of gavelkind. The earliest primary source, the *Custumal of Kent*, says that the custom '*furent devaunt le conquest*'. However, the earliest documentary references date from slightly after the conquest.⁷ The custumal itself was written down around 1300, when legal and administrative records were first being systematically recorded in writing.⁸ The sixteenth-century lawyer and antiquarian William Lambarde copied a version which he thought dated from Edward I (1272-1307).⁹ Given the Anglo-Saxon etymology, the weight of evidence seemed to lie in a Germanic origin, probably dating from the English Settlement.¹⁰ Other forms of partible inheritance are found earlier, but these, like the Irish type, tend to be based on communal or clan ownership of land whereas the Kentish form is based on individual ownership and heritability, even when the land is held in common by

7 Notably the eleventh-century chronicle of St. Augustine's Abbey, including Thomas Sprott's story of the Swanscombe legend (in which the Kentish Men confronted the Conqueror and secured their customs), repeated by William Thorne and Michael Drayton: W. Bell, *Thomas Sprott's Chronicle of Sacred and Profane History* (Liverpool, 1819); A. H. Davies trans. *William Thorne's Chronicle of Saint Augustine's Abbey* (Oxford, 1934); M. Drayton, *Polyolbion* (London, 1612).

8 J.H. Baker, *An Introduction to English Legal History* (4th edn, London, 2002), Chapter 11; J.M. Kaye, *Medieval English Conveyances* (Cambridge, 2009), Introduction. Matthew Hale distinguished the *Lex Scripta* after 1189 deemed 'time immemorial' from the *Lex Non-Scripta* before, although systematic rolls began only in the time of Edward III: M. Hale, *The History of the Common Law* (London, 1713), Chapter 1.

9 W. Lambarde, *A Perambulation of Kent* (1570), p.478. The archivist Felix Hull looked at the four versions known in the twentieth century, the earliest from around 1300: F. Hull, 'The Custumal of Kent', *AC* 72 (1958), 148-159.

10 K.P. Witney, *The Jutish Forest : A Study of the Weald of Kent from 450 to 1380 A.D.* (London, 1976); G.C. Homans, 'The rural sociology of medieval England', *P&P* 4 (1953), pp.35-7; Jolliffe, *Pre-Feudal England*.

coheirs.¹¹ Paul Barnwell, reviewing the explanations, dismissed the idea of Kent's settlement by a different Anglo-Saxon race, Bede's 'Jutes', on the basis that the peculiarities were survivals from a pattern which was once more widespread.¹² Partible inheritance is certainly found in manors elsewhere, more widespread in some areas than others. The custom occasionally extended into Sussex, particularly on the areas of reclaimed marsh which are across the county boundary and in the Rother valley.¹³ However, it is not at all clear that any other area had such a complete system; by 1550 gavelkind was a complex system, fully developed in case law. Significantly, it became the *type* by which other forms of partible inheritance were measured.

The fact that gavelkind survived the imposition of military tenures after the Norman Conquest and the rise of primogeniture is significant for this research. There were attempts to abolish it, yet it survived until the re-codification of property law in 1925-26. Kentish writers like Everitt tend, atavistically, to attribute this to the singular independence of the men of the county and their sense of identity, fitting for a county which was once a kingdom in its own right.¹⁴ Barnwell dismissed explanations based on wealth and topography. He found the answer, in part at least, in the 'political geography' of the county; its peculiarities were a survival in what became a political backwater. Yet Simon Keynes had argued the opposite view, that it was the very strategic importance of Kent which ensured the survival of its customs.¹⁵ The geographic attributes of the county are peculiarly designed for independence. Although the north-west lies adjacent to London, parts of the county are cut off from it by the terrain and soils and it extends so far west to east that much of it is closer to France than to London.¹⁶ Yet it commands the narrow seas towards France and the Netherlands, the approaches to London and the east coast, and the high ground overlooking the Thames, and it hosts the Cinque Ports.¹⁷ Its strategic importance is beyond doubt, and from that the need to keep its men happy. The obvious deduction

11 C. Lennon, *Sixteenth-Century Ireland* (Dublin, 2005), p.49. Irish land was held, in modern terms, by joint tenancy.

12 P.S. Barnwell, 'Kent and England in the Early Middle Ages', *Southern History* 16 (1994), p.1-2.

13 D.R. Clarke, 'The 'Land-Family Bond' in East Sussex c.1580-1770', *C&C* 21.2 (2006), 341-369.

14 A. Everitt, *Continuity and Colonisation, the Evolution of Kentish Settlement*, (Leicester, 1986), p.21.

15 Bede, *A History of the English Church and People*, translated by L. Sherley-Price, (1955), p.56; Homans, 'Rural sociology'; S. Keynes, 'The Control of Kent in the Ninth Century', *Early Medieval Europe* 2.2 (1993), 111-131; Barnwell, 'Kent and England', pp.1-2.

16 A. Everitt, *Continuity and Colonisation, the Evolution of Kentish Settlement* (Leicester, 1986), p.21.

17 P. Laslett, 'The gentry of Kent in 1640', *The Cambridge Historical Journal* 9.2 (1948), p.151.

is that the men of Kent were attached to their ancient custom, conclusive evidence that for them it performed important social functions.

There have been many studies of land tenure in England, and many of Kentish economy and society. A number of general studies of Kent have discussed gavelkind, but on scattered data, often drawn disproportionately from the records of large landowners. What there has not been is a detailed reconstruction of one community, highlighting the impact of gavelkind in a quantifiable way on a consistent base. This lack reflects the difficulty of the sources. The major studies by Jane Whittle on Hevingham Bishops in Norfolk and Henry French and Richard Hoyle on Earls Colne in Essex were made possible by the survival of significant manorial records.¹⁸ The dominance of freeholders in Kent makes this problematic; Whittle herself comments on the inconsistency of records of freeholders in court rolls.¹⁹ Not only this but the survival of lay manors in Kent is rather poor, and their nature scattered and fragmented. Bruce Campbell described the consequence as a '*pronounced historiographical bias*' towards customary tenants.²⁰ This project has been achieved by the systematic use of title deeds. It performs a secondary function, therefore, in demonstrating a method of investigating freeholders below the level of gentry, with the strengths and weaknesses of that method.

Structure of the Study

There are three main elements to this research: inheritance, the commercialisation of land, and the spread of land ownership. Partible inheritance was the dominant feature of gavelkind, but was also found in Ireland and Wales and locally in certain manors in England. The main distinction was that in Kent gavelkind was the presumption, the burden of proof was on any claimant who wished to assert another tenure.²¹ This would ensure survival in the absence of challenge, but the question is how often it was over-ridden.

18 J. Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1580* (Oxford, 2000); H.R. French & R.W. Hoyle, *The Character of English Rural Society, Earl's Colne 1550-1750* (Manchester, 2007).

19 J. Whittle, 'Individualism and the land-family bond: A Reassessment of Land Transfer Patterns among the English Peasantry', *P&P* 160 (1998), p.29.

20 B.M.S. Campbell, 'The agrarian problem in the fourteenth century', *P&P* 188.3 (2005), pp.23-24.

21 N. Neilson, 'Custom and the Common Law in Kent', *Harvard Law Review*, (1925), p.492. This dated from the Eyre of Kent of Edward I in which it was established that the common law of Kent did not have to be proved, just that the land was in Kent.

The combination of freehold tenure and partition could stimulate or inhibit the land market, and the market in leases the commercial potential of land; the involvement of outsiders is an indicator of commercial development. Ann Brown calculated that more than 10% of those assessed in the 1436 London Lay Subsidy owned property in Kent; outsiders could buy out one of the coheirs to a property as an investment, so the rise of London fostered the market in land.²² On the other hand, in an increasingly diversified society coheirs could follow another calling but keep their share in parental land. If rural owners could raise capital through mortgage, land became a financial asset but could be at risk of loss, perhaps favouring the capitalist owner.

A relatively widespread ownership is indicated by the pattern of scattered settlement and small homesteads so often highlighted.²³ A spread of small freeholders with additional privileges such as protection from forfeiture may explain why Kentish men have played a role in resistance to authority in history. The central question is whether the yeomen, the small freeholders, were as dominant as often thought and if there was change over the period of study.

The remainder of this chapter introduces the selected area, the sources and research method, and the historiography of gavelkind. [Chapter 2](#) describes the community, and the operation of gavelkind as experienced by the families whose histories have been reconstructed. It considers how it was limited by custom and by common and statutory law. [Chapter 3](#) considers the economic and social features, so that the developments in land and property are seen in temporal context. [Chapter 4](#) looks at inheritance, the extent to which partition took place, and at how landowners treated their sons, their daughters, and their wives. [Chapter 5](#) analyses the market: buyers and sellers, property size and price, and the relevance of partition. [Chapter 6](#) considers how the land market interacted with the market in capital, the ability of Kentish yeomen to mortgage their holdings and the implications for commercialisation. [Chapter 7](#) reconstructs land ownership as it was at the beginning of the seventeenth century and again at the end. It looks at the incidence of leasing and asks how gavelkind affected the rise or fall of particular segments of society. [Chapter 8](#) draws

22 A. Brown, 'London and north-west Kent in the later middle ages: the development of a land market', *AC* 42 (1976), 145-155.

23 See Section III for descriptions of Kent's landscapes. O. Rackham, *The History of the Countryside* (London, 1986), Chapter 1 'Regions' maps the pattern of hamlet and village landscapes over the whole of Great Britain.

together the results of the investigation. It concludes that while there were aspects of gavelkind which were slowly being superseded, it continued to be a dominant feature of life in Somerden. By 1600 there was already a significant body of landless, but the typical property was small, and mapping land ownership shows a multiplicity of yeoman owners connected by kinship ties. There were signs of change after 1670 with the gentry increasing in strength at the expense of the yeoman, but the gentry families had risen from among the long-established yeomen.

II. This Research

Scope of the Study

This research takes as its subject the Hundred of Somerden, in south-west Kent, a rural area of approximately 15,000 acres with a population in 1700 of under 2,000 (*Map 1*).²⁴ One hundred is the maximum area which it is possible to examine in detail by reconstructing the landowning families and their properties; Alan Macfarlane considered that one historian could only handle 2,000 people. This study has considered in excess of this number and although not a full reconstitution recreated families using similar methodology.²⁵ The technique has been the creation of family trees or 'pedigrees' such as contemporary lawyers, faced with inheritance issues, were required to do. A parallel process has reconstructed property histories, in the manner of a lawyer's 'abstract of title'. There has been no sampling of the evidence: all landowning families and all properties in Somerden are its subject. In this sense it represents a reconstruction; however, the survival and usability of the sources have imposed limitations. *Map 4*, placed at the back so that it can be folded out, locates the families and their properties.

The time-frame has also had to be limited. The period 1550-1700 was a period of transition; it saw major legal developments, a break through the previous demographic ceiling, economic change, political upheaval, and the end of feudalism and seignorial society.²⁶ It is the period often thought to have seen a reduction in the applicability of gavelkind, the decline of the yeoman and the beginnings of capitalism. From a practical perspective, it is a period short enough to reconstruct and long enough to reveal changes and trends; it is also the period when parish register data first become available to the historian, without which family reconstruction would be impossible for anything other than aristocratic families. Where possible the results have been set into historical context, but this is only indicative of possible longer-term trends. Suggestions as to where it would be useful to extend the study into a future period are made in the final chapter.

24 Somerden, like most Kentish place names, is pronounced as if a separate adjective and noun: Somer Den.

25 A.A. Macfarlane, *Reconstructing Historical Communities* (Cambridge, 1977).

26 See Chapter 2 below.

A study of one hundred cannot be representative of the county of Kent as a whole, but all historians are obliged to be selective. Macfarlane highlighted one of the central dilemmas of history: that community studies cannot inform the national picture, micro studies the macro structure of society, nor structural studies change over time. Equally, national studies, studies of macro structures, and analysis of trends, all involve generalisations which disguise differences. Only a close examination of an individual community can reveal the elements of change.²⁷ This research is not intended to be 'microscopic', but 'microcosmic': *'to illuminate processes and practices at a parochial level and thereby better to comprehend those issues that have a significance at a higher geographical level'*.²⁸ Previous studies of Kentish society are of both types. Some look at the whole of the county; Jolliffe's, Clark's and Everitt's work falls into this category.²⁹ Others take a more narrow perspective, and consider a specific subject.³⁰ Ann Brown's work falls into this category.³¹ This study looks at gavelkind and the land market in one community at a period of critical change, to *'illuminate social and economic change in sufficient detail to examine the roots of change'* in the words of Whittle.³²

Study Area

Kent is divided between East Kent, about two-thirds by area and dominated by Canterbury and the shipping towns of the coast, and the former sub-kingdom of West Kent, dominated by Maidstone, Rochester and the inland towns of Sevenoaks and Tonbridge. The west had fewer ecclesiastical foundations, poorer soils with a relatively

27 Macfarlane, *Historical Communities*, pp.14-16; for similar views see P. Burke, *History and Social Theory* (New York, 1992), pp.29-43; D.R. Kelley, *Frontiers of History* (Yale, 2006), pp.176-189.

28 R. Smith, 'Linking the local and the general in population history: prioritising migration', *LPS*, 81 (2008), p.9.

29 Others include the *Kent History Project* series: M. Zell (ed), *Early Modern Kent 1540-1640* (Woodbridge, 2000); N. Yates, R. Hume, P. Hastings (eds), *Religion and Society in Kent, 1640-1914* (Woodbridge, 1994); A. Armstrong (ed.), *The Economy of Kent 1640-1914* (Woodbridge, 1995); and F. Lansberry (ed.), *Government and Politics in Kent 1640-1914* (Woodbridge, 2001). Separating the Downs and the Weald are P. Brandon's *The Kent and Sussex Weald* (Chichester, 2003) and *The North Downs* (Chichester, 2005).

30 Examples are A.R.H. Baker, 'Field systems in the Vale of Holmesdale', *AgHR* 14 (1966), 1-24; and 'Open fields and partible inheritance on a Kent manor', *ECHR* 17.1 (1964), 1-23; C. W. Chalklin, 'The rural economy of a Kentish Wealden parish 1650-1750', *AgHR* 10.1 (1962), 29-45; K.P. Witney, 'The woodland economy of Kent, 1066-1348', *AgHR* 38.1 (1990), 20-39; S. Hipkin, ' "Sitting on his Penny Rent": conflict and right of common in Faversham Blean, 1595-1610', *Rural History* 20/21 (2000), 1-35, 'The structure, development and politics of the Kent grain trade', *ECHR* 61.S1 (2008), 99-139, 'The structure of land ownership and land occupation in the Romney Marsh Region 1646-1834', *AgHR* 51.1 (2003), 69-94, and 'Tenant farming and short-term leasing on Romney Marsh, 1587-1705', *ECHR* 40:4 (2000), 646-676. Other work is referred to in the following chapters.

31 Brown, 'London and north-west Kent'.

32 Whittle, *Agrarian Capitalism*, p.3.

narrow strip of cultivable land between the Downs and the High Weald; it lay predominantly in the Diocese of Rochester, though part of Somerden was in the archbishop's peculiar, the Deanery of Shoreham. Records tend to be poorer, research on the county is dominated by East Kent and the Diocese of Canterbury.³³

The Hundred of Somerden was centred on Chiddingstone 'town'; the Hundred Court was held at Somerden Green: *Map 1*. It included the large central parish of Chiddingstone, the smaller parishes of Hever and Cowden and most of Penshurst; it also included parts of Leigh, Brasted and Edenbridge. There was peculiarly little correspondence between the boundaries of the hundred, the taxation 'boroughs', the parishes, and the manors of the area.³⁴ For example, Delaware, home of the prominent Seyliard family, is one mile south-east of Edenbridge church, its land largely in Hever, but was administratively in a detached portion of Brasted parish, seven miles to the north; it was in the Manor of Brasted but in Somerden Hundred and Stanford Borough. Successive imposition of manors, hundreds, parishes and boroughs on an ancient and different structure was one cause, but division and accumulation of property added to the complication.³⁵

Somerden lies on a tributary of the River Medway: *Map 4*. The name describes it: before permanent settlement this was a 'den' (area of wood pasture) in the Weald, too wet for winter grazing.³⁶ West was Westerham Hundred linking the towns of Westerham on the Chart Hills and Edenbridge on the river. Due north was Sundridge, the original upland manor to which the den was attached. To the east was the Lowy of Tonbridge where Tonbridge Castle guarded the main river crossing, and to the south the county border with Sussex along the Kent Water which bounded Cowden, across which was the parish of Withyham, covering much of Ashdown Forest.

Chiddingstone village today is a rump, left over from the creation of the park of Chiddingstone 'Castle' in the nineteenth century, but in the sixteenth century it was a street settlement. Cowden was in the woodland area almost into Sussex which was

33 For example M. Overton, J. Whittle, D. Dean, A. Hann, *Production and Consumption in English Households, 1600-1750* (London, 2004); P. Clark, 'Migration in England during the late seventeenth and early eighteenth centuries', *P&P* 83 (1979), 57-90.

34 In Kent Leigh is pronounced 'Lye' as are most names ending in -ly.

35 Jolliffe, *Pre-Feudal England*, p.41.

36 Den: an area of wood pasture, usually held of an upland manor but geographically detached from it. Jolliffe suggested that such dens were carved out of the forest and allotted to a manor only in the ninth century: Jolliffe, *Pre-Feudal England*, p.56.

exploited for iron in Tudor times. Hever was a small parish outlying Edenbridge, and Penshurst was dominated by the large estate formerly held by the Duke of Buckingham, but by 1550 by the Sidney family.

Sources

The reconstruction in this study makes use of manorial records, probate records, maps and estate surveys, litigation, taxes, and a variety of incidental documents such as letters and accounts, but the major source is the surviving conveyancing documents. Each of the sources used is examined here. For each type, an index or database file was created on a spreadsheet, indexed on the archive reference numbers which are listed in the bibliography. The transactions were categorised into six twenty-five year periods, and also into decades (years 0-9); this allowed short-term fluctuations and long-term trends to be identified. Analysis sheets with searchable text fields provided specific details for the figures and tables which accompany the text.

Manorial Records

Kentish manors were notoriously scattered, to the point where it is sometimes difficult to identify their parts; this '*vitiates any attempt at manorial arithmetic*' in Peter Clark's words.³⁷ For example, a three-acre field called Benge Land was attached to a small house, Tye Haw, centrally placed within the Manor of Tyehurst, but was part of Millbrook Manor, belonging to Bore Place three miles to the north.³⁸ Jolliffe wrote '*the manor, so homogeneous elsewhere, is here a jumble of lands and jurisdictions without order, principle, or unity*' and he saw the hamlet, based on jugum and sulung, as the '*completely organised economic unit*' in Kent.³⁹ Felix Hull, county archivist and compiler of the Streatfeild catalogue, commented on the uninformative nature of the court rolls, and Michael Zell on the difficulty of their use for meaningful statistics.⁴⁰

Moreover, some purchasers of land bought a release of manorial services. John

37 Clark, *Provincial Society*, p.125; see also Chalklin, *Seventeenth-Century Kent*, p.48.

38 KHLC U908 E2.

39 Jolliffe, *Pre-Feudal England*, pp.2, 20, 39. The sulung went with an eight-ox plough, the jugum or yoke with two oxen, rendered practicable by the ties of kinship; these were caught up into the manorial system at a late date. Oxen were the main draught animals throughout the period and longer: see Chapter 8.

40 KHLC U908; M. Zell, *Industry In the Countryside: Wealden Society in the Sixteenth Century* (Cambridge, 1994), p.12.

Ashowne purchased such a release for land at Larkins, so that it was subject only to quit-rent.⁴¹ The son and heir of Michael Basset the mill-owner sold the Manor of Stangrave subject to release of all his own property even from quit-rents, suit and service.⁴² Some properties, like Waystrode in Cowden, never appear in the manorial records.⁴³ Finally, piecing together the history of defunct manors is impossible; Smith Street appears as a separate manor with three manorial tenants until 1500, then is combined with Chiddingstone Burwash and after 1630 disappears.⁴⁴

The manor courts, dominated by freeholders, had a reduced role and were held infrequently. Entries in the rolls were extraordinarily dilatory in some cases; reconstruction of the history of Gilridge showed that by the end of the seventeenth century the last transaction in the manor court was twenty years after the event recorded by the title deeds. At one point the record of ownership was historic and incorrect.⁴⁵ Rentals and other manorial documents have been used, where informative, to supplement the other sources. A useful source for custom and dues is a notebook compiled by Henry Streatfeild in 1747 listing twenty-three manors, for some of which he was the lord and some the manorial tenant.⁴⁶

Title Deeds

Title deeds, covering a variety of conveyancing transactions, are not only more accurate than manorial records but provide information about local communities at a level of detail not obtainable from court rolls. They have the added advantage that they distinguish permanent from temporary transfers, problematic data from some other sources. Although individual documents have been extensively used by others, settlements notably by Lloyd Bonfield, this research uses all the surviving material for the hundred.⁴⁷

Title deeds have been drawn from the Streatfeild, Middleton, Seyliard, Polhill, Heath, Combridge and Goldsmith archives, and a number of other collections; these are

41 KHLC U908 T13.

42 KHLC U908 T166.

43 G. Ewing, *The History of Cowden* (Tunbridge Wells, 1926), p.72. It may have formed part of a former head manor.

44 KHLC U908 M1.

45 KHLC U908 T178, M52.

46 KHLC U908 E2.

47 L. Bonfield, *Marriage Settlements 1601-1740: The Adoption of the Strict Settlement* (Cambridge, 1983).

itemised in the bibliography. Although one gentry estate dominates, that of the Streatfeild family, it includes the title deeds of a variety of families at all levels of society which were gradually acquired as the family rose into the upper gentry in the eighteenth century.⁴⁸

Table 1.1 shows these broken down by transaction, with a note as to their interpretation.

Table 1.1: Total number of title deeds used in the research			
<i>Type of Transaction</i>	<i>Transactions</i>	<i>Docs</i>	<i>Notes</i>
<i>Used in Statistics</i>			
Conveyance	175	313	Purchase and sale of a property (Ch.5)
Lease	80	80	Leases for a term of years, associated with husbandry. The lease form has a variety of other uses such as conveyances or mortgages. (Ch.7)
Mortgage	112	140	Security for a debt which transfers property. (Ch.6)
Partition	18	22	Division of a property formerly held in common into two or more properties held in severalty. (Ch.4)
Settlement	105	128	A transfer of property during the lifetime of the holder (Ch.4).
<i>SUBTOTAL</i>	<i>490</i>	<i>683</i>	
⁴⁹ <i>Ancillary Documents</i>			
Agreement	5	5	Heads of terms
Annuities	6	6	Grant or sale of annuity or rent-charge
Arbitration	4	4	Neighbour dispute
Bond (alone)	42	42	Two types: bond for a debt and bond to keep covenants.
Copyhold title	18	18	Admissions and surrenders
Covenants	5	5	Additional covenants
Debts	23	23	Accounts, recognizances, distrains, compositions
Estate papers	7	7	Abstracts of title, schedules, family, accounts
Final concord (alone)	44	45	Process by which title is secured
Litigation matters	7	9	Counsel's opinion, case details, queries
Manorial	4	4	Court records other than copyhold title
Quitclaim or release	81	82	Release of title
Receipt	12	12	Receipt for a legacy or other payment

48 A study of the eighteenth century would be that of a single family; an end date of 1700 removes this difficulty.

49 35 ancillary documents occur in bundles without a major transaction. This does not imply a missing deed. 21 of them are bonds for debts, 5 receipts and releases for legacies or debts, the remainder include an abstract of title, a grant of an annuity, a manorial dispensation, and a pedigree. Three are fines and two recoveries for known properties. All provide relevant information for the reconstructions.

Recovery	27	29	Process by which title to land is cleared of encumbrances.
Other matters	14	14	Notes, letters, lists, miscellaneous
<i>SUBTOTAL</i>	<i>299</i>	<i>305</i>	
TOTAL	789	988	
<i>Sources: NUL Mi5, Mi6; KHLC U36, U55, U116, U442, U908, U1000/10, U1007, U1048, U1475, U1823/1, U1936, U1986, U3512. Probate documents are counted separately.</i>			

The number of individual documents is also shown. Conveyances commonly include documents used to clear title of previous settlements or other rights. A settlement transaction could comprise six or seven individual documents, although most commonly they were laid out in a single indenture, as were partitions. Leases are perhaps the most complicated. The main purpose was to transfer possession without title; they were therefore adapted not just to tenancy agreements but to conveyances where the title was transferred by a separate release, where they tended to be short in term, usually a year, and to settlements where they tended to be very long, perhaps 1,000 years. Those listed as leases in *Table 1.1* are tenancy agreements only.

The first section of the table shows the documents which form the basis of the statistical tables in the study. The second section lists the ancillary documents such as agreements, arbitrations and the like which have only been used in family or property histories, or to provide social and economic context. Quitclaims and releases both release property rights. A quitclaim tends to be a short document, perhaps in response to a testamentary devise, a release a long document with detailed covenants, perhaps after repayment of a mortgage. These can occur as part of a conveyance or settlement or as ancillary documents. Receipts are for money payments, including testamentary bequests. Bonds fall into two types: bonds for debt and bonds to perform covenants. The former are securing money lent, in the early part of the period with a penal element. The latter are often found with conveyances, since they allowed a party to pursue an action in debt which was more straightforward than an action for covenant (contract).

Final concords require explanation. The use of feet of fines in central records, as opposed to those in title deeds, are without context. W.G. Hoskins and H.J. Habakkuk identified that these were not necessarily sales, including feoffments to trustees, mortgages and other transactions; prices were often a nominal £40, and acreages

rounded. Zell concurred, although he thought a sale could be distinguished from a feoffment to trustees and the volume of transactions could be used to indicate the level of the land market.⁵⁰ In this research, where a final concord occurs as part of conveyancing deeds price and acreage seldom agree; although acreages are similar, prices are so dissimilar as to be a trap for the unwary. They are not notional in the sense that Hoskins suggests, but they appear to be a cash-in-hand payment, so that mortgage repayments or instalments are not included.⁵¹ Where they occur without supporting deeds they cannot be used to analyse sales. They do not contain property names, so identification is not always possible. They have occasionally been used in the reconstruction to clarify other information.

Though title deeds are detailed and informative their use is not without difficulty.⁵² There is the problem of survival; although every possible source has been considered, the title deeds remain essentially a patchwork, as is very clear in the description of changing land ownership in Chapter 7. There is an inbuilt bias, because the majority come from estate papers, and the records of families who have died out or moved away do not survive as do those who prospered and survived. However, this effect should not be exaggerated, because of course the land itself continued and the deeds were passed on, and where one family came to dominate and accumulate the deeds of other families, as with the Streatfeilds of Chiddingstone, the record can be substantial in breadth and duration.

50 W.G. Hoskins, *The Midland Peasant* (London, 1957), pp.99-101; H.J. Habakkuk, 'The rise and fall of English landed families 1600-1800', *TRHS* 31 (1981), 195-217; Zell, *Industry*, p.47, and also his introduction in *Kent Feet of Fines from Edward VI to Philip and Mary*, The Kent Records Society, Vol.4 (2012).

51 A version of the Doctrine of Consideration seems to apply here: the sum is not required to be proportionate.

52 A.A. Dibben, *Title Deeds, 13th-19th Centuries*, Historical Association (London, 1968) has been used. 'Deeds in Depth' on the web-site of Nottingham University Manuscripts and Special Collections is more detailed: [<https://www.nottingham.ac.uk/manuscriptsandspecialcollections>].

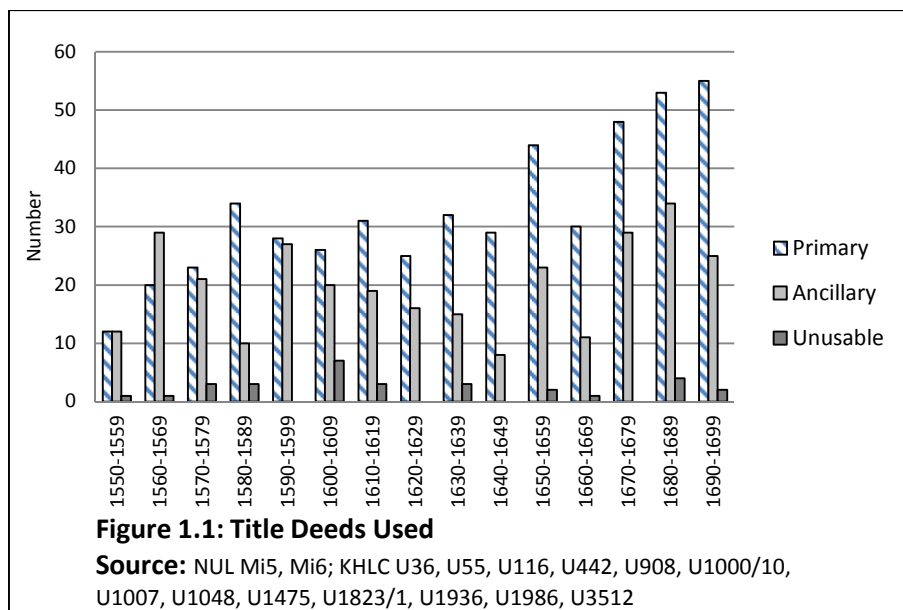


Figure 1.1 shows the documents broken down by decade. Copies or duplicates were omitted and those with missing parts or inadequate information. This left 988 documents within the scope of the research; 490 transactions made up of 683 documents were used in the statistics and 299 ancillary documents were used for the family or property transactions.⁵³ There is an overall rise in the number of transactions which is discussed in the analysis of transactions in the chapters which follow.

Parish Registers

Reconstructing families has been done through the use of parish registers, but these are insufficient on their own, not only because of the limited palette of given names but of gaps in the record. Chiddingstone registers begin in 1558 but are missing the years 1599-1630.⁵⁴ Cowden registers begin in 1566 and are missing the two years 1637-9; the father's name is given in christenings only after 1600 which greatly diminishes their usefulness. Hever registers are missing entirely before 1637. Penshurst's are the most complete, but all are scanty during the early years of the Commonwealth. Transcripts for the surviving registers are used here, accepting that there will be some errors of transcription.⁵⁵

53 The items omitted as damaged were therefore a small proportion of the whole. Many more were excluded as outside the scope. KHLC documents are catalogued in bundles, NUL records as individual documents.

54 A later family historian recorded details for the Streatfeild family for the missing years: KHLC P89/1/27.

55 Society of Genealogists transcripts: Chiddingstone KE/R86, Cowden KE/R226, Hever KE/R272, Leigh KE/18,

Wills

The wills used are shown in *Table 1.2*. They include all wills of residents in the four main parishes, and a number of wills were added where the place of residence was outside the area, but the location of the property was in Somerden Hundred. Most were proved in the Prerogative Court of Canterbury or the Archbishop's peculiar, the Deanery of Shoreham; a few (mostly poorer testators) in the Diocese of Rochester Archdeaconry and Consistory Courts.⁵⁶ Wills have been used for two distinct purposes.⁵⁷ The first is in family reconstruction where they often reveal children missing from the registers, indicate seniority, or show which children did not survive. They can still confuse: Manasses Jessup's wife Elizabeth, née Everest, clearly died in 1640 but was apparently mentioned in the will of her mother seven years later.⁵⁸ Other documents established that Manasses had married two wives, both Elizabeth Everest, and that both had mothers called Elizabeth and brothers Thomas and Edward. Only their fathers' names were distinct.

The second purpose is as evidence for the devise and inheritance of land; here again they are imperfect. Firstly, the name and location of a holding is often disguised under the general term 'all my land in the parish of Penshurst', or worse 'in the county of Kent'. The will of John Bloome of Sevenoaks dated 1624 left 'all my lands in Chiddingstone' to secure his widow's annuity of £20 p.a.. Apart from what it implies about the value of the property this says little. Fortunately the 1634 conveyance for the property survives and tells us that the land was sold for £355 and comprised The Crofts, The Marles and a piece of meadow in Broadeye Mead, 38 acres in the occupation of John Hollamby, purchased from Thomas Browne the iron founder and ratified by a fine from Percival Willoughby of Bore Place in 1611, a full history of the property.⁵⁹ Even if a property is named, there can be curious anomalies where names conflict, and a particular difficulty arises around Rendsley Hoath where the name

Penshurst KE/R155. For their use see E.A. Wrigley & P. Schofield, *The Population History of England, 1541-1871: A Reconstructio*, (Cambridge, 1981), pp.1-12.

56 TNA PROB 11; LPL VH96; KHLC DRa and DRb. See bibliography.

57 N. Goose & N. Evans, 'Wills as a historical source', Chapter 3 in T. Arkell & N. Evans eds, *When Death do us Part* (Oxford, 2000).

58 TNA PROB 11/201.

59 TNA PROB 11/149; KHLC U908 T184.

'Buckhurst' is the place-name equivalent of the patronymic 'Smith'.⁶⁰ Secondly, there are several examples in the data of wills referred to in subsequent documents which have not survived, and conversely sixteen wills appear only within the title deeds; even valid wills were not always subjected to probate.⁶¹

<i>Parish</i>	<i>Male Wills Devising Land</i>	<i>All Male Wills</i>	<i>Female Wills Devising Land</i>	<i>All Female Wills</i>	<i>ALL WILLS DEVISING LAND</i>	<i>ALL WILLS</i>
Chiddingstone	66	114	4	24	70	138
Cowden	38	65	1	12	39	77
Hever	35	61	3	11	38	72
Penshurst	57	108	1	23	58	131
Subtotal	196	348	9	70	205	418
Edenbridge part *	31	69	1	12	32	81
Leigh, part *	11	13	1	1	12	14
Owners resident in 24 other parishes*	30	43	3	4	33	47
TOTAL	268	473	14	87	282	560
* Only testators with property in the Hundred or from families primarily located there are included. <i>Sources: TNA PROB 11; LPL VH96; KHLC U116, U908, U1986; Jean Fox: West Kent Wills [CD].</i>						

Of 418 wills in the four main parishes of the hundred, 29% (205) made provision for land. The role of wills in disposing of land is considered in more detail in [Chapter 4](#), but the general conclusion is that they performed the role of mopping up of property not disposed of by other means, rather than the primary means of disposal.

The total 560 wills were indexed by surname, in a nominal database. Spelling of surnames was standardised. Of the resulting 473 male wills and 87 female wills, 282 included land within the area.

Estate Maps, Surveys and County Maps

Maps are a vital source in plotting land ownership. Estate surveys do exist from earlier periods, but the methods of chain and rod survey which came in during the latter part of the seventeenth century led to a trend for measuring and mapping the estate, and especially those properties which were being purchased or valued. There are more

60 The place-name Rendsley Hoath, now gone, is variously spelled Rendsleigh, Rennesleigh, and other variants.

61 L. Bonfield, *Devising, Dying and Dispute: Probate Litigation in Early modern England* (Farnham, 2012), p.18. The 1670 Statute of Distributions may have inadvertently increased this effect. Examples include William Ware of Chiddingstone 1585, Thomas Wickenden of Cowden 1590, and Godfrey Jessup of Penshurst 1626, KHLC U908 T33, T90 & T136.

than seventy estate maps for the Somerden area, most in the Streatfeild papers. None dates from the period studied but twenty-five are from 1704-1724.⁶² The remaining maps can still be used in conjunction with the detail in title deeds to reconstruct a property.⁶³ Care is needed in their use; one purpose of an estate survey was rationalisation of the layout.⁶⁴

The early maps of Christopher Saxton (1575), Philip Symonson (1596), John Speed (1611) and others are too notional and small scale to be of use in a detailed study, although Symonson gives considerable detail including surviving parks and significant houses.⁶⁵ The eighteenth-century maps, Samuel Parker's edition of Symonson (1719) and Andrews, Drury and Herbert (1769), show villages, hamlets, and the main houses with their owners. The latter is particularly useful in showing the old road layout.⁶⁶ The county has the earliest Ordnance Survey of 1801; this also shows the old road system, but differs in some respects from that of 1769. The 1841 tithe award survey, although not without its own difficulties, provides a check on the location of particular fields and farms.⁶⁷

Litigation

Reports of litigation provide a minor source. Cases in the common law courts have not been sufficiently well calendared to be useful in a study of this duration, but some cases in the Court of Chancery and Star Chamber are available.⁶⁸ Quarter Sessions and

62 KHLC U908 P1-P14, P16-P26.

63 Seventeen are from 1729-1746: KHLC U908 P27-P33, and P42-P51. Those from the late eighteenth century are U908 P34-P41, P52-P69, P71.

64 D.J. Fletcher, 'Mapping and estate management on an early nineteenth-century estate: the case of the Earl of Aylesford's estate atlas', *AC* 109 (1991), 85-108, p.94.

65 L. Taylor, 'Philip Symonson's Map, *A New Description of Kent*: 'the Finest Specimen of English Cartography before 1600', *AC* 137 (2017), 149-164. In Andrews, Drury and Herbert the spelling derived from the local dialect provides some entertainment: Liverox being rendered Libbards and Vexour Backsover, so that its use for identifying historic place names is somewhat limited.

66 Before the creation of the parks of Chiddingstone Castle and Stonewall and the construction of the railway line.

67 B.P. Hindle, *Maps for Historians* (Chichester, 1998); H. Wallis (ed.), *A Historian's Guide to Early British Maps* (London, 1995); F. Hull, 'Kentish map-makers of the seventeenth century', *AC* 109 (1991), 63-83; H. Margary, *The County of Kent in 1801: A Reproduction of the First Published Ordnance Survey Map of Great Britain* (Ashford, 1990); British Library, *The Counties of Britain: A Tudor Atlas by John Speed* (London, 1988); G.M. Livett, 'Early Kent Maps (Sixteenth Century)', *AC* 49 (1937), 247-277; R.A. Burgess, 'Printed Maps of Kent 1575-1900' [www.oldkentmaps.co.uk accessed April 2017]. Use has also been made of T. Lawson & D. Killingray, *An Historical Atlas of Kent* (Chichester, 2004) and K. Leslie & B. Short, *An Historical Atlas of Sussex* (Chichester, 2010).

68 TNA C1, C6, C8, C142.

Assize records have been used, and a handful of Inquisitions Post Mortem.⁶⁹ Twenty law cases recorded in the Streatfeild archives relate to the subjects of this study.⁷⁰

Table 1.3 breaks down cases used, by court. Additionally, the title deeds include disputes settled by arbitration and by recourse to Counsel's opinion. Litigation divides into two causes: disputes over properties, and disputes over debt. Few if any of these cases resolve questions of law.

Table 1.3: Court proceedings					
<i>Court</i>		<i>1550-1599</i>	<i>1600-1649</i>	<i>1650-1699</i>	<i>TOTAL</i>
Chancery		1	6	8	15
King's Bench			2	2	4
Common Pleas			1	2	3
Exchequer				1	1
Star Chamber		1			1
Kent Assize				2	2
Quarter Sessions		7	1	1	9
Total cases		9	10	16	35
<i>Source: KHLC U908 L1,L3,L32-3,L34-40,L51; ASSI 35,94,95; QM SRc, SB, SI1; TNA C2,C6,C9,C10,C25, STAC 8.</i>					

Correspondence, Taxation and State Papers

Nothing exists in the Somerden area for the period to compare with the published letters of Henry Oxinden of Barham or the accounts of Nicholas Toke of Godinton in East Kent, or the records of Sir Roger Twysden of Roydon Hall in East Peckham.⁷¹

Original correspondence of the Heath family of Brasted Court between 1632 and 1698, while mostly referring to routine management and to an outlying estate, gives some feeling for the political and economic problems of the times.⁷² Subsidy rolls survive for the early seventeenth century, in particular that of 1628, giving a list of taxpayers; the 1709 Land Tax has been used but the data is of variable quality.⁷³ The 1664 Hearth Tax is useful in establishing residence, but is not organised in such a way to make it easy to

69 TNA ASSI35; QM SRb and c.

70 KHLC U908 L1-L70.

71 D. Gardiner, *The Oxinden Letters 1607-1642* (London, 1933), *The Oxinden Letters 1642-1670* (London, 1937); E.C. Lodge, *The Account Book of a Kentish Estate 1616-1704* (Oxford, 1927); F.W. Jessup, *Sir Roger Twysden 1597-1672* (London, 1965) and KHLC U47.

72 KHLC U55 E100.

73 KHLC U1000/9 C1.

link occupiers to specific properties.⁷⁴

The Reconstruction

The Properties

For the property reconstructions, all the relevant documents were used, together with any published or unpublished data which could supplement them, to create a property history. A total of 465 properties were covered, varying from a cottage to a large holding, including plots moving between holdings.⁷⁵ Some are illustrated in the Case Studies within each chapter. Establishing the *extent* of each property at a period in time has not always been possible. Some properties were constantly in flux, a field or two added here, a field or copse sold there. In the seventeenth century acreages were normally but not invariably given in title deeds; they were uncommon in wills. Small variations in measurements over time could be the result of more accurate measurement, or the taking in of waste, or simply the effect of rounding. Best estimates have been used, with the aid of metes and bounds in the documents.

The Families

For each landowner who occurred in the abstracts of title or wills, a family tree was created, using family tree software. This was built up from all the sources, starting with parish registers, checking these against wills, and adding in detail from the title deeds. In total 153 family names were recreated. This was an iterative process, adding and correcting as the research continued, and many trees have remained partial, or with unproven links, some consist only of two generations, or scattered individuals. The strict rule of linkage, three references, has not been used; in such a small area, the link is usually self-evident.⁷⁶

74 N. Evans, 'Hearth tax data: general information', in British Records Society Hearth Tax Series, Vol. II: *Kent, Lady Day 1664*, (London, 1999); J. Patten, 'The Hearth Taxes, 1662-1689', *LPS* 7 (1971), 14-27.

75 A bundle of title deeds or a will could cover several properties, and these could move from holding to holding.

76 The methods and limitations of family reconstitution and reconstruction have been discussed in detail by the following: E.A. Wrigley, *Identifying People in the Past* (London, 1973); E.A. Wrigley & P. Schofield, *English Population History from Family Reconstitution 1580-1837* (Cambridge, 1997); S. Ruggles, 'The limitations of English family reconstitution: English Population History from family reconstitution, 1580-1837', *C&C* 14.1 (1999), 105-130; G. Newton, 'Family reconstitution in an urban context: some observations and methods', *CWPESH* No.12 (2013); M.B. Sussman, S.K. Steinmetz, G.W. Peterson eds, *Handbook of Marriage and the Family* (New York, 2013), p.16.

Terms and Terminology

Status

The emphasis of the research is on the yeoman, held to be a feature of Kent and gavelkind. The description which Francis Grose gave in 1787 looked back to an earlier period:

*'A Yeoman was an independent man, somewhat less than a Gentleman (a term formerly not so liberally dealt out as at present). A yeoman occupied his own land, killed his own mutton, and wore the fleeces of his own sheep, spun in his house. The yeomanry of Kent were famous for their riches. This class of people is now entirely extinct, the title of Gentleman being almost as universally claimed in England as in Wales.'*⁷⁷

The term 'yeoman' did not have a fixed and immutable meaning and requires definition. Mildred Campbell in *The English Yeoman* (1942) considered the origins of the word and changes in its use over time.⁷⁸ It probably originated in the Saxon 'yemen' meaning a free man, and was usually identified with the 'forty-shilling freeholder' who was enfranchised after 1430, but Campbell concluded that by the fifteenth century it had become a status term.⁷⁹ Mark Overton suggested that the size of holding rather than freehold tenure was the defining feature by the seventeenth century.⁸⁰

In a study using probate inventories, Jacqueline Bower concluded that the 'yeomen' were less than 5% of the total population of Kent in the seventeenth century and their wealth varied greatly from a few pounds of chattels to wealth worthy of a gentleman. They represented a varied class, but were generally prosperous and important economically and socially in the community.⁸¹ Roger Kain calculated from the tithe

77 F. Grose, *A Provincial Dictionary* (London, 1787), p.214.

78 M. Campbell, *The English Yeoman* (Yale, 1942), pp. 7-10. and Glossary.

79 C. Seymour, *Electoral Reform: in England and Wales: the Development and Operation of the Parliamentary Franchise* (London, 1915); *Freeholders Act, (8.HenVI.c7)*.; Campbell, *Yeoman*, p.12 and K. Wrightson, *English Society 1580-1680* (London, 1982), p.31-32 discuss yeomen.

80 M. Overton, *Agricultural Revolution in England: The Transformation of the Agrarian Economy, 1500-1850* (Cambridge, 1996), p.40. He draws this from 'detailed studies' but does not cite them.

81 J. Bower, 'The Kent yeoman in the seventeenth century', *AC* 114 (1994), 149-163. I do not agree with some of her assumptions, such as her narrow interpretation of 'servant' in the sixteenth century; Richard Medhurst, dying in 1626, referred to Thomas Seyliard as his 'master', but left two houses and cash and credit of over £500; he was clearly not a servant in this sense [TNA PROB 11/148]. I do not agree that a yeoman in Sandwich would not live in a farmhouse. Her figures for wealth taken from probate inventories do not take account of life cycle, which probably gives an apparent range which is wider than reality. Nor does her extrapolation to Kent of Gregory King's estimates for freeholders ring true, since Kent was notoriously atypical in this respect. The choice between median and mean affects her conclusions on prosperity but is not sufficiently justified.

survey that in the mid-nineteenth century when yeomen were thought to be in eclipse they still held 44% of the land area of Kent, numbering about 1,450 people.⁸²

Designations of titled people appear clear. However, as D.C. Coleman pointed out '*The firm rock of the titular peerage slips into soft and shifting procedural sand*' when it comes to younger sons, knights, baronets and rich squires.⁸³ It is possible that the aristocracy of 1700 was not made up of the same families as that of 1550, and was perhaps different in approach and ethos, as the debate on the 'crisis of the aristocracy' suggested.⁸⁴ As Grose's definition suggests, it is wise not to confuse the rise of families into a class with the rise or fall of the class itself or the inclusiveness of the definition.

Strictly defined, 'gentlemen' were those granted that status by the College of Heralds, but it was a fluid term. Wrightson suggested that the significant factors in practice were '*the recognition accorded to wealth, life-style and the exercise of authority*'; they include clergymen and lawyers who were thought to be entitled by office to gentry status.⁸⁵ The title is not always an indicator of wealth, however. William Lambarde observed in *A Perambulation of Kent* (1570) that a Kentish yeoman often had no ambition to obtain a coat of arms for himself, despite prosperity which would have supported that status.⁸⁶

'Husbandman' was another term which varied greatly. In leases of 1688, 1698 and 1709 John Floyd of Cowden was called 'husbandman'. When his children were born he was variously described as 'farmer' (1699), 'yeoman' (1701 and 1703), and 'farmer' again (1705). When he died in 1728 he left four houses and £400 to his youngest son, and property to his two older sons, significant wealth, and he described himself as yeoman.⁸⁷ Campbell suggested that, like 'yeoman', 'husbandman' gradually developed a connotation of status, initially being an occupational title.⁸⁸ Husbandmen were likely to be tenants, unlikely to be literate.⁸⁹ Leigh Shaw-Taylor's comments about the local

82 R.J.P. Kain, 'Tithe surveys and land ownership', *Journal of Historical Geography* 1.1 (1975), 39-48.

83 D.C. Coleman, 'The 'Gentry' controversy and the aristocracy in crisis 1558-1641', *History* 51.172 (1966), 165-178.

84 Section II infra.

85 Campbell, *English Yeoman*, Chapter II; Wrightson, *English Society*, p.24. Overton takes a similar view: *Agricultural Revolution*, p.39.

86 Lambarde, *Perambulation*, pp.7-8.

87 TNA PROB 11/625, 641.

88 Campbell, *English Yeoman*, pp.27-33.

89 Overton, *Agricultural Revolution*, pp.40-1.

nature of the term are apposite; classification of them as tenant farmers does not fit Somerden.⁹⁰ There were variations in meaning even between the parishes in this research (Chapter 3).⁹¹ Nesta Evans found the term to be so wide that a detailed look at their activities was required to be precise; she could only say for sure that they were predominantly engaged in agriculture.⁹²

The term 'labourer' is very rare in Somerden. While it logically implies someone who worked for others, it appears from this research that the term was as subjective as 'husbandman'. Francis Tye was called 'husbandman' in his Chiddingstone probate inventory, worth £56, but 'labourer' when buried in his native Penshurst.⁹³

In conclusion, by the seventeenth century status designations can be understood to reflect *sources* of income. A gentleman lived on his rents, a yeoman farmed his own land, a farmer held a significant tenancy, a husbandman was a tenant or smallholder who might supplement his income in other ways, and a labourer lived by his wages alone. The terms were subjective: the same man could be described variously at different stages in life, or in different documents, or by different scribes. For the purposes of the statistics in this research, the parties have been classified as they were designated in the documents used.

Farms and Farmers

As the term 'servant' changed from defining a personal relationship to a contractual one, so the term 'farmer' changed its meaning over time.⁹⁴ In the late sixteenth century it indicated a relationship: the manorial gentleman, Thomas Willoughby, referred to Thomas Wells who acted as his bailiff and occupied an estate farm as 'my farmer'. It came to mean a relationship of contract denoting a lessee; a change of emphasis from person to property.⁹⁵ In this sense it is critical to one of the major

90 L. Shaw-Taylor, 'The rise of agrarian capitalism and the decline of family farming in England', *ECHR* 65.1 (2012), p.49.

91 Table 3.3 shows a variation in the occurrence of 'husbandmen' across the parishes which may be terminological.

92 Goose & Evans, 'Wills as an historical source'.

93 LPL VH96/6556.

94 D. Loades, *Power in Tudor England* (Bangor, 1997), p.16 makes this distinction with reference to servants.

95 R.W. Hoyle, *The Farmer in England* (Farnham, 2013), Chapter1: 'Recovering the Farmer'; Campbell, *English Yeoman*, p.27. D. Kelley, *Fortunes of History*, (Yale, 2000), p.238 discusses the change of emphasis from 'blood' to 'land'. He is quoting H.S. Maine, *Ancient Law* (1861, 10th edn 1906), Chapter V pp.163-165. In *Lectures on the Early History of Institutions* (1875) Maine suggested that groups formed of kinsmen 'gradually became

historiographical debates on the period, the rise of the landlord-farmer-labourer model of agrarian structure. In Somerden the term is rare, and it is only quite late in the seventeenth century that it becomes an occupational title. Similarly, the term 'farm' in this study is usually used in its modern sense of a unit of production. Its use in the period was sparse: it occasionally occurs as a proper noun, 'Baileys Farm', but the usual designation for this would be simply 'Baileys'.

Whilst the terms 'tenant' to describe a freeholder's relationship to a manorial lord and 'subtenant' for his lessee are perfectly correct and synchronistic, this terminology, confusing to the modern ear, has been avoided, and 'manorial', 'customary' or 'free tenant' used for the former and 'tenant' or 'lessee' for the latter.

Other terms

Finally, the term 'individualism' is frequently used in this study. This does not imply self-interest or lack of social cohesion. As E.H. Carr puts it:

*'Increasing individualization in this sense is a necessary product of a modern advanced society' . . . 'a society in which the interdependence of individuals on one another has assumed advanced and complex forms. It would be dangerous to assume that the power ... to mould the character and thought of its individual members, and to produce a certain degree of conformity and uniformity among them is any less than that of a primitive tribal economy.'*⁹⁶

Legal Change

Many years ago Nellie Neilson drew attention to the importance of an understanding of customary law to economic historians and it remains true that it is not possible to understand the implications of land tenure without first understanding the law.⁹⁷ No study of tenure can ignore the changes in the law which took place in the sixteenth and seventeenth centuries: the abolition of feudal tenures, the substitution of copyhold for unfree tenures and socage for military tenures, the establishment of the principle of free alienation of land, the establishment of protections for leaseholders, copyholders and freeholders against the world at large, the development of uses, trusts and

bodies of men held together by the land which they cultivated', from which developed 'property in land'. In the annotations to the 10th edn of Maine, Frederick Pollock doubted whether this principle could be extended from law to society, p.422.

96 E.H. Carr, *What is History?*, 2nd edn (Basingstoke, 1986), p.26.

97 Neilson, 'Custom and the common law', p.482.

settlements, the liberalisation of usury and expansion of mortgage law, and not least the constitutional changes which saw the emergence of the constitutional monarchy. These changes have been described as a move from tenure to contract, or from fealty to a cash nexus.⁹⁸

The mid-point of the period, 1625, recurs as a turning-point. The social and economic developments of the seventeenth century, attitudes to commerce, increasing polarization of wealth, privatisation of land, stimulated legal change. It is no coincidence, however, that developments coincide with a period of moral, social, and constitutional reassessment, exemplified in the Putney Debates and the campaign for legal reforms.⁹⁹ Some of the reforms which were instituted were overturned in 1660, but there could be no return to the sixteenth-century position. What did happen was a halt to the radical reforms which Robert Allen has described as '*policies which might have maintained England as a yeoman society*', instead of which inequality of wealth became the dominant social mode.¹⁰⁰ Gavelkind tenure was predominantly yeoman tenure so these changes provide the context for consideration of its long-term impact.

While this study is not a legal history the legal context is critical, so the individual chapters are generally introduced with a brief exposition of the important legal developments. This study does, consequently, include some legal terminology. Kent also had its distinctive dialect, and its own terminology for administrative units, measures and agricultural implements and techniques. Although any potentially unfamiliar terms are explained in the text, there is also a brief glossary.

98 For a summary of the extensive literature, see C.J. Reid, 'The Seventeenth-Century Revolution in the England Land Law', *Cleveland State Law Review* 43 (1995), pp.221-302.

99 B. Worden, *The English Civil Wars 1640-1660*, (London,2009); Reid, 'Seventeenth-century revolution'; B. Shapiro, 'Law reform in seventeenth-century England', *The American Journal of Legal History* 19.4 (1975), 280-312; D. Veall, *The Popular Movement for Law Reform 1640-1660*, (Oxford, 1970).

100 R. C. Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands, 1450-1850* (Oxford, 1992), p.77 and Chapter 15: 'The Yeoman Alternative'.

III: Historiography of Gavelkind

Contemporary Sources

The sources for gavelkind were described in an article by R.J. Smith in 1998 which is still the most detailed review.¹⁰¹ Those from the long seventeenth century fall into two categories: legal treatises and historical or antiquarian reports. In the former category come William Lambarde (1536-1601), himself a Kentish man and also the writer of the first county history, the *Perambulation of Kent*, and Sir Henry Spelman (c.1562-1641).¹⁰² In the latter come the treatises of Roger Twysden (1597-1671) of Roydon Hall in the Weald, William Somner (1598-1669) of Canterbury, and Silas Taylor (1624-1678), not a Kentish man.¹⁰³ Lambarde refers to both Glanvill and Bracton as legal authorities before his time.¹⁰⁴

For a full, near-contemporary, exposition of the actual law research is dependent on Thomas Robinson's *The Common Law of Kent* (first edition 1741), which continued in print until the mid nineteenth century, C.I. Elton's *The Tenures of Kent* (1867) and the more general legal treatise of Blackstone.¹⁰⁵ The treatise of Thomas Robinson, in three editions, provides the legal backbone of this research.¹⁰⁶

Modern Studies

Anglo-Saxon and Medieval Origins

In 1925 the medievalist Nellie Neilson described gavelkind as but one example of

101 R. J. Smith, 'The Swanscombe Legend and the Historiography of Kentish Gavelkind' in R. Utz & T. Shippey, *Medievalism in the Modern World* (Turnhout, 1998).

102 Lambarde, *Perambulation*.

103 Sir Henry Spelman, ed. Edmund Gibson, *The Original Growth Propagation and Condition of Feuds and Tenures by Knight Service in England* (London, 1698); Roger Twysden, *Historiae Anglicanae Scriptorum Decem: 9, Chronica W. Thorne*, (London, 1652); William Somner, *A Treatise of Gavelkind both Name and Thing* (London, 1660) written 1647; Silas Taylor, *A History of Gavelkind with the Etymology Thereof* (London, 1663); Robert Brady, *A Complete History of England from the First Entrance of the Romans unto the End of the Reign of King Henry III* (London, 1684).

104 *Treatise on the Laws and Customs of the Kingdom of England*, known as Glanvill, c.1190, ed. J. Rayner, (London, 1780), 7th book, 3rd chapter; Henry Bracton, *On the Laws and Customs of England* (c.1235).

105 C.I. Elton, *The Tenures of Kent* (London, 1867); W. Blackstone's *Commentaries on the Laws of England* (London, 1765-69), Book II.

106 T. Robinson, *The Custom of Kent or the Law of Gavelkind* (London, 1741), 2nd edn (1788); T. Robinson, ed. J.D. Norwood, *The Common Law of Kent or the Custom of Gavelkind with the decisions concerning Borough English*, (London, 1858). For primary sources, R.J. Smith cites the Year Books of Edward I [A.J. Horwood trans, 1863]; the only other legal sources for the period are court cases, which provided limited information on judgements.

customary law, albeit the best known and most established. Of particular interest is her conclusion that survival was a consequence of the developed sense of identity in Kent, emphasising Kent's exceptionalism. It was too well established to be obliterated, not a survival but a living, developing system which emerging common law could not defeat.¹⁰⁷

In the nineteenth and early twentieth centuries, there was a debate over whether gavelkind was a consequence of different racial origins in Kent, Jutish or Frisian, but most now doubt any racial link. J.E.A. Jolliffe's *Pre-Feudal England: The Jutes* (1933) highlighted the peculiarities of Kent: fragmented manors and misfit hundreds uneasily imposed on a pre-existing structure of yokes and lathes, scattered settlement, and a single-field system of agriculture.¹⁰⁸ Gavelkind was intertwined with these features, division among sons leading to a hamlet pattern in the landscape and the combination of severally held tenements with communally managed meadow and marsh. Compared with the communal three-field system, Jolliffe said, '*the hamlet expresses in a single-field system the opposite qualities, freehold right, tempered by the close association of a peasant group which is primarily a group of coheirs.*'¹⁰⁹ Mark Overton linked settlement pattern with field system: hamlets indicated several rather than communal cultivation, and were a feature of parts of England outside the central Midland belt.¹¹⁰

K.P. Witney's *The Jutish Forest* acknowledged a debt to Jolliffe, and also covered the medieval period, to 1340.¹¹¹ Witney gave gavelkind a more *causal* role than did Jolliffe, to whom it was part of a wider cultural and agrarian structure, but he put a greater emphasis on the land market. Rapid growth in population, '*modified (or mitigated) by the free market in land*' resulted in fragmented holdings, homesteads expanded into hamlets, scattered fields, and '*an intensely individualistic society within which inequalities were growing*'.¹¹² This is important, suggesting that the equalising tendency of partible inheritance could be offset or compounded by the freedom of

107 Neilson, 'Custom and the common law', pp.484, 498. See also D.C. Douglas, 'The Norman Conquest and English feudalism', *ECHR*, 9.2 (1939), 128-143: he suggests that feudalism was established slowly in the unstable times post-Conquest, and the Normans compromised with existing systems of customary law.

108 Barnwell, 'Kent and England', p.1-2; Homans, 'Rural sociology', p.36; Everitt, *Continuity and Colonisation*.

109 Jolliffe, *Pre-Feudal England*, p.13.

110 Overton, *Agricultural Revolution*, p.26 & Fig.2.1.

111 Witney, *Jutish Forest*.

112 Witney, *Jutish Forest*, pp.156-159.

disposition which characterised gavelkind tenure. He also emphasised the potential for those with a small inheritance to supplement their income with craft work, or wage labour, or to migrate to the town, a point raised by those looking at the origins of industrialisation.

In 1986, Alan Everitt, focusing on topography, place names, landscape and *pays* accorded less significance to racial origins than Jolliffe, and was less convinced of a Jutish origin or even a post-Roman date for gavelkind. However, he also thought that partible inheritance was responsible, in a period of rising population, for the increasing numbers of new farmsteads.¹¹³ His emphasis was on inheritance; he did not pursue the issues around the market in land, although he did discuss the rising prominence of lawyers to meet the increasing complexity of the law.¹¹⁴

Early Modern Politics and Society

With *The Community of Kent* (1966), Everitt brought the subject into the early modern period. This was predominantly concerned with political circumstances in the Civil War, but its significance for social history was as a reconstruction of a gentry community.¹¹⁵ He particularly emphasised the long-established nature of gentry families, at least in areas at a distance from London. He attributed to gavelkind, although under attack by the seventeenth century, the peculiar dominance of 'clans', small estates, a large number of minor gentry and yeomen, and what he described as a corporate feeling in families, features found elsewhere but particularly characteristic of Kent.¹¹⁶

Peter Clark's *English Provincial Society from the Reformation to the Revolution: Religion, Politics and Society in Kent 1500-1640* (1997), while a detailed account of Kentish gentry society, gave little space to gavelkind or even to partible inheritance.¹¹⁷ It was his view that the community of Kent was not as different from elsewhere as Everitt had suggested. I do not share his sense that Everitt, in *Change in the Provinces: the Seventeenth Century* (1969), backtracked on his earlier view. In a general study of

113 Everitt, *Continuity and Colonization*, p.179.

114 A. Everitt, *Change in the Provinces: The Seventeenth Century*, (Leicester, 1969), p.36.

115 Everitt, *Community of Kent*.

116 Everitt, *Community of Kent*, pp.46-47.

117 Clark, *Provincial Society*, p.xii.

provincial society Everitt was of necessity discussing generalities, but he emphasised local and regional individuality. His contention was always that Kent was different not in quality but in degree.¹¹⁸ Clark gave attempts to abolish gavelkind as one possible reason for unrest in the 1540s, though he countered this by saying that it was not so much disgavelling that was seen as a threat as the general attack on the rights of the 'peasants' and the impact of tithes.¹¹⁹ He failed, however, to distinguish clearly between attempts at abolition and private disgavelling Acts, which applied only to the manors and freeholds of a named landowner. The relevance of gavelkind to the land market for him was only that it gave lawyers '*the difficult task of adapting local gavelkind customs to the new economic pressures of the land market*'.¹²⁰

Land and Inheritance

One factor in the landscape pattern was inheritance practice. Christopher Chalklin described how gentry disgavelled or used wills and settlements to direct land to the eldest son, and mortgaged to provide for younger sons. Protected in this way, large estates were more stable than small, he claimed.¹²¹ For Lawrence Stone, however, mortgages led to indebtedness which was a cause of decline of the aristocracy, slow but inexorable.¹²² Chalklin's view was supported by Lloyd Bonfield on the basis of marriage settlements, but he attributed the stability to strict settlement, making the eighteenth century the period when smaller estates were most likely to lose out.¹²³ According to Chalklin, 'farmers' and tradespeople either divided their estates, or left them to their sons in common, and increasingly made no will so that custom took its course.¹²⁴ Reapportionment of shares, sale to one heir, or joint ownership, meant that the holding did not reduce in size, although the expansion of estates was inhibited. Such small estates were more unstable, due to lack of financial reserves of the smaller men to tide them over in bad times. He estimated that smaller estates were more likely to be mortgaged.¹²⁵ If Chalklin's interpretation were correct, the smaller men

118 Clark, *Provincial Society*, p.xii; Everitt, *Change in the Provinces*, pp.5-7.

119 Clark, *Provincial Society*, p.80, 121., n.39 on p.424.

120 Clark, *Provincial Society*, p.290.

121 Chalklin, *Seventeenth-Century Kent*, p.18.

122 L. Stone, *The Crisis of the Aristocracy* (Oxford, 1965).

123 Bonfield, *Marriage Settlements*.

124 Chalklin, *Seventeenth-Century Kent*, pp.55-57.

125 He gives no specific evidence, other than 'it is rare to find a bundle of title deeds' without one. See Chapter 6.

would be less stable and less established than Everitt found for the gentry, a view which the Somerden research does not support ([Chapter 3](#)). Despite his emphasis on small farms he implies that partition was in decline: '*it is possible that under the influence of gavelkind partition may have continued in the Weald until the sixteenth century*'; most assuredly it did ([Chapter 4](#)).¹²⁶

Zell's 1996 study *Industry in the Countryside: Wealden Society in the Sixteenth Century*, looked at the Weald specifically, but overlapping only the first fifty years covered by this thesis. He was particularly clear on the difficulties of examining land ownership in an area of multiple lordship and scattered property, and where manorial rentals, *inquisitions post mortem* and (in West Kent) inventories are few, and wills and deeds limited in their information. Zell identified in the sixteenth century the pattern Chalklin described for the seventeenth. His examination of 39 parishes using parish, estate and central records supported the view of small, scattered holdings; however while yeomen were more likely than gentry to divide their holdings, they did not do so where a property was very small.¹²⁷

The Land Market

Like Witney, Chalklin discussed the land market, suggesting that estates were commonly broken up and sold through lack of heirs, but could take a long time to accumulate through purchase, inheritance and marriage.¹²⁸ He described the sale of estates in Tonbridge through loss of heirs, and the sale of Crown and confiscated land, but considered that the former were exceptional and most of the latter were returned at the Restoration. This was a surprising conclusion since Joan Thirsk had deduced that return of land to their original owners under the new regime stalled very quickly.¹²⁹

Using an extensive range of sources: state papers, Chancery and Exchequer records, records of Canterbury Diocese, and borough and parish records and estate papers, Chalklin identified the late sixteenth century as a period when the gentry could make purchases of land and build up their estates, prosperity arising from rising rents and prices of foodstuffs. After 1620 this prosperity halted as a result of inflation, losses in

126 Chalklin, *Seventeenth-Century Kent*, p.69.

127 Zell, *Industry*, p.17.

128 Chalklin, *Seventeenth-Century Kent*, pp.52-55.

129 J. Thirsk, 'The Restoration land settlement', *Journal of Modern History* 26.4 (1954), 315-328.

the civil war and high taxation at the Restoration; he drew on the Tufton estate in East Kent for an example. For a wider view he looked at 85 larger estates in Hasted (1775), and the title deeds of 24 smaller properties. For the larger properties there were 65 sales in the seventeenth century, for the smaller properties, 47 sales.¹³⁰ This method of selection would be met with methodological objections today: using such different sources is unlikely to give a fair comparison. He had to omit the estates for which Hasted gave only an incomplete history - and Hasted was not always reliable - and the basis of selection of the title deeds is unclear.¹³¹ The larger estates were spread unequally over the regions of Kent, and no split given for the smaller ones. Comparing a whole estate with a single property out of context is likely to be misleading; not least, comparing 85 large estates with only 24 smaller ones will give rise to distortions.¹³² This study looking at one area in detail avoids these difficulties; it includes large and small estates, but in the proportions in which they occur.

Farm Size, Leasing, and Rural Industry

Zell's *Industry in the Countryside*, was a response to the proposition made by Homans in 1953, and backed up by Thirsk in 1961 and Mendels in 1972, that areas of partible inheritance fostered by-employments.¹³³ He described an economy and society in which gavelkind, combined with weak manorialisation, pastoral agriculture and access to fuel and water, provided the preconditions, and population rise in the sixteenth century the stimulus, for the rapid growth of rural industry.¹³⁴ The theory of 'proto-industry' sought to explain the origins of the industrial revolution, implying that areas of rural industry would eventually develop the full factory form.¹³⁵ In the case of Kent it did not, and the question of de-industrialisation is equally important to the debate; was it a 'failure', or the result of inevitable specialisation in areas with ready access to

130 Chalklin, *Seventeenth-Century Kent*, pp.53-54.

131 At the time he wrote, the collection of title deeds into the County Record Offices was at an early stage.

132 R.S. Schofield, 'Sampling in historical research', in E.A. Wrigley ed., *Nineteenth-Century Society: Essays in the use of Quantitative Methods for the Study of Social Data*, (Cambridge, 2008), Chapter 5; Burke, *History and Social Theory*, pp.33-38; R. Floud: *An Introduction to Quantitative Methods for Historians*, (1972).

133 Homans, 'Rural sociology', p.38; J. Thirsk, 'Industries in the countryside', in F.J. Fisher, *Essays in the Economic and Social History of Tudor and Stuart England* (Cambridge, 1961); F.F. Mendels ' "Proto-industrialisation": the first phase of the Industrialization process', *JnlECh* 32 (1972), 241-261.

134 Zell, *Industry*, pp. 3-8.

135 S.A.J. Keibek & L. Shaw-Taylor, 'Early Modern Rural by-Employments: A Re-Examination of the Probate Inventory Evidence', *AgHR* 61:2 (2013), 244-281; R. Houston & K. Snell, 'Proto-industrialisation? Cottage industry, social change and industrial revolution', *Historical Journal* 36.1 (1984), 473-492; C. Coleman, 'Proto-industrialisation: a concept too many?', *ECHR* 36 (1983), 435-448.

coal?¹³⁶ Subsequently, the evidence for by-employments among men, based on probate inventories, has been questioned.¹³⁷

Zell deduced that the land market was active by the the mid-sixteenth century, and continued to rise in the early seventeenth. Though he was unable to quantify it, he thought that leasing of land was ubiquitous, based on inquisitions and leases from large estates. For smaller properties, he was dependent on the wills of landowners which he found did not mention tenants as a matter of course.¹³⁸ Chalklin found that ecclesiastical landowners and gentry were the most likely to lease out their land, keeping perhaps a home farm in hand if they were resident, but even small landowners could be landlords. A farmer might inherit land at a distance, or he might be a coheir. Evidence was drawn from the 1694-98 Land Tax in three parishes, where 60%-80% of land was tenanted, and rentals of four manors of the Lennard family in 1642, where it was at least 55%. For the terms of the leases, Chalklin looked at only a small number. On this slender basis he drew the conclusion that, like elsewhere, rents rose until about 1620, fluctuated for the next thirty years, then fell slightly after 1660. Leases were 21 years or shorter.¹³⁹

Chalklin noted the inadequacy of evidence for the size of farms (units of production) in the seventeenth century. From a few manorial rentals, descriptions and occasional data he suggested that while arable farms on the fertile plain were increasing in size throughout the century, supplying London with corn, those in the Weald were smaller. The methods of engrossment available to landowners in Kent were limited to consolidating plots already in their ownership, and small-scale purchases. He estimated that more than half of all holdings were probably less than 50 acres, and two-fifths of the population either landless or land-poor.¹⁴⁰

During the 1990s and early 2000s the *Kent History Project* series was published,

136 L. Flisher & M. Zell, 'The demise of Kent's broadcloth industry in the seventeenth century: England's first de-industrialisation', *AC* 129 (2009), 239-246; B. Short, 'The de-industrialisation process: a case study of the Weald, 1600-1800, in P. Hudson (ed.), *Regions and Industries* (Cambridge, 1989).

137 Thirsk, 'Industries'; Keibek & Shaw-Taylor, 'Early Modern Rural by-Employments'.

138 Zell, *Industry*, p.37. He makes no mention of the bequests of tenants.

139 Chalklin, *Seventeenth-Century Kent*, p.58-67; Habakkuk thought that in the country as a whole rents rose at the end of the seventeenth century: H.J. Habakkuk, 'English landownership, 1680-1740', *ECHR* 10.1 (1940), 2-17. Chalklin's three Land Tax parishes were Meopham in north-west Kent and Monckton and Eastry in East Kent, and those of the Lennard family in the parishes of Keston, West Wickham and Eynsford in north-west Kent.

140 Chalklin, *Seventeenth-Century Kent*, pp.68-71.

including articles by many of the modern specialists. Four volumes are specifically relevant: *Early Modern Kent 1540-1640*, and three volumes covering the economy, government and religion and society after 1640. Also of interest are the books by the historical geographer Peter Brandon: *The South East from AD1000*, *The North Downs*, and *The Kent and Sussex Weald*, covering a range of subjects with a topographical focus. The articles in these books have been discussed throughout the text as they become relevant.¹⁴¹

Local studies of direct relevance are Gordon Ward's *A History of Chiddingstone*, and *Sevenoaks Essays*, Laurence Biddle's *Leigh in Kent*, Henry Somers-Cocks' *Edenbridge*, and Guy Ewings's *A History of Cowden*.¹⁴² Others not directly applicable to the area or time-scale of this research but of interest are referred to in the text as they arise, including the work of Lorraine Flisher and Anthony Poole on Cranbrook, Jill Eddison, Stephen Hipkin and others on Romney Marsh, and Christopher Chalklin on Tonbridge.¹⁴³

Implications

Social Character of South-West Kent

The historiography of gavelkind has generally seen Kent as having a distinctive social character: individualistic, insular, mobile and less stratified than elsewhere.

Individualism is assumed from the lack of communal structures, but there is an important distinction between partition implying severalty and partibility which could include holding in common. Jolliffe suggested that concentration on self-determination had resulted in the underestimation of the communal resulting from

141 Zell ed., *Early Modern Kent*; Armstrong ed., *The Economy of Kent*; Lansberry ed., *Government and Politics in Kent*; and Yates, Hume & Hastings ed., *Religion and Society in Kent*; Brandon, *South East*; *North Downs*; *Kent and Sussex Weald*.

142 L. Biddle, *Leigh in Kent 1550-1900* (Tonbridge, 1991); G. Ward, *Sevenoaks Essays* (Sevenoaks, 1931, reissued 1980); G. Ward and others, *A History of Chiddingstone* (Chiddingstone, 1939, reissued 2013); Ewing, *Cowden*; H.L. Somers-Cocks, *Edenbridge* (Edenbridge, 1912, reissued 1995).

143 A.R. Davison, *The Agrarian Economy of Romney Marsh and its Hinterland, with special reference to the Knatchbull Estate*, unpublished PhD thesis, University of Canterbury (2011); A. Poole, *A Market Town and its Surrounding Villages: Cranbrook, Kent in the Later Seventeenth Century* (Chichester, 2005); J. Eddison, *Romney Marsh: Survival on a Frontier* (Stroud, 2000); C.E. Brent, *Employment, Land Tenure and Population in East Sussex*, unpublished PhD thesis, University of Sussex (1973); J.M.L. Gulley, *The Wealden Landscape in the Seventeenth Century*, unpublished DPhil thesis, University of London (1960). Lorraine Flisher's unpublished PhD thesis of 2013 was not open for access at the time of writing.

'family solidarity'.¹⁴⁴ Medieval references to ownership of land by *fratri, heredes, socii or pares*, are reflected in the early modern period in references on estate maps and in documents to heirs or coparceners.

Everitt saw Kentish society of the sixteenth and seventeenth centuries as intensely insular; despite political differences, the gentry society was held together by kinship and identity.¹⁴⁵ He accepted the view of Laurence Stone that after 1660 there was rising snobbery and separation of the gentry from the community, 'court' from 'country'. However, he thought Stone exaggerated, giving examples of Kentish gentry and their sons involved in trade, and managing their estates in person.¹⁴⁶ The gentry of the provinces, especially before 1640, were embedded in their local communities, not least because of the inaccessibility of rural areas: '*Quite close to London, for example in Holmesdale and much of the Kentish downland, the ancient ways still lingered surprisingly*'.¹⁴⁷ What he thought true of the upland was doubly true of the wet and impenetrable Weald.¹⁴⁸ However, the expansion of towns generally brought people in from the countryside, and they became a place for leisure as well as business.¹⁴⁹ The gentry bought town houses, even in provincial towns like Maidstone, and they played a part in the spread of theological ideas, and in the notion of county identity.¹⁵⁰

Looking at social mobility Everitt found significant differences between Suffolk, where the gentry were newcomers, and Kent (excepting the metropolitan border), where they were of old stock and much inter-related.¹⁵¹ '*Directly or indirectly, the custom of gavelkind tenure had led to the frequent practice of setting up younger sons of the family with a small estate of their own*'.¹⁵² Although this was true elsewhere, it was not to the same degree as he found in Kent: in the Vale of Holmesdale (between the chalk and sandstone hills) 50% of gentry families were local, and in the Weald virtually all. Even incomers were often married to a local heiress. Most families dated back to the fifteenth century, many from earlier, and their capacity to survive the vicissitudes of

144 Jolliffe, *Pre-Feudal England*, p.22-30.

145 Everitt, *Change in the Provinces*, p.22; *Community of Kent*, pp.33-55.

146 A. Everitt, 'The Peers and the Provinces', *AgHR* 16.1 (1968), p.63.

147 Everitt, 'Peers and the Provinces', p.66.

148 Even today, the small lanes in the Weald are often flooded in winter and in bad years, such as December 2013, areas south of the Medway can be cut off from the north.

149 Everitt, *Change in the Provinces*, pp.25-6.

150 Everitt, *Change in the Provinces*, p.38.

151 A. Everitt, 'Social Mobility in Early Modern England', *P&P* 33 (1966), 56-73.

152 Everitt, 'Social Mobility', p.61.

the seventeenth century exceeded that of the newcomers. Those who rose in the social scale did so gradually.

If towards the end of the seventeenth century society became more stratified and rigid, Everitt found this was less marked in Kent than in Northamptonshire. The dominance of the larger owner in Northamptonshire he ascribed to an increasing sense of caste, taxation on the gentry, the unification of estates through marriage, and the increasing universality of primogeniture among the aristocracy. Younger sons could not rise through trade, industry and intensive farming there as they could in Kent. The gentry had profited by enclosures and deforesting, whereas the Kentish gentry were of modest wealth but as time went on were more likely to lease out their property than to farm themselves, expanding the market in leases.¹⁵³

For Homans, partible inheritance, a commercial market in land, weak manorial organisation, joint families and scattered hamlets went together as elements of a social system, as important as the economy in historical explanation.¹⁵⁴ To partible inheritance could be ascribed the density and stability of population in Kent and East Anglia, the dominance of the cloth trade there, a commercial market in land as early as the thirteenth century, varied holding sizes and a 'more fluid' system of social status.¹⁵⁵ The system was tolerated by the lords because free tenants paid their dues as rent, easily apportioned, rather than services. Such was the social context of gavelkind.

Wider Historical Implications

The issues raised in these studies have had a wider application than a study of Kent. Developing Homans' concept of a rural sociology, there followed a debate on the origins and social consequences of partible inheritance. It was seen as a factor in family organisation, settlement size, holding size, the increase or otherwise of population, the commercialisation of interests in land, the extent of manorial development, fluid status systems, enclosures, the end of villeinage, and the development of new institutions. It led on to a debate on the nature of rural industry

153 Everitt, 'Social Mobility', p.62-7.

154 G.C. Homans, 'Partible inheritance of villagers' holdings', *ECHR* 8 (1937-8), 48-56; 'Rural sociology', p.42.

155 Homans, 'Rural sociology', p.38.

as a precursor to factory industry.¹⁵⁶

Two further historical debates are relevant: the development of agrarian capitalism, and the decline of the yeoman. The debate about the reasons for the increased agricultural productivity and the timing of the emergence of 'capitalist' as opposed to 'family' farms which dates back to Max Weber and Richard Tawney, still exercises historians.¹⁵⁷ Gérard Béaur and Jean-Michel Chevet have said that 'institutional' explanations based on land tenure '*see the redefinition of ownership rights as the starting point of the irreversible process towards a capitalist society and economy*': reform of property rights to remove communal systems and create a free and active land market was a necessary condition for agrarian development.¹⁵⁸ Kent's freeholds and its land market are significant.

Whittle highlighted the connection between the end of unfree tenures and increasing landlessness in the sixteenth century. The disadvantages of customary land discouraged competition, and a consequence of their end was that poorer and more vulnerable manorial tenants lost out to the more prosperous who were the real architects of engrossment.¹⁵⁹ Anxieties about the decline of the small freeholder have been raised periodically over the centuries, from Hugh Latimer's sermon to Edward VI in 1549 to Arthur Johnson's investigation in 1909.¹⁶⁰ Concern about the increasing dominance of large owners led to the 1873 *Return of Owners of Land*, which seemed to confirm the suspicion that land was concentrated in very few hands. The fear was that the yeoman, considered an important part of the social fabric of the country not least for his role in the administration of the parish, was being driven out. Since then a debate has taken place about the extent of this supposed decline, and its timing and

156 S.A.J. Keibek & L. Shaw-Taylor, 'Early Modern Rural by-Employments: A Re-Examination of the Probate Inventory Evidence', *AgHR* 61:2 (2013), 2444-281; Zell, *Industry*; R. Houston & K. Snell, 'Proto-industrialisation? Cottage industry, social change and industrial revolution', *Historical Journal* 36.1 (1984), 473-92; D.C. Coleman, 'Proto-industrialisation: a concept too many?', *ECHR* 36 (1983), 435-448; Mendels, "'Proto-industrialisation" '; Thirsk, 'Industries in the countryside'; Homans, 'Rural sociology', p.38.

157 J. Whittle, 'Land and people', in K. Wrightson, ed., *A Social History of England 1500-1750* (Cambridge, 2017); J. Whittle, *Landlords and Tenants in Britain, 1440-1660* (Woodbridge, 2013); Shaw-Taylor, 'Agrarian capitalism'; R.H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912); M. Weber *The Protestant Ethic and the Spirit of Capitalism* (1905, trans T. Parsons, London, 1930).

158 G. Béaur & J-M. Chevet, 'Institutional Change and Agricultural Growth' in Béaur et al. eds. *Property Rights, Land Markets and Economic Growth in the European Countryside, Thirteenth to Twentieth Centuries* (Turnhout, 2013), p.19.

159 Whittle, *Agrarian Capitalism*, pp.306-9.

160 H. Latimer, 'The decay of the yeomanry', in A. Quiller-Couch, ed., *The Oxford Book of English Prose* (Oxford, 1930), p.37; A.H. Johnson, *The Disappearance of the Small Landowner* (London, 1909).

causes.¹⁶¹

These debates have typically given a causal role to enclosures, engrossment, individualisation of title, and the removal of common rights, stimulating a free market in land. Robert Allen contested the accepted paradigm for agricultural change when he dated advances in productivity to the sixteenth and seventeenth centuries and placed them in the open fields of the Midlands. This effectively removed enclosure as a stimulus, and by association the capitalist farm structure.¹⁶² Indeed, he argued that the small farmer was more flexible and adaptable to change than the large, supporting Kerridge against Tawney, and Clark against Overton, whose work on probate inventories (including Kent) emphasised the eighteenth century as the period of greatest change.¹⁶³ The recent work of Broadberry and others on the economy has suggested that there was no single turning point at which productivity increased.¹⁶⁴ All now recognise the relevance of region and *pays* (landscape type) in variations in the model.

If gavelkind tenure was not quite the exemplar of the 'perfect, absolute property rights' described by Béaur and Chevet, it was certainly freehold and individualistic; moreover, since there was little unenclosed land and common rights were less dominant in the economy than elsewhere, it has relevance for this debate.

161 J. Broad, 'The fate of the Midland yeoman: tenants, copyholders and freeholders as farmer in North Buckinghamshire, 1620-1800', *C&C* 14.3 (1999), 325-347; J.V. Beckett, 'The decline of the small landowner in eighteenth- and nineteenth-century England: some regional considerations', *AgHR* 30.2 (1982), 97-111.

162 R.C. Allen, 'Tracking the Agricultural Revolution in England', *ECHR* 52:2 (1999), 209-235; and *Enclosure and the Yeoman*.

163 E. Kerridge, *The Agricultural Revolution* (London, 1967); Tawney, *Agrarian Problem*; Overton, *Agricultural Revolution*; G. Clark, 'Common sense: common property rights, efficiency, and institutional change', *JECH* 58.1 (1998), 73-102.

164 S. Broadberry, B.M.S. Campbell, A. Klein, M. Overton & B. van Leeuwen, *British Economic Growth 1270-1870* (Cambridge, 2015), Chapters 2 & 3. Richard Hoyle makes this point most clearly in his review in *Agricultural History Review* 66.1 (2018), 112-131.

IV: Summing Up

Most examinations of gavelkind have been concerned with partible inheritance, and the lesser customs of dower, escheat and wardship have been less considered. Gavelkind is often treated as a residual system of inheritance, largely side-lined in the early modern period by the ubiquitous use of wills and settlements. This study examines this proposition and puts it into the perspective of the other features of the custom as demonstrated in particular families. It considers the effect of the presumption in its favour, and of the demographic, economic, and social context in which it operated.

Since '*land property dominates not only the exercise of power but more generally the archival record of the past*' our view of the past is mediated through the survival of documents relating to land.¹⁶⁵ Manorial rolls and estates records have provided the basis for extensive and illuminating research, but the former emphasise customary tenants and the latter the aristocracy. This study, by methods of reconstruction, emphasises the small freeholder, the yeoman, who has too often been eclipsed in the record. This is achieved through the systematic analysis of title deeds and wills, supplemented by maps and manorial, parish, and other records.

Studies of the whole county, or even of the Weald, are not able to provide statistical information on a common base of time and place. This study looks at a single local area over a period of one hundred and fifty years, with a consistent base of families and properties. A history of 150 families and over 400 properties has been created which, although not at the level of detail achieved by French and Hoyle for Earls Colne, nevertheless allows the movements in holdings if not individual plots to be tracked.

The picture of Kent in the historiography is one of a landscape of hamlets dominated by family groups, perhaps the result of partition of a homestead. Fields were small and enclosed, although there was common meadow and marsh. Freedom of disposition led to a free market in land so that the social impact of partition of properties was varied. Enclosure and freehold ownership provided the ideal conditions for a capitalist economy to develop. The social set-up was 'individualistic', but this was mitigated by

165 P.J. Geary, 'Land, Language and Memory in Europe 700-1100', *TRHS* 9 (1999), p.170.

co-operation between coheirs either holding in common or in severalty but leased to one heir. From this was derived a 'corporate' feeling (Everitt) or 'family solidarity' (Jolliffe). Small estates prevented (or slowed) the rise of large estates. Gentry and yeoman families, other than in the north-west near London, were of old stock and much intermarried. Some historians have suggested that gavelkind created non-viable holdings and family instability, others have disagreed. These propositions are examined in the chapters which follow.

CHAPTER 2 : GAVELKIND IN PRACTICE

I. Introduction: The Sixteenth-Century Community

Introduction

The first question the study set out to test was whether the provisions of gavelkind were continuing to have an impact on the people of Kent by the early modern period. This chapter describes the community of Somerden in the late sixteenth century, then the features of gavelkind as experienced in these families. It then discusses the ways in which the applicability of the custom was established, and finally at the extent of gavelkind lands.

Forty-two families dominate the record of land ownership in Somerden. The **Appendix** shows them ranked by the frequency of the appearance in the parish registers 1550-1599, together with the properties with which they are mainly associated. (Hever registers do not survive from the period so its families are added to the end of the list.) These families should be seen in geographical context, as they would have seen themselves. Maps 1 and 4 are extracts from Edward Hasted's study of Kent published in 1775, showing the area.¹ These exemplify the comments by Christopher Chalklin and Alan Everitt that the landscape of Kent was one of hamlets rather than villages.² The yeomen family properties were grouped together, sometimes giving their name to the hamlet with which they were associated: the Whistlers at Whistlers Green, the Medhursts of Medhurst Row, the Stanfords of Stanfords End, the Cares of Cares Cross, suggestive of long settlement. This pattern supports the idea that hamlets were originally homesteads, and subdivision of property consequent on gavelkind had expanded them, the occurrence of side-by-side farmsteads with the adjectives 'Great' and 'Little' being further evidence.

1 E. Hasted, A History and Topographical Survey of the County of Kent (Canterbury, 1797).

2 See Chapter 1.

Families and Property in the Sixteenth Century

The Aristocratic Estates

There were three aristocratic estates centred in the hundred: Bore Place, Penshurst Place, and Hever Castle (*Map 4* at the end of the text), together with a fourth estate, Starborough Castle, with its seat outside the hundred. The old road to Somerden from Sundridge, the ancient manor to which the den was originally attached, passed down the hill through the hamlet of Bough Beech, crossed a tributary of the river Medway at Cransted Mill and met Chiddingstone Street at Tye Green.³ The river divided the large central parish of Chiddingstone into northern and southern administrative parts.

In 1550 Bore Place was the dominant property in the northern part, holding the manors of Millbrook and Bowsells and much of the land around the hamlet of Bowbeech or Bough Beech (*Case Study 1, page 43*). The estate reached north into Sundridge and south to the river. In the fifteenth century Bore Place had been acquired by Sir Robert Rede (d.1519), Chief Justice of the Common Pleas, through marriage with a local heiress.⁴ His daughter Bridget had carried it into a junior branch of the Willoughbys of Middleton and Wollaton.⁵ Bridget herself died in 1558 and the bulk of the property was inherited by her grandson. The Willoughbys were probably not resident for much of the year, having estates elsewhere and a focus on the courts at Westminster. In the early seventeenth century Sir Percival Willoughby married the heiress of the main branch of the family at Wollaton and sold his Kentish lands.⁶ Bernard Hyde, a London merchant, acquired the estate and a coat of arms in 1609-10.⁷ The Hyde family owned the property until the nineteenth century, but progressively consolidated their estate around Sundridge Place to the north.

Other estates north of the river were Broxham Manor to the west of Bore Place and Sharps Place to the east, both forming part of larger aristocratic estates for most of the period.

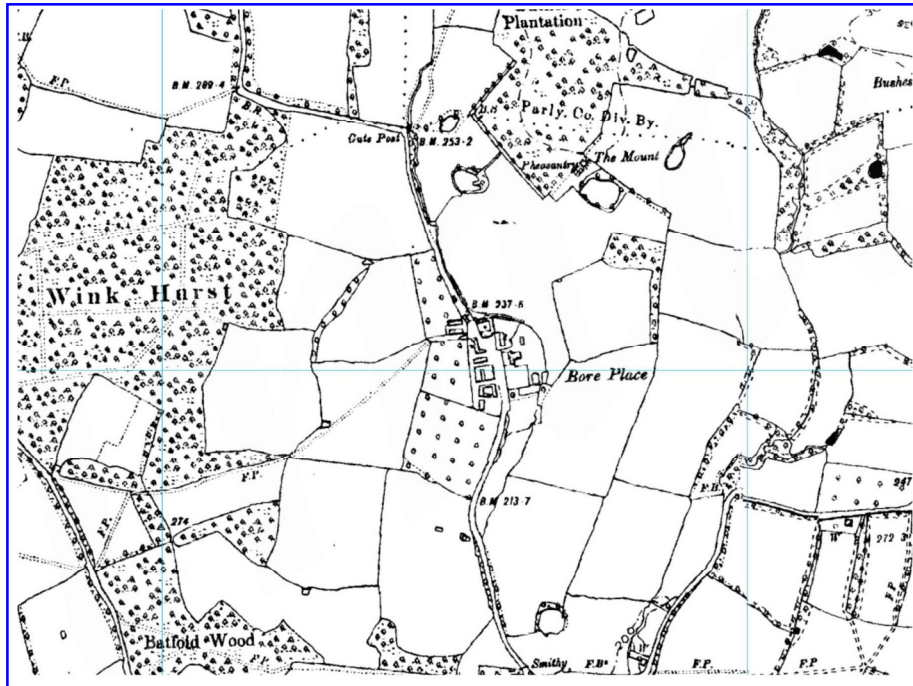
3 The River Eden is now so called as a misinterpretation of the place name Edenbridge, 'Eadhelm's Bridge': J. Glover, *Place Names of Kent*, (1976).

4 A. Everitt in 'Social mobility in Early Modern England', *P&P* 33 (1966), 56-73, highlights this feature of incomers. Sir Robert Rede was the endower of the Cambridge University Rede Lectures [TNA PROB 11/19]. NUL Mi5 161-01-43, 168-51.

5 W.H. Stevenson, Report on the Manuscripts of Lord Middleton at Wollaton Hall (London, 1911).

7 W.G.D. Fletcher, 'The Hydes of Bore Place and Sundridge', *AC* 22 (1897), 112-122.

Case Study 1: Bore Place, An Aristocratic Estate



Bore Place in 2015

Brief History

- 1550 Owner Bridget, widow of Sir Thomas Willoughby, who had disgalvelled by Private Act in 1540.
- 1558 Bequeathed by Bridget to grandson Thomas, eldest son of eldest son, in tail male.
- 1583 Settled on Percival, eldest son, in tail male, with life interest retained by Thomas. He married his cousin Bridget Willoughby and mortgaged the estate to execute his father-in-law's will.
- 1610 Sold by Sir Percival Willoughby to Bernard Hyde.
- 1631 Inherited by Bernard Hyde, eldest of five sons.
- 1655 Death of Bernard, leaving four sons. Descended to eldest son Bernard Hyde.
- 1685 Death of Bernard without heirs, inheritance by brother Humphrey (1636-1719), who also inherited Sundridge Place from his uncle. Descended down to eldest son in two more generations.
- 1759 Sold to the Streatfeild family.
- Gap in the record.
- 1841 Owner Mary Whitton occupier Robert Marchant.

8 The location map for this and the following Case Studies is from Hasted, *History*, detailed map from OS 1870, Documentary sources: KHL C U908 P58, T118, T119; NUL Mi5 161, 162, 168, 171, 173, 175, 179, 182; TNA PROB 11/19, 40, 88, 252.

South of the river, before diversion in the late eighteenth century around the park of High Street House (now Chiddingstone Castle), the old road passed due south through Helde or Hill Hoath to Rendsley Hoath and on to Penshurst, Hever and Cowden. Here were two aristocratic estates: Penshurst Place in the east and Hever Castle in the west. The Sidneys of Penshurst had their origins in the Weald, prospering in the iron fields of Sussex to become Tudor courtiers; they acquired their estate after the execution of the Duke of Buckingham. After the death of the poet soldier Sir Philip Sidney in 1586, the estate passed to his brother who became the first Earl of Leicester. As courtiers they must have been in Kent relatively seldom; however it was their main country seat, many were brought up there, and it was one of the first properties to feature in the literary and artistic country house movement.⁹

The Catholic Waldegraves were also immigrant to Kent, acquiring Hever Castle when Anne of Cleves died, promoted by Queen Mary. Sir Edward Waldegrave, the first baronet (c.1568-1650), was an active cavalier despite his age, and he died in exile.¹⁰ His great-grandson came back into favour under the later Stuarts and married an illegitimate daughter of James II by Arabella Churchill. Their son was the first earl. The family was centred on their estate in Somerset; Hever Castle was let for most of the period, and sold in the eighteenth century.

In addition to the owners with their seats in the hundred, a significant portion of the south part of the parish of Chiddingstone was owned in 1550 by the Lords Burgh of Lincolnshire as part of the estate of Starborough Castle west of Edenbridge. Thomas (the first father-in-law of Katherine Parr), had the Kentish estate from his mother Anne Cobham, with the manors of Chiddingstone Cobham and Starborough.¹¹ He was succeeded in 1550 by his third son William (1521-1584); by 1600 most of the estate in Chiddingstone had been mortgaged to the Streatfeild family. The Castle itself was slighted in the Civil War and no longer survives.

9 *To Penshurst* by Ben Jonson (1572-1637) exemplifies this tradition. Sir William Temple (1628-1699), proponent of rural retirement, was a nephew by marriage of the Rector of Penshurst, and frequently visited.

10 J. Burke, *A General and Heraldic Dictionary of the Peerage and Baronetage of the British Empire* (London, 1832) Vol.2.

11 KHLC U908 M2.

The Gentry

Among the forty-two families in the **Appendix**, three gentry estates stand out, those of the Seyliards, the Wallers and the Streatfeilds. The area south of the hamlet of Four Elms in Hever parish was occupied by the Seyliard family. They were one of the oldest families in the county; they had owned Syliards since about 1200, and later acquired Gabriels and Delaware through marriage.¹² In the fifteenth century Delaware on the south bank of the Medway, bestriding the boundary of Edenbridge and Hever, became their main residence (*Case Study 2, page 46*).¹³ The owner in 1550 was John Seyliard; his five younger brothers held nearby properties. Their descendants were particularly influential during the Civil War. Their gentry status is emphasised by their relative detachment from their neighbours; intermarriages were few.

The main property in Leigh, the small Hall Place estate, had been part of the Duke of Buckingham's confiscated property but at the end of the sixteenth century belonged to a junior branch of the Waller family of Groombridge Place, who remained there until the middle of the seventeenth century, after which it changed hands several times and was let for most of the period.¹⁴ Expanding an estate in this area was inhibited by the dominance of Penshurst Place to the south. The response of George Children to this difficulty is discussed in [Chapter 4](#) on partition and inheritance.

As it met Chiddingstone Street at Tye Green, the 'Quene's highwaie' looked down the main street, where the largest house, on a vantage point, was High Street House, the home of the Streatfeild family. Henry Streatfeild was the second generation of the family here, although its roots in the Weald are probably older; a brother Richard lived across the river at Chested, east of Somerden Green. Henry's only son, Richard, prospered in the iron industry, and had established the fortunes of the family by the time of his early death in 1601.¹⁵ Henry and Richard described themselves as yeomen, but acquisition of Lord Burgh's manors through mortgage moved Richard's sons into the gentry class. Unlike the Seyliards, they were part of the local community, marrying into local families.

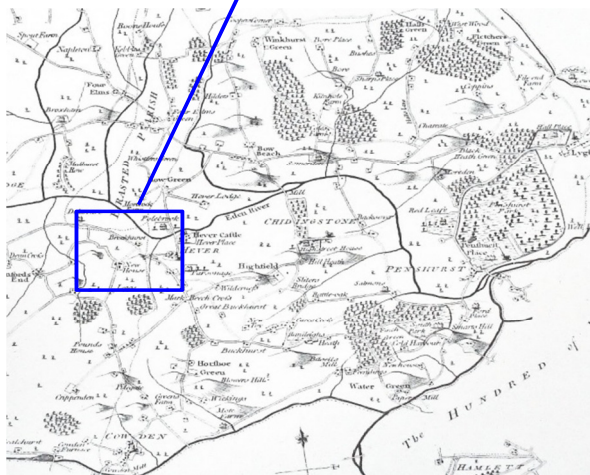
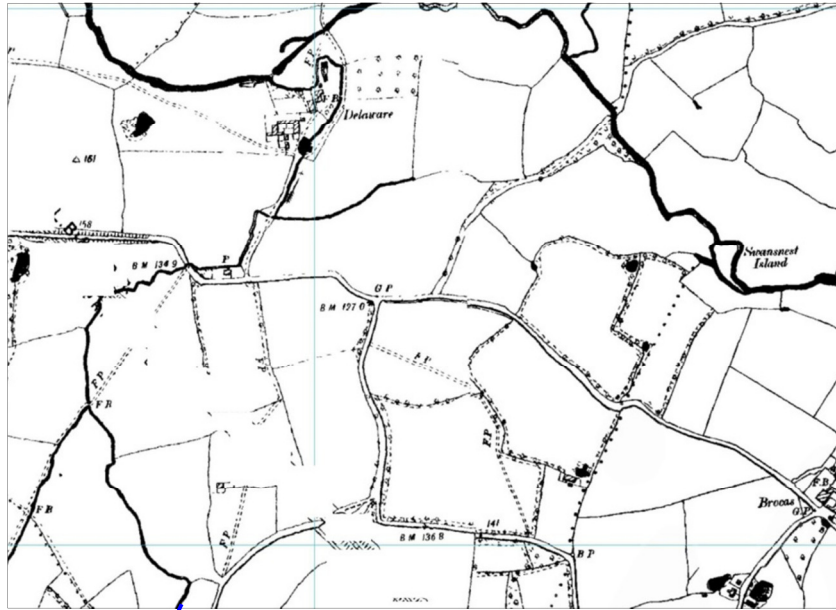
12 KHLC U908 Z20 is a modern transcript of this charter.

13 Hasted, *History*: 'Hever'.

14 L. Biddle, *Leigh in Kent* (Tonbridge, 1991), p.20; KHLC U908 T185.

15 KHLC U908 T302, T303.

Case Study 2: Delaware, A Gentry Estate¹⁶



Brief History

- 1536 Thomas Seyliard left it to eldest son John. Thereafter descended father to eldest son.
- 1559 Death of John Seyliard leaving one son, William.
- 1596 Death of William Seyliard leaving eight children.
- 1649 Death of Thomas Seyliard leaving eleven children.
- 1663 Delaware leased to William Streatfeild.
- 1668 Death of Sir John Seyliard, 1st Baronet, in Chiddingstone. He left one son, Thomas, and four daughters.
- 1670 Thomas Seyliard married Frances Wyatt of Boxley Abbey.
- 1676 Renewal of William Steatfeild's lease.
- 1692 Death of Sir Thomas Seyliard, 2nd Baronet, of Boxley Abbey.
- 1699 Seyliard estate vested in trustees by Act of Parliament, to be sold to pay portions. Conveyance to Henry Streatfeild. Tenant William Streatfeild.
- 1841 Owner Henry Streatfeild, occupier David Whitby

16 KHLC U116 T17, T38; U184 T2; U908 P14, T15-T23, T46, T47, T48; TNA PROB 11/39, 55, 60, 87, 145, 155, 162, 180, 195, 211, 216, 223, 283, 322, 327; LPL VH96/6026, 6027.

The Yeomen

Shortly after Tye Green the main road going south divided into lanes to Rendsley Hoath south and Hever west. The Woodgates were large yeoman landowners at Rendsley Hoath. They occupied Woodgates for at least four centuries, later building a new house, Stonewall Park, next door. They also owned a farm called Truggers across Rendsley Hoath, and built up ownership of much of the land between that and Peshurst. In the late sixteenth century Peter Woodgate, a clothier, occupied Truggers, his brother, father and uncle held Woodgates and other property round the hoath.¹⁷ His son Walter was to inherit Truggers, and William was to inherit Stonewall Park.¹⁸ By the end of the seventeenth century they had become gentry.

The Ashdowne family were prominent in the community, owning property around Rendsley Hoath from at least the mid fifteenth century.¹⁹ In 1550 Great Batts, overlooking the hoath, belonged to Henry, son of Richard, from whom it passed to his son John (c.1545-1615) (*Case Study 3, page 49*).²⁰ In 1580 John acquired a share in the Manor of Rendsley from the Willoughbys of Bore Place, and other purchases included Geers and Riddens north of the hoath. High and Low Buckhurst west of Batts were in Ashdowne hands for much of the period.²¹ John's cousin Henry and Henry's son John held other properties including Gilridge, Larkins and a house and land in The Street ('Ashdowne's').²² Larkins remained in the Ashdowne family until a failure of male heirs in 1666, Batts and Buckhurst descended through the family until the eighteenth century, but Geers and Gilridge changed hands several times.²³

Bassetts Mill, as its name suggests, had been in the Bassett family for many years by 1550. The owner at the end of the century was Henry Bassett (c.1540-1585). Henry had a numerous family. By the time of his death he had already made three purchases of property to leave to his younger sons, so that, with the addition of money portions, he was able to leave to his son Thomas Bassetts Mill '*w[hi]ch did discende and come*

17 G. Woodgate, *The History of the Woodgates of Stonewall Park and Somerhill* (Wisbech, 1910).

18 NUL MiM 198; KHLC U908 T143; LPL VH96/6874.

19 Manorial records 1485 KHLC U908 M3; will of John Ashdowne 1488 TNA PROB 11/8.

20 KHLC U908 M3. Walnut Tree Farm next door, a small property, was formerly known as 'Little Batts'.

21 NUL Mi5 161-02-6.

22 John Ashdowne's house is not named in the documents; it was subsumed into the curtilage of High Street House in the later seventeenth century by which time the house was gone.

23 KHLC U908 T120, T178.

unto me by waye of Inheritance from John Basett my fath[er]'.²⁴ Henry was followed by his son, grandson and great-grandson.

The Combridges were a very old family, centred to the south of Rendsley Hoath, around Finch Green and Walters Green in Penshurst. In the late sixteenth century Robert Combridge occupied Coldharbour and his sons inherited Hawden and Coldharbour respectively. Robert's brother, John Combridge, owned Walter's Green to the west, and the family also owned Newhouse or Harts, Frienden, Keysden and Knights, all clustered together.²⁵

The Hayward family occupied several properties around Helde or Hill Hoath: Tye Haw, Helde House, Lockskinners, Stones Land.²⁶ The Everest family were located predominantly in the Hale area east of Bore Place, the early place name of Everhurst was found here suggesting long establishment. The Piggott family were neighbours of the Haywards at Hill Hoath with property spreading south towards Rendsley Hoath, notably Withers and Skinners.²⁷ The Birstys were incomers to Hever from Sussex, brothers Thomas and William occupying property around How Green purchased from the Seyliards in the late sixteenth century. The Beechers held Beechers and Vexour on the borders of Chiddingstone and Penshurst.

Others making up the twenty-one yeomen families holding properties at various times include Wickenden, Jessup, Goldsmith, Walters, Hollamby, Saxby, Rivers, Constable, Tichborne, Medhurst, Moyses, and Still. In addition four yeomen living just outside the hundred were prominent landowners within it: the Children, Dixon, Holmden and Jemmett families. The remaining families were known only as tenants, tradesmen or husbandmen: Rogers, Crondwell, Skinner, Wells, Budgen, Fullman, and Salmon. The Hunter, Beech, and Harris families disappeared shortly after 1600. These forty-two families provide the examples which follow. In the next section the features of gavelkind are exemplified in the experience of five of these families: the Haywards, the Everests, and their neighbours the Bassetts, Combridges, and Beechers.

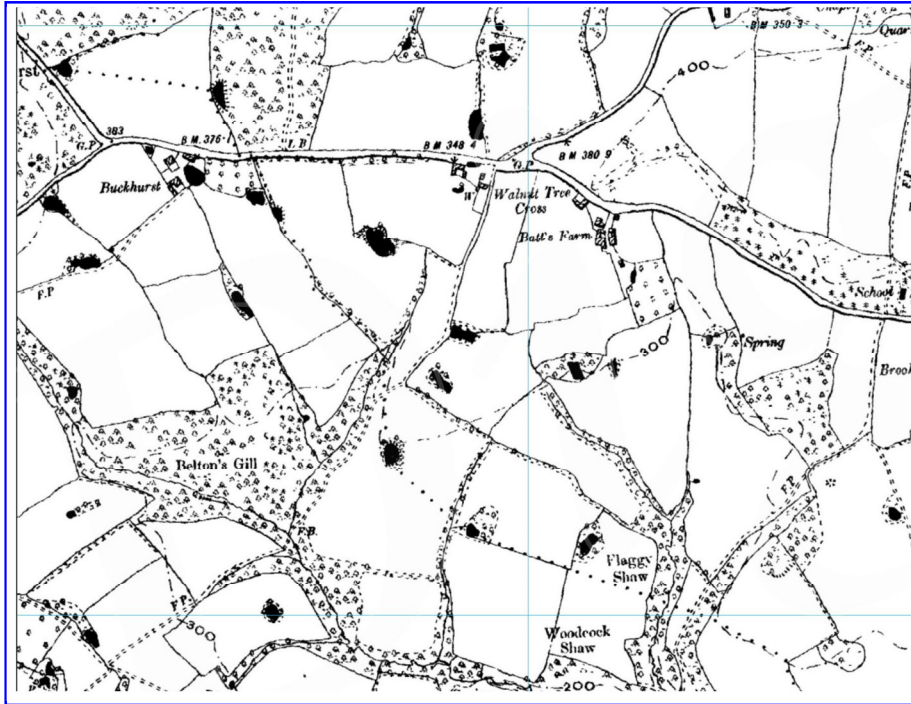
24 TNA PROB 11/68.

25 Deeds for the Combridge family are referred to in Woodgate, *History of the Woodgates*. They were then in private hands and most have not been located.

26 This is usually translated as 'heath': W.D. Parish & W.F. Shaw, *A Dictionary of Kentish Dialect and Provincialisms* (Lewes, 1888), however in usage it is closer to 'hoo' or 'hough'. Hoaths were generally waste or common land.

27 TNA C131/260/24.

Case Study 3: Batts with Buckhurst, A Yeoman Holding ²⁸



Brief History

- 1503 Richard Ashdowne settled it on his son Henry.
- 1590 Henry's son John died childless, leaving his property to his nephew John son of Richard.
- 1602 Marriage settlement of Robert, eldest son of John, and Agnes French of Seal.
- 1636 Marriage settlement of Robert junior and Jane Chapman of Seal.
- 1647 Death of Robert Ashdowne.
- c.1660 Inheritance by John son of Robert.
- 1715 Death of John Ashdowne and inheritance by his son John.
- 1729 Death of John without heirs and inheritance by nephew Nicholas Piggott.
- 1794 Heirs of Nicholas Piggott sold to Henry Streatfeild.
- 1841 In the possession of Henry Streatfeild.

II. Gavelkind in Practice

1. Freedom and The Rule on Felony

Under the common law lands of a felon escheated (were forfeited) to the manorial lord, and he in turn had to pay a year's income to the crown, but this was not the fate of those in Kent who held by gavelkind, escheat law was not applicable to their land; this is described in the couplet : *The father to the bough, The son to the plough.*²⁹

In about 1570, Thomas Hayward of Tye Haw, overlooking Tye Green, married his first wife, Joan (*Case Study 4, page 52*). The parish registers recorded the birth of four sons, but in December 1581 they recorded the death of Joan.³⁰ Whether suspicions were aroused at once is not clear, but Thomas married Petronella Brightred from Sundridge whose husband William had also died, and shortly afterwards they were arrested and charged with poisoning Joan and William with rat bane.³¹ At Maidstone assize of March 1583 both were convicted and sentenced to death, but in July Petronella was said to be pregnant and reprieved.³² On 11th April Tyehurst manor court recorded that Thomas had been hanged.³³

Thomas's case shows that the principle was still in practical operation in the late sixteenth century: the manorial court duly ruled that Thomas' sons would inherit as heirs in gavelkind.³⁴ Only one other instance is known for this area, when Richard Wicking of Cowden was executed in 1479.³⁵ The relevance is not so much in its frequent applicability, but what it represented: the peculiar freedoms and strong proprietary nature of gavelkind which may be one explanation for its persistence.³⁶

29 F. Bacon *Use of the Law* (London, 1636), p.35. W. Lambarde, *A Perambulation of Kent* (1570, reprinted Bath, 1970), p.497 quotes the couplet, a translation from the early English whose precise meaning has been debated: J. Ray, *A Compleat Collection of English Proverbs* (1737). Forfeiture for felony was finally abolished by the *Forfeiture Act 1879*.

30 KHLC U908 P89.

31 J.S. Cockburn records a similar case in 1622, showing that arsenic was freely available: 'Early modern assize records as historical evidence', *Journal of the Society of Archivists* 5:4 (1975), p.219.

32 J. Cockburn, *Calendar of Assize Rolls Elizabeth I* (London, 1987), S.1200. This may have been a case of 'pious perjury' to reprieve her from the draconian punishment which would have been applied for killing of a husband, held to be 'petty treason'; J.H. Baker, *An Introduction to English Legal History* (4th edn London, 2002), pp.517, 528. She lived to marry again.

33 KHLC U908 M50.

34 KHLC U908 M50.

35 G. Ewing, *A History of Cowden* (Tunbridge Wells, 1926), pp.17, 61; Cowden Leighton Court Baron.

36 E. Kerridge, *Agrarian Problems in the Sixteenth Century and After* (Cambridge, 1969), p.35.

2. The Age of Majority

According to the Kentish custom, a boy could both marry and sell his land at the age of fifteen, although he could not bring an action in the courts until he was twenty-one.³⁷

Practice was rather different. Thomas Hayward's eldest son, Richard, sold his fifth share of Tye Haw and Helde House in 1598 at which time he was aged 26; by 1606 the last of the sons, Charles, 'yeoman of Chiddingstone', had followed suit, also aged 26.³⁸

The property passed to the Willoughbys; by 1612 it had been acquired by William Birsty of Hever (*Case Study 4, page 52*).³⁹

The rule on majority was out of favour among testators by the late sixteenth century. A few fathers chose to leave their sons to inherit at 15: in 1606 Richard Streatfeild of Penshurst left his property to his son at this age, possibly adhering to old tradition, but more probably because it was the age in which he might need to buy an

apprenticeship.⁴⁰ Some money portions might be given at an earlier age: Andrew Stanford in 1641 left his grandchildren to receive their small bequests at 16.⁴¹ Some staggered payments by arranging for younger sons to inherit later, commonly at 24.

The vast majority of testators from 1550 onwards stipulated 'at age 21 or marriage' for bequests, whether portions or land. However, where there was no will the default age of majority would apply. There are examples from elsewhere in Kent of boys in the seventeenth century selling land at the age of fifteen, looked on with a little suspicion, but nevertheless held to be lawful.⁴²

37 Fifteen was also the age of alienation at common law for common socage tenants during the early modern period, but it had been fourteen in the middle ages. P. Brand, 'Family and Inheritance' in C. Given-Wilson (ed.) *An Illustrated History of Late Medieval England* (Manchester, 1996); C.I. Elton, *The Tenures of Kent* (London, 1867), p.43; T. Robinson, *The Custom of Kent or the Law of Gavelkind* (London, 1741), p.123. This rule was ratified in the reign of Edward II by a writ to the justices in eyre: 7 Ed.II 1314, N. Neilson, 'Custom and the common law in Kent', *Harvard Law Review*, 38.4 (1925), p.492.

38 Only four sons are identifiable in the parish registers or surviving transfers. There is a gap between two of the sons, leaving doubt whether one is missing or whether Petronella's child was included.

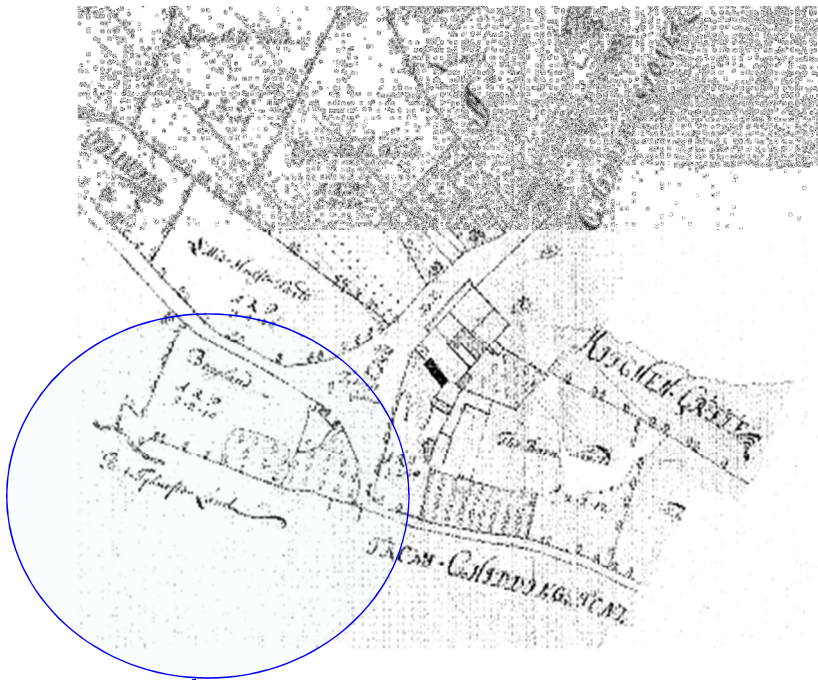
39 KHLC U908 M50, U908 M51, U908 T74, U908 M50.

40 TNA PROB 11/108.

41 TNA PROB 11/185.

42 For example KHLC U1590 T32; E. Henden, W. Noy, R. Mason and H. Fleetwood, *The Perfect Conveyancer* (1650), p.190.

Case Study 4: Tye Haw and Benge Land, Rules on Felony and Minority⁴³

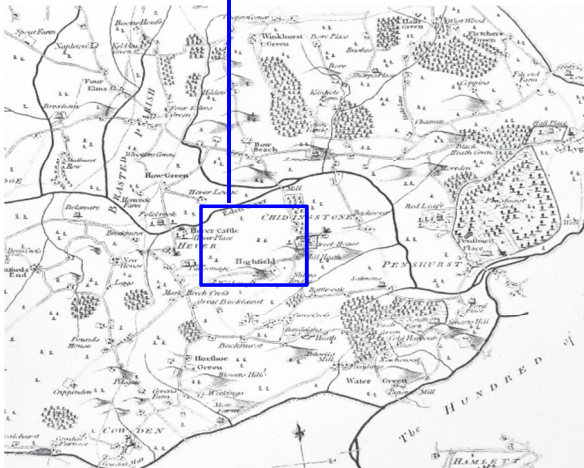
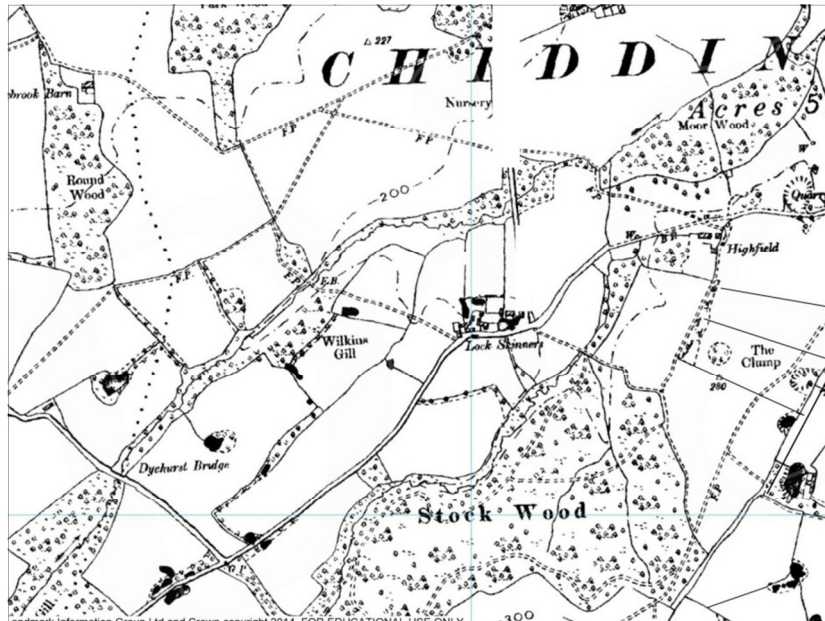


Brief History

- 1580 Owned by Thomas Hayward.
- 1583 Sons of Thomas Hayward held in undivided shares.
- 1598 One fifth sold to Thomas Willoughby.
- 1606 Final share sold to Thomas Willoughby.
- 1612 Sold to William Birsty, father of Anne and Katherine.
- 1627 By marriage of Anne Birsty to Anthony Combridge.
- 1677 Inherited by Francis Combridge.
- 1684 Francis bequeathed Tye Haw and Helde House to his daughters with 6 acres of land, a messuage with 9 acres in Hever and his wife's inheritance of a house in Chiddingstone. He left his younger sons 20 acres of land. His eldest son £5 (but had taken the main property of Coldharbour). Residue divided four ways.
- 1698 Partition by daughters; it was the allotment of Mary Seale.
- 1700 Sold to Henry Streatfeild.
- 1841 Owned and occupied by Henry Streatfeild; part of curtilage of High Street House.

43 LPL VH96/3289, 3290; KHRC U908 M50, P1, T74; U1000/9 T8; NUL Mi5 162-28.

Case Study 5: Lockskinners, Partible Inheritance, Devise and Dower ⁴⁴



Brief History

- 1577 In the possession of the Hayward family.
- 1597 Richard Hayward sold to William Everest: Lockskinners and 25a., with Stones Land, 48a.
- 1598 William Everest died and left it to his eldest son Thomas.
- 1617 Thomas Everest died and left it to his eldest son William.
- 1654 William Everest died intestate
- 1655 Partition between sons Thomas and William Everest, subject to their mother's right to occupy.
- 1658 Thomas died young.
- 1658 East end sold to George Beecher. Stones Land descended to Thomas' son Edward.
- 1666 West end sold to John Seyliard.
- 1679 Edward Everest sold a moiety of Stones Land to Francis Heath.
- 1680 Edward Everest sold remaining moiety of Stones Land to Thomas Seyliard.
- 1694 East end sold to Henry Streatfeild.
- 1699 West end and Stones Land sold Henry Streatfeild.
- 1841 Owned and occupied by Henry Streatfeild as part of High Street House.

3. Partible Inheritance

Partible inheritance between sons was the best-known aspect of gavelkind, so that 'gavelkind' is often used as a misnomer for partible inheritance generically. At the end of the sixteenth century Lockskinners, near Tye Haw, was occupied by Richard Hayward, probably the cousin of the felon Thomas (*Case Study 5, page 53*). In 1597 Richard sold to William Everest. William held other property and was able in his will to pass Lockskinners to his son Thomas intact as his share, but his grandson, another William, died intestate, leaving the property to be divided between his two sons.⁴⁵ Sons inherited a father's property equally, but this was not in separate shares. Initially inheritance was jointly as 'coparceners', that is in 'undivided shares'. The heirs might continue to hold in common for many years; unlike properties purchased by joint tenancy which would accrue to the survivor, tenancy in common shares would descend to the heirs of each of the holders. In order to take possession in severalty a partition had to be made by deed, allotting to each son his share, as indeed applied to daughter coheirs. The eldest brother had the privilege of choosing his property, but where the capital message itself was divided the youngest son took the hearth first.⁴⁶ Here the Lockskinners farmhouse had to be divided; William Everest, the younger son, took the half with the chimney piece, and Thomas took the part behind.⁴⁷

This has been the aspect of the tenure most researched by historians. Homans' sociological approach was followed by the work of social anthropologists like Jack Goody, drawing attention to its possible impact on the family, as described by Richard Smith.⁴⁸ It has raised issues of household structure, marriage customs, demography, social and economic differentiation, and a debate on the nature of 'peasant' families and their 'attachment to land'. Much of this research was concerned with medieval societies, and based on manorial records, so weighted towards customary tenants, but it raises issues of direct relevance to this research, which are discussed in Chapter 4.⁴⁹

45 KHLC U908 T60-62.

46 Lambarde, *Perambulation*, p.519; Robinson, *Common Law* (1741), p.112.

47 KHLC U908 T60.

48 G.C. Homans, 'The rural sociology of medieval England', *P&P* 4 (1953), 32-43; R.M. Smith, 'Some issues concerning families and their property in rural England 1250-1800', in R.M. Smith (ed.), *Land, Kinship and Life-Cycle* (Cambridge, 1984), pp.1-5.

49 Smith gives an account of the literature up to 1984, pp.8-9. Further contributions of particular relevance are:

A distinction is often implied between land which was inherited and land which was purchased; medieval historians refer to the distinction between bookland held by charter and folkland held, by implication, under customary tenure.⁵⁰ Bookland could be devised away from the family, for example, to the church; the process of moving to land held by deed may be called 'individualisation of title'.⁵¹ Although there are no specific references in the study to a division of property between inherited and purchased land, the quote from Henry Bassett's will above hints that a distinction was still to be seen.⁵² Even without a legal distinction, there was more reluctance to dispose of an inherited property than a purchased one, demonstrated in [Chapter 5](#).

[Chapter 1](#) has described the oldest written statement of the customary law dating from about 1290. This is comparable to the custumal of a manor, but it applied to the whole county. The Custumal of Kent distinguishes between goods and lands; even though the gavelkind lands of a felon went to the heirs, his goods were forfeit. With regard to goods in general, in conformity with ecclesiastical law, it says

'In like sort let the goods of Gavelkinde persons be parted into three parts, after the funerals and debts paied, if there be lawfull issue on live, So that the dead have one part, and his lawful sonnes and daughters an other part, and the wife the third part'.⁵³

By the seventeenth century it appears that chattels were being left within the right of the testator.⁵⁴ The direct references to the local custom which occur occasionally in London wills are rare here: only one example has been found, perhaps further evidence of the presumption.⁵⁵

D.R. Clarke, 'The "land-family bond" in East Sussex c.1550-1700', *C&C* 21:2 (2006), 341-369; B. Stapleton, 'Family strategies: patterns of inheritance in Odiham, Hampshire, 1525-1850', *C&C* 14:3 (1999), 384-400; J. Whittle, 'Individualism and the family-land bond: a reassessment of land transfer patterns among the English peasantry, 1270-1580', *P&P* 160.3 (1998), 25-63.

50 F.W. Maitland, *Domesday Book and Beyond: Three Essays in the Early History of England* (Cambridge, 1897).

51 C. Phillips, 'The Law of Gavelkind', *Transactions of the Proceedings of the Royal Society of New Zealand* (1883), 518-532.

52 Section I above. Somner, citing Glanvill, Coke, and Blackstone, suggested that for inherited land, or patrimony, unlike purchased land, the heirs had to be included in the deed. W. Somner, *A Treatise of Gavelkind both Name and Thing* (1660), p.39.

53 Lambarde, *Perambulation*, p.521.

54 A.L. Erickson, *Women and Property* (London, 1993), Ch. 2. Practice did not always follow precept: J. & N. Cox, 'Probate 1500-1800: A System in Transition', in T. Arkell & N. Evans, *When Death Do Us Part*, (Oxford, 2000), 14-21.

55 For a London example see Henry Beecher 1571, TNA PROB 11/53. The sole Somerden example is William Douglas d.1652, making a nuncupative will *in extremis* [TNA PROB 11/222].

4. Devise

William Everest of Lockskinners and Henry Bassett of Bassetts have been described as devising land in their wills. The ability of a landowner to decide to whom he would leave his land in this way was a point of doubt, at least in the early sixteenth century. Both tradition and ecclesiastical principle held that a man should not leave his wife and children impoverished, and provision should be made for them.⁵⁶ The Customal of Kent is clear on bequest of personal property but it is silent on the question of devisibility of real property. Elton suggested that while acquired lands could be devised the patrimony could not, but it was a point which was disputed.⁵⁷ Attempts were made to imply provision into the Customal. Somner quoted conflicting opinions and came down in favour of the suggestion that only specific land was devisable, because in practice such wills were expressed as trusts, or the heirs were obliged to give their consent, or provisions were made for the will being disallowed.⁵⁸ The 1540 *Statute of Wills* was decisive; now all freehold lands were devisable, though for land held *in capite* a third was protected to the heir, to provide the service required by the Crown.

A further legal development which potentially overrode customary law was the development of the 'use' (precursor to the trust). The *Feoffment to Uses Act* was passed in 1483, and the *Statute of Uses* in 1536, but the exceptions to this were developed into new forms, and the development of the family settlement, and the potential for deciding the inheritance of land in advance, proceeded apace.⁵⁹

Gavelkind could be overridden by these means, but in a limited sense. Robinson is clear that partibility could not be altered by anything the holder did; he could not do away with the rights of future younger sons.⁶⁰ One generation might direct its property, but could not alter the *nature* of the land as gavelkind land. Peter Fleming raised an interesting case of the dispute in the Lovelace family in the late fifteenth

56 Cox, 'Probate 1500-1800', pp.19-21

57 Elton, *Tenures*, p.40.

58 Somner, *Treatise*, pp.152-170.

59 N.G. Jones, 'Tyrrel's Case (1557) and the Use upon a Use', *JLegH* 14:2 (1993), 75-93; E.W. Ives, 'The genesis of the Statute of Uses', *EHR* 82.325 (1967), 673-697; F. Bacon, *Reading on the Statute of Uses*, c.1600 (1642).

60 Robinson, *Common Law* (1741), p.74.

century.⁶¹ Richard Lovelace senior had property including the manors of Goodnestone, Bayford and Hever. The manor of Hever was held in knight service, but Goodnestone and Bayford were gavelkind. Richard attempted to settle Goodnestone and Bayford on his eldest son, and when this was obstructed by his younger sons, he bequeathed Hever to his daughter. Whether either act was legal was unclear; despite the initial support of the courts it led to long-term dispute and was ultimately unsuccessful.

By the start of this period it was established that gavelkind land *could* be transferred by will or by settlement, giving rise to the opinion that gavelkind had declined into a way of establishing the heir for intestate inheritance.⁶² How often this led in reality to the disinheritance of younger sons is covered in [Chapter 4](#).

5. Dower and Courtesy

When Thomas and William Everest partitioned Lockskinners, it was subject to the rights of their mother, and Thomas did not take up residence at once (*Case Study 5, page 53*). After partibility, the rule on dower was the most important; these two are often seen as the 'core' of the custom, to which other practices formed a subsidiary code. The widow had dower of a half (a 'moiety') of the estate, until she remarried or had a child. This compared with the position at common law, where a widow would have a third of the property, but for life. Dower of a half appears to date back to the early days of the English settlement. *'If she bear a live child, let her have half the property if the husband die first. If she wish to go away with her children, let her have half the property'* say the Laws of Aethelberht of Kent (560-616), although it is unclear whether this term in the original Old English applied to the husband's real property or merely goods; the term property cannot be assumed to denote land until the sixteenth century.⁶³ Robinson described both widows' dower and widowers' courtesy as *'special customs incident to Gavelkind'*; that is, they were not intrinsic to the tenure, but were *'by immemorial Usage annexed to land of this Tenure'*, remaining even if the land had

61 P. Fleming, 'The Lovelace dispute: concepts of property and Inheritance in fifteenth-century Kent', *Southern History* 11 (1990), 1-18. I deduce that the Hever referred to is actually Hever Place near Goodnestone.

62 See Chapter 1.

63 *Medieval Sourcebook: The Anglo-Saxon Dooms 560-05*, www.fordham.edu [accessed 13 July 2012]: the Laws of Aethelberht of Kent, Chapters 78 & 79; C.A. Hough, 'The early Kentish divorce laws: a reconsideration of Aethelberht, Chs 79 and 80', *Anglo-Saxon England* 23 (1994), 19-31; D.J. Siepp, 'The Concept of Property in the Early Common Law', *Law and History Review* 12.1 (1994), 29-91; G.E. Aylmer, 'The Meaning and Definition of Property in Seventeenth-Century England', *P&P*, 86 (1990), p.87.

been disgavelled.⁶⁴ Over the years lawyers had to fit gavelkind into developing legal doctrine.

Normally dower lands were specifically allotted to the widow and held in severalty, but could be held in common with the heir if this were to be agreed between both parties, or where the estate had been held undivided in coparcenary by her husband.⁶⁵ As with common law, the right of dower was of all her husband's lands held during the marriage, even if disposed of before his death; so particular conveyancing practice was required to ensure that a purchaser had good title.⁶⁶ Dower was not always evaded: but the analysis in [Chapter 4](#) shows that respect for dower was in decline in the period, with settlements being used to restrict property rights. Manors elsewhere in the country could have a similar principle, but the generality was for dower of a third; this custom was so entrenched that 'thirds' became a synonym for a widow's dower.

The position for a widower was similar to that of the widow: he had a moiety of the wife's estates until remarriage. It differed from common law in that there was no requirement that children had been born of the marriage, and even if there were, he could only claim a half.⁶⁷ [Chapter 4](#) describes an instance where this led to litigation.

6. Women's Property and Daughters' Portions

After its purchase by William Birsty, Tye Haw was used as a portion for daughters in the next two generations (*Case Study 4, page 52*). There was a concept of 'women's property', though often tacit, in which a mother's property was reserved for her daughters. The adjacent property of Highfields was also owned by women, including Elizabeth Everest, for part of its life. It later became a dower house (*Case Study 11, page 139*).⁶⁸ However, by custom daughters had no right to the inheritance of land. Writing in 1741, Robinson, quoting the Laws of Canute, suggested that the ancient 'natural' system of inheritance would support all children, and younger sons were gradually excluded. It was not until the time of Henry I, he thought, that females began

64 Robinson, *Common Law* (1741), p.136.

65 Robinson, *Common Law* (1741) Bk. II, Ch. 2.

66 Robinson, *Common Law* (1741) p.172-3. He cites *Davis v. Selby* (Cro. Eliz).

67 Robinson, *Common Law* (1741) Bk. II Ch. 1.

68 KHLC U908 T74.

to be excluded from the inheritance of land.⁶⁹ They were excluded under gavelkind too, but like others this study finds that daughters were always left a portion in goods, money or land. Daughters were the residuary heirs where there were no sons, as under common law, when they could be considerable heiresses, like Bridget Rede, wife of Thomas Willoughby, and the heiresses who brought Gabriels and Delaware to the Seyliards.⁷⁰

7. Wardship

Between Thomas Hayward's execution in 1583, and 1598 when his eldest son sold his fifth share, little is known about the five Hayward sons (*Case Study 4, page 52*).⁷¹

Where they had been in the interim is not clear, but they would have been brought up by kin. An important rule of gavelkind, shared in part with common socage, was that if the heir was a minor the rights of the lord of the manor to control him (or her) and the estate were restricted, guardianship being vested in the nearest relative who could not inherit. Although the guardian was supposed to account to the heir, wardship could be a profitable business in the hands of the unscrupulous who could avail himself of the income and even of the capital asset, and also arrange the marriage of the heir.

Occasionally the heir in gavelkind complained of 'waste', that is reduction of the capital value, mainly through felling timber, a particularly vital resource given the demands of the iron industry and the construction of timber hall houses in the period.⁷² This occurred in the Hawden branch of the Combridge family, who suffered a series of family traumas which left two young sons relatively unprotected. Their grandfather and his brother were their guardians after their father's death, but neglected their duties. The boys' affairs were left to their mother, her brother and her new husband. The surviving son, Oliver, later made a complaint of waste which led to litigation.⁷³ Nevertheless, this provision would have been a significant protection from exploitation by a relative in the line of succession, or from a lord.⁷⁴

69 Robinson, *Common Law* (1741) p.24.

70 NUL Mi5 161-01-43.

71 KHLC U908 M50, T74.

72 Woodland was generally managed through 'coppice' where plants were cut back to the ground in a ten to fifteen year cycle to provide a crop of wood, combined with 'standards' left to mature to provide timber.

73 TNA C9/417/81 Combridge v. Woodgate 1681.

74 1535 *Re Lord Dacre of the South* demonstrates this: J. H. Baker, *Introduction to English Legal History*, 4th edn

8. Freedom to Sell

The ability of holders in gavelkind to sell or transfer their land was one of its most prominent features, allowing families to increase and dispose of their holdings as needed. The Customal of Kent said '*And that they may their landes and their tenements give and sell, without licence of their Lordes; Saving unto the Lordes the rents and the services due out of the same tenements.*'⁷⁵ This freedom is at the heart of the development of a market in land, discussed in [Chapter 5](#). The difference in effect between gavelkind in Kent and European systems of partible inheritance may be that freedom to sell counteracted partition, and so allowed for both geographic and social mobility. The debate on agrarian reform has often turned on the freedom or otherwise of copyholders to alienate; for gavelkind this was never in doubt. The ability to devise was also now undisputed; the use of such freedom is discussed in [Chapter 4](#).

In some areas of the country, family land in the Middle Ages was due to the next heir and could not be sold; moreover families are said to exhibit a strong 'attachment' to their land. In her study of Kibworth Harcourt Cecily Howell shows how this declined after the Black Death and did not recover when population rose.⁷⁶ Gavelkind land was alienable from the start. Referring to the work of Thirsk, Terry Reilly says, '*Kentish gavelkind prefigures the transition from a feudal agricultural economy to mercantile capitalism, a change which began to affect the rest of the English in the sixteenth century.*'⁷⁷ He attributes early commercialization to gavelkind.

Despite the buying and selling of property, there was also considerable continuity of ownership. The Stanfords owned Lydens throughout the period, the Seyliards Delaware, the Streatfeilds High Street House, the Piggotts Withers and the Tichbornes Crippenden. This is described in [Chapter 7](#) on land ownership.

Land Held In Capite of the Crown

The Beecher family held Vexour at the east end of Chiddingstone Street, and also property north of the river and in Leigh. In 1567 James Beecher of Leigh died leaving

(London, 2002), p.255.

75 Lambarde, *Perambulation*, p.515.

76 C. Howell, *Land, Family and Inheritance: Kibworth Harcourt 1280-1700*, (Leicester, 1983), pp.237-45.

77 T. Reilly, 'King Lear: the Kentish forest and the problem of thirds', *Oklahoma City University Law Review* 26 (2001), 379-401.

his property to his three sons, to be allocated to them by his brother Richard. His death was drawn to the attention of the Escheator for Kent, the official responsible for *inquisitions post mortem*, with a question as to whether part of his land, Beechers in Hale, was held in chief and could not be devised.⁷⁸ Attempts to leave property fairly to all sons according to gavelkind could come up against the common law of the land, for not all land in Kent was gavelkind, and there were particular rules about inheritance of land held directly of the king.⁷⁹ The Beecher sons, who had already partitioned the property to suit themselves, had to reappportion it in 1573.⁸⁰

Summary

The principles of gavelkind as they operated in practice have been described: partibility and partition, the rights of widows and daughters, devisibility, alienability, age of majority, and escheat for felony. Other minor customs had been set aside by the courts or fallen into desuetude by 1550.⁸¹ The right to be in the vanguard of battle, Robinson suggested, was in any case a right for which there would be no competition.⁸² What the family histories illustrate is that gavelkind *did* play a routine part in the lives of the holders of land. The next section looks at what courses of action were available when things went wrong.

78 The Hale area of Chiddingstone and Leigh formed part of the manor of Penshurst Hale mote.

79 This ceased at the Commonwealth and the 1660 *Tenures Abolition Act* permanently abolished tenancy in chief : 12.CarII.c24.

80 KHLC U1986 T26.

81 Neilson, 'Custom and the common law'.

82 Robinson, *Common Law* (1741), p.278. This ancient tradition was still known to William Wordsworth in 1803 when he wrote his poem 'To the Men of Kent'.

III. Administration of Gavelkind

The *Custumal* dated from the thirteenth century and the law had developed since then. The brief exposition printed by William Lambarde dated from 1570; that of Somner and Taylor to the latter part of the seventeenth century.⁸³ Littleton, the great authority on tenures throughout the period, mentioned gavelkind only in passing. Although much of what he said would be applicable, such as the methods of partition and the options for holding land in common, he did not, for example, draw out all the distinctions between dower of a third at common law and dower of a moiety by the custom of gavelkind.⁸⁴ Robinson's practical work was not published until the mid eighteenth century. Decisions as to fact depended on the manor courts, and the law on the King's Courts.

The Manor: Court Leet and Court Baron

The court leet covered the whole of the hundred; none of the individual manors had this delegated criminal and administrative function.⁸⁵ As a source, the leet has value in listing those living within its jurisdiction, and useful location information, but little else. Typical is the following:

The verdict of the Jurie at the Court Leet houlden for the Hundred of Som[er]den the xxiii th daye of Aprill 1630

Imprimis we p[re]sent Robert Combrige \ of Pensherst / for not scowring his ditch \ belonging to a p[ar]cell of land called Cookes / leadinge from Frenden Cross to Penshurst we give him tyme to amend the same until Michaellmas next subpena

It[e]m we p[re]sent John Hunt of Leigh for not scowringe his ditch at one p[ar]cell of land called Orchard mead and ag[ains]t a p[ar]cell of land called Lower Hooches leadinge from Roses corner to Morden we give him tyme to amend the same untill this and Michaellmas next subpena.⁸⁶

Useful as this is for mapping, it tells us little about the law.

As copyhold was rare, the duties of the court baron were largely limited to establishing

83 Somner, *Treatise* (1647); Silas Taylor, *A History of Gavelkind with the Etymology Thereof* (1663).

84 T. Littleton, *A Treatise on Tenures* (1482), A. Wambaugh ed., (Harvard, 1903). See §210 on gavelkind, §265 on parceners by custom, §736 on warranties in gavelkind.

85 P. Hyde & M. Zell, 'Governing the county' in Zell, ed. *Early Modern Kent 1540-1640* (Woodbridge, 2000), p.12, quoting KHLC U1473/M11; Hasted, *History of Kent*, Vol.3 (1797), p.189.

86 KHLC U1000/9 M14.

the heir, as with Thomas Hayward's sons in the Manor of Tyehurst.⁸⁷ Not only were the duties limited, but the dues were token. At the beginning of the sixteenth century Sir Robert Rede derived worthwhile income for the several manors he held, £13 6s 8d for Bore Place alias Millbrook and £10 for Chiddingstone Burwash, but the real value was declining by the late sixteenth century.⁸⁸ Henry Streatfeild's notebook records that the most common dues were small quit rents, a heriot of the best beast or 3s 4d, and relief (where payable at all) usually of one year's quit-rent.⁸⁹ In the Manor of Tyehurst the liability was only for quit-rent; surviving rentals show that these remained at 14s 7½d throughout the seventeenth century, so the value had fallen greatly in real terms.⁹⁰ This was to the advantage of the freeholders: the manorial lord was still receiving 8d for Tye Haw in the 1690s, when the leasehold rent (including the three acres of Bengel Land in Millbrook manor) was £5 10s.⁹¹ John Evelyn noted in 1655 that he had disposed of his Manor of Warley Magna in Essex, because *'the taxes were so intolerable that they eat up the Rents'*.⁹² Token as they were, attempts at avoidance occurred including a 1680 case in King's Bench about Princkham's Farm, Chiddingstone, where the carpenter-builder Richard Stevens initially took a long lease of 1,000 years of the property to avoid heriot, but later changed his mind and took a conveyance; in the confusion the tenant of his heir was ejected.⁹³

The manor court had an interest in listing the manorial tenants, accounting for quit-rents, establishing whether heriot or relief were due, and identifying the heir. Some local variations in custom at manorial level would have been within the court's jurisdiction, but the details of the tenure and resolution of disputes were above the remit of the court.⁹⁴ For this the free tenant had recourse to the king's courts, a right which was clearly laid down in the nature of the tenure.

87 KHLC U908 T87.

88 NUL Mi5 161-01-43.

89 Chapter 1; KHLC U908 E2.

90 KHLC U908 M54.

91 KHLC U908 T75.

92 E.S. de Beer, ed., *The Diary of John Evelyn* (Oxford, 1959; Everyman Edition, London 2006) p.329.

93 KHLC U908 L37.

94 Neilson, 'Custom and the common law'; L. Bonfield, 'What did English villagers mean by Customary Law', Z. Razi & R.M. Smith, eds., *Medieval Society and the Manor Court* (Oxford, 1996), Chapter 3.

The Royal Courts

As freeholders, gavelkind holders had recourse to both the common law courts and the courts of equity. Of the cases shown in *Table 1.3*, those heard in Kings Bench are not illuminating: cases on the removal of animals by way of distraint from property disputed between Burgh and Streatfeild heirs (1625), Richard Stevens' case, and a suit about the portion of Dorothy Crossman née Streatfeild who died as a minor (1686).⁹⁵ Cases in Common Pleas included disputes over dower (1648), and for debt (1688 and 1692).⁹⁶ The Court of Wards and Liveries heard a case concerning a property in nearby Seal which the owner left to his eldest son not wishing it to be divided, but as so often argument and principle are sadly lacking.⁹⁷

Equity cases included one case heard in the Court of Exchequer relating to a mortgage.⁹⁸ In the Court of Chancery there were disputes about the title of a vendor to sell, a dispute about a Statute Staple secured on Burgh property then purchased by Streatfeild (1614); a dispute about settlement and dower on a property subsequently sold (1613-1623); and disputes about the property of the Great Bridge Trust in Edenbridge (1673).⁹⁹ Akin to these are cases relating to the detention or falsification of title deeds. A typical case is that in the Ashdowne family. In about 1600 Richard Ashdowne sued his widowed sister-in-law for both these alleged breaches; her reply was that her husband's will entitled her to fell a certain number of trees, and that she had had the title deeds read through by Thomas Willoughby, and copied by the scrivener Nicholas Hooper of Tonbridge.¹⁰⁰ Other complaints were the failure of a landlord to repair farm buildings (1685), and a claim in the Carter family to land in Leigh, (1558-1603).¹⁰¹ There were also actions for ejectment concerning the debts of John Reddich (1693, 1695 and 1698), described in Chapter 6.¹⁰² These cases concern day to day practicalities rather than the niceties of the law of gavelkind, and precedents were limited before the establishment of systematic court reporting.

95 KHLC U908 L35, U908 L37, U908 L38.

96 KHLC U908 L3, L40, L41, L42.

97 West Sussex Record Office, WISTON/5044-5047, TNA WARD/7/96/111 (1642).

98 KHLC U908 L48.

99 KHLC U908 L63; T68.

100 TNA C2/Eli/14/58.

101 KHLC U908 L1, L32, L33, L63, L64, TNA C2/Eliz/C15/26.

102 KHLC U908 L43, L44, L45.

For a period the prerogative Court of Requests provided a quick resolution to disputes which included disputes over wills, marriage settlements, and the ownership of land, but even by the mid sixteenth century the court was under attack by the common law courts and few Kentish cases occur after 1550; the only one in the record which relates to Somerden is just before this date, dealing with the ownership of a property in Leigh.¹⁰³

As the case of James Beecher illustrates, occasional *inquisitions post mortem* exist.¹⁰⁴ This might establish the nature of lordship but not the details of tenure, and such cases ended in 1640. Even cases such as Beecher's are of limited value; they might be prompted by the enmity or cupidity of an informer.¹⁰⁵

In conclusion, examples of substantive legal decisions on the tenure of properties in Somerden are few. Early in the eighteenth century, Anne Streatfeild née Sidney drafted a request for legal opinion on who would inherit part of the estate left by her husband, Henry, who had died intestate.¹⁰⁶ Perhaps the answer to most problems lay with the opinions of Counsel.

103 TNA REQ/2/6/120 1538.

104 Chapter 1 above. KHLC U1986 T26-1.

105 TNA C142/161/83 1571.

106 KHLC U908 T323, E38. She was an heiress in her own right, illegitimate daughter of Jocelyn, Earl of Leicester.

IV. The Extent of Gavelkind

Incidence of Other Tenures

Not all land in Kent was gavelkind, but that it predominated is indicated by a statute passed in 1439 which removed from gavelmen the privilege of not sitting as jurors in attaints, on the basis that this left '*but 30 or 40 Persons at most who had any Lands or Tenements out of the Tenure of Gavelkind*'.¹⁰⁷ Elton in 1867 estimated that at Domesday one third of lands were held in other tenures: 680 ploughlands compared with 2,332, an estimate which is a significant feat of calculation when large areas of the Weald were not identified separately in the Domesday Book.¹⁰⁸

Whatever the position before, it was by no means clear in 1550. The absorption into gavelkind of other land because of the lack of a definitive register was occurring from the earliest times; the presumption of gavelkind would apply where there was doubt. Francis du Boulay described the history of half a knight's fee in Gillingham, showing that it was partitioned as gavelkind at least once and was also included in a survey of customary lands; since former partition was deemed to be evidence of partibility such cases were capable of producing a *fait accompli*.¹⁰⁹ By 1913 Percy Maylam, a Canterbury solicitor, said he thought there was hardly a case where it could be proven that land was other than gavelkind.¹¹⁰

In order to make the determination it was necessary to establish first if the manor was originally gavelkind, second if the land in question was demesne (lord's land) and so followed the tenure of the manor, and third if it had been disgavelled. Elton suggests that it was not a major task to establish which manors were originally held by military or spiritual tenure, a confidence it is hard to share. Manorialisation was never wholly successful in Kent with its extensive freehold land and some allodial land (land never incorporated into a manor).¹¹¹

Edward Hasted's *A History and Topographical Survey of the County of Kent* published in

107 Robinson, *Common Law* (1741), p.262; Somner, *Treatise* (1647), p.145; 18.Hen6.c2: Jurors in Attaints repealing 15.Hen6.c2.

108 C.I. Elton, *The Tenures of Kent* (London, 1867), p.150.

109 F.R.H. du Boulay, 'Gavelkind and Knight's Fee in Medieval Kent', *EngHR* 77.304 (1962), 504-511.

110 P. Maylam, *The Custom of Gavelkind in Kent* (Canterbury, 1913), p.6.

111 Ewing, *Cowden*, p.46.

1797 was sometimes used to clarify the position.¹¹² Although this is a *tour de force*, it is not without its errors and inaccuracies; even in Chiddingstone he failed to identify all the manors. He gave a history of the manors, parish by parish; problematic because of the notorious discontinuity between the manors and parishes of Kent. In Edenbridge, he records, '*There is a small part of it, called the Borough of Linckhill, comprehending part of this parish, Chiddingstone, and Hever, which is in the Hundred of Ruxley, and being a part of the manor of Great Orpington, the manorial rights of it belong to Sir John Dyke, bart., the owner of that manor*'. Such is the complexity.

Hasted himself was not always clear as to what was a manor and what a mere estate. The courts might have declined, old seats which may originally have owed dues to the manor had detached themselves. New manors were carved out from others: Hever Cobham and Hever Brocas were parts of the manor of Hever which arose when daughters inherited as coheirs, and they were carved out as separate manors; Chiddingstone Cobham and Chiddingstone Burwash had similar origins. In many areas, he says, the manors were so complicated and in so many estates that '*the continuing a series of them would afford no entertainment to the reader*'. Often a manor had been broken up '*since which it has been of no consequence worth mentioning*'.¹¹³ In these circumstances, where no lord of the manor continued and the rolls were lost, it was not possible to establish the ancient custom of the manor, and each piece of land was likely to be absorbed into the tenure of the greater estate. Even where the sources exist and provide information they sometimes disagree.¹¹⁴ Yet again the problem is a moving target; given the different eras from which these sources come, it is difficult to establish the situation at one point in time. Everything militated against identifying the tenurial status even of particular manors.

On the second plank, even Elton admitted that establishing which land was demesne was a problem. He suggested that in order to establish this it was necessary to go back to the Conquest, and to Domesday Book where it was possible to find the proportion of a manor which was demesne land, estimated from the number of sulungs, (the

112 Hasted, *History of Kent*, Vol.3.

113 Hasted, *History of Kent*, Vol. 3: Edenbridge.

114 Hasted recorded Morant's Case in 1292/3 in which the three sons of Morant established that their property was gavelkind; yet Elton recorded it as Knight Service: Hasted, *History of Kent*, Elton *Tenures*, p.413.

Kentish measure of area, similar to a 'hide').¹¹⁵ Even if the property was in Domesday, which much of the Weald was not, how this could identify a single field, perhaps altered in bounds and in name many times and never accurately surveyed, was clearly beyond most rural litigators.

Even the third plank, identifying the land covered by a disgavelling Act, was problematic despite the relative modernity of the records. A detailed survey of disgavelled property was rare, and the changing of boundaries, streams and lanes would confuse. So, whatever its original tenure, if that was ever certain, more and more land would have been accepted as gavelkind. The principle that if land could not be identified as any other tenure, it was deemed to be gavelkind would have determined that, and provided no-one put up a case, gavelkind it would remain.

New lands

The general rule was that land which was 'inned' from the marsh or 'assarted' from the native woodland, was gavelkind (in the former case, even if it was in Sussex). Nevertheless, there are occasional instances of land enclosed late where it is specifically described as copyhold; sometimes termed 'demesne copyhold'.¹¹⁶ All are small. A rental of 1616 for the manor of Chiddingstone Burwash granted William Brooker a piece of waste land near Bourne Brook in Penshurst 'to hold by copy of court roll' and in 1638 a cottage at Stonelake in Chiddingstone is described as copyhold of the Honour of Otford, 'lately part of the manorial waste', carrying with it 'five dayworks of land'.¹¹⁷ In the nineteenth century a property at Vexour Bridge was recorded as copyhold of the Manor of Penshurst Halemote, and two similar properties were enfranchised (converted into freehold).¹¹⁸ Of these one was in the centre of Chiddingstone and the other at Hill Hoath three miles south, illustrating the scattered nature of Kentish manors.

115 Elton, *Tenures*, pp.122-134.

116 H.R. French & R.W. Hoyle, *The Character of English Rural Society, Earl's Colne 1550-1750* (Manchester, 2007) Chapter 1 n.23.

117 KHLC U908 M48, T216.

118 KHLC U908 T169, T199.

Disgavelling

The Disgavelling Acts

Those like the Waldegraves who held in knight service were by default ruled by primogeniture. Others who wished to override gavelkind could do so by wills and settlements, but for one generation only. Much more controversial was the ability of an owner to 'disgavel' his land for all time. Gentry who did this included Thomas Lord Burgh of Starborough Castle and Thomas Willoughby of Bore Place.¹¹⁹ Primogeniture may have originated in the need of the state to protect the 'fee', the unit on which defence was organised, but it quickly became associated with the gentry. When large estates signified privilege and a certain level in society there was a desire to maintain that status, and perhaps considerable efforts had gone into building an estate by inheritance, purchase, or marriage. Kentish gentry were not immune from this desire.

The question arose early as to whether the nature of gavelkind could be altered. It appears that originally this could be done for particular properties by royal charter. There were examples from the thirteenth century where this happened, but in the fourteenth century *Gatewayk's Case* (9 Edw.II, 1315-16) established that an Act of Parliament was required.¹²⁰ Such Acts date predominantly from the period of Henry VIII, but at least two are dated to the reigns of the Stuarts.¹²¹

Disgavelling created its own problems. The first related to record-keeping; the landowner and the lawyers needed to be aware of the Acts, particularly private Acts. A greater problem was that disgavelling operated only at a moment in time, and could not bind land acquired subsequently. The problems this might cause are only too obvious. Even as early as the 1570s, Lambarde (himself a lawyer) commented that it would be 'right woorthie the labour' to establish of what those estates consisted.¹²² Sir Edward Wotton of Boughton Malherbe, brother-in-law of Bridget Rede, had the

119 Lambarde, *Perambulation*, p.530.

120 du Boulay 'Gavelkind'; F.W. Maitland, *The History of English Law* (Cambridge, 1895), p.110; J.E.A. Jolliffe, 'English Book-Right', *EngHR* 50.197 (1935), 1-21, p.11; Hasted, *History of Kent*; Elton, *Tenures* (1867), p.370; Robinson, *Custom* (1858), p.123.

121 One Act for Kent is recorded in the Statutes of the Realm for 1539, and another was drafted in 1597; six private Acts were recorded in 1548, 1558, 1566, 1623, and 1670: HL/PO/PU/1/1539/31H8n3; HL/PO/PB/1/1558/Eliz1n28; HL/PO/PB1/1566/8Eliz1n30; HL/PO/PB/1/1623/21J1n70 of 1623.

122 Lambarde, *Perambulation*, pp.531-533.

foresight to survey the estate but in most cases this did not happen.¹²³ A third problem was that from their phraseology it was not clear whether the effect of the Acts was to void all the customs which gavelkind comprised, or whether it only removed the obligations of partible inheritance.¹²⁴ In *Wiseman v. Cotton* (undated) it was held that only the manner of descent was altered; devisibility, alienability, wardship and other customs remained.¹²⁵ Even so, the onus of proof was on the claimant and the existence of an Act was not *prima facie* evidence; it was necessary to submit the Act itself in evidence. Perhaps it was for this purpose that the lawyer Henry Streatfeild kept to hand drafts of disgavelling Acts relating to two Kentish landowners.¹²⁶

Rare cases did succeed: in south-west Kent, one of those who disgavelled his estates was Sir Henry Isley (2&3 Ed.VI). Hasted records that in 1709 the nieces of the then holder, Thomas Lennard, Earl of Sussex, claimed that the Manor of Brasted was gavelkind, but the verdict went against them, Thomas successfully demonstrating that the manor was in Isley's possession at the time of the disgavelling Act.¹²⁷ However, a manor was one thing, a single plot over many years of buying and selling, dispersal and accumulation, was quite another. It was likely that even disgavelled land would be absorbed back into the pool of gavelkind land over time.

Non-disgavelling Gentry

Significantly, the gentry families described earlier, the Seyliards, Streatfeilds and Woodgates, made no application for a disgavelling Act. Perhaps the explanation is that, unlike the incoming Willoughbys, they were old Kentish families. Perhaps, with lawyers predominating, their thinking encouraged them to keep the tenure of their estates as free as possible for the support of all their children. Perhaps it is simply that they had smaller pockets. Whatever the case, even the gentry do not appear to have been at all averse, at least before the eighteenth century, to dividing their property.

123 <http://www.kentarchaeology.uk/wottonsurveys>; Elton, *Tenures* (1843). Boughton Malherbe is pronounced 'Borton Mallerby'.

124 Robinson, *Common Law* (1858), atp.54.

125 Robinson, *Common Law* (1858), p.42. No date has been found for this case.

126 KHLC U274 E7. They were for Sir Thomas Twysden of Roydon Hall, East Peckham, and Sir Norton Knatchbull of Mersham Hatch, Mersham.

127 Hasted, *History of Kent*, Vol.3, pp.146-157.

The Somerden Manors

The uncertainty surrounding tenure is only too clear from the Somerden manors. Chiddingstone Cobham was in the hands of coheirs for much of the period, but it and Tyehurst were probably owned by Lord Burgh when he disgavelled. The Hever and Penshurst manors were held in knight service prior to abolition, and so subject to primogeniture. Rendsley was almost certainly gavelkind, being acquired by the Willoughby family after disgavelling and in shares. Leigh Ensfield was held with Penshurst, but Leigh Hollenden was possibly gavelkind. Cowden Leighton was part of a gavelkind partition in 1747, Cowden Lewisham was originally held in knight service but was divided up by Michael Bassett.¹²⁸

After 1660 the only argument was whether the manors were partible. Even this applied only to the demesne lands. The example of the small manor of Tyehurst puts this in perspective. In 1612 there were ten free tenants paying 14s 7½d, including Richard Hayward for part of Lockskinners, John Hayward for a piece of land in Hever, Henry Piggott for his house and an acre of land at Withers, and William Birsty for Tye Haw. By 1700 the lord, Henry Streatfeild, had bought in two of these properties, and in 1747 there remained four very small free tenants, paying 1s 10½d. After this no more courts seem to have been held.¹²⁹

Abolition

It was partly difficulties of identification which led to the attempts to limit or abolish gavelkind altogether, but primarily objection to division. The Commission on Real Property in 1832 reportedly found instances of property divided into extremely small shares, described as leading to complexity for lawyers, inconvenience for purchasers of property and impoverishment for heirs. Lawyers from Kent replied that these examples were very rare and overall the system was fairer.¹³⁰ When a bill for abolition was before Parliament in 1911, Percy Maylam said that gavelkind did not have the pauperising effects of which it was accused, and that it was suitable to the interests of

128 KHLC U908 E2, M4, M54, M56, T8, T54; NUL MiM 98.

129 KHLC U908 M54, P3, T8.

130 Robinson, *Common Law* (1858) pp.187-8; H. Kingsford & W. Beale, *An Address to the Freeholders of the County of Kent on the Subject of Gavelkind*, Kent Law Society (Maidstone, 1836).

small owners (with which, it was agreed, Kent was still particularly well-endowed). With some prescience he suggested that as some of the peculiar privileges of gavelkind had already become embodied in common law, so now it was the common law which needed to change.¹³¹ Kent's people were perhaps opposed to disgavelling not just because they saw it as an attack on their ancient customs and freedoms, but because primogeniture had become associated with feudalism.¹³² Gavelkind meant that the lowliest might own an acre or two by inheritance, and have the opportunity to rise. Eric Kerridge suggested that protection from escheat alone was an incentive to retain the custom, and a cause of at least one bill to abolish it failing.¹³³ This attachment to the custom is the best evidence we have that gavelkind was not seen as a residual and outdated system.

In the 1920s gavelkind finally met an irresistible tide of change. The entire system of property law in England and Wales required reform in order to simplify conveyancing and remove an accretion of antiquated rules. The result was six major pieces of legislation altering the nature of tenures and estates, the rules relating to trusts, and the rules of devise and inheritance. Previous legislation had specifically exempted gavelkind; this time it was caught up in the desire for uniformity.¹³⁴ Gavelkind was swept away. And yet one can but share Maylam's opinion; the current system has more in common with gavelkind than the common law of primogeniture which then applied.

131 Maylam, *Custom of Gavelkind*, pp.3-11.

132 P. Clark, *English Provincial Society from Reformation to the Revolution: Religion, Politics and Society in Kent 1500-1640* (Hassocks, 1977), p.80; Smith, 'Swanscombe', p.100.

133 E. Kerridge, *Agrarian Problems in the Sixteenth Century and After* (Cambridge, 1969), p.35.

134 Statute of Distributions 2 & 23.Carll.c10.

V: Summing Up

This chapter has introduced the aristocratic, gentry, and yeomen families who dominated the Somerden landscape in the late sixteenth century. Through the experience of these families the features of Kentish gavelkind have been described. Although partible inheritance is the best-known and most influential characteristic, it is a mistake to treat gavelkind purely as a system of inheritance.¹³⁵ The rule on felony was still operating, and although occurring rarely was of significant value to the heirs of an estate. The age of majority at fifteen years was in decline; twenty-one years for men was almost universal in Somerden, but occasional examples occur and those from elsewhere show that they would be supported by the courts. Partibility was widespread; this is discussed further in [Chapter 4](#). The rights of women were similar to those at common law, but dower, where it occurred, was more generous. The rules of wardship were similar to those of socage tenure, a protection for a minor heir, though not a certain one. Finally, just as influential as partible inheritance was the freehold nature of the tenure, which brought with it the freedom to sell or devise without the agreement of the manorial lord, and rights in the royal courts.

Not all the Somerden manors and their demesne lands were held in gavelkind, but the land of free tenants was almost exclusively so. Thomas Willoughby of Bore Place was one of those who disgavelled by private Act to convert his land to primogeniture. However, with no coterminous survey as pieces of land were sold and devised, the presumption would bring much land back into partible inheritance, and the other features of gavelkind were in any case unaffected.

Neilson argued that in Kent gavelkind was not just a survival, but a living and developing system.¹³⁶ The substantial body of law in the 1858 edition of Thomas Robinson's treatise demonstrates that this was true. Some aspects of the custom were in decline, but most were very much alive.

135 Kerridge uses the terms interchangeably, and applies gavelkind to systems of partible inheritance outside Kent, admittedly a common adaptation of the term: Kerridge, *Agrarian Problems*, p.34.

136 Neilson, 'Custom and the common law', p.498.

The next chapter looks at the economic and social context in which it operated, before considering questions of its impact on the land market and land ownership.

CHAPTER 3 : SOCIAL, ECONOMIC, AND POLITICAL CONTEXT OF GAVELKIND

I. Introduction

It was argued in the introduction to Chapter 1 that gavelkind was more than a method of identifying the heir in the absence of a will or settlement, that the experience of yeomen differed from that of the gentry, and that the economic and social conditions of Kent mediated that experience over time. The description of gavelkind in Somerden in Chapter 2 has illustrated the wider provisions extending beyond inheritance. This chapter sets out the historical context in which it operated. The period saw long-term trends of rising population and prices, migration, urbanisation and specialisation, together with short-term economic cycles, periods of dearth and disease. These were accompanied by significant religious, cultural and political change.¹

The historiography was for many years dominated by the concept that there was a *general crisis* which affected the whole of Europe, and beyond. This saw the seventeenth century as a period of violent transition, radical change in religious and political thought and in economic mode of organisation, accompanied by 'revolutions' in agriculture and industry. This concept was unable to withstand the light of archival research and new theoretical frameworks.² The understanding is now that if no 'crisis' or 'revolution' can be identified, the period was nevertheless one of rapid and painful

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- 1 In addition to the specific references which follow, general sources used include: K. Wrightson ed., *A Social History of England 1500-1750* (Cambridge 2017); J. Bowen and A.T. Brown eds, *Custom and Commercialisation in English Rural Society* (Hatfield, 2016); S. Broadberry, B.M.S. Campbell, A. Klein, M. Overton, & B. van Leuwen, *British Economic Growth 1270-1870* (Cambridge, 2015); M. Overton, J. Whittle, D. Dean & A. Hann, *Production and Consumption in English Households 1600-1750* (London, 2004); B. Coward, *The Stuart Age: England 1603-1714*, 3rd edn, (Harlow, 2003); K. Wrightson, *Earthly Necessities* (Yale, 2000); G.R. Elton, *England Under the Tudors*, 3rd edn, (London, 1991); J. Thirsk ed., *The Agrarian History of England and Wales, Volume V 1640-1750* (Cambridge, 1984); C. Clay, *Economic Expansion and Social Change* (Cambridge, 1984); P. Laslett, *The World We Have Lost - Further Explored* (London, 1965, 3rd edn re-issued 2000); K. Wrightson, *English Society 1580-1680* (London, 1982); J. de Vries, *The Economy of Europe in an Age of Crisis, 1600-1750* (Cambridge, 1976); J. Lawson & H. Silver, *A Social History of Education in England* (London, 1973); J. Thirsk ed., *The Agrarian History of England and Wales, Volume IV 1500-1640* (Cambridge, 1967); F.J. Fisher, *Essays in the Economic and Social History of Tudor and Stuart England* (Cambridge, 1961).
 - 2 J. de Vries, 'The economic crisis of the seventeenth century after fifty years', *JIntH* 40.2 (2009), 151-194; Volume 113.4 of *The American Historical Review*, (2009), including: G. Parker, 'Crisis and catastrophe: the Global crisis of the seventeenth century reconsidered', 1053-1079, J. Dewald, 'Crisis, chronology and the shape of European social history', 1031-1051. The original 'Crisis' debate took place in *Past and Present*, from 1954-1960, initiated by E.J. Hobsbawm. The best summary is in T. Williamson, *The Transformation of Rural England: Farming and the Landscape 1700-1870* (Exeter, 2002). Two recent contributions to the debate on the Industrial Revolution, one economic and one social, are E.A. Wrigley, 'Reconsidering the industrial revolution: England and Wales', *JIntH* (49.1 (2018), 9-42, and E. Griffin, 'Diets, hunger and living standards during the British Industrial Revolution', *P&P* 239.1 (2018), 71-111.

change.³ Population in England rose sharply in the later sixteenth century, from about 3 million in 1550 to 4 million in 1600, more than 30% in half a century, then slowed up to 1700.⁴ Steep price rises accompanied population increase, followed by stagnant prices and production in the seventeenth century.⁵ Accompanying this was urbanisation, dominated by the expansion of London, provincial towns and cities developing only in the eighteenth century.⁶

Crisis seems an apt word for the political and religious events. The dissolution of the monasteries was complete by 1550, though the sale of church and crown land continued. Changes of monarch and religion in the 1550s were followed by the changes of dynasty and by further religious upheaval in the next century, culminating in the Civil War, Commonwealth and Restoration between 1640-1660, in which a number of the families in the Somerden area and locally played a significant role.

In this chapter Section II considers demography, Section III urbanisation and migration, Section IV the economy. Section V discusses political change and provides a general introduction to the legal changes which will be explored in more detail in later chapters.

3 de Vries, 'Economic crisis'; Parker, 'Crisis and catastrophe'.

4 A. Hinde, *England's Population: A History Since the Domesday Survey* (Oxford, 2003); P. Slack & R. Ward, *The Peopling of Britain: The Shaping of a Human Landscape* (Oxford, 2002); K. Shurer & T. Arkell, *Surveying the People* (Oxford, 1992); E. A. Wrigley & P. Schofield, *English Population History* (Cambridge, 1997).

5 J. de Vries, 'Economic crisis'. For prices: S. Broadberry, B.M.S. Campbell, M. Overton & B. van Leeuwen, *British Economic Growth, 1270-1870* (Cambridge, 2015); N.J. Mayhew, 'Prices in England 1170-1750', *P&P* 219.1 (2013), 1-37; R.C. Allen, 'The great divergence in European wages and prices from the Middle Ages to the First World War', *Explorations in Economic History*, 38 (2001), 411-447; J. de Vries, *The Economy of Europe in an Age of Crisis, 1600-1750* (Cambridge, 1976).

6 General works on urbanisation used here include: K. Wrightson ed. *The Social History of England 1500-1750* (Cambridge, 2017), Chapter 8: P. Withington, 'Urbanisation'; E.A. Wrigley, *People, Cities and Wealth* (Oxford, 1987); P. Clark, (ed.) *The Transformation of English Provincial Towns* (London, 1984); P. Clark, & P. Slack, *English Towns in Transition 1500-1700* (Oxford, 1976).

II: Demography

Demographic Change

Population estimates for Kent fit the national pattern: rapid rise had ceased by 1600, between 1600 and 1700 the population of the county is estimated to have grown only from 153,000 to 160,000, about 5%.⁷ Within the overall trend there were periods of greater or lesser growth, and there were regional and sub-regional variations. Mary Dobson looked at a sample of parishes from the south-east of England and divided these into different *pays*.⁸ The Low Weald, in which Somerden lies, had relatively high levels of population, but suffered absolute decline in the middle decades of the seventeenth century. In the whole south-east region the difference between baptisms and burials fell below zero during the 1650s to 1680s.⁹

Figure 3.1 uses the Somerden parish registers, and takes the excess number of births over deaths per decade using crude data. Only Cowden and Penshurst registers span the period; however, the scattered pattern in the remaining parishes is similar. The results generally support Dobson. Births exceeded deaths before 1610, broke even in the 1610s, recovered in the 1620s, fluctuated during the 1630s and 1640s, dropped in the 1650s, then were stable until the 1690s when there was once more a rise. Michael Zell's suggestion that the 1580s and 1590s in these parishes saw the greatest rise is not supported; Chiddingstone registers are too deficient for definite conclusions, and those for Penshurst indicate some of the highest excess births in the 1560s and 1570s.¹⁰

However, this does not take account of the effects of under-registration, especially during the Commonwealth period.¹¹ Figures 3.2a and 3.2b show the baptism and burial rates for Cowden and Penshurst, this time adjusted for under-registration.¹²

7 Wrigley & Schofield, *Population History*; E.A. Wrigley, 'Rickman revisited: the population growth rates of English counties in the early modern period', *ECHR* 62.3 (2009), p.721.

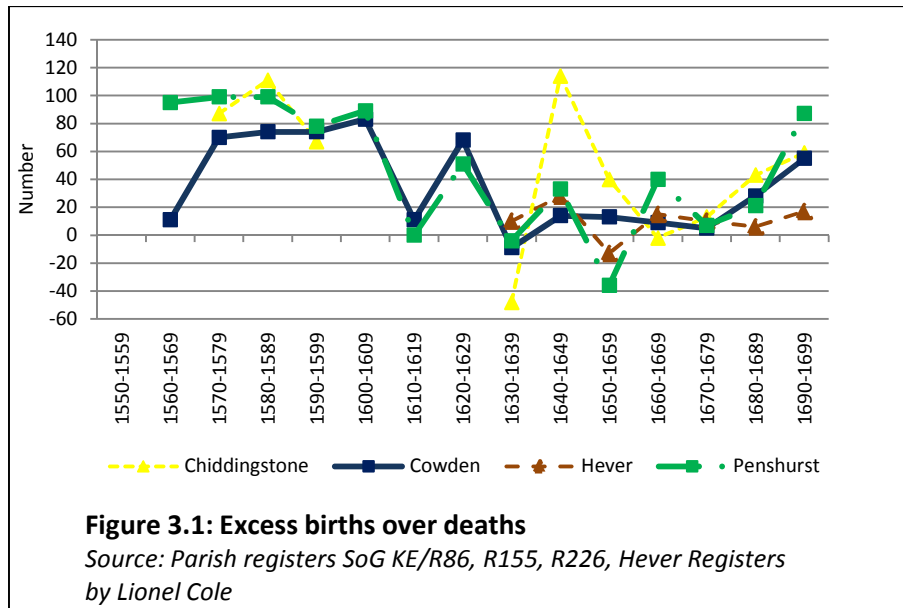
8 M. Dobson, *Contours of Death and Disease in Early modern England* (Cambridge, 1997); M. Dobson, 'The last hiccup of the old demographic regime: population stagnation and decline in late seventeenth and early eighteenth-century south-east England', *C&C* 4.3 (1989), 395-428.

9 M. Dobson, 'Population stagnation', p.406.

10 M. Zell, *Industry in the Countryside* (Cambridge, 1994), p.64.

11 Wrigley, 'Rickman revisited'.

12 Anthony Wrigley pointed out that although inaccuracy of birth registration was about 4% in the late sixteenth and early seventeenth-century, in the years 1640-49 it was nearly 16%, and in the years 1650-59 over 16%. For burials this was 22%. The multiples used for the adjustment are those given by Wrigley, except for the early years where 5% has been used.



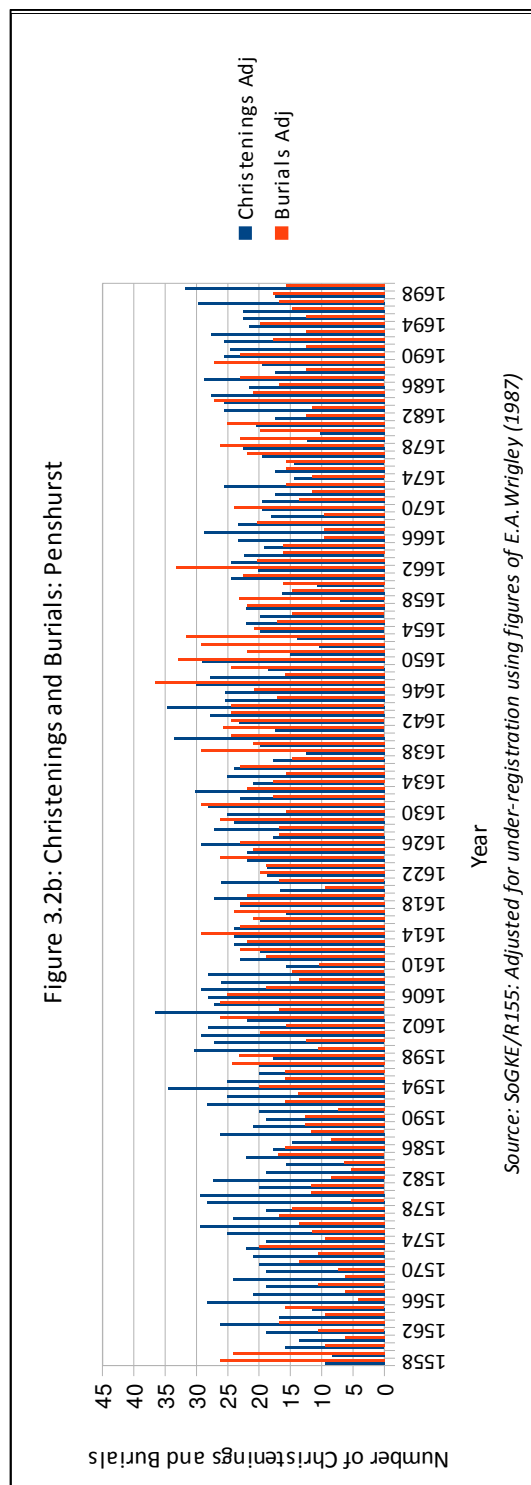
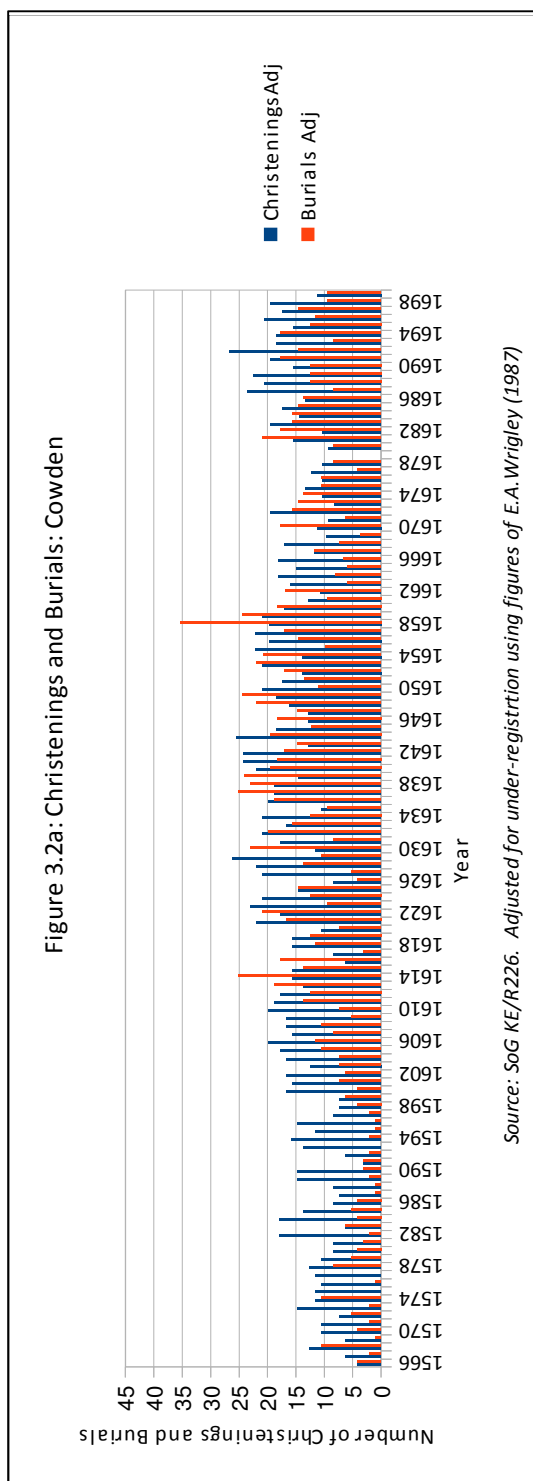
These figures are also able to highlight particular years of stress within each decade and runs of problem years with high mortality, within the overall trends. The figures show that before 1612 baptisms generally exceeded burials. Thereafter there was an overall balance until the 1690s when births again rose above burials. Such long-term trends are most closely associated with endogenous factors (fertility, dependant on age of marriage and spacing between children), and the figures are similar to those found elsewhere.¹³ Within these periods are short-term fluctuations caused by exogenous factors - dearth and disease - with a more local focus.

Although it is not easy to distinguish the effects of disease from those of dearth, epidemics tend to show as short-term crises, perhaps a year or two. Such short-term crises are seen in Penshurst and Cowden around 1614, 1638 and 1658. Diseases related to dirt were the most frequent cause, notably typhus and typhoid.¹⁴ Smallpox was recorded in Cowden in 1654, 1669 and 1700, and disease probably explains the mortality illustrated in *Case Study 8* on page 99.¹⁵

13 Hinde, *Population*, Chapter 7.

14 Dobson, 'Population stagnation', p.418; *Contours of Death*. Mortality was particularly severe in Westerham in 1609 and 1610 and may have spread south from there. In August 1609 there were 23 deaths, with another 23 between September and December when several families were badly hit. This compares with normal annual totals of under 30. [Westerham Parish Registers transcribed by Lionel Cole; www.theweald.org].

15 E. Turner, 'Ancient parochial account book of Cowden', *Sussex Archaeological Collections* (1882), p.116.



Poor harvests could cause longer periods of stress. Harvest failure occurred in 1555-6, and 1596-7 was difficult, being preceded by bad harvests in 1594 and 1595.¹⁶ The years

16 W.G. Hoskins, 'Harvest fluctuations and English economic history, 1480-1619', *AgHR* 12.1 (1964), 28-46; 'Harvest fluctuations and English economic history, 1620-1759', *AgHR*, 15.1 (1968), 15-31. Hoskins calculated that in a typical decade 41.5% of harvests would be good, 25% would be deficient, but a single dearth year

1607 to 1617, 1629-1638, 1648-1650 and 1659-1661 were poor and 1692-1698 was a particularly severe run.¹⁷ In Penshurst mortality shot up in the years 1558 and 1559, the burials exceeding 20, as compared with an average of 9 for the following decade.¹⁸ (In Cowden, the registers do not cover these years.) In both parishes, 1615-1630 seems to have been particularly difficult. Mortality rose sharply and there was poverty and high prices: the poor rate in Cowden increased from under £7 to £9 in 1617, £28 in 1620 to £43 in 1627; meanwhile wheat prices doubled to 64s a quarter.¹⁹ Less serious, but evident, is the national crisis of 1647-1650.²⁰ How far dearth led to death has been debated. Famine occurred nationally in the 1590s and 1620s, but by the 1690s this was not evident in southern England. This has been variously attributed to agrarian improvements, changes to crops, or to improvements in infrastructure and administration.²¹ Neither Cowden nor Penshurst saw a crisis in the 1690s.

Population and Migration

Calculating the population of the Hundred of Somerden depends on the 1664 Hearth Tax and the 1676 Compton Census, because direct sources are not available. The Hearth Tax divides the hundred into the seven boroughs which do not relate to parishes.²² The Compton Census is by parish but in turn cannot be equated to the taxation boroughs. The hearth tax, eliminating five empty houses, lists 372 properties; using a multiplier of 4.25 people per household gives an estimated population of about 1,600 for the seven boroughs in 1664. Using the Compton Census with a multiplier of 1.5 per communicant, gives the adult population of Chiddingstone as 373, of Hever 204, of Penshurst 422.²³ From these Mary Dobson calculated the populations to be 560, 306 and 633, giving an estimate for the hundred of 1,800.²⁴ The acreages are

could be less fatal than a run of poor years.

17 Hoskins, 'Harvest fluctuations 1620-1759', p.18.

18 This is not reflected in Figure 3.1 because the records for the decade are incomplete.

19 Turner, 'Ancient parochial account book', p.100. A quarter was 28 lbs.

20 S. Hindle, 'Dearth and the English Revolution, the harvest crisis of 1647-1650', *ECHR* 61.S1 (2008).

21 A.B. Appleby, 'Grain prices and subsistence crises in England and France, 1590-1740', *JEC*, 39 (1979), 865-887; R.W. Hoyle, 'Why was there no crisis in England in the 1690s?', in R.W. Hoyle ed., *The Farmer in England 1650-1980* (Farnham, 2013), 69-100; B. Fagan, *The Little Ice Age: How Climate Made History 1300-1850* (New York, 2000), p.150.

22 D. Harrington, ed. *Kent Hearth Tax Assessment Lady Day 1664*, Kent Records Vol.29 (London, 2000).

23 A. Whiteman, *The Compton Census of 1676, A Critical Edition* (Oxford, 1986).

24 M. Dobson, 'Original Compton Census Returns for the Shoreham Deanery', *AC*, 94 (1978), 61-73; 'The last hiccup of the old demographic regime: population stagnation and decline in late seventeenth and early eighteenth-century south-east England', *C&C*, 4.3 (1989), 395-428. In the former Dobson had compared the

approximately 6,000 for Chiddingstone, 2,700 for Hever and 4,600 for Penshurst, giving 11, 8, and 7 acres per head: Chiddingstone was less densely populated than its neighbours. This is significant, because one potential consequence of rising population was pressure on land, and increased mobility.²⁵ All sources are in some degree selective and they tend to emphasise particular types of flow, but it is agreed that people were more mobile generally than was formerly thought, although over short distances.²⁶ There were local factors which pulled or pushed migration: the availability of land or employment, the 'open' or 'close' nature of the community, communication routes, and *pays*. Wood-pasture agrarian regimes, as found in the Weald, attracted incomers; woodland, common and hoath were a draw for settlers: in 1634 Anthony Wickenden of Cowden left a bequest to '*eight of the poorest sort of people upon Blackham Com[m]on*', probably squatters.²⁷ Other influences were age, gender, and status. The Settlement laws and their enforcement had an impact: endogamous marriage, as opposed to exogamous (marrying in or out of the community) increased.²⁸ Bruce Campbell has suggested that partibility of holdings gave access to land and encouraged early marriage which in turn led to rising population, at least in the fourteenth century.²⁹

Peter Clark found that more than two-thirds of deponents in church courts had moved at least once, but the majority within fifteen miles.³⁰ His source, deponents in church

1641 Protestation Returns with the 1676 Compton Census, and found that in Chiddingstone and Penshurst there was a slight rise of 5-7%. In the latter she replaced the multiplier 1.66 with the 1.5 recommended in A. Whiteman *Compton Census*, finding that the population actually fell by 3%, more in line with national trends. Such multipliers have to be chosen with discrimination: N. Goose & A. Hinde, 'Estimating local population sizes at fixed points in time', Part I *LPS* (2006) and Part II (2007). By 1801 the population of Chiddingstone was 910: Rural Queries: Report to Poor Law Commissioners, 1834.

- 25 This is highlighted in studies of migration using nominal listings, marriage records, apprenticeship registers, poor law settlement papers and court depositions. R. Smith 'Linking the local and the general in population history: prioritising migration', *LPS* 81 (2008), 9-10; I.D. Whyte, *Migration and Society in Britain, 1550-1830* (London, 2000); B. Stapleton, 'Migration in pre-industrial southern England: the example of Odiham', *Southern History* 10 (1988), 47-93; K.D.M. Snell, 'Parish registration and the study of labour mobility', *LPS* 33 (1984), 29-43; A. Kussmaul, 'The ambiguous mobility of farm servants', *ECHR* 34.2 (1981), 222-235; P. Clark, 'Migration in England during the late seventeenth and early eighteenth centuries', *P&P* 83 (1979), 57-90; B. Holderness, '"Open" and "Close" parishes in England in the Eighteenth and Nineteenth Centuries', *AgHR* 20.2 (1972), 126-139; P. Spufford, 'Population movement in seventeenth-century England', *LPS* 4 (1970), 41-50.
- 26 Laslett, *The World We Have Lost - Further Explored*, pp.74-5.
- 27 TNA PROB 11/165. Blackham was in the forest parish of Withyham.
- 28 Clark 'Migration' and Holderness 'Open and Close' differ on this point. Whyte, *Migration and Society*, pp.44-48.
- 29 B.M.S. Campbell, 'Land Markets and the Morcellation of Holdings in Pre-Plague England and Pre-Famine Ireland', in G. Béaur et al *Property Rights, Land Markets and Economic Growth in the European Countryside Thirteenth to Twentieth Centuries* (Turnhout, 2013), p.202.
- 30 Clark : 'Migration in the seventeenth century'; Clark 'Migrant in Kentish Towns' in Slack and Ward, *The Peopling of Britain*. He found that 70% of town deponents had moved at least once, a figure which was higher in rural

courts, emphasises urban areas of East Kent: he omits West Kent so that his figures are not necessarily representative of Somerden. Dobson calculated that the 'natural growth rate' 1661-1681 in south-west Kent was negative.³¹ Penshurst and Cowden figures confirm these findings. Although the fall in the period post 1630 does not reach the levels she found, the implication is that migration was significant.

Table 3.1 analyses the family names of children christened in the Somerden parishes at the end of the sixteenth century, a period when christenings exceeded burials.³² Hever registers are missing for the period, but the three remaining parishes have been shown separately and then consolidated to give one figure for each family name. Of 345 family names (not families), only 9% (31 names) appeared more than fifteen times in the four registers. More than half, (53% or 182 names) appear only one or twice. 38% appear 3-15 times. The inference is that more than half the population was not settled in the area for a long period, whether through mobility or mortality is unclear. This research concentrates on landowning families; a future study might usefully investigate the mobile (predominantly non-landowning) families further.

Table 3.1: Family names of children christened 1558-1599										
<i>Source: Parish registers SoG KE/R86, R155. R226³³</i>										
Number of children	Chiddingstone 1558-1599		Cowden 1566-1599		Hever (not available)		Penshurst 1558-1599		PARISHES CONSOLIDATED	
1	62	39%	30	39%			75	40%	123	36%
2	35	22%	13	17%			38	20%	59	17%
3-5	31	19%	18	24%			36	19%	78	23%
6-9	13	8%	9	12%			17	9%	35	10%
10-15	11	7%	2	3%			12	6%	19	5%
>15	9	5%	4	5%			11	6%	31	9%
Total names	161	100%	76	100%			189	100%	345	100%

Table 3.2 shows the same figures for the years 1650-1699. The numbers are greater,

areas and in Kent highest for women. However, 60% of males and 65% of women had moved less than ten miles. The gentry and professional men were more likely to have moved, followed by those in the clothing industry and those in the service industries

31 Dobson, 'Stagnation', p.44.

32 Michael Turner's study of surnames indicates the uses and limitations of this methodology: M. Turner, 'Distribution of surnames in a Yorkshire Dale, 1500-1750', *LPS* 54 (1995), 28-39.

33 The parishes have been consolidated, not totalled as individual parishes.

the 31 has become 48, and the total number of names has risen from 345 to 394. However, with population stability mid-century the static families had increased rather than otherwise.

Table 3.2: Family names of children christened 1650-1699											
No. of children	Chiddingstone 1650-1699		Cowden 1650-1699		<i>Hever 1650-1699 [not consolidated]</i>		Penshurst 1650-1699		THREE PARISHES 1650-1699 CONSOLIDATED		<i>Three parishes 1558-1599 consolidated</i>
1	62	35%	33	24%	41	37%	55	28%	99	25%	36%
2	18	10%	23	17%	17	15%	32	17%	57	15%	17%
3-5	37	21%	35	26%	25	23%	44	22%	88	22%	23%
6-9	30	17%	23	17%	19	17%	32	17%	66	17%	10%
10-15	15	8%	9	7%	5	4%	19	10%	36	9%	5%
>15	17	9%	12	9%	4	4%	11	6%	48	12%	9%
Total names	179	100%	135	100%	111	100%	193	100%	394	100%	100%

The figures in Somerden indicate increased population and a level of migration which support a theory of increasing urbanisation, considered in [Section II](#).

III: Urbanisation, Education and Occupations

Urbanisation

Kent has been described as a landscape of hamlets, but the whole country was still predominantly rural. The population of England living in towns of over 5,000 people was 8.25% in 1600, by 1700 it was still only 17.00%. In Kent, Canterbury was the only major city at the beginning of the period, with a population estimated at over 5,000; by 1700 it had expanded by perhaps 50% but had declined in relative importance nationally.³⁴ The commercial, legal, and administrative centre for West Kent was the inland port of Maidstone, where the Quarter Sessions were held; its population rose from about 2,000 in 1550 to about 4,000 in 1700.³⁵ More important to the rural area were the local market towns. Somerden looked towards Sevenoaks to the north as the centre for the Justices, the Poor Law, and the market, but also to markets in Tonbridge and Westerham.³⁶ Based on Hearth Tax and parish register data, the populations in 1660 were estimated to be 800 for Sevenoaks, 700 for Westerham, and 650 for Tonbridge, barely larger than Chiddingstone.³⁷ Using the 1676 Compton Census produced a higher estimate, about 1,400 for Sevenoaks.³⁸ William Lambarde devoted several pages to Tonbridge; for Sevenoaks he found '*not in all history any memorable thing concerning it*' - the Civil War would change that - and Westerham he ignored.³⁹ In line with the contemporary paradigm Chalklin described these towns as 'small and slow to develop'. However, the influence of the market town on the surrounding rural area was significant for education and access to lawyers, and it fed into the provincial centres.⁴⁰ There was a symbiosis here; agricultural improvement and specialisation

34 E.A. Wrigley, 'Urban growth and agricultural change: England and the Continent in the Early Modern Period', *JIntH* 15.4 (1985), p.686. Chalklin has Canterbury's population in 1550 at rather less, perhaps 4,000 in 1570: Chalklin, *Seventeenth-Century Kent*, p.31.

35 J. Bower, 'Kent Towns, 1540-1640', Chapter 5 in M. Zell ed., *Early Modern Kent 1540-1640*, (Woodbridge, 2000); C. Chalklin, 'The Towns', Chapter 6 in A. Armstrong ed., *The Economy of Kent 1640-1914*, (Woodbridge, 1995).

36 It was latterly in Sevenoaks Rural District Council, and now the amalgamated Sevenoaks District Council.

37 Chalklin, *Seventeenth-Century Kent*, p. 32.

38 Dobson, 'Compton Census', p.65.

39 W. Lambarde, *A Perambulation of Kent*, (1570), pp.368-386. By 1831 Tonbridge had overtaken all the neighbouring parishes, with a population of over 10,000.

40 Phil Withington argues (with de Vries) that England's towns were of a different, hierarchical type from the cities of Europe, being a network linking, creating and disseminating new ideas and practices, in both commercial and social life: P. Withington, 'Urbanisation', p.176.

fostered by urbanisation in turn stimulated the market function of towns like Sevenoaks and Tonbridge. Sevenoaks market was particularly significant for its position on the road to London and the ports, although competition increased from Tonbridge after 1691.⁴¹ As urbanisation took hold, trading and port towns developed; regional centres like Maidstone were overtaken and some even declined.⁴²

The dominance of London inevitably had a great impact on Kent. In 1600 it had a population of around 200,000; by 1700 it had grown to about 575,000.⁴³ It was unique in the nationwide nature of its reach, its absorption of population and its influence on national markets.⁴⁴ Anthony Wrigley emphasised the role of 'through migration', short-term residence, disseminating a new pattern of consumer demand and stimulating social mobility. It fostered education and what has been described as a culture of 'civility'.⁴⁵ The impact was greatest on the gentry, particularly in East Kent and the uplands, but even among Wealden yeomen the social changes can be seen.

Most now think that the explanation for the departure of England from 'organic' economies dependant on land, was an 'energy revolution' predicated on coal and the fortuity of cheap sea transport down the east coast from the coal fields to the Thames; countries without this benefit had to await the development of efficient steam engines and rail transport.⁴⁶ In this, East Kent was favoured too, with access to the Cinque Ports and the Thames. West Kent had a northern boundary along the Thames with its shipbuilding towns, but the Weald was at a disadvantage. The main transport routes were (and still are) along the high ground in the north of the county. From this, narrow

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- 41 D. Killingray & E. Purves, eds, *Sevenoaks: An Historical Dictionary* (Andover, 2012), p.111; A. Wilson, ed., *Tonbridge Through Ten Centuries* (Tonbridge Historical Society, 2015), p.31.
- 42 Hinde, *Population*, p.161; Wrigley, 'A simple model'; E.A. Wrigley, 'Urban growth in early modern England: food, fuel and transport', *P&P* 225 (2014), p.86-88; 'Urban growth and agricultural change' (1985) p.686; de Vries, *European Urbanisation*, p.64; de Vries, 'Economic crisis', pp.177-8; P. Clark and P. Slack: *Crisis and Order in English Towns*, (London, 1972).
- 43 Wrigley, 'Urban growth in early modern England: food, fuel and transport', *P&P* 225 (2014), p.84; Hinde, *Population*, p.107; V. Harding, 'The population of London 1550-1700: a review of the published evidence', *The London Journal* 15.2 (1990), 111-128; Hinde, *Population*, p.161; E.A. Wrigley, 'A simple model of London's importance in changing English society and economy 1650-1750', *P&P* 37 (1967), 44-70; Wrigley, 'Urban growth: food, fuel and transport', pp.86-88; 'Urban growth and agricultural change' (1985) p.686; de Vries, *European Urbanisation*, p.64; de Vries, 'Economic crisis', pp.177-8; Clark and Slack: *Crisis and Order in English Towns*.
- 44 E. A. Wrigley, 'Urban Growth, food, fuel and transport', p.84, quoting S. Rappaport, *Worlds Within Worlds: Structures of Life in Sixteenth-Century London* (Cambridge, 1989), pp.79-84; Wrigley, 'A simple model', pp.65-68.
- 45 Wrigley, 'A simple model'; Withington, 'Urbanisation', p.192; A. Bryson, *From Courtesy to Civility: Changing Codes of Conduct in Early modern England* (Oxford, 1998).
- 46 E.A. Wrigley, 'Reconsidering the industrial revolution: England and Wales', *JIntH* 49.1 (2018), 9-43; 'Urban growth: food fuel and transport'; *Energy and the English Industrial Revolution*, (Cambridge, 2010), pp.9-25.

drove roads descended into the Weald, still clear on a modern map. The road to Tonbridge was turnpiked only in 1709, the turnpike from there to Chiddingstone and Cowden in 1765.⁴⁷ Only in the nineteenth century was the River Medway made navigable, and that only to Tonbridge. Before the turnpiking accessibility to the Weald in winter was difficult and expensive. Daniel Defoe described the state of the roads, such that timber carts were drawn by up to 22 oxen and could become becalmed in the mud for months on their way to Chatham.⁴⁸ Yet Jacqueline Eales refers to the surprising quality of communications from London, including carriers and letters bringing news.⁴⁹

It has been argued cogently that economically Kent rose with London; and the influence was not just economic.⁵⁰ The 'provincial capital' was undoubtedly London: the distance from Somerden to St Paul's was barely forty miles. Geographically it was close, but at the same time soils and communications made it isolated.

Education and Occupations

The consequences of urban growth, modest though it was locally, were significant socially. Towns were meeting places and centres for business and leisure.⁵¹ They also became a stimulus to specialisation of function within their market area.⁵² A consequence was an increase in opportunities for education, especially for the 'middling sort'.⁵³ Basic education was available in most villages by the late sixteenth century: a schoolmaster was licensed in Chiddingstone in 1595, a petty school in Penshurst in 1635, and schools were run by the parish clerks in both Chiddingstone and Cowden in the latter part of the seventeenth century; it is probable that a dame or

47 Wilson, *Tonbridge*, p.89.

48 D. Defoe, *A Tour through the Whole Island of Britain* (London, 1726; Penguin edition, 1971) p.144.

49 J. Eales, 'Alan Everitt and *The Community of Kent* revisited', in J. Eales and A. Hopper, *The County Community in Seventeenth-Century England and Wales* (Hatfield, 2012), p.22.

50 Brown, 'London & North-West Kent'; W.K. Jordan, 'Social Institutions in Kent 1480-1660, V. The Impact of London on the County', *AC* 75 (1961), 132-138. In areas away from the Thames a very restricted communications system operated: Everitt: *Continuity and Colonization*, pp.20-22.

51 Peter Clark implies that the town houses of the West Kent gentry in Maidstone were a source of propinquity which explains political cohesion: Clark, *English Provincial Society*, p.89.

52 Wrigley, 'Urban growth: food, fuel and transport', p.91.

53 From the extensive literature on the history of education, the following have proved particularly useful: D. Cressy, 'Educational opportunity in Tudor and Stuart England', *History of Education Quarterly* 16.3 (1976), 301-320; Lawson & Silver, *A Social History of Education in England*.

petty school was run throughout the period, at least in the two larger villages.⁵⁴ How far the poor were able to participate is questionable; a petty school usually made a small charge, and children from as young as seven were expected to contribute to the household economy, but literacy was increasing. In 1595 Henry Piggott, yeoman of Withers, wrote '*I the foresaid Henry Pigott have written this my last will and testament with myne hand*'.⁵⁵ Judged by ability to sign their names most yeomen in 1600 were illiterate, by 1700 most were not. Of 35 male probate inventories which survive for the period 1675-1699, 23% (8) specifically listed a bible or other books, including those of a husbandman, a tailor and a cooper.⁵⁶

Gentry sons might join their contemporaries at the petty school, but were more likely to be tutored either privately or by the rector or vicar of the parish. For education beyond the village school Kent had six grammar schools in 1550, by 1600 it had fifteen, ten of them in West Kent, and by 1660 there were 31 schools, including intermediate level 'writing schools'. These schools were intended to educate the sons of the poor free of charge, but could add fee-paying boys from the sons of the gentry and yeomanry. The curriculum was normally based on Latin, but occasionally, as at Lewisham, mathematics and book-keeping were included for pupils not expected to go on to university.⁵⁷ Sevenoaks, one of the oldest endowed schools in the country, founded in 1432, was taking sixty boys by 1600. Tonbridge, founded in 1553, became one of the wealthiest schools, and offered six scholarships to the universities. In addition there were private schools for the sons of gentry.⁵⁸ Education and legal training among the gentry, as they took an increasing part in the county administration, had a profound impact on the political thought of the times.⁵⁹

Gentry eldest sons were the most likely to go on to university.⁶⁰ However, from

54 www.clergydatabase.uk; also see Ch.2.

55 TNA PROB 11/85.

56 LPL VH96/3428, 4090, 4269, 4619, 4710, 5304, 5462, 5959.

57 Sir Joseph Williamson's Mathematical School in Rochester was founded in 1701 and still continues. [<http://www.sirjosephwilliamson.medway.sch.uk/376/history-of-the-school> retrieved February 2018]. The location is significant; such schools taught skills useful in naval and military construction.

58 Clark, *English Provincial Society*, Chapter 6 'The Progress of Educational Change'; W.K. Jordan, 'Social institutions in Kent 1480-1660', *AC* 75.1 (1961), entire issue. Edward Rivers, son of Sir George Rivers of Penshurst attended Mr. Grymes' school in Hadlow: J. Venn, *Alumni Cantabrigiensis* (Cambridge, 1922).

59 B. Worden, *The English Civil Wars 1640-1660* (London, 2009), pp.14-16; P. Laslett, 'The gentry of Kent in 1640', *Cambridge Historical Journal* 9.2 (1948), pp.155-160.

60 P. Wallis & C. Webb, 'The education and training of gentry sons in early modern England', *LSE Working Papers* 129/09, (2009).

grammar school, the sons of yeoman and even husbandmen might do so; most then went into the church. One of Henry Piggott's sons, Thomas, went to Corpus Christi, Cambridge, and became Rector of Meopham in 1609. William Pearse, son of Thomas Pearse the miller at Hever, went from Tonbridge School as an exhibitioner to Cambridge in 1641, and was later Rector of Dartford. Isaac Burgess, son of a Cowden yeoman, became Rector of Withyham in 1670.⁶¹ The period saw a rise in the professions generally.⁶² In addition to schoolmasters and clerics there were licensed medics in Chiddingstone and adjacent parishes.⁶³ The rising volume and complexity of land market transactions led to an increase in lawyers and this can be seen in the development of precedent and guide books.⁶⁴ Manorial records were increasingly kept by an attorney; the name of Thomas Weller was associated with several manors in the period, among them the manors of Chiddingstone Burwash and Cowden Leighton. Urbanisation also offered increasing opportunities for apprenticeship. An Act of 1563 set the length of training at seven years, and set controls on the practice of a craft.⁶⁵ No indentures of apprenticeship have been found in the sources used, but there are occasional references in wills to the cost of apprenticeships for sons, either already paid or to be allowed.⁶⁶ Analysis therefore depends on probate records, accepting that no statistical conclusions can be drawn from this.⁶⁷ The most common craft careers in the parish registers for Somerden were in the clothing trades (clothier, draper, weaver, tailor, shoemaker), the merchant trades (merchant tailor, mercer), and the timber trades (carpenter, joiner).

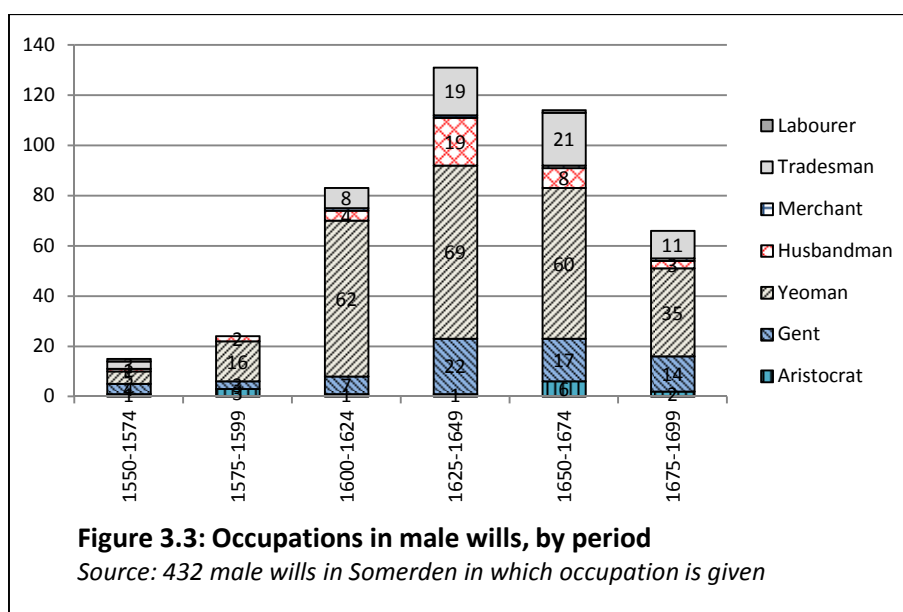
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- 61 J. Venn & J.A., *Alumni Cantabrigiensis* Vol. 3 (1924); Will of John Piggott 1630 LPL VH96/5713. A. Fox, 'Words, Words, Words: Education, Literacy and Print', in K. Wrightson ed., *A Social History of England 1500-1750* (Cambridge, 2017); Church of England Clergy Database [www.clergydatabase.uk]
- 62 K. Bevan, *Clerks and Scriveners: Legal Literacy an Access to Justice in Late Medieval England*, unpublished PhD thesis, University of Exeter (2013); J.H. Baker, *An Introduction of English Legal History*, 4th edn (London, 2002), Chapter 10 'The legal profession'; R. O'Day, *The Professions in Early modern England, 1450-1800* (Harlow, 2001); D.C. Coleman, 'London scriveners and the estate market in the late seventeenth century', *EcHR* 4.2 (1951), 221-230.
- 63 In Chiddingstone Robert Goldsmith (1616): LPL Abbot 1, f.193v, in Westerham Robert Isley (1619): LPL Abbot 2, f.182, John Perrimont (1671), LPL Sheldon 2, and John Skinner (1686), LPL Sancroft 2; and in Sevenoaks Nicholas Best (1669), LPL Sheldon 2 f226, and Humphrey Smith (1670), LPL VH1/1, f.8.
- 64 Everitt, *Change*, pp.43-44. The best known precedent book is O. Bridgeman, *Conveyances, being Select Precedents of Deeds and Instruments Concerning the Most Considerable Estates in England*, 2nd edn (1689). *The Perfect Conveyancer of 1650*, edited by Edward Henden, William Noy, Robert Mason and Henry Fleetwood, was particularly adapted for Kentish law. For scriveners: Anon., *The Character of a London scrivener*, (1667) and Anon., *The Complete Clark and Scriveners Guide*, (1655).
- 65 Statute of Apprentices, [5.ElizI.c4].
- 66 For example the will of Andrew Stanford, TNA PROB 11/185.
- 67 S. Keibek, *Cambridge Working Papers in Economic and Social History* 26, 'Using probate data to determine historical male occupational structures', (2017).

One defining feature of a market town is the existence of trades which did not serve just the community itself but the local area. Although Chiddingstone and Penshurst were often described in the documents as 'Town', in practice there is little sign that they performed a specialised function in this sense. *Table 3.3* shows the occupation data from wills and parish registers by parish, and *Figure 3.3* shows occupations for the hundred over time. Wills are the most consistent source available, but as Nesta Evans found they greatly under-record trades when compared with parish registers. Parish register occupation data is very patchy and of late date, a response to the 1694 *Marriage Duty Act*. For Hever there is no consistent record, and in Cowden and Penshurst only the last year of the seventeenth century and the early years of the eighteenth include it. In Chiddingstone the record is better; although the christenings only record occupations from 1698, there are data for the last quarter of the seventeenth century in the burial registers. In only 21 years there are six occupations recorded which never appear in wills. Some men were recorded as yeoman for status, not reflecting their true occupation, like the miller Michael Bassett (*Case Study 7, page 94*).

Table 3.3: Occupations in wills 1550-1700							Adult Burials 1679-99	
Occupation	Chidd	Cowden	Hever	Penshurst	Total	%	Chidd	%
<i>Primary Sector</i>								
Yeoman	62	38	42	59	201	57.7	18	22.2
Husbandman	19	1	4	7	31	8.9	24	29.6
Labourer				1	1	0.3		0
<i>Secondary Sector</i>								
	13	9	3	9	34	9.8	24	29.6
<i>Tertiary Sector</i> ⁶⁸								
	5	4		2	11	3.2	6	7.4
<i>Titled & Gentry</i>								
Titled & esquires	2			3	5	1.4	1	1.3
Gentleman & clerks	7	9	2	15	33	9.5	2	2.5
None given	6	4	10	11	32	9.2	5	6.2
TOTAL MALE	114	65	62	107	348	100.0	81	100.0
<i>Wives, widows & spinsters</i>								
	24	12	10	23	69		82	92.2
<i>Female servants</i>								
							6	6.7
<i>None given</i>								
							2	1.1
TOTAL FEMALE							90	100.0
FULL TOTAL	138	77	72	131	417		171	
<i>Sources: Wills: TNA PROB 11, VH96, KHL C U908. Burials SoG KE/R86</i>								

68 Includes servants and apprentices.

Firstly, there are differences between the parishes. The yeomen were 54% in Chiddingstone, 59% in Cowden, 69% in Hever and 55% in Penshurst. Chiddingstone had a high level of husbandmen at 17%, and Cowden the highest tradesmen at 20% with Chiddingstone only just behind at 16%. The differences are small, but it is tempting to attribute these to the subtle differences between the parishes: large Chiddingstone with its mixed community, small Hever with its scattered population, Cowden with its industry, Penshurst with its dominant estate.



Secondly, overall numbers of will-makers peaked in the middle of the seventeenth century before declining in the last quarter. Numbers for the first quarter are too small to be significant in analysis, but there were fluctuations over the period. Yeomen rose to 75% in 1600-1624, remaining at 53% for the rest of the period. Husbandmen were 9% overall, peaking at 15% in 1625-1649. Tradesmen were at their greatest in 1650-1674 at 18%. Omitting the first quarter, gentry were at their highest in the final quarter, at 21%. While tradesmen and yeomen wills declined in the last quarter of the seventeenth century, those of the gentry increased. The trend is small, and there was a strong presence of yeomen even at the end of the seventeenth century, but perhaps the trend is an indication of things to come.

The dominance of yeomen among the will-makers is clear from *Table 3.3*. Over the

whole period they made up 48% of all will-makers or 57% of male will-makers; 8% of will-makers gave no occupation so that the real total might be more. They were 22% of Chiddingstone male burials 1679-99 but 43% of the Chiddingstone male will-makers for that twenty-one-year period.⁶⁹ Tradesmen in the parish registers were mainly skilled, mainly sufficient to supply the local market, and relatively settled in the community. Twenty-four husbandmen occur in the burial registers for Chiddingstone 1679-1699. Of these three left wills, one of which contained land, but outside the parish. Six were born in the parish, eleven had children in the parish (one who was also born there). Only one, Thomas Stoneham, was identifiable as a tenant of specific land.⁷⁰ Labourers are less conspicuous in the record. Only one labourer occurred in the burials, John Relfe, whose employer has not been identified; he probably came from Edenbridge. One testator, George Finch, described himself as labourer. He died in Penshurst leaving a simple will dividing his goods between his five children, four of whom had been born in the parish.⁷¹ Using Quarter Session records, James Wells calculated that in Kent as a whole labourers were 10% of the population in 1610.⁷² The burials in *Table 3.3* shows them to be inconspicuous in the Somerden burial registers. However, it cannot be assumed that agricultural labourers in Somerden were in a class of their own. Joan Thirsk thought that areas of wood-pasture such as this favoured by-employments, especially where associated with partible inheritance.⁷³ Sebastien Keibek has contested this on the basis that probate inventories were both biased to the wealthy and misinterpreted, but here it is clear that gentry, yeomen and husbandmen could all have multiple sources of income.⁷⁴ It is probable that husbandmen and craftsmen, and indeed their wives, would have contributed to the seasonal work; spring hop-tying was women's work, but thatching, timber-felling, drovering and many other tasks were occasional work for semi-skilled or unskilled men.⁷⁵ There would also have been

69 Three male burials are without an occupation but are identifiable from the wills and included in the figures.

70 KHLC U908 T120.

71 TNA PROB 11/234.

72 J. Wells, 'The male occupation structure of Kent in the seventeenth and eighteenth centuries, unpublished PhD thesis, University of Cambridge (2017).

73 J. Thirsk, 'Industries in the Countryside', Chapter 4 in F.J. Fisher, ed., *Essays in the Economic and Social History of Tudor and Stuart England* (Cambridge, 1961).

74 S.A. J. Keibek, 'By-employments in early modern England and their significance for estimating historical male occupational structures', CAMPOP Working Paper 29 (March 2017); S.A.J. Keibek & L. Shaw-Taylor, 'Early modern rural by-employments: a re-examination of the probate inventory evidence', *AgHR* 61:2 (2013), 244-281.

75 John Moore's schedule of the sources of income of the jobbing labourer in 1925, while fictionalised, is based

seasonal work in the iron industry, and piece work for the cloth trade.

Case Study 6 shows the Tichbornes of Crippenden, and *Case Study 7* the Bassetts of Bassetts Mill (pages 93 and 94).⁷⁶ Although nominally gentry, the Tichbornes' prosperity derived primarily from iron.⁷⁷ The sons included members of the Skinners Company, a doctor, and an apothecary.⁷⁸ This was a mobile family, with connections in Hampshire, Sussex, Kent and London, holding land but prospering primarily through trade. The Bassetts were established local millers, but prospered to own property and manors. These families illustrate, in this most remote of Somerden parishes, the influence of London and the opportunities available through industry, trade and the professions.

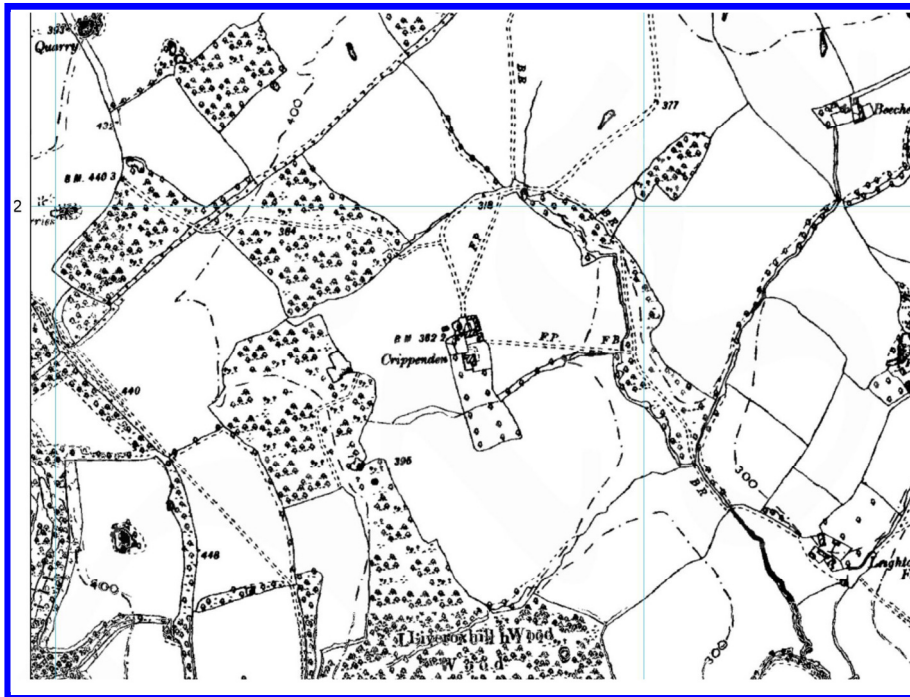
on his experience as a livestock auctioneer circuiting the farms of Gloucestershire: J. Moore: *Portrait of Elmbury* (1946, Oxford edition 1985), Part IV. p.139-142.

76 A junior branch of the Hampshire family of *Tichborne Claimant* fame. KHLIC U908 T3, T162.

77 G. Ewing, *A History of Cowden*, (Tunbridge Wells, 1926), pp.18, 21.

78 Rev. Can. Scott Robertson, 'Richard Tichborne's House of Crippenden', *AC* 14 (1882), 153-156. DNB.

Case Study 6: Crippenden and the Tichbornes, Mobility and the Professions ⁷⁹

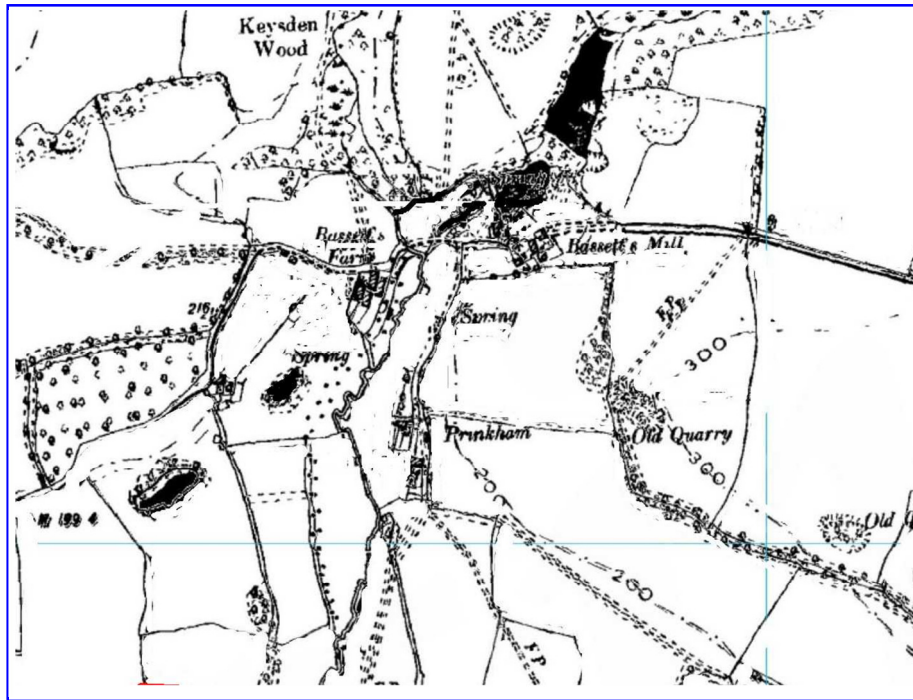


Brief History

- 1520 Marriage of Margaret Martin of Crippenden to John Tichborne.
- 1550 Richard Tichborne, gent, died without sons and left Crippenden to his nephew Maurice Tichborne.
- 1600 Death of Maurice Tichborne.
- 1612 John Tichborne, brother of Maurice, settled Crippenden on son Richard (iron interests).
- 1616 Death of John Tichborne, gent, in Sussex, Richard settled Crippenden with 200a. on wife Dorothy Saxby.
- 1636 Richard settled Crippenden on youngest son John's marriage.
- 1637 Death of Richard Tichborne, gent. His brothers, Robert, skinner, and Henry, doctor, died shortly after.
- 1642-8 Death of Thomas Tichborne of Westerham, gent. He had been apprenticed to his uncle the skinner. Death of brother Richard.
- 1668 Death of John Tichborne in Sussex, and inheritance by his eldest son John who repeatedly mortgaged.
- 1682 *Death in the Tower of Robert Tichborne, skinner, regicide.*
- 1708 Death of John, inheritance by sons of brother Richard, an apothecary.
- 1841 Owner George Marshall, occupier Robert Wickenden.

79 Sources: KHLX U908 T161-T164; U1936 T1-T6; TNA PROB 11/33, 125, 175. Scott Robertson, 'Richard Tichborne's House of Crippenden'. Photo by David Anstiss, www.geograph.org.

Case Study 7: Bassetts Mill, Trade and Industry ⁸⁰



Brief History

- 1585 Henry Bassett left the mill to eldest son Thomas with other land to younger sons.
- 1615 Thomas left it to his son Penticost but Penticost died and younger son Michael inherited.
- 1663 Church marks show Michael was still the owner.
- 1684 Michael Bassett left it to his elder son Thomas, and a manor and farm to his younger son John.
- 1715 Thomas died without heirs and left the mill to his nephew, Michael son of John.
- 1738 Michael died without heirs and left the mill to his sisters.
- Gap in the record*
- 1841 Owner Richard Price, occupier John Burfoot.

IV: Economy

The occupations in *Table 3.3* show that the primary sector was the major employer in Somerden, but iron, shipbuilding, brick-making, glass-making, textiles, were all expanding in England at the beginning of the period, and the demands of war stimulated the development of new processes such as the blast furnace and the use of cast iron in gun-founding. There developed a considerable grain trade from Kent into London during the seventeenth century; F.J. Fisher calculated that cereal imports into London from Kent went from thirteen thousand quarters in 1579-80 to fifty-seven thousand in 1638; Stephen Hipkin has found this to be an underestimate. This was, however, predominantly from East Kent and the coastal plain rather than the Weald.⁸¹ West Kent and the Weald were dominated by the cloth industry and iron, and a significant shipbuilding industry at Deptford, Woolwich and Chatham.

With better communications and soils, the desirable areas in Kent were along the coast and the hinterland of Canterbury.⁸² Nevertheless, the sixteenth century was a period of prosperity for yeomen, who could benefit from rising agricultural prices; the prices rose more than threefold between 1520 and 1620.⁸³ Prices then declined in the seventeenth century; wealth dropped slightly in the 1600s and sharply in the 1610s, remained low in the 1620s and 1630s, then rose again in the 1640s to peak in the 1650s; it dropped back in the 1660s, then rose steadily for the rest of the century.⁸⁴

There were additional pressures during periods of war.⁸⁵ The effects of military taxation were unduly borne by a county with a long coastline with its ancient ports and fortresses. Tudor taxation and the impositions of Charles I, culminated in the demands of the Civil War, which Parliament met with the monthly assessments on income. It is estimated that the annual total of the assessments for Kent in the 1640s equated to those for fifteen years at the end of the sixteenth century.⁸⁶ The pressure did not cease in 1650. England was at war with the Dutch 1652-4, with Spain 1655-8, with the Dutch

81 F. J. Fisher, 'The development of the London food market 1540-1649', *ECHR* 5.2 (1935), 46-64; S. Hipkin, 'Grain trade'. S. Hipkin, 'The structure, development and politics of the Kent grain trade', *ECHR* 61.S1 (2008), 99-139.

82 Wrigley, 'Urban growth and agricultural change', p.5.

83 Broadberry et al, *British Economic Growth*, pp.334-336, excluding from their figures fuel, oil, candles and soap, but including linen. J. de Vries, *The Economy of Europe in the Age of Crisis* (Cambridge, 1976), p.185.

84 Broadberry et al, *British Economic Growth*, pp.337-338, 405, 297.

85 C. Hill, *The Century of Revolution* (London, 1961), pp.11-15.

86 Clark, *English Provincial Society*, pp.228, 357.

again 1665-7 and 1672-4. Michael Braddick found that taxation in the 1690s was ten times that of the 1590s. Parliamentary taxation rose to reach 90% of government revenues, a dramatic rise in taxation powers at a time when prices were stagnant.⁸⁷ Land was the focus of the increase, being hardest to evade: the Hearth Tax of 1662-9, window tax from 1696, Land Tax from 1693, were added to the lay subsidies, the tenths and fifteenths, the poll taxes and the 'free and voluntary present' on the Restoration. In 1704, William Streatfeild recorded that he had paid out £61 7s 3d for Delaware, including taxes (£18 4s 0d), great tithes (£18), other tithes (£4 4s 4d), poor rates (£9 5s 0d), quit-rents (£2 15s 11d), and repairs; significant sums even for a large-scale farmer.⁸⁸ These conditions are the context for movements in the land market, examined in [Chapter 5](#).

Agriculture

Enclosure, enfranchisement and engrossment, the raising of yields, and improvements in husbandry are a feature of the sixteenth and seventeenth centuries.⁸⁹ The freehold, enclosed land of Kent was at a commercial advantage. Whether there had ever been common agriculture in the Weald is doubtful, although there is evidence of open fields in manors on the northern uplands and coastal fringe.⁹⁰ Even in Chiddingstone, a large field, Target Field, was in multiple ownership in the sixteenth century. J.E.A. Jolliffe, describes this type as a 'great field', originally in the common ownership of coheirs, although they could also result from piecemeal sales.⁹¹ The evidence of Somerden is that fields were commonly unhedged even where held in severalty. Marks were usually sufficient boundaries between properties, and full enclosure was a piecemeal affair. A dispute in 1565 between Sir Thomas Willoughby and his uncle Christopher over the bounds of Bowsells was resolved by reallocating certain areas and fencing in

87 M.J. Braddick, 'Fiscal transformation and political compliance, England 1550-1700', *Illes i Imperis*, (2010), p.23; M.J. Braddick, *Parliamentary taxation in seventeenth-century England* (London, 1994); P. O'Brien, 'The political economy of British Taxation, 1660-1815', *ECHR* 41.1 (1988), 1-32; J.V. Beckett, 'The levying of taxation in seventeenth- and eighteenth-century England', *EHR* 100.395(1985), 285-308.

88 KHLC U908 E7. He does not state the years covered by the payments, but it was probably more than one.

89 R.C. Allen, *Enclosure and the Yeoman*, (Oxford, 1992); J.R. Wordie, 'The chronology of English enclosure, 1500-1915', *ECHR* 35.4 (1982), 483-505; Hill, *Century of Revolution*, p.13; Houses of Husbandry Act, 39.Eliz1 c1, Tillage Act 39.Eliz1.c2: *Statutes of the Realm*, Vol.4.2 (1819).

90 A.R.H. Baker, 'Open Fields and Partible Inheritance on a Kent Manor', *ECHR* 17.1 (1964), 1-23.

91 J.E.A. Jolliffe, *Pre-Feudal England: The Jutes*, (Oxford, 1933), pp.13-14, 16.

the resulting plots.⁹² In a similar dispute in 1577 between the lords of the Manor of Chiddingstone Burwash and an adjacent landowner, John Hayward of Lockskinners, John was given a small parcel of land providing access to his meadow, in return for erecting rails or hedges to replace the boundary marks.⁹³

If there was no common arable, there was certainly common grazing. Right to graze on Black Hoath is found in a lease of 1602, on the highway from Lew Cross to Rendsley Hoath in 1639, and common of pasture is found as late as 1813.⁹⁴ The hamlets of which the area is made up each had its own small green such as Tye Green; the very name 'tye' denotes a small common.⁹⁵ Common meadow was ubiquitous; although disappearing through piecemeal enclosure, some survived at the Tithe Survey of 1841.⁹⁶ These meadows had management rules which were not dissimilar to those relating to common arable elsewhere. In Cransted Mead the owners were permitted to let their animals out onto the mead on 8th September (the date of Westerham Fair) to graze the rowen, one animal for each acre they held.⁹⁷ As two owners held less than an acre, their rights were alternated year by year. As a consequence, Kent was not entirely immune from the issues surrounding enclosures: Stephen Hipkin describes the resistance to enclosure of common land put up by one East Kent community.⁹⁸

The soils of Somerden are poor, predominantly Wealden clay, giving way to Hastings sand near to Tonbridge and south of Cowden.⁹⁹ This land does not support the grain growing found in the coastal plain, and emphasis was on cattle fattening.¹⁰⁰ Thomas Willoughby was selling cattle into the London market on a large scale in the first half of the sixteenth century.¹⁰¹ Orchard fruit and hops were introduced from 'beyond the

92 NUL Mi5 160-18.

93 NUL Mi5 162-29.

94 KHLC U908 T148, T223, T16.

95 W.D. Parish, & W.F. Shaw, eds, *Kentish Dialect and Provincialisms in Use in the County of Kent* (Lewes, 1988).

96 KHLC U908 T54.

97 KHLC U908 E33. Rowen = pasture after the hay crop was taken.

98 S. Hipkin, 'Sitting on his Penny Rent': Conflict and Right of Common in Faversham Blean, 1595-1610', *Rural History* 20/21 (2000), 1-35.

99 S.W. Wooldridge & F. Golding, *The Weald*, New Naturalist Series, (London, 1953).

100 J. Thirsk, *England's Agricultural Regions and Agrarian History, 1500-1750* (Cambridge, 1987). Zell, *Industry*, p.7; G. Mingay, 'Agriculture', Chapter 2 in A. Armstrong ed, *The Economy of Kent 1640-1914* (Woodbridge, 1995); B. Short, 'The South-East: Kent, Surrey and Sussex', in J. Thirsk ed., *The Agrarian History of England and Wales, Vol. VI: 1640-1750* (Cambridge, 1984), Chapter 9; J. Thirsk, *England's Agricultural Regions and Agrarian History, 1500-1750* (Basingstoke, 1987), p.28; A. Everitt, 'The making of the agrarian landscape of Kent', *AC* 92 (1976), 1-31.

101 Zell: *Industry*, p.105. He quotes U1000/3.

seas' in the early sixteenth century.¹⁰² Given the capital outlay, only the larger farmers would cultivate them extensively but they did represent a profitable (though risky) crop which could be produced on a small acreage in the closes which typified the Weald. The 1697 inventory of Robert Abraham (taken in March when most of the crop would have been sold) records a pocket of hops, equipment in the oast and hop poles worth 9% of the value of his goods.¹⁰³ By the eighteenth century hops dominated the agriculture of the Somerden area.

Most of the Somerden yeomen, from the evidence of inventories, were engaged in mixed farming. John Ashdowne of Hever, dying in February 1679 aged 85, left fat stock valued at £58 6s 8d (the largest item), corn and hay at £11 10s 0d, standing crops £2 0s 0d, and timber £2 13s 4d, in an inventory totalling £131 13s 4d. His son-in-law Henry Piggott of Chiddingstone, yeoman, dying in spring 1688, left seven acres of wheat, eight of oats, three each of barley and peas, worth £16 17s 6d, and fat stock worth £7 10s 0d in an inventory worth £103 10s 0d, the largest item of which was linen at £12 15s 0d.¹⁰⁴

An example of the larger farmer was William Douglas of Hever who died in 1688 aged 46 (*Case Study 8, page 99*). He farmed his own land in Hever and a property in Chiddingstone brought to him by his Ashdowne wife, supplemented with land leased from the Waldegraves of Hever Castle. His inventory, taken in December, included grain and hay worth £63, fat stock at £80, draught animals at £43. He had sufficient wool and flax for the household, and extensive goods and implements in a house which included accommodation for both maids and men. The inventory of £599 included £300 of bond debts and mortgages owed to him.¹⁰⁵ He was still a mere yeoman.

102 Lambarde, *Perambulation*, p.223: Richard Harris planted England's first commercial orchard at Teynham in about 1533. The first Kentish hop garden is believed to have been planted in 1520: R. Filmer, *Hops and Hop-picking* (London, 1998); Reginald Scot's hop growing manual *A Perfite Platforme of a Hoppe Garden* was printed in 1574. See also Thirsk 'Agriculture in Kent 1540-1640', Chapter 3 in Zell, *Early Modern Kent*.

103 LPL VH96/2950. A hop pocket is a strong, six-foot jute sack for dried, pressed hops, weighing around 170 lbs; about 75kg.

104 LPL VH96/3032, VH96/5716.

105 LPL VH96/3933.

106

Case Study 8: The Douglas Family of Polebrook in Hever

1602 Will of William Douglas I left an annuity of £10 p.a. to wife Jane (Leigh) £20 to younger sons Thomas and John and daughter Susan. He left the lease of his farm to son William together with the lease of a farm promised by Sir Charles Waldegrave. He was tenant to the Waldegraves.

Susan, daughter of William I, married first John Woodgate and third Andrew Stanford of Lydens (d.1641). Her sons-in-law were Thomas Birsty and Thomas Medhurst, her stepchildren married into the Leigh, Children, and Saxby families.

1630 Will of William Douglas II left all lands to son William, £60 to next two sons, £50 to daughters and £30 to youngest son, £20 to widow, second wife Joan. He leased his house from Sir Edward Waldegrave but was also a freeholder.

Son William married Margaret Beecher daughter of James Beecher and Elizabeth Streatfeild of Chiddingstone and Penshurst.

They were therefore kin to most of the yeomen in Hever, Cowden and Chiddingstone. Such networks were not limited to the gentry.

c.1632 William Douglas III married Jane. Six daughters and two sons born.

Eldest child died in 1638, two in 1649, one in 1651. In 1652 William himself died, with another daughter. In 1653 another daughter and Jane their mother died. Only the eldest son, William, and one daughter, Mary, lived into adulthood.

In all the Somerden parishes, the years 1649 to 1654 were high mortality years. In the small parish of Hever, 1648 and 1650 saw high deaths, and the years 1652-1655 an average mortality of 164%. In 1658 the mortality was 163% in Hever, in Cowden 179%, and in Penshurst it reached 333%. Not one of the six Williams lived to be 50, but they became substantial tenant farmers and freeholders.

1652 Will of William Douglas III, nuncupative, was declared by Oliver Theobald, probably the physician of that name. He left all his land to son William and £700 between his surviving daughters - only one survived. He made reference to the 'custom of the countrye' i.e. gavelkind.

c.1668 William IV married Mary Ashdowne. She was the only daughter of John Ashdowne of Hever, tenant of Hever Lodge opposite Polebrook. She inherited Buckhurst and they purchased more land. They had only one child, William born 1670.

1688 William Douglas IV, yeoman, died intestate. Goods included £5 worth of silver, and a clock worth 10s.

<i>Inventory of William Douglas 1688</i>	
Goods	£104
Grain	64
Stock	124
Cash and debts owed	<u>307</u>
TOTAL	<u>£599</u>

1692 William Douglas V was tenant of Thomas Seyliard for 100a., part of Delaware, in addition to his own property.

1716 William Douglas V died. His widow married the curate, Thomas Standen. Of seven children, only one married. His son died childless in 1730, his last daughter in 1797.

1797 The property passed to the descendants of Thomas Standen.

1841 Polebrook was owned by Charles Douglas Standen; 91 acres.

106 Sources include U908 T111, T114, T146, T194; TNA PROB 11/99, 158, 222, 1350, LPL VH96/3933.

Trade and Industry

Eric Hobsbawm said that by the time of the 1851 census most of the Weald '*lacked any kind of non-agricultural industries or manufacturers*'.¹⁰⁷ This was not true in the sixteenth century. The loom, the mill, the blast furnace and the forge were still operating, and brick-making was increasing - Crippenden was an example of a new brick house (*Case Study 6, page 93*). Somerden was outside the main textile area of the Weald.¹⁰⁸ Only three clothiers occur in the wills: Richard Seyliard (1573), Richard Hickmote (1642) and Thomas Levett (1652).¹⁰⁹ A career in this area would involve a move of location; Anthony Piggott, one of the sons of Henry Piggott of Withers (*Case Study 10, page 131*), relocated to Biddenden to become a clothier. In 1634 a tailor, Anthony Wickenden of Cowden, left bequests to a member of the Jessup family, who were weavers, and three married women, perhaps outworkers, but he was one tailor and probably catering for the local market.¹¹⁰

The iron industry was more significant. Chiddingstone Furnace at Bough Beech also included a forge as did Prinkham in the south of the parish. Cowden had two furnaces, Cowden and Scarletts, and its southern neighbours Ashurst, Hartfield and Withyham were at the heart of the industry. Thomas Browne held Bough Beech furnace in 1588 and purchased it from Thomas Willoughby in 1589; in 1596 he was appointed royal gunfounder and became a prominent figure in the industry in the Weald; John Browne was still at Cowden in the 1650s.¹¹¹ The Streatfeilds, Tichbornes and others rose to prosperity through the iron industry in the first half of the period. The days when dynasties could be built on iron were over by the late seventeenth century, although a map of 1743 shows Cowden furnace apparently still in operation.¹¹² Richard Streatfeild was buried under an iron grave slab in Chiddingstone church in 1601; so was Richard

107 E. Hobsbawm & G. Rudé, *Captain Swing* (London, 1969), p.26 note.

108 Zell *Industry*, p.157.

109 LPL VH96/4704, TNA PROB 11/275 & 55.

110 TNA PROB 11/165. It may be relevant that some were from the adjacent parish of Withyham on the forest.

111 J. Hodgkinson, *The Wealden Iron Industry* (Stroud, 2008), p.72; Turner, 'Ancient account book', p.106. Hodgkinson lists Prinkham, Scarlets, Cowden and Bough Beech, but is not definitive. The work of the Wealden Iron Research Group has found mineral extraction and bloomeries at Oakenden Farm and nearby Russells Wood in Chiddingstone, Beechenwood, Liveroxhill, Minepit Wood (near Crippenden), and Waystrode in Cowden, and Smith Hook in Hever. Over 30 sites are listed for Ashurst, Hartfield and Withyham. [www.wealdeniron.org.uk, accessed January 2019].

112 KHLIC U650 P1, Colour Illustration 14 in Hodgkinson, *Wealden Iron*.

Still in Cowden in 1726.¹¹³ Although stimulated by the use of cast iron in gun founding, by the mid seventeenth century the business was moving northwards.¹¹⁴ Thomas Browne is said to have employed 150 men in 1596 but there is no detailed record of names.¹¹⁵ The Poor Law accounts for Cowden record burials brought 'from the furnace', which implies a squatter village there, and there are references to 'aliens' and 'forgemen' in the 1560 Subsidy.¹¹⁶ Just one will-maker was identified as a collier, and one an iron founder, John Daniel of Cowden in 1631.

Shipbuilding on the north coast had an impact on the Weald, with increasing demands for timber. Henry Bridger of Hever purchased several small plots of land between 1558 and 1580, probably for its timber: in December 1562 he was paid £47 9s 5¼d for oak timber delivered to Deptford.¹¹⁷ Protests about the stripping of the woodlands were made, and go back to the sixteenth century if not earlier, although it has been argued that the reality did not match the protestations.¹¹⁸ There was a further great ship-building programme during the Commonwealth, under Henry Vane (a Kentish landowner) and Robert Blake.¹¹⁹

In the fourteenth century, Kent was in the top ten of 39 historic counties for agricultural wealth, dropped into 11th-14th place in the sixteenth century, recovered its position in the seventeenth, and maintained that place until the early nineteenth century, but the nature of wealth changed.¹²⁰ By the latter seventeenth century the iron and cloth industries in Kent were declining; competition and failures in timber supply were taking their toll and the Weald was de-industrialising.¹²¹ Visiting Maidstone in 1724, Daniel Defoe said '*on the other [south] side of the Medway there*

113 Hodgkinson, *Wealden Iron*, Colour illustration p.25.

114 Hodgkinson *Wealden Iron*, pp.72ff.

115 Clark, *English Provincial Society*, p.224.

116 Turner, 'Ancient account book', p.105; A. Sapoznik, 'Rural industry and the peasant agrarian economy: a study of the iron industry in medieval England' in J.P. Bowen and A.T. Brown, *Custom and Commercialisation in English Rural Society* (Hatfield, 2016), p.48; Clark, *English Provincial Society*, p.224; Wealden Iron Research Group, [www.wealdeniron.org.uk accessed 4th January 2019].

117 KHLC U908 T205; C.S. Knighton & D. Loades, *Elizabethan Naval Administration*, Navy Records Society, (Farnham, 2013).

118 P. Warde, 'Fear of wood shortage and the reality of woodland in Europe, c.1450-1850', *History Workshop Journal* 62.1 (2006), 29-57; John Evelyn, *Sylva* (1660); The shortage was sufficient to stimulate the extraction of coal and to warrant its transport south. John Nef's explanation for why factory industry did not develop here was based on access to coal: J. Nef, 'An early energy crisis and its consequences', *Scientific American* 237.5 (1977), 140-151.

119 Worden, *English Civil Wars*, pp.120-121.

120 E.J. Buckatzsch, 'The geographic distribution of wealth in England 1086-1843: an experimental study of certain tax assessments', *EcHR* 3.2 (1950-51), 180-202, p.180.

121 Short, 'De-Industrialization process'.

was once a very considerable clothing trade carried on, and the yeomen of Kent, of which so much has been famed, were generally the inhabitants on that side, and who were much enriched by that clothing trade'.¹²² While he identified the prosperity of the yeoman, and its probable source, he was talking in the past tense.

Occupation data suggest a community which was largely self-sufficient; weavers, clothiers, blacksmiths, carpenters, cordwainers, and shoemakers serving a local market. The same was probably true for timber trades: coopers for barrels and buckets, palemakers for fencing, sawyers, joiners and carpenters for the building trade where brickmakers such as John Hollamby and stonemasons such as George and Richard Stevens (seen in [Chapter 5](#) on the land market) also make an appearance.

122 Defoe, *Tour*, Vol.1, Letter 2, p.132. One should perhaps remember A.W. Coats' warning that Defoe is 'confirmed in his prejudices and unreliable in his facts': Review of P. Earle, *The World of Defoe* (1976), *ECHR* 30.3 (1977), p.517.

V: Politics

Political Change

It is surely significant that Kentish men were involved in risings in 1381, 1450, 1554, 1642, 1648, and 1688, and later in 1830. The period began with the rebellion of 1554, led by Sir Thomas Wyatt of Allington, near Maidstone, was divided by the Civil War of 1642-1650, and ended with the Revolution of 1688. Although the Kentish community saw little fighting, it was deeply involved in the revolution.¹²³ It also reflects the profound changes which took place in political thought, from the patriarchal conservatism of Robert Filmer of East Sutton near Maidstone (1588-1623) to the republicanism of Algernon Sydney of Penshurst (1623-1683).¹²⁴ There was not only a revolution in the nature and perception of authority, but structural change to the institutions of power. The affinities of the great magnates declined, and local jurisdiction effectively passed to the county gentry. Several of the families in Somerden rose under the new Tudor state, some flourished under the Stuarts, most maintained a low profile.

Somerden under the Tudors and Early Stuarts

Peter Clark has called the 1540s and 1550s 'overturning days'; he suggests that already by the end of 1553 opinion was firmly against Queen Mary, especially in West Kent and around Maidstone.¹²⁵ The effect on rural communities of the changes in religion is debatable. They were probably most significant for the gentry: Thomas Dixon, son of

123 A. Fletcher & D. MacCullough, *Tudor Rebellions*, 5th edn (Harlow, 2004); R.C. Richardson, *The Debate on the English Revolution*, 3rd edn, (Manchester, 1998); D. Loades, *Power in Tudor England* (Bangor, 1997); Hill, *Century of Revolution*; P. Clark, *English Provincial Society from the Reformation to the Revolution* (Hassocks, 1977); A. Everitt, *The Community of Kent and the Great Rebellion 1640-60* (Leicester, 1966). For the debate on the consequences of the 1688 revolution: J.H. Plumb, *The Growth of Political Stability in England 1675-1725* (London, 1967), and for a critique C. Roberts, 'The growth of political stability reconsidered', *Albion* 25.2 (1993), 237-256.

124 J. Scott, 'Unfinished business: Algernon Sidney's arguments with Henry Hammond, Sir William Temple, Henry Sidney, Charles II, and the public executioner', *The Seventeenth Century* 31.4 (2016), 391-410; B. Worden, *Roundhead Reputations: The English Civil Wars and the Passions of Posterity* (London, 2001), Chapter 5: 'Algernon Sidney the Republican' and Chapter 6 'Sidney the Whig'; D. Weigall, 'Sir Robert Filmer of East Sutton', *AC* 91 (1975), 99-105; B. Haydon, 'Algernon Sidney, 1623-1683', *AC* 76 (1961), 110-133. For the general background J.H. Burns & M. Goldie, *The Cambridge History of Political Thought* (Cambridge, 1991), in particular Chapter 12 J.P. Sommerville: 'Absolutism and Royalism' and Chapter 15 B. Worden: 'English Republicanism'.

125 Clark, *Provincial Society*, Ch.3, pp.87-98.

William Dixon of Hilden in Leigh, was a Marian exile, travelling to Frankfurt, probably with his cousin Gaius.¹²⁶ Unlike David Loades, Clark believed that Protestantism was a significant motive in rebellion in 1554, the area being prominent in the Edwardian reformation.¹²⁷ More than thirty Kentish gentry were involved, mainly from along the Medway and the Weald. Sir Henry Isley of Sundridge marched to meet Wyatt in Rochester, but was defeated at Wrotham by the loyalist Robert Southwell, and executed.¹²⁸ William Cromer of Tunstall, later father-in-law of John Seyliard of Delaware (*Case Study 2, page 46*), was involved but was pardoned under Elizabeth.¹²⁹

As the country returned to stability under Elizabeth, kinship and community formed the basis of social networks and reputation and replaced the declining medieval affinities.¹³⁰ Stability came at the price of increasing centralisation, but the *quid pro quo* was a role in county administration: in the reign of Elizabeth there were no less than 64 justices in Kent, allowing gentry families to be involved in government even when they did not aspire to provide the county with its MPs.¹³¹

By the 1590s, however, economic difficulties accompanied by war-time impositions were having an effect. In the Weald the iron industry and shipbuilding brought prosperity for some, but for many there was poverty. Even when prosperity returned under the Stuarts it was short-lived, followed by a decade of slump after 1615. Meanwhile, religious divisions were developing.¹³²

Somerden during the Civil War and Commonwealth Period

Although Kent was not in the forefront of the fighting in the Civil War, its people were often under suspicion, especially after the Kentish Petition in 1648, and the county could not escape the economic and social effects.¹³³ The defensive importance of Kent was commented on in Chapter 1. Sevenoaks and Otford to the north of Somerden

126 C. Garrett, *The Marian Exiles* (Cambridge, 1936), p.144.

127 Loades, *Power in Tudor England*; Clark, *English Provincial Society*, pp.87-98.

128 M. Ellis, 'Was Sir Thomas Wyatt able to draw on a culture of rebellion in Kent in 1554', *AC* 129 (2009), 77-102; Fletcher & McCullough, *Tudor Rebellions*; Everitt, *Community of Kent*. Wrotham is pronounced Rootum.

129 He purchased property in Edenbridge as he expanded his estate. [www.historyofparliamentonline.org]

130 Clark, *Provincial Society*, Chapter 4.

131 E. Hasted, *The History and Topographical Survey of the county of Kent*, Vol.1 (Canterbury, 1797), p.215.

132 Clay, *Economic Expansion*, Ch.11 emphasises the shift of taxation down the social scale in the 1590s, though doubts its overall impact on poverty. For religious divisions: Clark, *English Provincial Society*, pp.124-48.

133 Worden, *English Civil Wars*; S. Hindle, 'Dearth and the English Revolution, the harvest crisis of 1647-50', *ECHR* 61.S1, (2008), 64-98.

were in a strategic position, controlling the one road to the coast which bypassed Rochester Bridge. On more than one occasion an army had been able to control Kent by barring the route at Sevenoaks, so it is no coincidence that the Parliamentary forces sited the County Committee at Knole.¹³⁴ This was no peaceful backwater; Michael Bassett was reimbursed 4s 6d by the parish for '*the maintenance of maimed soldiers*'.¹³⁵ Thomas Weller was employed by Parliament to control the area, and monitor dissidents; in 1643 protests at the impositions of Parliamentary forces erupted in violence at Sevenoaks, and Weller had to be liberated from his house in Tonbridge by forces under Colonel Richard Browne.¹³⁶

Opinions have differed on the extent to which religious differences led to participation in the Civil War. Everitt considered that economic factors were more important to the Kentish community. Jacqueline Eales argued that ideological differences relating to royal power but also religion were building long before 1640; Everitt's picture of one community was deceptive. Authority and patriarchy in secular affairs were inseparable from those in religion, so that the congregational bent among some Kentish Reformists was an implicit attack not just on church but secular hierarchy.¹³⁷

The evidence suggests that most gentry families in the Somerden area were Protestant and Parliamentarian by inclination, but took a moderate line. Thomas Streatfeild (d.1627) bequeathed to his sister the sermons of the Puritan, William Perkins.¹³⁸ Robert Sidney, Earl of Leicester, had Puritan gentry and clergy among his circle, notably the polemicist Thomas Scott.¹³⁹ The clergy were perhaps more conservative. Only Cowden kept its rector, Thomas Aynscombe, throughout the Civil War, Commonwealth and Restoration period. The Rector of Chiddingstone, Edward Powell (married to a Streatfeild daughter), was ejected from his living, although it may have been cupidity rather than religious persuasion which prompted this.¹⁴⁰ Henry Hammond, vicar of Penshurst, took the Royalist side in the war, found himself out of step with the local

134 Against a Mercian army in the eighth century and at the Battle of Solefields during Cade's Rebellion.

135 Turner, 'Ancient account book', p.106.

136 Wilson, *Tonbridge*, pp.51-53.

137 J. Eales, 'The rise of ideological politics in Kent, 1558-1640', in M. Zell ed., *Early Modern Kent 1540-1650*, (Woodbridge, 2000); Eales, 'Alan Everitt'; Everitt, *Community of Kent*.

138 TNA PROB 11/152, 129.

139 Blair Worden describes him as 'a man of divided loyalties': *English Civil Wars*, p.37.

140 Everitt, *Community of Kent*, p.222.

gentry, and left the parish to join the Court at Oxford.¹⁴¹

The Sidneys of Penshurst notably produced the republican Algernon Sidney (1623-1683), his brothers Philip Viscount Lisle (1620-1699) who served in the Barebone's Parliament, and Henry (1641-1704), promoter of the Glorious Revolution.¹⁴² Robert Tichborne, mayor of London and grandson of John Tichborne of Crippenden was a regicide (*Case Study 6, page 93*).¹⁴³ The Wallers of Hall Place, Leigh were related to the regicide Hardres Waller and his cousin General William Waller, and to the Dixons. The Streatfeilds of Chiddingstone were followers of Sir Edward Dering, supporting his petition of 1642, and were involved in the 1643 Kentish Rebellion, with most of the local gentry including the Polhill, Hart, and Children families.¹⁴⁴ The Seyliard family, while clearly Protestant by inclination, can best be described as 'having an eye to the main chance'. Thomas Seyliard, grandson of William Cromer, installed his son in the living vacated by Edward Powell, and five Seyliards served on the County Committee under the unscrupulous Sir Anthony Welldon even after most of the ancient Kentish gentry had ceased to do so.¹⁴⁵ By 1656 even John Seyliard of Penshurst was sufficiently ambivalent about the Protectorate to be excluded from Parliament.¹⁴⁶

Among the 'middling sort' of Somerden, Protestant sympathies can be detected. In 1617 Jasper Jessup the weaver bequeathed an English bible to each of his sons.¹⁴⁷ Jasper gave his sons the biblical names Joseph, Benjamin, Ephraim, Manasses, and David. One of the sons of Thomas Hayward of Tye Haw was named Erasmus (1574), the eldest son of Henry Bassett called Penticost (1575), and Protestant names such as Repentance, Clemence, Obedience, Mercy, Mathias, Jeremiah, Esau, Onesimus and Christian occur regularly before the repression of the 1660s.¹⁴⁸ During the Commonwealth, several families in the area appeared as 'suspect persons', including

141 Ewing, *Cowden*, p.120; KHLC U55 E100; Everitt, *Community of Kent*, p.221; Scott, 'Unfinished family business'; Haydon, 'Algernon Sidney'.

142 A. Woolrych, *Commonwealth to Protectorate* (Oxford, 1982). Henry Vane (1613-1662), parliamentary leader and hero of Algernon Sidney, held Fairlawne, eight miles north-east of Penshurst.

143 DNB 1900. He was another member of the Barebones Parliament, and of the Independent church of Henry Cokayne: Woolrych, *Commonwealth to Protectorate*, p.127. The 1645 will of his father is at TNA PROB 11/192 and is notable for its charitable bequests.

144 Everitt, *Community of Kent*, p.191.

145 Everitt, *Community of Kent*, p.144, 151.

146 Everitt, *Community of Kent*, p.293, J. Eales, 'Kent and the English Civil Wars', in J.C. Lansberry, *Early Modern Kent 1640-1914*, (2001), p.29.

147 TNA PROB 11/129.

148 Parish registers, SOG KER/R86, R155.

William Saxby of Leigh and John Hollamby of Chiddingstone.¹⁴⁹

A few Somerden families were Royalist. The Heaths were originally of an Edenbridge family, but Robert Heath, who died in exile in 1649, was attorney-general to Charles I, prospered and established an estate at Brasted and another in Rutlandshire. A letter survives dated 17th October 1650 from his son Francis in Kent to the elder son John at Cottesmore, telling him that a tenant had been told not to pay rent to the landowner:

*'Since I last did write unto you, I mett with an information that Mr. Bowman of Ot[ford] had warning given him that he should pay no Michaelmas Rents till farther order. This I suppose must proceed from the Committee of Sequestrations by virtue of the late Stat[ute]. I thought it requisite, as soone as I could, to give you notice thereof; that you might perseive in what jeopardy that estate lyet[h]; and from which you may (more then probably) conclude what will fall upon the other: I shall not need to repeate what I told you in my former letter, but I desire you will bethinke yourselfe, and neglect no time given to make your best advantage in order to a compositio[n].'*¹⁵⁰

John Heath had been involved in a cavalier conspiracy the previous year and he remained a link to the exiled court up until the Restoration. The estate remained sequestered for some years.¹⁵¹

Many must have felt as did Sir George Sondes of Faversham when he said

'Yet I never was so great a Royalist as to forget I was a freeborn subject. Our King I was willing to have him, but not our Tyrant, or we his Slaves. I was ever for Reformation in Church and State, but not for extirpation. ... But when it came to Parliament and no King, and Parliament against king, then I bogled, I knew not what to do. I was contented to sit still and not do'.

Such people became quietist when their loyalties were challenged and they were overtaken by antipathetic extremism on both sides in the revolution.¹⁵²

Somerden in the Post-Restoration Period

A few families were steeped in the revolution. In 1666 Thomas Polhill of Otford, who owned property in Edenbridge, married Elizabeth Ireton. In her marriage settlement members of the local Petley and Petty families were his trustees and members of the

149 A. Rhodes, 'Suspected persons in Kent', AC 23 (1898), 68-77.

150 KHLC U55 E100.

151 Everitt, *Community of Kent*, pp.142, 275-3; KHLC U55 E100; Eales, 'Ideological politics'.

152 Sir George Sondes, *His plaine narrative to the world, of all passages upon the death of his two sons* (London, 1655), p.21; Everitt, *Community of Kent*; KHLC U908 T100.

Ireton, Fleetwood and Grey families were hers.¹⁵³ By 1666 the revolution supported by these 'grandee' army families was over, and they had adapted to the conditions of Restoration England. But only to a point. Elizabeth Ireton's brother Henry, his wife, and her cousin Ford Grey, grandson and heir of Sir Edward Ford, were all suspected of involvement in the Rye House Plot of 1683. Algernon Sidney of Penshurst was executed. Ford Grey was among those who escaped abroad, to return only to participate in the Monmouth Rebellion, but was rehabilitated under William III to become 1st Earl Tankeville (and the builder of Uppark). Henry Ireton also fled abroad, but was pardoned in 1686, served in the Royal Household and as M.P. from 1698-1711. Elizabeth's sister, Bridget Bendish, was a Calvinist and political activist, supported their brother in his rebellion and subsequent exile, and was an ardent supporter of William III and the 'Glorious Revolution'.¹⁵⁴ A daughter of Thomas Polhill and Elizabeth Ireton married into the Streatfeild family, illustrating the kinship links.

Though most of the people of Somerden were not as closely involved in the political changes as this, none would have been unaffected. Even for royalists there was disappointment. William Temple, nephew by marriage of Henry Hammond of Penshurst, said that it was under Charles II, disillusioned, that he 'fell first into a distaste for Public Affairs'.¹⁵⁵ Some prospered: the royalist John Heath of Brasted survived until 1691; his only daughter married into the Verney family.¹⁵⁶ The Parliamentarian, John Seyliard of Delaware, survived the Restoration, and purchased a baronetcy in return for provision of soldiers in Ireland, and died in 1667.

153 KHLC U908 T100.

154 Oxford DNB; J. Anderson, *Memorable Women of Puritan Times* Vol.2 (London, 1862).

155 W. Temple, *Memoirs Part III: From the Peace concluded 1679 to the Time of the Author's Retirement from Publick Business*, (London, 1709), p.122.

156 George Verney, Lord Willoughby de Broke of Compton Verney: KHLC U55 T38.

VI: Summing Up

A proposition in this research is that the impact of gavelkind, its distributive effect and the position of the small freeholder, varied from time to time according to economic and social pressures. This chapter has set out the context as it applied to Somerden. In much of the economic and demographic evidence, 1625, the mid-point in the period of study, marks a divide. The terminating date of 1700 presages change which did in fact come to fruition in the eighteenth century: a new period of rapid development in demography, economy and society.

The period 1550-1600 nationally saw rapid growth in population, and rising prices; 1650-1700 'national stagnation and decline'.¹⁵⁷ The parishes of Somerden follow the general pattern found elsewhere by demographers: births greatly exceeded deaths in the sixteenth century, fell below in the 1610s, 1630s and 1650s, and started to climb again towards the end of the seventeenth century. Within the decades of declining population, notable years were seen in 1614, 1638 and 1658, varying slightly between parishes, perhaps a consequence of short-term mortality crises. Years of poor harvest occurred throughout the period, but there is no evidence of famine by the 1690s (Section II above). The pattern of family names in the parish registers in the late sixteenth century suggests a high level of migration, only 25% of family names appearing more than six times in fifty years. The overall population of the hundred in the last quarter of the seventeenth century has been calculated to be under 2,000, in keeping with the landscape pattern of scattered settlement.

The period is most striking for the rise in population in London; although urbanisation was increasing, this was less evident in the market towns of Tonbridge and Sevenoaks. Education was increasingly available, and allowed even the sons of yeoman access to the universities. This is reflected in the proliferation of grammar schools, a rise in the professions, notably that of the law, and an increase and diversification of trades, although these mostly served only the local area.

The local economy shared the general rise in prices in the sixteenth century, but was also much impacted by the demands of London. The area was largely immune from

¹⁵⁷ Withington, 'Urbanisation', p.177.

enclosures, but not wholly: greens, hoaths and waste were occupied, fields were enclosed, held in severalty or by coheirs. By 1600 the marks denoting boundaries were being replaced by hedges, but common meadow and pasture was ubiquitous along the river. Given the soil and transport conditions, cattle rearing was an agricultural specialism, but hops and fruit were expanding. Agriculture was not the whole of the economy; iron, brick-making and shipbuilding featured, timber being in demand for construction and wood for fuel. Textiles were concentrated further east in the Weald.

The religious and political changes of the time were of particular importance for the gentry, some of whom were active in rebellion and civil war. Most were Protestants, some Puritans, one or two even Republicans.

As with the rest of the county, Somerden was influenced by the demographic, climatic and political vicissitudes of the age. How these impacted on land tenure and the land market is discussed in more detail in the following chapters.

CHAPTER 4 : GAVELKIND PARTITION AND INHERITANCE PRACTICE

I. Introduction

This chapter tests the proposition set out in Chapter 1 that gavelkind was merely a method of dealing with intestate inheritance, by analysing the extent to which wills and settlements were used to over-ride it. After the *Statute of Wills* was enacted in 1540 there was no doubt about devisibility of gavelkind land; provided it was not held in chief of the King all a landowner's real property could be devised as he chose. In fact, the law was merely catching up with reality: in her study of Norfolk Jane Whittle doubted that the practical difference was great.¹ This is all the more true because provision could be made for children through a gift or settlement, an area where the law was developing rapidly. If the gavelkind holders of Kent could override the rules of inheritance through wills and settlements, the question is to what extent they did this. This chapter looks first at provision made for sons, then daughters, then wives and widows, and briefly at retirement, to see how far gavelkind was adhered to.

Legal Developments

The term settlement covers a variety of legal instruments and a variety of purposes, but they have in common the transfer of the legal 'estate' to feoffees or trustees who were charged with using the property for the 'use' of beneficiaries; the beneficiaries were then said to hold the 'equitable estate' because the common law courts would not uphold their interest but the equity courts would do so. The settlement had been developing since the late middle ages, and the *Statute of Uses* of 1536 provided only a short-term hindrance, resolved by the double use or 'trust', but it took an acceptance by the courts of the idea that land could be settled to descend to an heir as yet unborn (a 'contingent remainder') for the full three-generational form known as the 'strict settlement' to develop in the mid seventeenth century.²

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- 1 J. Whittle: 'Individualism and the land-family Bond: a reassessment of land transfer patterns among the English peasantry, 1270-1580', *P&P* 160.3:1 (1998), p.38. Cooper said that testamentary disposition evolved despite the customary rules: J.P. Cooper, 'Patterns of inheritance and settlement by great landowners from the fifteenth to the eighteenth centuries' in Goody, J., Thirsk, J., Thompson, E.P., eds, *Family & Inheritance: Rural Society in Western Europe 1200-1800* (Cambridge, 1976), p.199.
 - 2 J.H. Baker, *An Introduction to English Legal History*, 4th edn (London, 2002), Chapter 16; N.G. Jones, 'Tyrrel's

The effect of a settlement was to divide up the interests in a single estate in terms of time or quality so that the holder of land had a life estate and the heir, usually a son, the 'remainder' after his death. Strict settlement went a stage further and gave the heir a life interest too, the remainder going to a future grandson.³ The early work of John Habakkuk and Lawrence Stone on strict settlements on marriage ascribed to them the rise of the 'great estate', at the expense of gentry and yeomen, through primogeniture. This has been the subject of historiographical debate. Lloyd Bonfield has argued that primogeniture was not in fact the primary objective; provision for widows and children were a crucial purpose.⁴ Eileen Spring, and Barbara English and John Saville argued that the form of a settlement was not always strict settlement, nor the occasion marriage.⁵ All are agreed that although arising in the seventeenth century, the strict settlement was predominantly a feature of the eighteenth and early nineteenth centuries, and the seventeenth century form was more variable.

Studies of inheritance practice have tended disproportionately to represent the gentry and aristocracy, for whom significant central records and estate accounts survive; indeed the work of Habakkuk, Stone, and Spring specifically addresses these upper echelons of society.⁶ By contrast, studies on manorial records tend to emphasize copyholders; freeholders are less conspicuous in the record.⁷ Amy Erickson's study is an exception in covering a range of classes but specifically addresses women's property.⁸ This study by its focus on gavelkind freeholders emphasizes the yeomen, and to a lesser extent the gentry.

Case (1557) and the Use upon a Use', *The Journal of Legal History* 14:2 (1993), 75-93; L. Bonfield, *Marriage Settlements 1601-1740: the Adoption of the Strict Settlement* (Cambridge, 1983).

- 3 H.J. Habakkuk, 'Marriage Settlements in the Eighteenth Century', *TRHS* 32 (1950); Bonfield, *Marriage Settlements* (1983), Chapter 4; Baker, *Introduction*; A.W.B. Simpson, *A History of the Land Law* (Oxford, 1986), Chapter 9.
- 4 L. Bonfield, 'Affective Families, Open Elites and Strict Family Settlement in Early Modern England', *ECHR* 39:3 (1986), 341-354.
- 5 L. Bonfield, 'Marriage Settlements and the "Rise of the Great Estates"', *ECHR* 32.4 (1979), 483-493; B. English & J. Saville, 'Family Settlement and the 'Rise of the Great Estates' ', *ECHR* 33.4 (1980); L. Bonfield, 'Marriage Settlements and the 'Rise of the Great Estates', A Rejoinder', *ECHR* 33.4 (1980), 559-563.
- 6 E. Spring, *Land Law & Family: Aristocratic Inheritance in England 1300-1800* (Princeton, 1993); L. Stone, *The Crisis of the Aristocracy 1558-1641* (Oxford, 1968).
- 7 M. Spufford, *Contrasting Communities: English Villagers in the Sixteenth and Seventeenth Centuries* (Cambridge, 1974); C. Howell, *Land Family and Inheritance in Transition: Kibworth Harcourt 1280-1700* (Cambridge, 1983); L. Bonfield, 'Normative Rules and Property Transmission: Reflection on the Link between Marriage and Inheritance in Early Modern England', in L. Bonfield, R. Smith and K. Wrightson eds., *The World We Have Gained* (Oxford, 1986).
- 8 A.L. Erickson, *Women and Property in Early Modern England* (London, 1993).

II. Provision for Sons

Primogeniture v. Partition

The debate on inheritance was always imbued with political ideology; literature shows that a link was seen between patriarchal religion and society.⁹ Primogeniture was seen to underpin property and status at the expense of younger children, whereas partition was held to support the family and the middling sort at the expense of the property. By the seventeenth century, younger sons were beginning to protest at the inequitable division of wealth; Thomas Wilson, himself a younger son, said '*their state is of all stations for gentlemen most miserable*'.¹⁰ Partition was seen to be fairer, and it spread the risk among a greater number of heirs. Contemporaries pointed not only to disaffected younger sons but to disobedient and profligate elder ones, beyond the control of their fathers through certainty of inheritance.¹¹ The tension among landowners between the desire to maintain an estate and the desire to provide for all the family, was matched by tension within the state between the desire for stability and for a free market in land.¹² This is reflected in the documents: entails and settlements directing inheritance are mixed with fines and recoveries and even Private Acts of Parliament used to free title.

Offsetting the disadvantages of primogeniture, some (like Thomas Wilson) suggested, was that it created a class of literate but impoverished younger sons who were thereby made 'industrious'.¹³ Gentry sons are prominent: even the small parish of Cowden produced a Lord Mayor of London in Robert Tichborne, Hever a master of Cliffords Inn in Nicholas Seyliard, Penshurst an alderman in Henry Beecher. However, these were the few; yeomen sons with a small inheritance were the many. Partibility, spreading capital assets among the many, favoured the rise of the business and trading class just as much as the production of landless younger sons through primogeniture. A

9 Z. Jamoussi, *Primogeniture and Entail in England: A Survey of their History and Representation in Literature* (Cambridge, 1999). Robert Filmer's *Patriarcha or the Natural Power of Kings* (1680) is but one example.

10 S. Staves, 'Resentment or resignation? Dividing the spoils among daughters and younger sons', in J. Brewer & S. Staves eds, *Early Modern Conceptions of Property* (London, 1995); J. Thirsk, 'Younger Sons in the Seventeenth century', *History* 54 (1969), 358-377; T. Wilson, (ed. F. J Fisher), *The State of England* (1600, Camden Miscellany London, 1936), p.24.

11 F. Bacon, *The Use of the Law* (1636), p.46.

12 Cooper, 'Patterns of inheritance'; pages 192-198 describe the contemporary opinion.

13 Wilson, *State of England*, p.24.

settlement was one means of redressing unfairness and providing for children, particularly in the form of the strict settlement which provided for unborn children.¹⁴

Most of the Somerden settlements are simple settlements. This form could be broken fairly easily in the hands of the inheriting son. Part of the estate could be excluded, giving the father flexibility in providing for his other children where land was the main asset of the family.¹⁵ Although it is generally recognised that settlements served purposes other than primogeniture, those purposes have not been analysed for yeomen, and this forms an important element of this chapter.

First, the extent to which wills were used is analysed and secondly the use of the settlements found among title deeds. Finally there is a consideration of the interplay between the two, and the extent to which landowners considered them alternatives or twin planks of their family strategies. Where possible, comparison is drawn with studies of areas outside Kent.

The Use of Wills to Determine Inheritance

Land in Wills

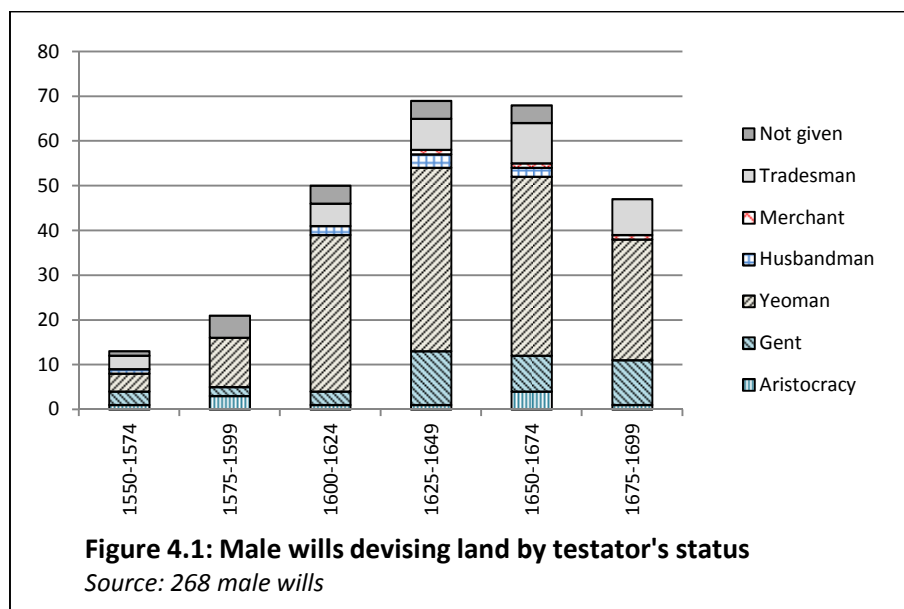
In *Figure 4.1* the Somerden wills listed in *Table 1.2* are broken down by the testator's status. As suggested in Chapter 1, the use of wills requires caution. Firstly will-making was far from universal. In Chiddingstone, of the 76 adult men buried in the period 1679-1699 (when occupation was given) 32% left a will: *Table 3.2*. Of 88 women, 7% left surviving wills (four widows, one wife and one spinster). Takahashi estimated the will-makers to be a third for men and a twentieth for women; Whittle found male will-making in Norfolk 1560-80 to be 22%-27%, a lower proportion which may reflect differing custom.¹⁶ Notable in Somerden is a slight decline in will-making at the end of the seventeenth century. This is not explained by demography because population was rising in this period: *Figure 3.1*. Nor is it compensated for by a rise in settlements as *Figure 4.3* (below) shows, so it may be an indication of a reduction in landowners, the subject of Chapter 7.

14 Staves, 'Resentment or resignation?', pp.201-202.

15 Habakkuk, 'Marriage settlements', p.16.

16 M. Takahashi, 'The Number of Wills Proved in the Sixteenth and Seventeenth Century' in G.H. Martin and P. Spufford, *The Records of a Nation* (1990), p.213. J. Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1580* (Oxford, 2000), p.130.

Secondly, will-makers were concentrated among the wealthier and landowners were likely to be over-represented. Half of will-makers in the four main parishes devised land: *Table 1.2*.¹⁷ In Somerden 1679-1699 will-makers were 17% of tradesmen (four out of twenty-four), 21% of husbandmen (five out of twenty-four), 72% of yeomen (thirteen out of eighteen), one of two gentlemen and the sole aristocrat, a knight. All the yeomen had wives or children and no settlement survives for any. Only one gentleman did not leave a will; five yeomen did not. For example, Jessup Beckett died intestate although he was still the owner of Highfields, albeit mortgaged, which was inherited by his two sons (*Case Study 11, page 139*).



Thirdly, wills represent only a moment in a life.¹⁸ Bonfield divides devolution of land into three stages of life: transfers and settlements made at any time, devise at the end of life, and the law and custom of intestacy which prevailed after death.¹⁹ It is the practice rather than the law which is considered here. The ownership of property was constantly in flux throughout the life cycle of a family, through inheritance, sales and purchases, receipts and gifts on marriage and retirement.²⁰ A will might appear to

17 Lloyd Bonfield raises a different opinion on this subject, that family responsibility was more significant than wealth, *Devising, Dying and Dispute: Probate Litigation in Early Modern England* (Farnham, 2012) p.21.

18 Bonfield, *Devising* p.21.

19 Bonfield, *Devising*, p.20; B. Stapleton, 'Family Strategies: Patterns of Inheritance in Odiham, Hampshire, 1625-1650', *C&C* 14:3 (1999), 384-400.

20 L.K. Berkner, 'Inheritance, land tenure and peasant family structure', in Goody et al, *Family and Inheritance*,

disadvantage a child who had in fact received a portion already; the will of Francis Combridge in 1685 appears to leave his eldest son only £5, and yet the later history of the property shows that he had received the main family holding of Coldharbour although the settlement has not survived to date this (*Case Study 4, page 52*).²¹ Sir John Seyliard's will of 1668 bequeathed only two small farms purchased in his lifetime, whereas his settled property totalled nearly a thousand acres (*Case Study 12, page 146*).²² Both ends of the social scale can show this disparity: Richard Wallis, blacksmith, mentioned no land in his will of 1613, but title deeds show that he had bought a cottage which remained in the family thirty-five years later.²³ Such wills may omit land where it had been transferred *inter vivos*, or where it was held as a life interest, or where custom was accepted. Deductions cannot be made about the status or property of men based on land devised in wills: *inter vivos* settlements and conveyances prohibit this.²⁴ Wills cannot be taken in isolation.

With the caveat that this is *unsettled* land, an analysis of land devised is useful for what it reveals about family structure. The results are shown in *Figure 4.2*. The family reconstruction has enabled the seniority of most sons to be identified so that the level of primogeniture can be estimated. However it has occasionally been impossible to establish, so a category of 'One son' has been included. Judgement has been required in identifying division: it is seldom possible to calculate the exact values of the bequests. Where the proportions are manifestly disproportionate the devise is treated as to the eldest son only, where the amounts are approximately comparable they have been treated as equal division.

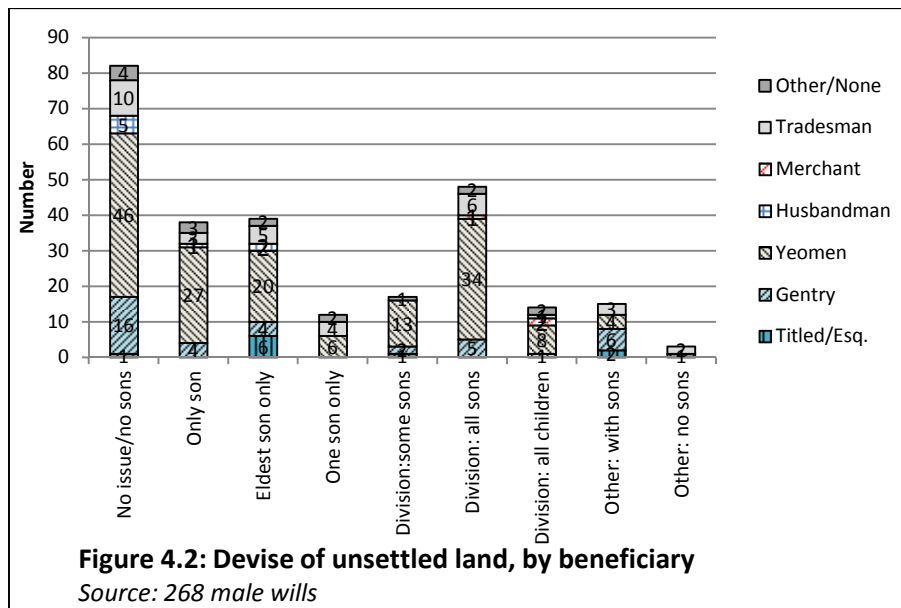
86n; *Bonfield, Devising*, p.21.

21 KHLC U908 T74.

22 KHLC U908 T47-19, PROB 11/326 1668.

23 KHLC U908 T139.

24 G. Clark falls into this trap in 'The consumer revolution', (2010), [<http://faculty.econ.ucdavis.edu>, accessed May 2017].



The analysis shows that 32% (85) of the 268 testators had no sons alive at the time the will was made.²⁵ A further 14% (38) had only one son, so for nearly half of all male testators no decision between sons was needed. The remaining 54% is made up of 29% (79) who divided it, 15% (39) who left their property to the eldest son, 5% (12) who left their property to one son and 6% of fathers (15) who left their property to be sold or to a grandchild. Considering only the 145 fathers with multiple sons, 27% (39) left their property to the eldest son, 8% (12) to one, 54% (79) divided it, and 10% made other provisions (*Table 4.1*). Among yeomen 64% (55 of 85) divided their property; of gentlemen and aristocracy, only 32% did so (9 of 28), and this is just devise of residual property.

The research supports Chalklin's finding that the middling sort in Kent tended to divide their property or leave it to heirs in common; those who favoured the eldest son were mainly gentry, those with ancient holdings, or those with very small holdings.²⁶ The Seyliard family wills are 15% (6 out of 39) of those leaving land primarily to the eldest son (*Case Study 12, page 146*).²⁷ In the ancient holding category comes Henry Bassett (*Case Study 7, page 94*). In the small holding category was Andronicus Jessup, yeoman,

25 Anthony Wrigley found this to be 4 in 10 during periods of rising population: E.A. Wrigley, 'Fertility Strategy for the Individual and the Group' in C. Tilly, *Historical Studies of Changing Fertility* (California, 1978), p.144. Cooper's suggestion that a quarter of marriages would produce two sons seems pessimistic. J.P. Cooper, 'Patterns of inheritance and settlement by great landowners from the fifteenth to the eighteenth centuries', in Goody, et al, *Family and Inheritance*, p.301.

26 C. Chalklin, *Seventeenth-Century Kent* (London, 1965), p.18.

27 TNA PROB 11/39, 87, 145, 211, 214; KHLC U908 T162.

who left Mapletons in Penshurst with ten acres of land to his eldest son Nathaniel in 1615, with portions of £20 to his younger sons.²⁸ However, some were willing to divide their land even if each son received only a field or two; in 1610 William Moyses, yeoman, even divided his house at Swaylands.²⁹

The figures for dividing property in Somerden are generally higher than those found in other areas of the country. Less than 10% of testators in Kibworth Harcourt, Leicestershire, left their land among multiple sons.³⁰ In Odiham, Hampshire, on the edge of the Weald, beyond gavelkind but in other ways comparable to Somerden, only 40% of landowners made a will, and of those just over half had more than one son; of these 45% left their property to the eldest son, 2% left their property to a younger son, and 34% divided their property.³¹ Erickson found great regional variation, from 32% dividing in Cambridgeshire to 57% in Lincolnshire.³² The inference is that gavelkind was the cause of the higher figures for Somerden.

Table 4.1: Devise of land by fathers with multiple sons

	Titled/Esq		Gentry		Yeomen		Other		Total	%
Eldest son only	6	60%	4	22%	20	24%	9	26%	39	27%
One son only					6	7%	6	17%	12	8%
Division: some sons	1	10%	2	11%	13	15%	1	3%	17	12%
Division: all sons			5	28%	34	40%	9	26%	48	33%
Division: all children			1	6%	8	9%	5	14%	14	10%
Other	2	30%	6	33%	4	5%	3	14%	15	10%
TOTAL	10	100%	18	100%	85	100%	35	100%	145	100%

Source: All 145 wills where testator has more than one son

Only four testators devised a life interest to a son and the reversion to another member of the family, a grandson or another son. Seven more left a life interest to a brother or nephew, three to daughters, and one to a sister. A mere handful went a

28 LPL VH96/4884.

29 TNA PROB 11/367; TNA PROB 11/122.

30 Howell, Land, Family & Inheritance, p.155.

31 Stapleton, 'Family Strategies'.

32 Erickson, *Women & Property*, p.75.

stage further and left it in tail male; only two yeomen did so. This type of devise was not always successful. When Robert Streatfeild died in 1651 he left his property at Chested and other land in Penshurst and Hever to his eldest son, Richard, for life with reversion to his younger son Robert, yet when Richard died in 1679 he devised the property to Richard Woodgate, grandson of his sister Sarah, and the will was not overturned, perhaps because it was unchallenged.³³

Despite the perception that an objective was to 'keep the name on the land' testators would almost always prefer to leave their land to a sister's son rather than a cousin of the same name.³⁴ John Ashdowne (d.1729) left Batts, which had been in the Ashdowne family for more than two hundred years, to his nephew Nicholas Piggott rather than his second cousin Richard Ashdowne (*Case Study 3, page 49*).³⁵

Occasionally the surname would be changed; this is uncommon at yeoman level but is a possible explanation for why John Hollamby *alias Nicholas* followed Thomas Nicholas at Coles.³⁶

Bequests of Money Portions to Sons

For all the wills in the sample, of 442 sons who were left bequests, 291 were left land, 117 were left cash or forgiven debts as their primary bequest; ten were given annuities, sixteen were left good or chattels and two had their settlements confirmed. The money portions of the 107 sons bequeathed named sums (as opposed to unnamed sums or debts) are shown in *Table 4.2*. Portions of over £100 were 31% of the whole, but 43% in the period 1625 and 1674, at the same time very small portions were also growing, which implies a greater propensity to make *inter vivos* provision. These are, however, small numbers.

Other than the bequests of the Earl of Leicester, the largest portion, £1,200 in 1669, went to Thomas Woodgate, younger son of Thomas Woodgate, yeoman of Truggers, who owned land in both Kent and Sussex, but was nevertheless a minor landowner as

33 TNA PROB 11/217, 360. I am less surprised since reading that Winston and Jack Churchill were not aware of the contents of their father's will and that they had not received their bequests: W.S. Churchill, *My Early Life* (London, 1930).

34 Erickson found the same: *Women & Property*, p.63.

35 TNA PROB 11/654.

36 Mi5 161-1-43. Another explanation is illegitimacy; the case of John Longley *alias* Woodgate follows.

compared with some of the gentry.³⁷ If the father's desire was to protect the patrimony, he was thwarted. The elder son died unmarried at the age of 55, and the younger son left the property to his only son, John Longley, born outside marriage, so the 'blood and kindred' continued, but the name did not.³⁸ Some testators favouring the eldest son even distinguished between the younger sons by seniority: Thomas Streatfeild, yeoman of Leigh, dying in 1654 left all his land to his eldest son, £300 to each of the next two, and £250 to the two youngest.

Table 4.2: Bequests of named sums of money: sons not devised land
Source: All male wills

	Gentry/Esq	Yeomen	Other	All	%
<£5	5	6	1	12	11%
=>£5<£25	1	10	22	33	31%
=>£25<£100	1	27	3	31	29%
=>£100<£500	11	13	0	24	22%
>£500	6	1	0	7	7%
TOTAL	24	57	26	107	100%

Bonfield and Spring have both highlighted the difficulty, in the absence of estate accounts, of calculating the relative value of land and money portions given to sons.³⁹ In 1563 John Piggott of Withers left all his land to his son Henry, with £30 portions to each of his younger sons; thirty years later, Henry himself left his three elder sons a third of the land each and his two younger sons £80 each (*Case Study 10, page 131*).⁴⁰ As the property was not sold or mortgaged in the period its value is unknown; however, the neighbouring and similar property of Lockskinnners was sold for £440 in 1597. If the value is taken as £400, the younger sons' portions of £80 were by no means dissimilar to those of the elder sons, perhaps £87 once the capital value of their mother's annuity and the portion of the youngest brother were deducted.⁴¹ So far as it is possible to estimate values, however, where the eldest son received all the land

37 TNA PROB 11/330.

38 KHLC U908 T143. John Longley is called Longley alias Woodgate in early documents, but not thereafter.

39 Bonfield, 'Affective Families', p.352; Spring, 'Strict Settlement', p.457

40 TNA PROB 11/47 & 85.

41 KHLC U908 T60.

younger brothers often did receive a lower cash value. The primogenitive effect should not be overemphasised; portions could be translated into land, but access to land was critical only in a purely agricultural society. In a commercial society sons with cash sometimes prospered in trade more than their farming elders and could buy land with the proceeds: John Seyliard of Salmons was one such (*Case Study 12, page 146*).

How strategies changed with the fortunes of the family can be demonstrated in the Stanford family who clustered around Stanfords End (*Map 4*). When Andrew Stanford, yeoman of Lydens, died in 1641 he left five sons, but he willed the whole property to his eldest son.⁴² It had been in the family for at least a century and in this way was left intact. Andrew devised his younger sons some small plots of land, but the total acreage together was less than half that left to the eldest. Instead he left money portions: his second son received £200, the third had already received a portion, the fourth son received £120 and the cost of his apprenticeship (clearly valued at about £80), the fifth an annuity. When his son, another Andrew, died in 1661 he also left five sons; Lydens again went to the eldest, but he was able to leave his younger sons properties in Hever, Edenbridge and West Malling, including over 200 acres of land.⁴³ Lydens remained in the Stanford family until the late eighteenth century.⁴⁴

We can conclude that fewer landowners in south-west Kent devised their unsettled land to an eldest son than is found in studies in other counties. Those that did redressed the imbalance in varying degrees with cash portions. Where younger sons did not receive land they received money portions. We can draw the conclusion from the statistics that gavelkind was influencing Kentish men to devise their land in a way which was more equal than is found in counties without this tradition. Suggesting that gavelkind was nugatory because over-ridden by wills fails to take account not just of levels of will-making but of what provision yeomen were actually making in their wills. However, these results have to be seen in the context of land granted in the lifetime of the testator.

42 TNA PROB 11/185.

43 TNA PROB 11/310. The four younger sons jointly had to pay half their sisters' portions, the elder the other half.

44 L. Cole: *Edenbridge Properties*, [www.theweald.org].

Inter Vivos Transfers and Settlements

Inter Vivos Gifts

Settlements were the main vehicle for *inter vivos* transfers, but another was the joint purchase, where a father joined his son in a purchase of land which put the son in immediate possession without need for further transactions; the son inherited by survivorship through the principles of joint tenancy. Henry Streatfeild (d.1596) made three such purchases with his son Richard between 1567 and 1591.⁴⁵ The son in these cases could even be a minor: in the first of Henry's transactions Richard was under ten; in 1675 Francis Combridge purchased a five-acre plot, including on the deed the name of his younger son, Francis, at the time only three years old.⁴⁶ Such transactions are commonly evident only from a detailed analysis of title deeds; few landowners explained in their wills that they had done this. There has been no systematic examination in the way that there has for settlements. In this study, 7% (12) of 175 conveyances in the title deed data were joint purchases with a son, three of them minors, suggesting this was a common tactic.

Settlements

For the whole area of Somerden Hundred, it has been possible to analyse and contextualise 105 settlements.⁴⁷ This is not the total originally made. In his 1654 will, a weaver from Peshurst, ratified his wife's jointure; in 1648 a yeoman, also from Peshurst, provided for his wife and daughter according to his marriage settlement; neither settlement survives.⁴⁸ Settlements of gentry are high given their incidence in the population: *Table 3.3* (Chapter 3), and we cannot be sure to what extent this is a function of survival bias. However, it is significant that those from the 'middling sort' survive in considerable numbers as part of a property's record of title. Overall, 22% (23) of surviving settlements were made by the titled or esquires, 21% (22) by gentlemen, 41% (43) by yeomen, 10% (11) by tradesmen, 5% (5) women, and one was

45 KHLC U908 T1-T3.

46 KHLC U908 T160.

47 Some additional documents could not be used. Although the second half of the period contains two-thirds of the settlements, they peak in the period 1625-49. There is no evidence of settlements designed to protect estates from sequestration during the Civil War at this level of society.

48 TNA PROB 11/239, 206.

a husbandman (*Table 4.3*). 78% (82) settlements took place on the marriage of one of the parties. If repeat settlors are removed, yeomen are 42% of settlors as compared with 59% of will-makers devising land; for aristocracy these figures are 19% as compared with 4%, and gentry are 21% as compared with 14%.

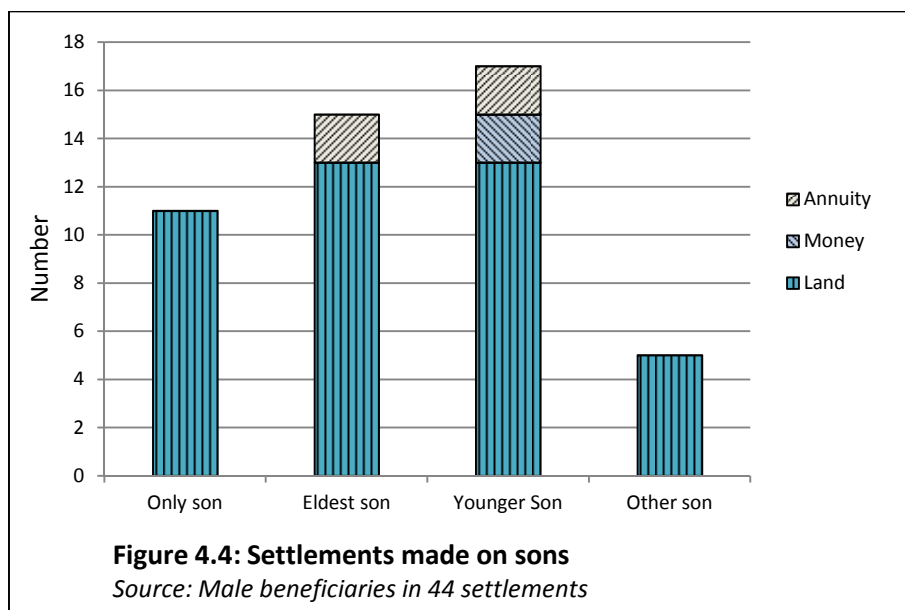
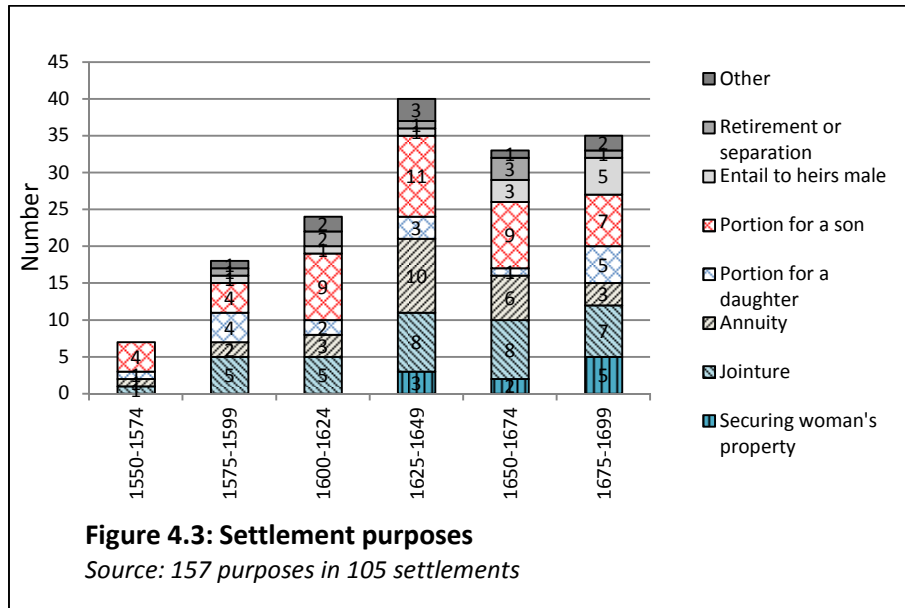
Table 4.3: Somerden settlements							
SETTLOR	Aristocrat	Gent	Yeoman	Merchant/ Tradesman	Husband- man	Woman	TOTAL
1550-1574	1		5			1	7
1575-1599	5	2	4		1		12
1600-1624	1	3	7	5		2	18
1625-1649	5	8	12	1		1	27
1640-1674	5	3	10	2			20
1675-1699	6	6	4	4		1	21
TOTAL	23	22	43	11	1	5	105
<i>Source: All 105 settlements</i>							

The protagonists in the debate on the aim of settlements agree that in the seventeenth century the purposes were relatively varied, but an analysis has not yet been made in the context of family reconstruction.⁴⁹ In the 105 Somerden settlements 157 purposes arise, which have been divided into eight categories (*Figure 4.3*). 66% (69) of the 105 settlements made provision for wives, 42% (44) additionally or separately made provision for sons, 15% (16) for daughters, and 8% (8) for retirement. 10% (11) of those making provision for wives and sons entailed the estate to heirs male. Miscellaneous purposes occur in 9%, including providing for step and unborn children, grandchildren and other kin. Provision for sons occurs in less than half: widows are the primary focus in a majority, as Bonfield pointed out.

Figure 4.4 shows the 48 sons (in 44 settlements) for whom provision was being made. They include eleven only sons, fifteen eldest sons, seventeen younger sons and five whose seniority has not been identified. Only two received cash portions, and two

49 Habakkuk, 'Marriage settlements', p.16; E. Spring, 'Strict Settlement: Its Role in Family History', *ECHR* 41:3 (1988), 454-460; A.L. Erickson, 'Common Law and Common Practice: The Use of Marriage Settlements in Early Modern England', *ECHR* 43.1 (1990), 21-39.

received annuities.⁵⁰ Where settlements were being made on eldest sons, four provided money portions for other children in the same transaction, dating from 1625 (two), 1636, and 1655; this does not concord with Spring's suggestion that this was a feature of eighteenth-century settlements.⁵¹ At least two settlors later made settlements of land on younger sons, two died intestate leaving their residual property to be divided. The proportion of eldest sons being preferred is no more than 37%.



There are two examples where a younger son was given preference over an elder.

50 KHLC U908 T120.

51 Spring, 'Strict Settlement', p.457.

Henry Care, a weaver, received a house and land; he was to pay his elder brother an annuity for life. When the brother died Henry sold the land but kept the house; there is a hint here that John needed support.⁵² In 1636 Richard Tichborne settled Crippenden with two hundred and thirty acres on his third son, John, by lease for an annual rent (to serve as a pension), endowing his future daughter in law with an annuity and himself taking the right to occupy certain rooms in the house (*Case Study 6, page 93*). The eldest son, Thomas and the second son Richard received smaller properties. This seems to have been an amicable family arrangement because Thomas, dying a few years later, left his own inheritance to John and made him his executor. Richard also seems to have died within a few years.⁵³ Probably it was a pragmatic arrangement: only John married and had children; his need for land, and his potential to carry on the line were being taken into account. John left Crippenden to his own eldest son; when he died childless it passed to his nephews.⁵⁴

To sum up, provisions for sons during a father's life could take the form of joint purchases or settlements. While protecting the patrimony might be a motive, the primary objective was to set their sons up in life, and the majority took place on marriage, although this was not invariably the case.⁵⁵ Some fathers would use a combination of methods of providing for their sons, covered next.

Inheritance Strategies : The Interplay of Wills and *Inter Vivos* Provisions

Of the 66 male testators from Chiddingstone who bequeathed land in the period (*Table 1.2*), 21% (14) are known to have made settlements. The 105 settlements in *Table 4.3* represent 81 individual settlors, (76 men, 5 widows or spinsters, and a wife acting as her brother's executor); for 46% (37) there is a surviving will, one had sold his remaining property, leaving 53% (43) settlors for whom no will has been found. By comparison, Bonfield found that for copyholders in the Manor of Preston, Sussex 1562-1702, 42% of potential male testators (22 of 53) left a will, of whom a third also made

52 KHLC U908 T217.

53 KHLC U908 T162, T164, PROB 11/175.

54 The Tichbornes had links with Sussex, but influence of the Sussex tradition of Borough English is unlikely. G.R. Corner, *On the Custom of Borough English as Existing in the County of Sussex*, Sussex Archaeological Society, (Lewes, 1803); KHLC U908 T162.

55 E. Spring, 'The Settlement of Land in nineteenth-century England', *American Journal of Legal History*, 209 (1964), p.209.

settlements.⁵⁶ Another 18 made settlements but not a will, so more than two-thirds of settlors did not make a will.

Some Somerden landowners were using settlements as an alternative to making a will.

This was often on retirement which is covered in the final section of this chapter.

Those who did make a later will might do so where the land settled was only part of the holding, perhaps based on the value determined by a bride's father, or a life interest was granted leaving the remainder to be devised, or the land had been purchased subsequently, so further provision was required. The history of Tye Haw (*Case Study 4, page 52*), contains the 'top-up' will of William Birsty. In 1602 William made a settlement of his estate in Hever on his marriage to Anne, widow of Richard Streatfeild the ironmaster. A farm, a smallholding, a house and two further holdings of land were to provide her jointure.⁵⁷ When he died in 1637 he ratified this settlement but bequeathed to his surviving daughters seven further holdings. Two of these can be identified as Tye Haw and Helde House and a third he had purchased from his brother Thomas; the others were small plots in his own occupation which seem likely to have been small purchases to add to his existing farm.⁵⁸

George Children's strategies are described in *Case Study 9, page 127*.⁵⁹ In the 1652 settlement on his second son George he first released his right to Three Crofts and The Marles which he had purchased in joint names, so that this devolved onto the son. This enabled George the younger, in a second document, to use the land to secure an annuity of £20 p.a. on his new wife. In a third the son and his wife leased the property back to the father for 40 years at £20 per annum. Finally, the father settled Bough Beech Farm and Coopers Corner on trustees for his own life then that of his wife, then his son. In his will he described the properties purchased for his younger sons. Although the patrimony was protected, George Children had prospered and provided land 'purchased not descended' as Thomas Wilson put it, for each of his sons, using it to provide for the widows, but also protecting it for the future.⁶⁰ Those who did not prosper and invest in this way were left with the decision whether to divide or not.

56 Bonfield, 'Normative Rules', pp.171-3.

57 The portion she brought to the marriage is not recorded. She had a life interest in High Street House.

58 KHLC U908 T254, LPL VH96 3289.

59 KHLC U908 T184.

60 Wilson, *State of England*, p.45.

Case Study 9: Children Family and Bough Beech Farm

- 1652 George Children of Childrens in Hildenborough settled three properties on his second son George's remarriage: Bough Beech Farm, Coopers Corner Farm, Three Crofts and The Marles. His elder son, John, was 'of Childrens'. George was 'mercer' of Sevenoaks.
- 1658 George Children the younger died, leaving his property to sons George, Richard and John. George and Richard shared Bough Beech and Coopers Corner.
- 1660 George Children the elder died. He left goods to his eldest son, John, '*already by me p[re]ferred with a portion*', (Childrens in Hildenborough), money portions to the children of George, a money portion to his third son Richard, who was also devised the reversion of property in Tonbridge in which his widowed aunt lived, together with property George had purchased in his own and Richard's name at Kingsdown. His youngest son William was to have properties recently purchased in Headcorn and Tonbridge from which his wife was first to receive an annuity.

Three Crofts and The Marles

38 acres adjoining Broadeye

- 1550 Property of the Willoughby Family.
- 1588 Three Crofts sold to Henry Streatfeild and The Marles to Thomas Browne.
- 1611 Percival Willoughby gave further assurance to the new owner, John Bloome.
- 1634 Julian Bloome, widow of John, sold to George Children. Thereafter descended with Bough Beech Farm.
- 1716 George Children the grandson sold to William Heath.

Bough Beech Farm

Messuage and 30 acres adjoining, with a further 10 acres called Bannsfield, and 3 acres of meadow in Cransted Mead to the south.

- 1550 Property of Edward Wybarn.
- 1567 Devised to Robert, son of Edward.
- 1628 Robert Wybarn sold to George Children.
- 1652 George Children settled it on his second son George.
- 1658 George the younger died and left his property to his sons George and Richard.
- 1677 Richard had died and his brothers George and John reapportioned the property.
- 1701 George the grandson left it to his only son George.

Messuage at Coopers Corner

Messuage and 21 acres

- 1652 George Children settled it on his second son George. It descended with Bough Beech Farm until 1701.
- 1701 George Children died and left it to his daughter Anne, born 1683.

Partition

Partition, though not unique to Kent, was intrinsic to the nature of gavelkind, and the process had a Kentish name: to *shift* a property. *Case Study 5* on page 53 described how Lockskinners was divided between the Everest brothers. In this study there are eighteen surviving deeds of partition (*Table 4.4*). However, deeds of partition do not represent the whole story of coparcenary: partitions did not need to be in writing before 1677, and if a property continued to be held in common there might be no partition, will, or settlement to highlight the shared ownership.⁶¹ The subsequent history of the estate might reveal it. Butt House in Chiddingstone was mortgaged in 1694 by William and Richard Lockyer, wheelwrights, and subsequently sold; the recitals of the sale show that they were coparceners who had inherited as a result of their father's intestacy.⁶² Given the level of intestacy, considerable property must have been held in common in this way.⁶³ On the other hand, intestacy was not the only reason for a shift. Of the eighteen partitions here, nine arise from intestacy, four arise from a joint bequest, between sons or between daughters. The remaining five fall into two categories: the first covers the situation where heirs received more than one property and divided them up in a more convenient way, or where a property returned to the family unexpectedly; the second covers cases of '*in capite* adjustment' where part of the land was found to be held in chief, and the shares had to be adjusted to comply with the common law.

Reason	1550-1559	1600-1649	1650-1700	Totals	%
Intestacy	2	2	5	9	50.0
Joint Bequest		2	2	4	22.0
Resettlement/reversion		1	2	3	17.0
In capite adj	1	1		2	11.0
TOTAL	4	6	10	18	100.0

Source: 18 deeds of partition

61 1677 Statute of Frauds [29.CarII.c3; Cruise 4.30.6.S15]. In an ideal world the new ownership would be recorded in the manor court rolls. The difficulties with this were described in Chapter 2.

62 KHLC U908 T95.

63 As was discussed in Chapter 1, not all wills survive, so the rate of intestacy is probably somewhat lower.

(i) Intestate Succession

Intestacy might occur as a result of sudden death or through acceptance of the provisions of custom.⁶⁴ Typical is Henry Streatfeild who died intestate in 1648 aged 61; he had provided for his widow in his own marriage settlement, and for his surviving children by way of pre-nuptial settlements on Richard in 1636, Anne in 1644 and Stephen in 1646; his widow could administer the residue (*Case Study 19, page 256*).⁶⁵ John and Henry Ashdowne's grandfather, father and uncle died intestate between 1600 and 1602, leaving them minors. When they reached maturity in 1615 they divided the property; there is no reason to suppose family wills would have altered this result.⁶⁶

Of the nine sets of coheirs in intestacy, six were sons, two were daughters and the ninth brothers. (For the partitions overall, there were ten sets of sons, two of daughters, two of brothers, two of sisters, one of grandsons, one of nieces and nephews.⁶⁷) Two contrasting examples will illustrate the process. When William Collins of Cinderhill died in 1653, his two sons, both labourers, were able to divide his two cottages, a close and a piece of meadow more or less equally between them, one paying his brother 20 shillings to address the difference in value.⁶⁸ In the partition of the Jemmett property between three surviving daughters in 1680, the rental value of the property was assessed to the last penny, £489 10s 0d, capitalised at £9,790; to adjust the partition Anne paid out £3 6s 8d to her sister Timothea and £53 6s 8d to Margaret: *Table 5.1* in Chapter 5.⁶⁹

(ii) Joint Bequest

Although fathers frequently detailed each son's share meticulously in a will or settlement, including any cash adjustment, eleven fathers, an uncle, a brother and a cousin left their property to some or all of their male heirs jointly, without specifically naming the share of each. In a detailed will in 1596, John Beecher left his own holding, Wickhurst in Leigh, to John Beecher junior, his eldest son, and Round Rowens, recently

64 Bonfield quotes a dying man who made this an objection to making his will, and Erickson found this among fathers in areas of primogeniture: Bonfield, *Devising*, p.20; Erickson *Women and Property*, p.78.

65 KHLC U908 T155, T158.

66 KHLC U908 T178.

67 Nieces without brothers inherited the shares of their deceased father coheirs.

68 KHLC U908 T16.

69 KHLC U908 T22-8.

purchased from a cousin, to his son Edmund (probably his second son), but Richard and Robert, the remaining sons, received 20 acres of land jointly (with significant goods). John Beecher would have been about 50 years of age at this time, and presumably his purchase of Round Rowens was intended to be the first of sufficient purchases to provide for his younger sons, in the pattern of George Children, but he did not survive to achieve it. There is no further record of this property, so any partition is not included in *Table 4.4*.⁷⁰ In the previous year, 1595, Henry Piggott left his three eldest sons to divide their property when the youngest of the three came of age, which they did in January 1601/2. His objective was clearly expressed: the two eldest sons were to occupy the land while the third was under age, and use it to pay the portion of the fifth son, and by implication to support all the younger sons in their minority (*Case Study 10, page 131*).⁷¹

Two of the joint bequests were to daughters, including one instance of property left jointly to daughters where there was also a surviving son. The same process applied; when one daughter and her husband wished to use the property as security, a partition was made; however it might remain in undivided shares for many years. Finally, Robert Goldsmith, who died around 1630, bequeathed a shop and five acres of land and a house with three acres to his Turner and Gourley grandsons, who partitioned it in 1638 reciting the will, which has not itself been found.⁷²

iii) Remainder and Reversion

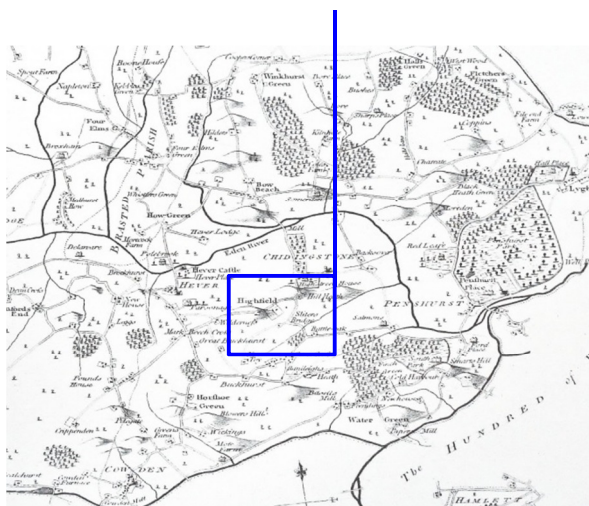
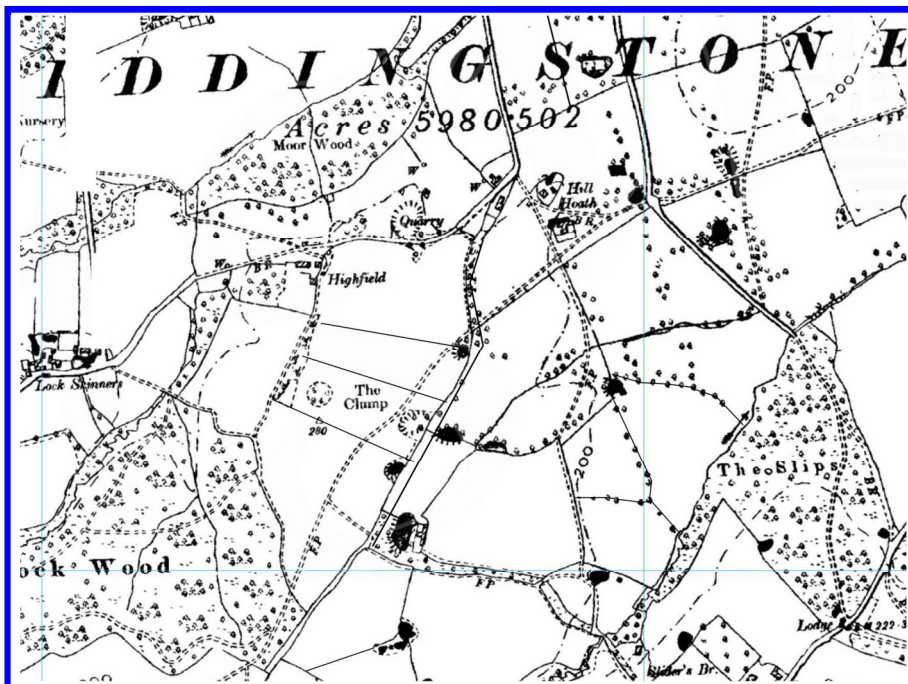
Richard Streatfeild the ironmaster died in 1601, leaving in his will a mortgage on the Manors of Chiddingstone Cobham and Tyehurst to his sons jointly. This was, of course, in practice a debt (a chattel) and had the money been repaid it would have been shared by his sons as residuary legatees. However, technically the mortgage was a conveyance of the legal estate so subject to partibility, and in due course when it was defaulted on the sons made a partition, taking one manor each in severalty, their passport into the manorial gentry.

70 TNA PROB 11/87. The location of Round Rowens has not so far been identified.

71 KHLC U908 T157.

72 KHLC U1986 T30.

Case Study 10: Withers or Hill Hoath, Provision for Sons ⁷³



Brief History

Message and 33 acres in Chiddingstone.

- 1563 John Piggott bequeathed all lands to wife Margery for life, then to son Henry, with £30 to other sons and £7 13s 4d and a cow to daughters.
- 1595 Henry Piggott bequeathed to his three eldest sons in common Withers with 33a., 35a. in Penshurst and 48a. at Rendsley Hoath. £80 each for two youngest sons, £50 to daughter, £6 p.a. for wife.
- 1602 Partition between sons: Withers became the share of eldest son Henry. They increased their mother's annuity to £9 p.a.
- 1618 Henry bequeathed all land to his only surviving child, Nicholas. Wife Ruth to have £100, goods & room in house. In fact she remarried.
- 1638 Nicholas bequeathed it to his only son Henry. £100 to only daughter, £6 p.a. to wife, £2 p.a. to mother in addition to £8 p.a. jointure provided by his father.
- 1675 Marriage settlement of Henry's son Nicholas: he received Skinners.
- 1688 Henry bequeathed all lands to only son Nicholas, £160 each to two unmarried daughters.
- 1688 Nicholas died leaving Withers, in the occupation of Benjamin Wakelin, & other land to eldest son Henry, £250 to younger sons, £150 to daughter.

73 Sources: KHLX U908 T83, T85, T148, T157; NUL MiM 198; TNA PROB 11/85, 119, 132, 147, 193; LPL VH96/5716

iv) *In capite adjustment*

Finally, there is the situation which occurs twice, where property had been bequeathed to a younger son, or had been divided equally between sons as coheirs, and it was found later that part was in fact held *in capite* of the King. The problem rested on the Statute of Wills which said that only two-thirds of land held *in capite* could be devised.⁷⁴ The example of James Beecher was quoted in Chapter 2.⁷⁵ The second instance concerns the three sons of George Beresford of Squerries in Westerham, who left various lands in Kent and elsewhere to his eldest son, Michael. When Michael died in 1628, although he left the manors of Squerries in Westerham and Broxham in Chiddingstone to his next brother, he tried to leave the rest to his younger brother. As a result of the ruling the brothers had to partition the property so that the elder received the third reserved by the statute. Cole Allens in Cowden, a holding of eighty acres, was part of the settlement (*Case Study 13, page 160*).⁷⁶

To sum up, partitions could occur as a result of intestacy, but they could also occur as a deliberate joint bequest, or where a property reverted to male heirs through non-payment of a debt or the death of a minor. As has been seen from the example of the Lockyer brothers a property might never be partitioned and the only knowledge we may have of a holding in common is through a later conveyance. Although partitions occurred under common law, they were intrinsic to the nature of gavelkind, and more frequent in Kent. It is this feature, indeed, which was so much criticized as bringing holdings down to small pieces of land, or numerous interests in the same piece of land, and which on the Continent was considered to be an inhibitor to improved agricultural productivity.⁷⁷ Chapter 7 considers the impact of partition.

74 *Coke's Reports* quotes the case of Leonard Lovie: Part X, p.394 (1826 edn, Law Book Exchange 2002).

75 Chapter 2 above. KHLC U1986 T26-1 1573.

76 Land held in socage could be *in capite*, even before the 1660 Tenures Abolition Act, [12.CarII.c24] and gavelkind would be subsumed in this principle. 'Those that hold lands by the tenure of socage *in capite* (although not by knight service) cannot alien without a licence and they are to sue livery and pay Primer Seisin but not to be in ward for body or land': F. Bacon, *The Use of the Law* (1636), p.35.

77 E.A Wrigley, 'Urban growth in early modern England: food, fuel and transport', *P&P* 225 (2014), p.94 quotes Dejongh and Thoen's analysis of Flemish agriculture in B.J.P van Bavel & E. Thoen eds. *Land Productivity and Agro-Systems in the North Sea Area (Middle Ages - Twentieth Century)* (Turnhout, 1999), p.57.

III. Portions for Daughters

Daughters and Land

The law was the same under gavelkind as it was under common law, that daughters did not inherit where there were sons, but shared in the inheritance where there were not, although they could receive land through a will or settlement.⁷⁸ The heiress has been said to have a distributive effect on land; even under common law they took by coparcenary in cases of intestacy.⁷⁹ The question is whether the principle of equality in Kent spread over into the treatment of daughters. Most research has looked particularly at wills, so these are considered first.

Land in Wills

Among Somerden male testators 158 had both sons and daughters of whom 13% (20) gave land to a daughter. Of the 382 daughters, 18% (68) received land, of whom 10% (38) had a surviving brother and 8% (30) did not. Of the twenty testators nine divided their land more or less equally between all children; eleven left small pieces of land to one or more daughters with the bulk to sons. A typical example is James Beecher (son of James Beecher of Leigh of the *inquisition post mortem*), who in 1638 left properties totalling 102 acres between his two sons, and a house to each of his daughters.⁸⁰ Oliver Combridge of Newhouse, neglectful uncle of the Chancery case in Chapter 2, left his daughters about 30 acres of land and £300; his son had received Newhouse.⁸¹ Erickson found that in southern counties fathers with sons gave their daughters land in 5% (one of 41) cases, whereas in Yorkshire this was 26% (10 of 39); the Somerden figures lie between the two.⁸² Yorkshire had a tradition of partible inheritance but in similar areas there was not a link, so she suggests that regional tradition was a cause, evidence for the influence of gavelkind. There remains the evidence of settlements.

78 T. Robinson, *The Custom of Kent or the Law of Gavelkind* (1858), pp.55-6.

79 Habakkuk, 'Marriage Settlements', p.28; C. Clay, 'Property Settlements, Financial Provision for the Family, and Sale of Land by the Greater Landowners, 1660-1790', *Journal of British Studies* 21.1 (1981), p.32; C. Clay, 'Marriage, Inheritance and the Rise of Large Estates in England 1660-1815', *EcHR* 21:3 (1968), p.505; E. Spring, 'The Heiress At Law: English Real Property Law from a New Point of View', *Law and History Review* 273 (1990), 273-296.

80 TNA PROB 11/178.

81 TNA PROB 11/344 1674.

82 Erickson, *Women and Property*, (1993), p.61.

Land in Settlements

Of the 105 settlements in *Table 4.3*, 16 provided portions (for 24 daughters), five of which were on marriage, seven part of a general settling of an estate and four making specific provision for daughters. Nine daughters received land, but only one had brothers.⁸³ Henry Streatfeild settled Bramsells in Hever on his daughter Anne when she married in 1644; he had four sons, two of whom married at about the same time and received their own property (*Case Study 19, page 256*).⁸⁴ Cooper found that by the early seventeenth century, settlements usually included provision for daughters, generally in the form of money where there were brothers; he was looking primarily at gentry and strict settlement, but there is a parallel here.⁸⁵

To sum up, 13% of male testators with both sons and daughters left land to their daughters, and 18% (68 of 382) of all daughters received some land, so it was the exception rather than the rule. A further 9 daughters received land in a settlement, but overall, less than a fifth of all daughters would have received land.

Daughters and Cash Portions

If 18% (68) of daughters received primarily land, 74% (282) received primarily cash and the remaining 8% (32) annuities or goods. Among 264 single daughters named in wills cash portions were never less than 60% by number in any period. The proportion of cash portions was highest in the years 1575-1624 at 82%, rising again to 79% in 1675-1699.⁸⁶ Spicksley charted the rise in money portions in Lincolnshire from 40% of bequests in 1570 to over 80% by the 1690s.⁸⁷ She found the rise occurred earlier in Kent. In Somerden they were at the upper end of these figures from the late sixteenth century. Goods as primary provision had ceased by 1650. Annuities were less common in the later period than the earlier, perhaps reflecting a desire to leave property unencumbered.

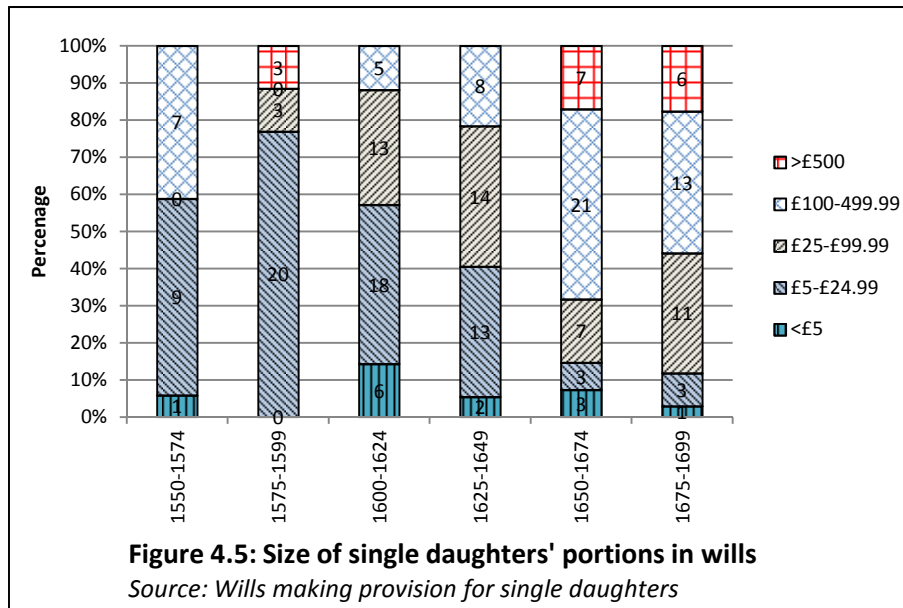
83 KHLC U1475 T55. Others were William Terry whose daughter Anne married Richard Streatfeild, he settled on her two properties in Penshurst, and John Collins, whose daughter married into the Ashdowne family and received Cinderhill: KHLC U55 T128.

84 KHLC U908 T258.

85 J.P. Cooper, 'Patterns of inheritance and settlement by great landowners from the fifteenth to the eighteenth centuries; in Goody et al., *Family & Inheritance*, p.209.

86 These figures are based on the will date, being the date when the bequest was decided upon.

87 Cooper, 'Patterns of inheritance'; J. Spicksley, 'Usury Legislation, Cash and Credit: the Development of the Female Investor in the late Tudor and Stuart Periods', *EcHR* 61.2 (2008), 277-301.



The size of single daughters' money portions varied greatly: *Figure 4.5*. The mean for aristocracy was £739 (twenty-one daughters), for gentry £366 (sixteen daughters), for yeomen £74 (118 daughters). The median values for these groups were £300, £175 and £40. As early as 1596 two of the Seyliard daughters received £600 each (*Case Study 12, page 146*).⁸⁸ For yeomen daughters the mean increased from £19 (21 daughters) in the years 1550-1599, to £49 (55 daughters) in 1600-1649, and to £150 (44 daughters) in 1650-1699. The value of cash bequests for married daughters was usually nominal, often 12d.⁸⁹ These portions were significantly more than the figures found by Judith Spicksley in Lincolnshire 1570-1760 though the increase in value was less.⁹⁰ The rise has been ascribed to commercialisation of marriage among the gentry classes, and the availability of trade wealth with merchant daughters.⁹¹ However, Spicksley found that it was particularly true for yeomen, where they rose from a mean of £9 in 1570 to £39 in the 1690s, more than twice the inflated value.⁹²

As with sons, wills are not the full story. Of the sixteen Somerden settlements in *Table 4.1* which made provision for daughters, fourteen daughters received money, one an

88 TNA PROB 11/87.

89 TNA PROB 11/212.

90 Spicksley, 'Usury legislation', p.290. Of her 1,418 records 331 were from Canterbury Diocese.

91 Spring, *Law, Land and Family*, p.85; Cooper, 'Patterns of inheritance', pp.221, 307; Stone, *Crisis*, p.787; Habakkuk, 'Marriage Settlements'.

92 Spicksley, 'Usury legislation', Table 1, p.283.

annuity. Again the gentry settled sums in the hundreds: £500 was paid by William Cromer of Tunstall at his daughter's marriage to William Seyliard in 1580, a large portion for the time; the largest was £1,000 to each of four daughters of Sir Thomas Seyliard in 1687, portions the estate ultimately could not sustain (*Case Study 12, page 146*).⁹³ Of the yeomen's daughters, one received an annuity and eight cash averaging £28.

It is sometimes suggested that settlements required money portions to be spent by the new family in purchasing land. Clay found that this was the exception in aristocratic families, and Bonfield found that of 104 Kentish settlements after 1660 only 8 contained provision for portions to be spent on land.⁹⁴ This study agrees that it was exceptional; there is no example in Somerden. It may have been used to fund portions paid out, or general outgoings.

The Interplay of Wills and Settlements

Combining the wills and settlements of yeomen only, the mean portion for daughters rose from about £20 in the sixteenth century, to £50 in the first half of the seventeenth century and £120 in the second half. Perhaps the decline in dower put pressure on fathers to provide a sufficient portion for their daughters' jointures, or it was due to the rise in the price of land, though Clay thought that portions rose faster.⁹⁵ A slight retrenchment occurred at the end of the century; contemporaries commented that prices had slowed at this period.⁹⁶ There is no example where a daughter was left without provision, once *inter vivos* gifts and settlements are taken into account.⁹⁷

The value compared with sons is very variable. John Piggott (d.1564) left his younger sons £30 apiece, but his unmarried daughters only £12 13s 4d although with a cow; his son Henry Piggott (d.1596) left £80 to his two youngest sons but only £50 to his

93 KHL C U908 T47. William Cromer (c.1530-1598) was attainted for involvement in Wyatt's Rebellion in 1554 but reinstated under Queen Elizabeth. He had only one son but other daughters.

94 C. Clay, 'Marriage, inheritance and the rise of the large estates in England 1660-1815', *ECHR* 21.3 (1968), p.509; J. Thirsk, ed., *The Agrarian History of England and Wales*, Vol. V(ii) (London, 1985), Chapter 14, p.193; Bonfield, *Marriage Settlements*, p.99.

95 Cooper, 'Patterns of inheritance and settlement', p.222; Clay, 'Property settlements', p.27.

96 C. Clay, 'The price of freehold land in the later seventeenth and eighteenth centuries', *ECHR* 27.2 (1974), p.176.

97 Ann Sidney of Peshurst, daughter of Robert Sidney, 2nd Earl of Leicester, had her £3,000 portion removed and her annuity reduced from £150 p.a. to £100 p.a. in a codicil to her father's will dated 1674. History does not relate either her fault or her fate. He was a notoriously disputatious man. [TNA PROB 11/335].

unmarried daughter.⁹⁸ In 1686 Henry Piggott left his daughters £160 each, his only son receiving all his land (*Case Study 10, page 131*). One of the largest differentials was in the will of Edward Everest (d.1615), who left his younger son £120 but his daughters only £50.⁹⁹ Equality occasionally occurred; in 1681 Henry Burgess left £40 to his younger son and daughters and Richard Hayward left his younger son and each of his daughters £200.¹⁰⁰ In one will, that of Richard Kettle of Moreden in 1658, seniority took precedence over gender. His second son received £100, his eldest daughter £80, the next £60 and his youngest son £66, which included interest for delayed payment.¹⁰¹ Seven settlors left further bequests in their wills; some left cash, some made further divisions of property as did Andrew Combridge. Elizabeth and Agnes Streatfeild who had received £40 and £30 respectively in a settlement of 1596 received a heifer each two years later, and their sister Joan, who had received £40 and now received a heifer like her sisters, received an additional £30; her marriage was the least advantageous which may be an explanation (*Case Study 19, page 256*).¹⁰²

In conclusion, daughters in Somerden received land exceptionally, and generally did receive less value than their brothers. The absolute values were high compared with elsewhere and rose considerably over the period. For an explanation of what was considered a sufficient marriage portion we have to look at the changing position of wives over the period.

98 TNA PROB 11/47, 85.

99 J. Fox, *West Kent Wills* [CD-Rom].

100 TNA PROB 11/366, 368.

101 TNA PROB 11/295.

102 KHLC U908 T139, T252, T257, T259; U1475 T55.

IV. Provision for Wives and Widows

Women's Property

The legal position of wives in Kent was much the same as in other parts of the country; they were governed by principles of coverture, the rule by which married women were deemed to be 'covered' by the legal personality of their husbands.¹⁰³ Pre-nuptial settlements were the main vehicle for securing land to a woman, although limited protection could be provided by a post-nuptial settlement or a will. Where a father was giving his daughter land and wanted it secured to her heirs, or where she herself was settling land to her heirs, it could be transferred to trustees.¹⁰⁴ As before, much of the early research was done on aristocratic estates, but Erickson has shown from Chancery cases and probate accounts that they were important too to the 'middling sort'.¹⁰⁵ If agreed before marriage a woman could determine the fate of her property. Highfields in Chiddingstone provides two examples (*Case Study 11, page 139*). In 1630 Elizabeth Everest used her money portion to purchase a property in Sutton at Hone and then exchanged it with her brother for Highfields, which she settled on her new husband in return for him settling a jointure on her from his property in Penshurst. Forty-nine years later, Elizabeth Wickenden's trustees used her portion to purchase a mortgage on Highfields to her use, before her marriage to John Speed, because he had no land on which to secure her jointure.¹⁰⁶

In 1567, Elizabeth, the widow of James Beecher of Vexour, settled property on her younger son, John, which had belonged to her father John Beach, and included Brook Street in Penshurst and other land in Penshurst and Speldhurst. This property was protected by a settlement which does not survive, but is referenced in the form of a recovery from trustees.¹⁰⁷

103 Erickson, *Women and Property*, p.19 et seq.

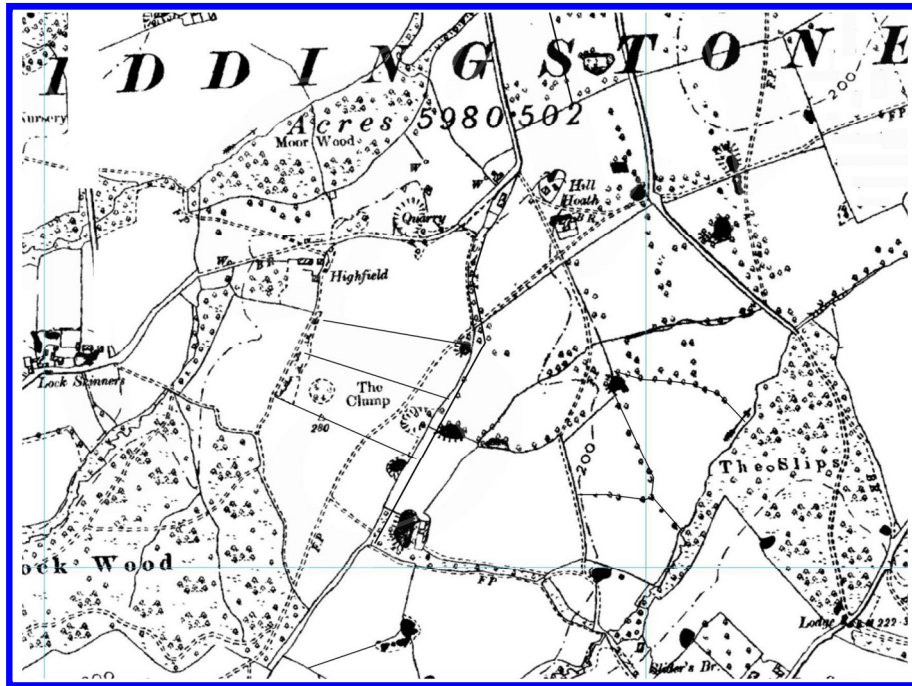
104 A.L. Erickson, 'Common law and common practice: the use of marriage settlements in early modern England', *EcHR* 43:1 (1990), pp.21-4.

105 Erickson, 'Common law', p.22.

106 KHLC U908 T82.

107 KHLC U908 T136-1 and 2.

Case Study 11: Highfields, Women's Property ¹⁰⁸



Highfields house was demolished around 1960.

Brief History

Message & High Hill, 6.5a., later with Low Hill, 6.5a., Broomy Hill, 3.5a.

- 1550 Property of Henry Streatfeild.
- 1586 Sold by Henry Streatfeild to James Everest & repeatedly mortgaged.
- 1617 Sold by James & mortgagee William to William's son Thomas.
- 1618 Thomas died and left Highfields three houses & £100 to third son Edward at 24, £80 each to daughters. Lockskinners and other property to eldest and second sons. Wife to pay allowances in the interim.
- 1630 Exchanged by Edward Everest with his sister Elizabeth.
- 1630 Marriage of Elizabeth to Manasses Jessup. She to stand seized to his use, in return for jointure on his property in Penshurst. She died 1640.
- 1664 Manasses Jessup died without issue and left Highfields to his godson Jessup Beckett.
- 1679 Trustees for Elizabeth Wickenden used her portion to buy a mortgage on Highfields to secure her jointure because her husband, John Speed, had no land.
- 1681 Death intestate of Jessup Beckett.
- 1711 Mortgage unpaid. Sold to Henry Streatfeild.

108 Sources: KHLC U908 P30, T60, T82; LPL VH96/3211, 4891.

Francis Combridge, who had three sons, left to his two daughters the marriage portion of his wife, Mary Osborne:

'Whereas the said Mary my deer and loveing wife In her lifetime and in the sicknesse whereof shee dyed did declare that her Will and devise was that the said Mary and Anne my daughters shoull have and enjoy to them and their heires All that Messuage or Tenem[en]t wherein George Children lately dwelt and the buildings Closes Gardens Orchards and Land with the Appurt[enances] thereunto belonging and situate lyeing and being in Chiddingstone aforesaid and the Inheritance of the said Mary my late wife How soe much as mine is I do ratifie the said Will and desire of my said late wife..'

He also left his daughters jointly '*All that Messuage or Tenem[en]t wherein George Weller blacksmith now dwelleth*' at Tye Green. This was Tye Haw (*Case Study 4, page 52*), which had been bought by William Birsty of Hever and had descended to his daughter Anne as her share as his coheir. Anne was Francis' mother, and he was in turn leaving this property to his daughters.¹⁰⁹

The agreement of the husband would be necessary if the land were inherited after the marriage. Sarah Ashdowne was the only child of her father, and in 1679 inherited the property settled on him by his father and grandfather.¹¹⁰ Her husband Henry Streatfeild settled this on the two of them for their lives, and then to their heirs. There is not the usual provision for her property to devolve back to the Ashdowne family in default of heirs, but Sarah had no brothers. Testators frequently left a married daughter (or sister) a life interest and directed the remainder to the next generation, usually one of her children.

Dower, Jointure and Annuity

All English widows had, in principle, a right of dower.¹¹¹ There were two significant differences under gavelkind: the *amount* in Kent being a half rather than a third, and the *duration* being until remarriage not for life, so the provision for the widow was generous but the patrimony was better protected. Although there was statutory intervention in probate matters, the provisions in Kent were generally exempted.¹¹²

109 KHLC U908 T74.

110 KHLC U908 T12-2; TNA PROB 11/180.

111 This is another significant distinction between Kent and Ireland, where widows had no right of dower and were extremely vulnerable: C. Lennon, *Sixteenth-Century Ireland* (Dublin, 2005), p.60-61.

112 1670 Statute of Distributions, 22&23.CarII.c10, Statutes of the Realm Vol.5: 'Provided That this Act or any thing

If there was a part of gavelkind which was under attack, it was the right of dower, as was true throughout England. This is not entirely incomprehensible. When Sir Philip Sidney of Penshurst died in 1586 his wife Frances, née Walsingham, was entitled to a third of his property for life, this being a property outside gavelkind. Philip's heir made a settlement with her to substitute an annuity, but she was still a young woman, and the annuity was for life.¹¹³ Although gavelkind only gave the widow a right to the property as long as she remained 'chaste', this was obviously still a disadvantage to the heir as at Lockskinnors where the widow remained in occupation (*Case Study 5, page 53*).¹¹⁴ John Ashdowne's settlement of his estate in 1648 was not only for his wife's maintenance but '*for the better recompense securing and satisfying of the said John Ashdowne the yonger his heires and assignes against all such losses and damages as he or they shall susteine or be at by reason of such haveing or claimeing of dower by her the said Joane*'.¹¹⁵ John's estate had come down through the family, and the desire to protect it is understandable; the problem of fairness to landowner and spouse still exercises us today.

Susan Staves has said that the courts '*chose to allow the expectations of dower to be defeated*' in the sixteenth and seventeenth centuries.¹¹⁶ Different interpretations, positive or negative, have been placed on this. Perhaps it was meeting a changing society, perhaps making rules more suited to women, or removing clogs on alienability, or perhaps the abuse of women's rights in favour of those of men.¹¹⁷ Habakkuk saw the emergence of jointure as a necessary practical consequence of settlement of male property.¹¹⁸ The data in this study suggest that jointure was a deliberate act of limitation of the widow's right of dower, and was frequently less in value than dower. The result was that over the period the right to a half of the property was transmuted into rights to a specific part of it, then to an annuity secured on that part. In what follows a distinction is made between these two means of providing for a widow, 'jointure' describing provision of land with the right to occupy it,

herein contained shall not any way prejudice or hinder the Custome observed within the City of London, or within the Province of Yorke, or other places haveing knowne and received Customs peculiar to them, but that the same Customs may be observed as formerly'.

113 KHLC U1475 T22.

114 KHLC U908 T62. 'Chaste', as it suggests, encompassed more than remaining unmarried.

115 KHLC U908 T12.

116 S. Staves, *Married Women's Separate Property in England, 1660-1833* (Harvard, 1990), Chapters 2 & 3.

117 Staves, *Married Women*, pp.82-87.

118 Habakkuk, 'Marriage settlements', p.26.

and 'annuity' an income, whether secured on land or not. Although the term jointure in the literature includes an annuity, it is useful to use separate terms for what were very different rights.

Figure 4.3 highlighted the provision for women in settlements. Of the wives, 34 were given a jointure, and 25 received annuities, most occurring after 1625. An example of the most basic jointure form is the settlement made in 1586 by the small yeoman Abraham Medhurst on his future wife, Frideswide Soane, of nineteen acres of land. A document of sixteen lines settled the land on a single trustee for the use of Abraham and Frideswide for their lives and then their heirs.¹¹⁹ This type of provision is dominant in the mid-sixteenth century, but it persisted right up to 1700: Abraham and Frideswide Medhurst's nineteen acres were used again as a similar jointure for the wife of Edmund Medhurst in 1614. Jointures increased again in the last twenty-five years of the period, particularly for the large estates of the Waldegrave, Seyliard and Petley families.

The suggestion made that while dower was certain, jointure was not, is a cogent one. In the course of settling land, there are occasional hints of hidden motives. When, in 1670, John Bowen 'resettled' his wife's inheritance for their joint lives, then to her heirs, the deed, including a fine, was drafted to leave the land unencumbered as far as possible. Shortly after this, the property was mortgaged (in which her name was included) and was ultimately lost. The phrasing of the deed left his wife little protection. Although in principle land which had been sold was not exempt from dower, in practice by joining in this fine she lost her rights. At best her protection was only that provided by a trustee of her husband's choosing, and her bargaining power was weak.¹²⁰ The transfer of rights of dower into settlement was the transfer from custom to contract, and although this might reflect the increasingly contractual nature of property rights, it depended on the relative bargaining strength of the parties, which dower did not.¹²¹

The advantage to a woman of an annuity is even more doubtful. By the mid-seventeenth century it had come to be based not on the value of the husband's property like dower, but on the value of the wife's portion. Habakkuk suggested that

119 KHLC U908 T64.

120 KHLC U908 T106.

121 Staves, *Married Women*, p.4.

the ratio between annuity and portion was higher in the seventeenth century, perhaps as much as 20%, but by the end of the century 10% had become the norm.¹²² In Somerden, in cases where a wife's portion and annuity are known, all instances late in the century, the annuity is almost invariably at 10%. That is, the portion had to pay her annuity, which placed at zero the value of growth or her contribution to the economics of the family. There are occasional examples of greater generosity, and Henry Piggott's three elder sons increased their mother's annuity gratis by £3 p.a. (*Case Study 10, page 131*).

In theory an annuity was certain, but the disadvantages are starkly illustrated in the case of Timothea Jemmett née Newman. When she married in 1648 it was to a man whose father and elder brother were still living. Liveroxhill was settled on her and her husband for life, and in addition she was given an annuity of £20 and rent-charge of £32. As it happened, her brother-in-law died young, and her dower could have been worth £245 a year. Not only was her annuity far less, but she was dependent on her daughters to pay it, and given the rising debts of her son-in-law she had many problems (*Chapter 6*). At one point, the bailiffs took all her household goods to pay debts; they were bought in by a friend, William Streatfeild, but again distrained by bailiffs for her son-in-law's debts, resulting in litigation.¹²³

Where there had been no settlement, or where there was desire to supplement its provisions, a will could be drafted so that a legacy or other provision was in lieu of dower.¹²⁴ Like a post-nuptial settlement, there was an element of choice here; in theory a widow could opt for dower and sacrifice her legacy. Frequently goods which she had brought to the marriage were returned to her, and a widow was often provided with accommodation even where her main source of income was an annuity.¹²⁵ Provisions in a will could be greater than dower; some husbands deliberately chose to improve on it. In 1564 Margery Piggott of Withers received all her husband's lands while she remained a widow, although she had three sons (*Case*

122 Habakkuk, 'Marriage settlements', pp.21, 25. Erickson found that it fell from 20% to around 12% during the seventeenth century: Erickson, 'Common law', p.30.

123 KHLC U908 T22, L42.

124 Staves, *Married Women*, pp.104-113.

125 For example in 1596 John Beecher granted his wife the right to occupy 'the new halle and entrie parcell of my tenement called Wickhurst together with the chambers or lofte over the same' which was left to his eldest son: TNA PROB 11/87; In 1618 Henry Piggott granted his wife 'the chamber over the halle and to come to fyer and fleete in the halle': TNA PROB 11/32.

Study 10, page 131). In 1618, Elizabeth Everest received Lockskinners for life, though with an obligation to pay an allowance of £5 13s 4d to her son William (*Case Study 5, page 53*). She also received her second son's property until he was 21, paying him £8 p.a., and that of her third son, part until he was 16 and part until he was 24. She married again and lived until 1632, so her eldest son William must have been her tenant until he was 36, delaying his own provision: a post-nuptial settlement was made in 1637.¹²⁶ In 1623 Thomas Jordan of Penshurst left Redleaf House, houses and land in Leigh, Sundridge, Ide Hill, Chevening and Sevenoaks to his wife Mary absolutely, to do with as she wished. Only a small property in Brasted, perhaps his patrimony, was to revert to his two sons, and his youngest daughter received a portion of £10. His sons do not appear to have received any provision during Mary's life because his eldest son, Thomas, died childless as his mother's tenant twenty-seven years later and the younger son disappeared completely (he may have been executed). When Mary died thirty years later she left all this property to her two surviving daughters for life, then to three of her five grandchildren; the others received only £10 on condition they made no claim on the estate.¹²⁷ No explanation has been found for this unequal treatment, exceptional even if she brought the property to the marriage.

So far, the picture in Kent is not dissimilar to that described by Erickson, and by Bonfield, who used original settlements.¹²⁸ There remained situations where a husband did not make a marriage settlement, nor a will. In this case the default provisions of gavelkind applied and the wife was significantly better provided for than elsewhere. Levels of intestacy were significant (Section I) but few landowners would fail to make a marriage settlement. Looking at one area allows an estimate of the occurrence of settlements in the community. 105 settlements compare with 175 conveyances, 99 mortgages, or 282 male and female wills leaving land: *Table 1.1* and *Table 1.2*. By any standards this is a significant volume.¹²⁹ 80 of the 105 settlements were on marriage, of which 33 were those of yeomen, 7 those of tradesmen and husbandmen. The aristocracy and gentry are disproportionately represented

126 KHLC U908 T60.

127 TNA PROB 11/142, 233.

128 Bonfield, *Marriage settlements*.

129 There can be no accurate calculation of the level of marriage settlements among landowners. Marriages in the parish registers include non-landowners and are often in the parish of the bride, and not all settlements have survived.

compared with their incidence in the population, but it is clear that trusts and settlements were important to Somerden yeomen.¹³⁰ As marriages were more commonly in the parish of the bride, it is rare that settlement can be linked with a marriage. As an example, 15 settlements survive covering land in Chiddingstone for the years 1650-1674, of which 13 were on marriage. During this period there were 67 marriages in the parish register. Eliminating those known to be outsiders, husbandmen or tradesmen made 26 marriages, so settlements as a proportion of marriages could have been as high as 50%. But we can add to this: 10 were from known landowning families, of whom 6 left surviving settlements, and the remaining 16 contain no known landowners, so 50% is probably an underestimate.

Of the settlements for the titled, esquires and gentry, eleven overall were from the Seyliard family, over five generations (*Case Study 12, page 146*). The owner of Delaware in 1550 was John Seyliard.¹³¹ John's father had divided his property between his seven sons but was the last to do so; thereafter the property was settled to the eldest son in each generation. The 1647 marriage settlement of John and Mary makes the objectives clear; to provide a jointure for Mary, '*in consideration of her portion*' and to ensure that the Seyliard property descends down the male line: '*to remain in the blood and kindred*'.¹³² Daughters and younger sons were given money portions, but the problem of portions is made clear by a private Act of Parliament passed shortly after the inheritance of his son, another Thomas in 1698:

*'An Act for the vesting certain Lands of Sir Thomas Seyliard Baronet in the County of Kent in Trustees to be sold for the Payment of his sisters' portions, charged thereon.'*¹³³

In summary, the position of women was similar to elsewhere in that dower was replaced by jointure then annuity. However, given the level of intestacy, widows in many cases would still have received their moiety.

130 Erickson, 'Common law', p.39.

131 KHLC U908 T47.

132 KHLC U908 T47-19.

133 10&11.Will.III c39, *Statutes of the Realm*, Vol.7.

Case Study 12: Seyliard Family ¹³⁴

1200 A charter granted lands to Richard Seyliard, son of Ralph Seyliard of Haddinden, Brasted: Syliards in Hever.

c.1375 John Seyliard of Syliards married Eleanor Pawlin, acquiring Delaware alias Pawlins.

c.1425 Robert Seyliard married Eleanor Gabriel acquiring Gabriels.

1536 Thomas Seyliard (1476-1536) had seven sons and divided his property among them. John received Delaware. John married Alice Franklin, whose first husband was Nicholas Posyer.

1559 John Seyliard of Delaware (c.1510-1559) died leaving his property to infant eldest son, but only the youngest, William, survived to inherit.

1596 William Seyliard (1556-1596) died leaving his land to his eldest son, Thomas, a minor; younger sons received £100 in cash and £20 p.a.; daughters £600.

William's wife was Dorothy Cromer (d.1613), who subsequently married Michael Beresford of Squerries in Westerham. Her portion was £500.

His third son, John (1588-1668), purchased *Salmons* in Penshurst. Grandson Thomas (1633-1673) left to his own eldest son *Salmons, Hartredge, Wat Stock, Lady Croft*, and *Doubleton* in Penshurst.

The other younger sons did not marry.

Sons of Thomas Seyliard

- John of *Delaware*: see main panel
- George of *How Green*: son Thomas sold it to Thomas Birsty
- Thomas of *Brook Street*: son, also Thomas, sold it; grandson had no heirs
- Nicholas of *Gabriels*: four sons, but only Thomas, Master of Cliffords Inn, had descendants. Gabriels descended down the line until last male heir died in 1729
- Robert of *Syliards*: died without heirs, leaving Syliards to sons of Nicholas
- Richard of *Cords*: left the property to his second son, his eldest being put to 'an honest trade'
- William became a merchant-taylor and moved to live in Essex. His only surviving son became a lawyer



1609 Settlement on marriage of Thomas Seyliard (1584-1649); picture above.

1647 Delaware estate settled on marriage of Thomas' eldest son, John, with money portions to his younger sons and six daughters. Strict settlement.

1649 Thomas Seyliard devised unsettled land to John, with £300 each to daughters and £250 to youngest son not yet provided for.

1663 John Seyliard, 1st Baronet, leased Delaware with 339a. to William Streatfeild for £180 p.a. and occupied a house in Chiddingstone.

1667 John Seyliard bequeathed two further properties to son, he paying £1,500 to eldest sister and £1,000 to younger ones.

1670 Marriage of Thomas Seyliard (1648-1692), 2nd baronet, to Frances Wyatt of Boxley . Postnuptial settlement 1678, strict settlement. Resettled 1687 on his second marriage.

1692 Thomas Seyliard 'of Boxley Abbey' (1648-1692) died leaving one son and five daughters.

1698 An Act of Parliament had to be obtained to dis-entail the property and provide portions. The Delaware estate was sold to Henry Streatfeild.

1700 Thomas, 3rd baronet died without a surviving son. Boxley Abbey was sold by his daughter coheirs. Syliards and Gabriels passed out of the family on failure of male heirs in the eighteenth century. Salmons was sold when the family relocated to Bletchingley.

134 Picture of Thomas Seyliard is courtesy of Miles Barton. Sources KHLC U116 F8, T15-T20, U184 T2, U908 T47.

V. Retirement

Retirement or Separation

It was not uncommon for a father, reaching old age, to pass his property to a son, and provide for himself to be accommodated, or to be paid an annuity, or both.¹³⁵ There are seven settlements of this type. Shortly before his death Henry Streatfeild of High Street House (d.1596) passed all his property to his only son, Richard the ironmaster, keeping just a small portion for himself (*Case Study 19, page 256*).¹³⁶ In 1624 Walter Woodgate passed Truggers to his son (charged with portions) and took up residence himself in a farm cottage, with provision for his food, drink and a small plot of land, and thirty years later his son made similar provisions, comprehensively settling portions for his children, retirement for himself and an entail to heirs male.¹³⁷ The Hollambys as a family were also fond of this tactic; John Hollamby's retirement deed in 1672 made a point that he should be provided with a horse (*Case Study 15, page 183*). Usually such settlors laid down an annuity for themselves, John Hollamby's was £24 per annum, one of the highest; about £15 was more typical. The highest of all was £60 p.a. in 1636 which Richard Tichborne required his son to pay him; this settlement is hard to distinguish from a lease at market rent (*Case Study 6, page 93*).¹³⁸

There is one case of separation, that of Christopher Combridge of Hawden and his wife Frances née Reeve in 1640. Frances had given birth to a son who was not Christopher's; he made provision for an annuity for her, '*to depart with her son*'. This marriage breakdown had ramifications down the family for several generations. Christopher's only surviving son died in 1656, leaving two small sons in his wardship. The litigation on waste which followed was described on the section on wardship in Chapter 2.¹³⁹

Finally, the settlement was used for a variety of other purposes, including settlements on stepchildren, godchildren, grandchildren, and other kinsmen.

135 Jane Whittle found these from the thirteenth century: *Agrarian Capitalism*, p.115.

136 KHLC U908 T253.

137 KHLC U908 T120.

138 KHLC U908 T162.

139 TNA C9/417/81.

VI: Summing Up

The Somerden data produce limited evidence that wills and settlements were used to override gavelkind inheritance. Firstly, as elsewhere, a will was made by less than half of landowners; it was clearly not considered to be the primary means of directing the inheritance of land but rather the final tidying up of the testator's affairs. The first option was the *inter vivos* gift or settlement. The deeds reveal the extent of joint purchases, hitherto unexplored. The number of settlements which survive are more than a sixth of the number of surviving landowners' wills, and recitals in other documents show that there were many more. The will was not necessarily altering the terms of gavelkind and substituting primogeniture, merely deciding the detail of who would have what, with an emphasis on goods rather than lands. The settlement *might* do so, but was commonly used to provide a widow's jointure or a portion for a son or daughter, or for retirement.

Secondly, nearly half of landowners had no sons or an only son, and a minority of the remainder passed their land to an eldest son, a lower proportion than found elsewhere except for areas with a tradition of partition. Those who did so were those with large estates to whom maintenance of status was a consideration, and those with very small estates. Yeomen only did so where their holdings were ancient and they would avoid breaking them up where possible; but they would attempt to buy land to provide for younger sons. The problem came when they could not, and burdened the estate with the obligation to pay portions. However, even some large estate owners were willing to divide their property according to the tradition of the county.

Thirdly, some fathers left their daughters land even where there were sons, and this was more common in Kent than elsewhere in southern England, but as the period progressed there was an increasing tendency to pay daughters a cash portion. Where the daughter's husband was landless a portion could be used to purchase land on which a jointure could be secured, generally it passed to him in cash. Where a daughter did not marry her portion could be invested to provide an income. The value of daughters' portions was generally less than that of sons, but more than has been found in areas of primogeniture. As elsewhere there was notable inflation; the mean rose fivefold over the one hundred and fifty years.

Finally, where wills and settlements were clearly used to override gavelkind was in the provision for widows. As the period progressed, the practice became to settle specific land on a widow as her 'jointure', then to provide for an annuity secured on land rather than the land itself (*Figure 4.3*). The value of this undoubtedly declined, so that by the end of the period a widow's annuity was based not on dower, nor on her contribution to the family venture, but to the amount of property she had brought into the marriage. Widows were not always less generously treated; husbands (and sometimes sons) could, and did, increase the value of the bequest so that it stood for life not just until remarriage, or to a greater share than half. Widows in Kent were more privileged than their counterparts under common law only where no other provisions were made. Section II found that 28% of yeomen who died in the period 1679-1699 made no will.

Surviving partitions are few, but holding in common without a partition was commonplace. The ability to purchase additional land, as did George Children, would offset the fragmentation of holdings, but even if a property were divided into small shares, the heirs had '*invaluable assets of last resort*', as Anderson described it, on which they could build future wealth.¹⁴⁰ This was especially so if they could be used to raise capital; the subject of Chapter 6.

Let the last word on partition come from a letter quoted by George Woodgate, commenting on the will of William Woodgate in 1809:

*'It is now three months since Mr. Woodgate .. who resided at Summer Hill, died; by his frugality and skill in agricultural concern he enlarged his original fortune very considerably, insomuch that at his Death the Property he possessed is estimated at full three hundred thousand pounds. This large property he has not bequeathed to his eldest son, but has conformably to the practise of this country divided it, governing himself by the principle of gavelkind.'*¹⁴¹

In Chapter 2 on gavelkind in practice the enduring nature of gavelkind was demonstrated through the lives of Somerden families. This analysis of inheritance has shown that while wills and settlements, and indeed joint purchases, were used to

140 B.L. Anderson, 'Provincial Aspects of the Financial Revolution of the Eighteenth Century', *Business History* 11:2 (1969), p.15.

141 G. Woodgate, *The History of the Woodgates of Stonewall Park and Somerhill* (Wisbech, 1910), p.371. Shortly after this the failure of the Tonbridge Bank led to the collapse of the estate, including the property of cousins and kin.

provide for sons, the level of division of property continued to be high, and many yeomen made no alternative disposition at all, accepting the default provisions of gavelkind. This sense of fairness seems to have extended to the treatment of daughters. Widows' dower was widely (though not universally) over-ridden, but where there was intestacy it remained generous.

CHAPTER 5 : GAVELKIND AND THE LAND MARKET

I. Introduction

The Land Market

Chapter 4 has demonstrated that partible inheritance was still dominant among the yeomen of Kent, and that land could be occupied in severalty or in common by coheirs. This chapter moves on to the second proposition, whether the consequence was division of property into small holdings. The alienability of gavelkind land is too often overshadowed in the literature by partible inheritance, but the two were closely intertwined. Alienability is key to whether there was fragmentation or engrossment, the involvement of outsiders, and the growth of commercialisation. This chapter therefore looks at the market in land in rural Somerden Hundred. The term 'land market' has not always been used consistently, variously including all transfers, or all voluntary transfers, or all made for a monetary consideration, or at a scale indicating market conditions.¹ Here the term 'transfer' is used in the wider sense, but the 'land market' more restrictively to indicate only sales at a market price. It excludes wills and settlements which are discussed in Chapter 4, mortgages discussed in Chapter 6, and leases discussed in Chapter 7. The difficulties with manorial documents and feet of fines are particularly significant in identifying market sales. The use of title deeds simplifies the identification because recitals, disposition clauses and ancillary documents provide the critical context.²

The conclusions are significant for the wider debate on agricultural growth and the emergence of agrarian capitalism. The argument was that for capital to be invested in innovation to drive growth, ownership had to be individualised so that risk and reward were united in one legal person; common agriculture and customary tenure had to be replaced by enclosures and the landlord-farmer-labourer structure.³ This process led

1 Jane Whittle includes all dispositions relating to land: *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1580* (Oxford, 2000), p.94. Henry French and Richard Hoyle include permanent and temporary transfers: *The Character of English Rural Society: Earl's Colne 1550-1750* (Manchester, 2007), p.179.

2 Chapter 1 above.

3 Robert Allen has questioned the link between engrossment and land productivity, but he endorses its role in increasing labour productivity and its proletarianising consequences: *Enclosure and the Yeoman: The Agricultural Development of the South Midlands* (Oxford, 1992), particularly in Chapters 11 & 14.

to engrossment and the rise of the gentry class, decline of the small landowner and proletarianisation of rural society.⁴ This is now seen as an over-simplified model, but as Jane Whittle has said, while the transformation from small farms to large ones is generally accepted, and productivity undoubtedly increased, *'the issues of when and where these changes took place, let alone why and how they occurred, are far from resolved'*.⁵ The theory is predicated on a free and open land market, and this by implication requires a market infrastructure, a scale of transactions and method of establishing a price, of 'market-making', and the involvement of commercial purchasers.

The period predates the institutions which form the market-place for land today, so scale and infrastructure are investigated first, in Section II. The issue of who was buying and who was selling and whether there is evidence of commercial investment is analysed in Section III. Although a price is usually given in a sale deed and often receipted, the question of whether that is a market price is more complex; Section IV considers this. It also looks at plot size and evidence for engrossment or fragmentation. Section V investigates the social and economic impact, based on the length of time for which land was held and differences between inherited and purchased land, and between shares and non-shares. The conclusions are that there was an infrastructure which was informal but functional and that there was a formula for price-setting, but the market was overwhelmingly local and plots were typically small. Some conclusions can be drawn from this as to whether plots became too small for family survival.

Although an active market in land has been identified in parts of England since the middle ages, there were many restrictions, legal, social, and economic, on sale. Change is the subject of the remainder of this section.

4 G. Béaur & J-M. Chevet, 'Institutional change and agricultural growth', in G. Béaur, P.R. Schofield, J-M Chevet & M.T. Pérez Picazo (eds.), *Property Rights, Land Markets and Economic Growth in the European Countryside, (Thirteenth to Twentieth Centuries)* (Turnhout, 2013), pp.39-46; H.W. French and R.W. Hoyle, 'English individualism refuted - and reasserted: the land market of Earl's Colne, (Essex), 1550-1750', *ECHR* 56.4 (2003), 595-622; Whittle, *Agrarian Capitalism*; R.W. Hoyle, 'Tenure and the land Market in early modern England: or a late contribution to the Brenner Debate', *ECHR* 43.1 (1990), 1-20; A.A. Macfarlane, *The Origins of English Individualism* (Oxford, 1978); R. Brenner, 'Agrarian class structure and economic development in pre-industrial Europe', *P&P* 70.1 (1976), 30-75; J. Thirsk, 'Industries in the countryside', in H.L. Fisher, *Essays in the Economic and Social History of Tudor and Stuart England* (Oxford, 1961). The classical model is set out in G.R. Elton, *England Under the Tudors*, 3rd edn (London, 1991), pp.229-238.

5 J. Whittle, 'Land and people', in K. Wrightson ed., *A Social History of England 1500-1750* (Cambridge, 2017).

Legal Developments

Restrictions on sale significantly disadvantaged customary tenants in the middle ages. Gavelkind was seen as a privileged form of ownership, with the right of alienation. Customary tenants enjoyed no status in the royal courts, limiting their rights of redress from third parties, and the lord's permission was required to admit a new owner. However, by 1550 the rights of lords had been limited by the state and the courts had developed new remedies which would allow even leaseholders and copyholders to recover possession.⁶ The 1540 *Statute of Wills* was perhaps critical in creating a different and individualised concept of property.⁷ As feudalism was dismantled property rights became more individualistic, enforceable, and secure, so that the advantage to gavelkind over copyhold was less obvious.⁸

The rights were still less than 'perfect ownership'. Gérard Béaur and Jean-Michel Chevet have highlighted the complex web of rights and obligations vested in a single holding which remained and were increasingly created.⁹ The current holder might have only a life-interest, so that a purchaser would need to obtain the reversion, or the property might be encumbered with annuities, rights of dower, or debt. The rule for holders in chief that a third must be retained by the heir to provide the king's dues continued into the seventeenth century.¹⁰

Lawyers found ways around such difficulties.¹¹ After the 1536 *Statute of Uses* and *Statute of Enrolments* the bargain and sale (sale contract) was used as a conveyance by the expedient of registering it so that the implied use was executed in favour of the purchaser. The lease and release form was then developed to restore privacy to transactions. These were adaptation of medieval forms, and the same documents of transfer of land were adapted to perform a number of functions: to settle, mortgage, or sell land, so that context is all-important to establish what purpose was intended.

A new problem then arose in the increasing complexity and cost of conveyancing,

6 A.W.B. Simpson, *A History of the Land Law*, 2nd edn (Oxford, 1986) pp.144 seq.

7 A. Reeve, 'The meaning and definition of property in seventeenth-century England', *P&P*, 89.3 (1980), 139-142.

8 B.M.S. Campbell, 'Factor markets in England before the Black Death', *C&C* 24.1 (2009), 79-106.

9 Béaur & Chevet, 'Institutional change', p.39.

10 The importance of the apparently innocuous phrase in conveyances '*of the Lord or Lords of the fee there*' was clearly explained by the lawyer and manorial steward Herbert W. Knocker in *Kentish Manorial Incidents*, The Manorial Society (1912).

11 J.M. Kaye, *Medieval English Conveyances* (Cambridge, 2009).

especially for small plots.¹² William Ward's conveyance of three acres at Parkhill in 1558 was written in twelve lines on a scrap of parchment; John Ashdowne's purchase of six acres at Larkins in 1693 took a lease of 23 lines and release of 55 lines on a whole skin, accompanied by a lengthy and detailed bond.¹³ The costs went up in proportion. In 1632 when Whistlers in Hever was purchased by Edmund Walker for £115 the charges came to £6 4s 10d; 5% of the purchase price.¹⁴ For John Goodwin in 1696 the charges for two cottages were nearly 7% of the £65 price.¹⁵ By this time larger estates would almost certainly be surveyed in addition.¹⁶ Manorial charges were also due, although David Clarke in his study of Sussex parishes did not find a link between them and the volume of land transactions.¹⁷ Here gavelkind land was at an advantage: entry fines in West Kent, when due at all, were generally a modest year's quit-rent.¹⁸ By comparison, between 1592 and 1747 a copyhold shop in Chiddingstone descended through four generations, the fees in 1747 amounting to 19s 11d, about 3% of the value.¹⁹ Stamp duty was introduced towards the end of the period and added a few shillings to each transaction.²⁰ We cannot tell whether cost was a deterrent, but some tiny properties were involved; a quarter of an acre was the smallest in this study, but many were less than five acres (Section IV).²¹

Offsetting the advantages of gavelkind, security of tenure by making land more desirable and costly might put the small owner at a disadvantage as against the wealthy.²² The legal changes were the context in which the market developed.

12 D. Sugarman & R. Warrington, 'Land law, citizenship and the invention of 'Englishness': the strange world of the Equity of Redemption', in J. Brewer & S. Staves eds., *Early Modern Conceptions of Property* (London, 1995), p.111. Campbell suggested that capitalism in the medieval period was encouraged by 'cheaper and better legal services': B.M.S. Campbell, 'Land markets and the morcellation of holdings in pre-plague England and pre-famine Ireland', in G. Béaur et al *Property Rights*, p.212; this was no longer the case by the sixteenth century when legal complexity had greatly increased.

13 KHLC U908 T205, T144.

14 KHLC U908 T64, T181, T2, T144, T104, T79, U1048 T3.

15 KHLC U908 T79.

16 F.T. Melton, *Sir Robert Clayton and the Origins of English Deposit Banking 1658-1685* (Cambridge, 1986), p.150.

17 D. Clarke, 'The 'Land-family bond' in East Sussex c.1580-1770', *C&C* 21.2 (2005), p.360.

18 KHLC U908 E2. Also Knocker, *Kentish Manorial Incidents*.

19 KHLC U908 T7.

20 '22&23.CarII.c9, (1670/71). *Statutes of the Realm*, Vol.V. The scale of charges was complex and was simplified in 1694: Duties Act 6&7.W&M.c12.

21 KHLC U908 T87.

22 Whittle, *Agrarian Capitalism*, p.306.

The Problem of Plot Size

The problem with a small local sample is its diversity. Richard Hoyle has cogently said in his critique of Sreenivasan that mixing up small parcels of a few acres incapable of providing subsistence with whole farms, manors or large estates is problematic: *'to treat the two as one is to produce an unrewarding mean'*.²³ The same would, of course, be true of manors of greatly different value. No concept of a 'standard holding' can apply here: much of the land in the Weald was won piecemeal from woodland, and was never part of a managed landscape.²⁴ Nor is a 'subsistence holding' easier to define. Chalklin suggested that this was 40 acres as he wrote, but in the seventeenth century would be 10 acres; this ignores the potential of small enclosed fields for growing intensive crops such as hops and apples in market conditions.²⁵ Farm size was held to have increased over the century, stimulated by access to markets and economies of scale, but a farm could consist of both owned and leased land, and the dispersed nature of estates in Kent favoured such leasing: the issue is explored in Chapter 7.²⁶

Somerden sales include a wide range of plots. George Towers' cottage on a quarter of an acre was sold in 1652 for £4; the Bore Place estate was sold in 1610 for £9,800.²⁷ How are these to be equated? Equally difficult is how to treat a *'a fourth part of his Manor of Renslee ... and a fourth part of all lands and tenements'*, or a sixth share of a small farm, or a substantial house with little land, or a mill, or an inn.²⁸ Most of the analysis which follows discusses who is selling and why, rather than what is sold. However, the pattern of large or small holdings is considered in Section IV, and the analysis is supplemented with the history of properties through the generations, an approach taken by French and Hoyle for copyholds, here illustrated by Case Studies.²⁹

23 R. W. Hoyle, 'The land-family bond in England', *P&P* 146.1 (1995), p.162.

24 J. Whittle, 'Individualism and the family-land bond: a reassessment of land transfer patterns among the English peasantry c.1270-1580', *P&P* 160 (1998), p.52; P.D.A. Harvey, *The Peasant Land Market in Medieval England* (Oxford, 1984), pp.7-19.; A. Everitt, *Continuity and Colonisation* (Leicester, 1986), p.25.

25 C. Chalklin, *Seventeenth-Century Kent: A Social and Economic History* (London, 1965), p.68. 40 acres seems low for 1965. Bruce Campbell considered 5 hectares, 12 acres, to be a subsistence holding in the middle ages: B.M.S. Campbell, 'Land markets and the morcellation of holdings in pre-plague England and Pre-Famine Ireland', in Béaur et al., *Property Rights*, p.200.

26 Chalklin, *Seventeenth-Century Kent*, p.64; Zell, *Industry*, p.37-44.

27 KHLC U908 T87, NUL Mi5 162-13 seq.

28 NUL Mi5 162-82, KHLC U1823-1 T12, NUL Mi5 162-11.

29 H. French & R. Hoyle, *The Character of English Rural Society: Earl's Colne 1550-1850* (Manchester, 2007).

II. The Market

Activity

In Somerden just under two hundred sales of land were found for the period 1550-1700. Eliminating twenty-three where there were parts missing or the purposes uncertain left 175 which could be analysed. The only decade in which there is a significant number of unused documents is the period 1600-1609 when there were five transfers of the same property within three years, probably mortgages with a missing part (see [Chapter 6](#)). For each of the conveyances the property history has been reconstructed, together with the history of the families buying and selling. Such a close, detailed analysis is required to understand what was really happening on the ground. The results show a slow but perceptible rise in transactions (*Figure 5.1*).

Michael Zell found an established land market in the Weald early in the sixteenth century. Generally sales were of small acreages, usually less than 30 acres and seldom more than 100 acres, and the parties commonly yeomen. Transactions peaked just after mid century as did prices; a rise in leasehold rents leading to a rise in the capital value of land, but he did not think the sale of ecclesiastical land had a great impact.³⁰

He was unable to quantify the rise, given the nature of his sources (feet of fines, which were without the context and whose use varied over time). Evidence is that the land market exhibited a relatively low rate of turnover before mid century.³¹ Whittle found that sale transactions in Norfolk were low in the second quarter of the sixteenth century; by the second half of the century sales were rising, as was the price of land.³²

Paul Glennie found a slightly different pattern in the Lea Valley, with 1545 being a high point.³³ In contrast, the seventeenth century saw what Chalklin described with regard to sequestered properties as "*one of the biggest transfers of land in Kentish history*".³⁴

The research on Earls Colne, Essex, a county in many ways similar to Kent, is more comparable with Somerden. Alan Macfarlane, using manorial records, suggested that

30 M. Zell, *Industry in the Countryside: Wealden Society in the Sixteenth Century* (Cambridge, 1994), pp.47-51.

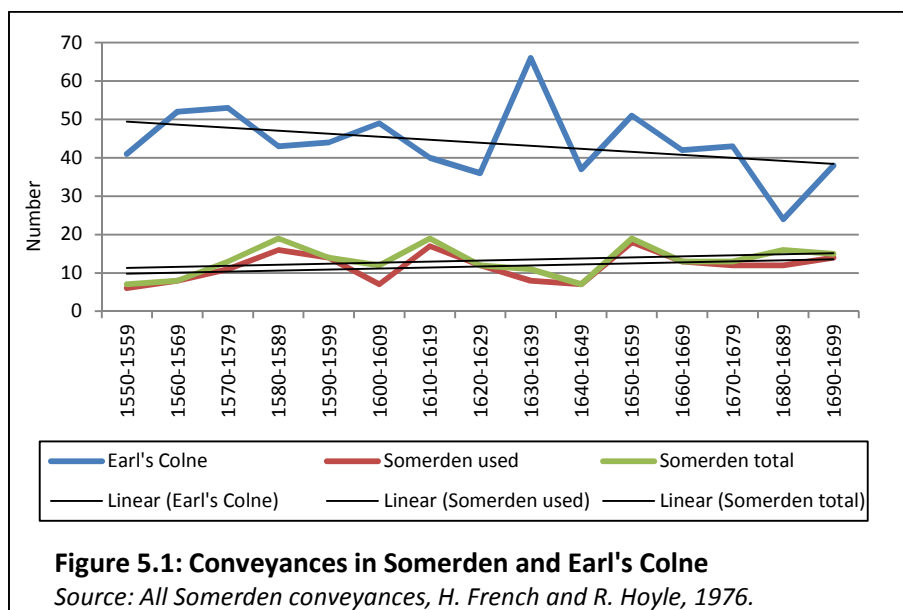
31 Béaur & Chevet, 'Institutional change', p.46.

32 Whittle, *Agrarian Capitalism*, p.106.

33 P. Glennie, 'In search of agrarian capitalism: manorial land markets and the acquisition of land in the Lea Valley, 1450-1560', *C&C* 3.1 (1988), 11-40.

34 Chalklin, *Seventeenth-Century Kent*, p.53.

so active was the land market that continuity of families was short-term.³⁵ Henry French and Richard Hoyle, reworking the data, suggested more continuity.³⁶ Their work was on copyhold land based on a database of all holdings; in Somerden the land is freehold and the data is a patchwork. The population of the four main parishes in Somerden was perhaps twice that of Earls Colne, estimated at 900 in the 1670s.³⁷ The comparison is worth making, however. *Figure 5.1* shows the pattern of the conveyances in Somerden with the data of French and Hoyle, taking extra-familial transfers from their article 'English individualism refuted - and reasserted: the land market in Earls Colne, Essex, 1550-1750'.³⁸ The rise and fall in transactions over time is evident, but activity in Somerden is lower, the range is less extreme and the periods of low activity fall into different decades. Both drop in the war years of the 1640s, but the Somerden activity is more level in the second half of the seventeenth century.



Reasons for this pattern of transactions may be political, economic or social, although the small numbers may include an element of chance.³⁹ Falls in the volume of transactions in the 1600s, 1640s and 1670s might reflect political instability: the end of the reign of Elizabeth in the 1600s, the rule of Charles I and the civil war in the 1630s

35 Macfarlane, *Individualism*, p.68.

36 French & Hoyle, *Character*.

37 French & Hoyle, *Character*, p.51.

38 French & Hoyle, 'English individualism - reasserted', p.605, Table1.

39 H.J. Habakkuk, 'The rise and fall of English landed families', *TRHS* 31 (1981), 195-217.

and 1640s, the uncertainties around the heir to Charles II. High points in the 1610s and 1650s could represent a recovery after these events. There might be a short-term response to the economic and financial fluctuations, not least high taxation in the war years. This is not borne out by the figures of French and Hoyle, and the analysis of the conveyances which follows suggests something more local and individual.

What the figures for Somerden do confirm is a general upward trend in transactions over the period of a century and a half, unlikely to be wholly explained by the legal developments in the period. The extent to which infrastructure played a part in this rise repays examination by way of introduction to the data.

Infrastructure

Transfer deeds were brief in the sixteenth century but they were in Latin, and in the seventeenth century they became increasingly complex, indicating the involvement of experts in conveyancing.⁴⁰ Witnesses to documents in Somerden support this: in the 1550s they were mostly neighbours, but from the 1570s onwards the scrivener and his 'servant' appeared frequently. Nicholas Hooper of Tonbridge and later his son John and grandson George operated as scriveners; over seventy years they witnessed seven conveyancing transactions, but this is still a small proportion of the whole.⁴¹ Local scribes were to be found from the schoolmasters and parish clerks in the seventeenth century: Stephen and Samuel Arnold of Chiddingstone and Nicholas Wicking of Cowden were involved in the simpler conveyancing. Among the attorneys, the sixteenth century saw Richard Plumley and William Cowdrey witness ten transactions between them, all for yeomen. Humphrey Bridges witnessed six for Thomas Willoughby of Bore Place, to whom he was related. Nicholas Seyliard (1547-1625), his son Robert (1586-1666) and his kinsman Francis Seyliard (c.1592-1676), together with Henry Streatfeild, father (1639-1710) and son (1679-1747), and their cousin Thomas Streatfeild were the prominent lawyers, acting mostly for gentry clients but for some yeomen. Aristocratic estates were increasingly employing attorneys such as Thomas Weller of Tonbridge as stewards ([Chapter 1](#)). Overall, 33% of the Somerden transactions in the period 1550-1599 involved a professional, by 1650-1699 this was

40 D.C. Coleman, 'London scriveners and the estate market in the later seventeenth century', *ECHR* 4.2 (1951), 221-230.

41 They were the founders of a law firm whose successor practice still exists.

55%, but in the former period they were scriveners, in the latter lawyers.

The extent to which these professional men were acting as intermediaries, putting seller and buyer together, is questionable. With the exception of Humphrey Bridges they had local links, but acting as agents is a step too far for the evidence: this concept probably belongs more to the metropolitan conveyancer and the aristocratic client than to a rural area.⁴² In this area conveyancers were too numerous and varied to support the idea of a 'first port of call'.

As for the market place, the pattern of buyer and seller which emerges suggests that for the most part putting the word around within the community was sufficient to locate a purchaser. The evidence of mortgages in Chapter 6 suggests that in the sixteenth century at least the church porch would have acted as the place for business; only at the very end of the seventeenth century does the lawyer's premises or Inn of Court feature as a place of payment. There is no evidence in the Somerden title deeds of innkeepers providing a central place for business; again, this is probably an urban phenomenon.⁴³

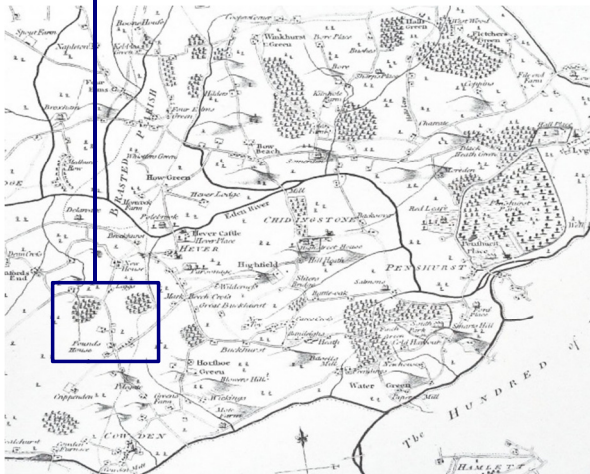
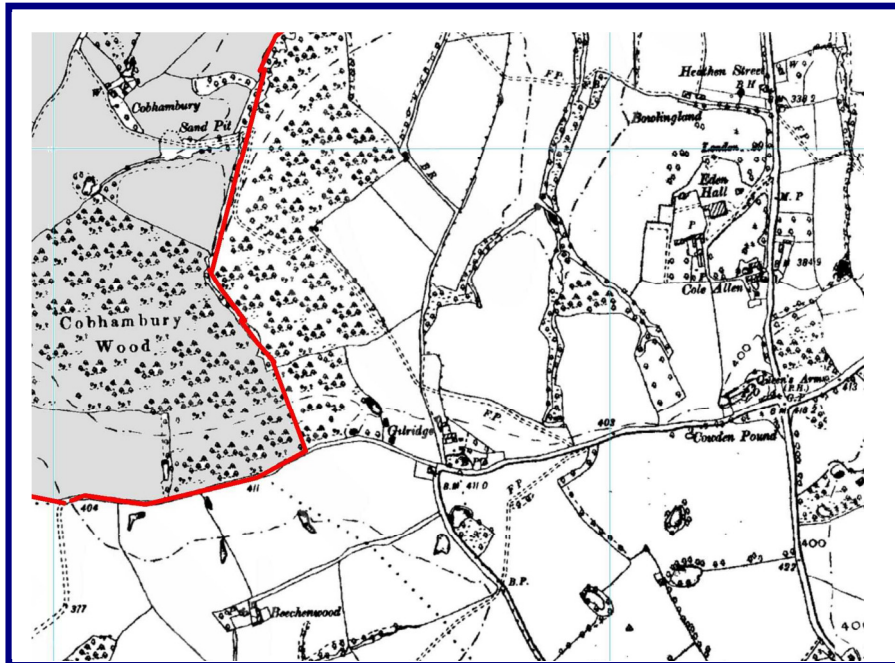
The availability of capital for purchases also presents a varied picture; mortgages are discussed in Chapter 6; trade wealth emerges as a modest factor in the case studies which follow, supporting Whittle's argument that it was increasing wealth inequality among the yeomen themselves which created the market.⁴⁴ What is indubitable is that the use of the term 'market' for land sales and purchases should not be seen to presuppose an organised structure; the systems seem to have been effective but informal, as the analysis of vendors and purchasers which follows confirms.

42 F.T. Melton: Sir Robert Clayton *and the Origins of English Deposit Banking 1658-1685* (Cambridge, 1986).

43 Innkeepers in this rural area were more likely to combine the role with that of butcher.

44 Whittle, *Agrarian Capitalism*, pp.307-9.

Case Study 13: Cole Allens, Former Ecclesiastical Property ⁴⁵



Brief History

Message and 80 acres in 1628.

- 1544 Property of St. Peter's Priory, Lingfield, granted to Thomas Cawarden, presumably for sale but there is a gap in the record.
- 1571 George Swone devised it to his daughter Thomasin.
- 1572 Sold by executors to Michael Beresford (d.1608) of Westerham and son George, a minor.
- 1610 George Beresford leased it to John Skinner for 21 years at £10 p.a.
- 1614 Devised by George Beresford to eldest son Michael.
- 1628 Devised by Michael to his younger brother, Tristram, but property held to be *in capite* and so reapportioned to elder brother Thomas.
- 1663 Church marks maintenance schedule says it was held by Roger Glover.
- 1841 Henry and John Longley were owner-occupiers.

III. Vendors and Purchasers

The Vendors

The sale of ecclesiastical and crown lands in the mid sixteenth century and of archiepiscopal and sequestered land in the mid seventeenth may have released land, as Thirsk and others have described.⁴⁶ But the extent to which it filtered down to yeomen is questionable; unfreezing from Crown and Church was followed by refreezing in aristocratic estates; its desirability for lesser men is doubtful.⁴⁷ The Manor of Stangrave was granted to Sir John Gresham after the dissolution of St. Peter's Westminster and remained with the Gresham family of Titsey Place (west of Westerham) until 1670; Cole Allens in Cowden (with 80 acres) formerly belonged to the College of Lingfield and became part of the estate of the aristocratic Beresfords of Squerries in 1572 (*Case Study 13, page 160*).⁴⁸ Doubleton Farm in Penshurst, which had been the property of Penshurst Chantry had come by 1654 to John Seyliard of Salmons; by 1699 it was part of the estate built up by Gilbert Spencer, the Earl of Leicester's steward, around Redleaf, formerly belonging to Thomas Jordan and later to William Wells (Chapter 4).⁴⁹

Who was supplying the market? *Figure 5.2* shows all transactions broken down by the status of the vendor. These represent 139 individual vendors: only 23 appear in more than one transaction, of which 3 appear more than twice and two more than three times. Aristocracy were vendors in 33 transactions, representing 17 individuals. They are particularly noticeable in the 1580s (56%), 1610s (29%), and 1650s (39%). All sales by the aristocracy in the 1580s were by Thomas Willoughby (1537-1596) of Bore Place; in February 1580 he sold four plots, all under thirty acres, for £250, and purchased in the same month a half-share of Rendsley Manor for £170, thereby reuniting the manor. Further holdings were sold in March of the same year for £260, and three more for £480 in 1588, perhaps to fund the marriages of his daughters Frideswith in 1586 and

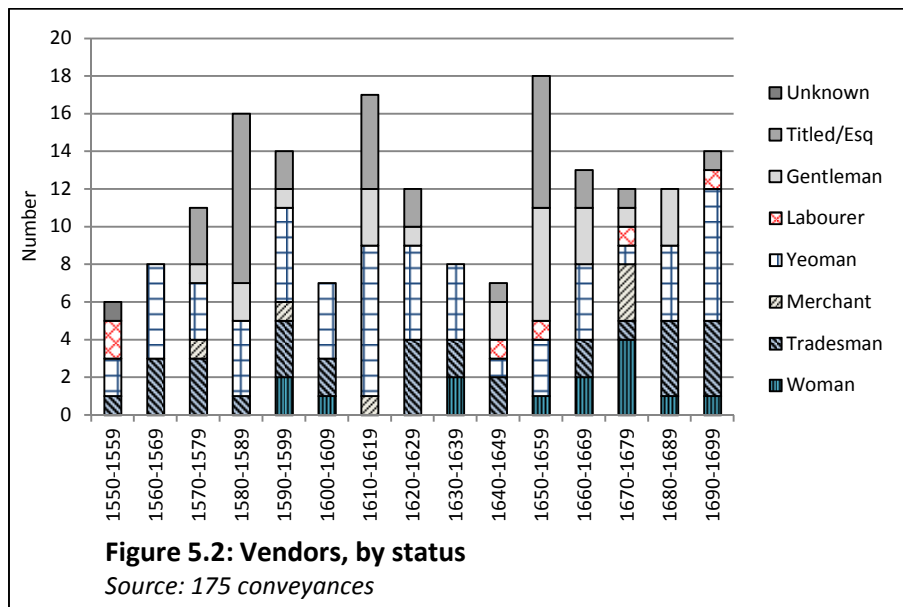
46 J. Thirsk, 'The sales of royalist land in the interregnum', *ECHR* 5.2 (1952), 187-207; C. Clay, 'Landlords and estate management in England' in J. Thirsk ed. *The Agrarian History of England and Wales*, Vol.5 (Cambridge, 1985); Béaur & Chevet, 'Institutional change', p.41; H.J. Habakkuk, 'Landowners and the civil war', *ECHR* 18.1 (1965), 130-151.

47 H.J. Habakkuk, 'The market for monastic property, 1539-1603', *ECHR* 10.3 (1958), 362-380.

48 E. Hasted, *The History and Topographical Survey of the County of Kent* (Canterbury, 1797), 'Cowden'.

49 KHLC U908 T166, T138-1, TNA PROB 11/233.

Elizabeth in 1589, perhaps for investment (*Table 5.1* in Section IV below). In the 1610s, three aristocratic sales were by Thomas's son Percival Willoughby (1558-1643), disposing of the whole estate. All those in the 1650s were by Sir John Seyliard (1613-1667), amounting to the large sum of £990. An extensive estate was settled on his marriage to Mary Glover in 1647; the lands he sold were unsettled, mostly inherited on the death of his father. £550 in value was sold within a few months, more was sold two years later, probably as portions of £1,400 in his father's will became due (*Case Study 12, page 146*). These seem to be family rather than general economic or political causes.



Gentry were vendors on 23 occasions, representing 21 individuals. They were conspicuous in the 1650s. Individual reasons are in evidence again. Members of the Dixon and Streatfeild families sold property, but in both cases to kin. Robert Jacob of Essex sold land at Stanfords End which his father had acquired by mortgage in 1629 and he had just inherited; the purchaser was Robert Jemmett, husband of Timothea whose later difficulties were described in Chapter 3.⁵⁰ A single conveyance in 1688 represents the sale of seven properties as a result of the unpaid mortgages of her son-in-law. Again, family circumstances and location dominate, but debt is a significant element.

50 KHLC U908 T18, T25, U1823/1 T12.

The 60 sales by 47 yeomen are (significantly) more consistent over the period as a proportion of the whole, though they are high in the difficult 1610s, and they seem to be rising again towards the end of the seventeenth century. In the 1560s and again in the 1610s members of the Wickenden family who were in decline are represented; Cransted Mill passed out of the hands of the Walters family, as did land at Rendsley Hoath, but the reasons are unidentified. Henry Streatfeild sold Highfields, (perhaps because of a title dispute), but overall the family was on the rise. In the 1610s sellers include members of the Goldsmith family, formerly prominent in the area. In the 1690s Richard Hayward and Edward Bowers, with local roots but not resident, sold property which they had inherited, as did Michael Bassett's son John.⁵¹

The 30 tradesmen were vendors in 32 transactions, the greatest number occurring in the 1590s, 1620s, 1680s and 1690s, suggestive of economic difficulty, but again the motives seem to have been personal. Henry Medhurst sold Claycrofts which had been in the family for a considerable time; he had become a butcher in Oxted, Surrey. Edward Everest, son of Thomas of Lockskinners, sold the land which his father had saved for him; he had become a watchmaker in London. Henry Ashdowne sold part of Geers which he had purchased five years earlier from a kinsman. William Piggott of Croydon sold a tiny piece, 1.5 acres, of Sheppencrofts which had been his portion of the 1602 partition, perhaps simply because his neighbour (who had bought an adjacent cottage) asked; the rest remained in the family for two further generations. Robert Curd of Penshurst sold a small piece of meadow which he had just inherited to his uncle, Robert Curd of Speldhurst; the land would have been closer to Speldhurst village than to Penshurst. Henry Care sold land at Rendsley Hoath which had provided an annuity for his brother John after John died, and Andrew Furminger sold a remaining portion of Edenbridge Mill, perhaps on retirement, perhaps because the purchaser of the rest could now raise the capital. Sales clearly for financial reasons do occur, such as those of the Wakelin brothers, William the butcher and Benjamin the yeoman, who over twenty years gradually sold the property acquired by their butcher father.

If the chronological pattern appears to support the suggestion that economic crisis was stimulating sales this is somewhat deceptive. At least half the sales were for family

51 KHLC U908 T189, T144, T60, T79.

reasons: sale of recently inherited land either to pay portions or because it was not conveniently located, or because the vendor had a larger estate elsewhere.

Christopher Clay highlighted these as the main motives to sell fifty years ago.⁵² It is true that prosperous vendors could have kept these properties and leased them, but even where one is aware of family decline, there is seldom a single reason, portions were a motive to sell, but the need to pay taxes or to compound for sequestered property are less obvious in the data. One does have to look to economic circumstances rather than judicio-legal ones (based on land tenure) for explanations, but these are complex and suggest that trends are very long term. This is considered further in Section IV below.

The Purchasers

Land in Somerden (though not manors) was desirable because it was freehold, it was located near to London, it was enclosed, and manorial dues were light. It was not particularly good farming land, being heavy clay and wet, but the area produced much-needed wood fuel. There were other disadvantages, and the multiplicity of owners was potentially one of them. Occasionally large estates might be sold as a unified estate to a wealthy merchant such as Bore Place to Bernard Hyde in 1610 (*Case Study 1, page 45*).⁵³ Other owners had to acquire an estate piecemeal, and it could take years; in the early nineteenth century William Wells the shipbuilder built up the Redleaf estate in Penshurst painstakingly farm by farm, share by share.⁵⁴ Yeomen like the Hollambys of Coles (*Case Study 15, page 183*) or the Everests of Lockskinners (*Case Study 5, page 53*) acquired plots around their farms over a number of years, mainly from the Willoughbys.

It is therefore significant that merchants were not involved in the market to any large degree at this time. *Figure 5.3* shows all the transactions divided into purchaser by status. There is a difficulty in disentangling the rise of new men into a class from the expansion of that class generally.⁵⁵ There were more tradesmen overall in the

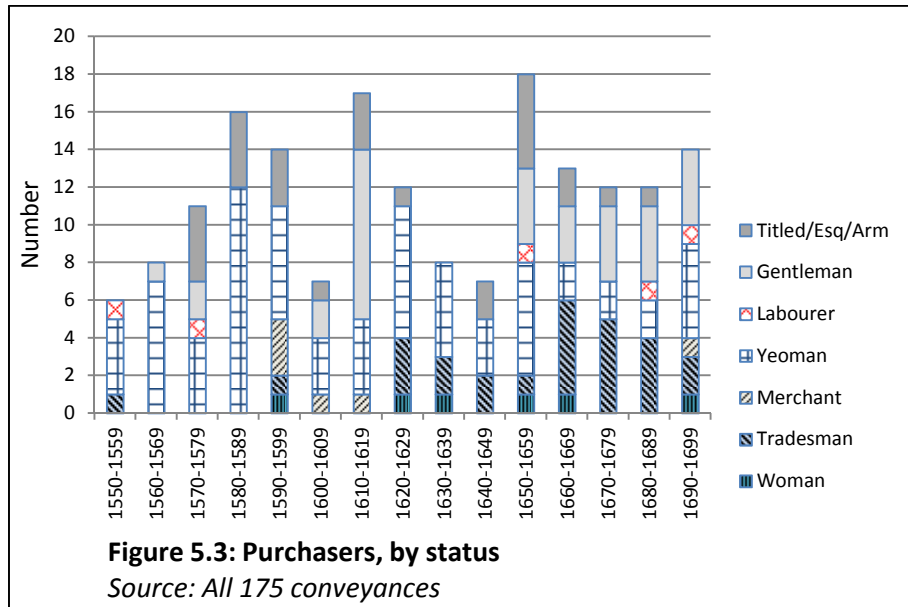
52 C. Clay, 'Marriage, inheritance and the rise of large estates in England, 1660-1815', *ECHR* 21.3 (1968), pp.510-7.

53 NUL Mi5 162-83.

54 KHLC U1986; F.M.L. Thompson, *English Landed Society in the Nineteenth Century* (London, 1963).

55 J.P. Cooper, 'The counting of manors', *ECHR* 8:3 (1956), p.377; R.H. Tawney, 'The rise of the gentry, a postscript', *ECHR* 7:1 (1954), 91-97; R.H. Tawney, 'The rise of the gentry 1558-1640', *ECHR* 11:1 (1941), 1-38.

population by the latter part of the seventeenth century; some were sons of yeomen, and if they prospered they might purchase land and become yeomen on their own account. This analysis based on the status is of the individual, not adjusted for changes in the make-up of the class.



Only in the 1610s were gentry the net purchasers, purchases exceeding sales made by their class in that difficult decade. These include purchases by John Wickenden, gent, reassembling Beechenwood which had been partitioned; it was later inherited by Robert Wickenden of Dover and sold to Robert Jemmett in 1658 (*Case Study 14, page 167*).⁵⁶ By the 1670s, however, gentry purchases were exceeding those of yeomen. The implication is clear that difficult economic conditions favoured gentry purchases. Purchases before 1600 were dominated by yeomen. Yeomen were opportunistic purchasers, and generally they purchased to keep, steadily building up their acreage. Of the plots sold by Thomas Willoughby, all were to adjacent owners or tenants consolidating or enlarging existing holdings. Two were purchased by John Ashdowne as part of an exchange transaction, and one by his cousin Henry Ashdowne. One was purchased by John Woodgate, and two by the Pickett brothers of Cowden, yeoman with very small holdings, one by John Hollamby of Coles, and one by Henry

56 KHLC U908 T31, T34.

Streatfeild.⁵⁷ Over the whole period, members of the Ashdowne family acquired fourteen plots, Streatfeild yeomen twelve, the Beechers and Woodgates six, the Everests and Thomas Wakelin the butcher five, the Jemmetts of Edenbridge three, the Turners three, but the great majority were single transactions.

Purchases by tradesmen occur almost exclusively in the second half of the period. Thomas Wakelin made five purchases, all near to his butchery, for one of which he was already the tenant. John Bassett the cooper purchased Willetts, near to a large wood.⁵⁸ In the 1620s and 1630s Henry Ashdowne, tailor, purchased Geers, and John Curd, glover, a piece of land in Penshurst. Two mercers, both members of the Beecher family, purchased small plots.⁵⁹ In the 1680s and 1690s the Webb family purchased shares in Edenbridge Mill, and an innkeeper, a carpenter and a palemaker made small purchases. Such purchases are utilitarian rather than a rise in the social scale; the exception was the carpenter-builders, George Sale and the brothers George and Richard Stevens in the late seventeenth century. The half-timbered farmhouses which survive widely in the area predate them, but new barns and malhouses are frequently mentioned in deeds and brick houses were being built, like Crippenden (*Case Study 6, page 93*).⁶⁰

The role of outsiders in the market is relevant. The debate on Macfarlane's 'individualism' depended on evidence of land sold outside the family, and the involvement of outsiders with capital in the market has been used as an indicator of commercial society.⁶¹ Contemporaries observed that London merchants were starting to want a place in the country more for status and leisure than to produce an income: Defoe noted such owners in Surrey and Essex in the early eighteenth century; by 1830 south-west of London was seen to be dominated by such families.⁶² Somerden was close to London and might attract the same attention.

57 NUL Mi5 162-11 & 46, 161-02-3, 161-02-10 & 33 .

58 KHLC U908 T78, T94, T96 , T99.

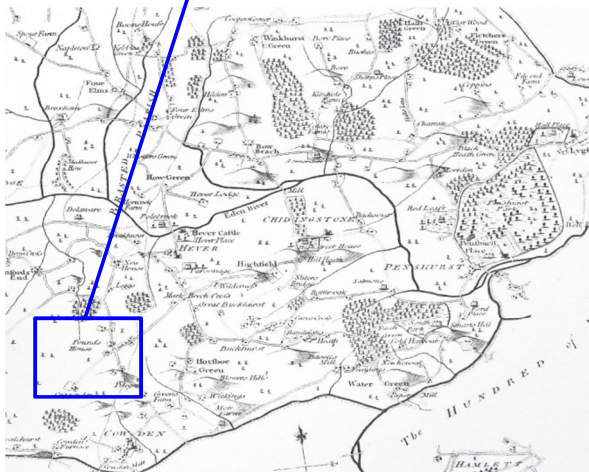
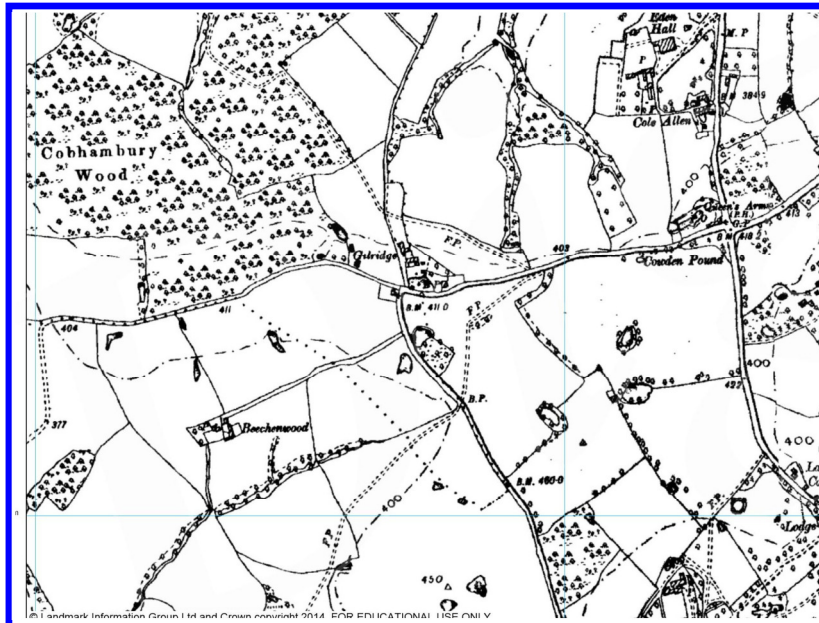
59 KHLC U55 T324, U908 T120.

60 KHLC U908 T114, T164. Crippenden was built around 1610 [www.britishlistedbuildings.co.uk].

61 J. Broad, 'The fate of the Midland yeoman: tenants, copyholders, and freeholders as farmers in North Buckinghamshire 1620-1800', *C&C* 14.3 (1999), 325-347; J.V. Beckett, 'The pattern of land ownership in England and Wales 1660-1880', *ECHR* 37 (1984), 1-21; H.J. Habakkuk, 'English landownership, 1680-1740', *EcHR* 10.1 (1940), 2-17.

62 D. Defoe, *A Tour through the Whole Island of Great Britain* (London, 1725, Penguin edn, 1986), pp.165-168; W. Cobbett, *Rural Rides* (London, 1830, Penguin edn, 2001), p.223.

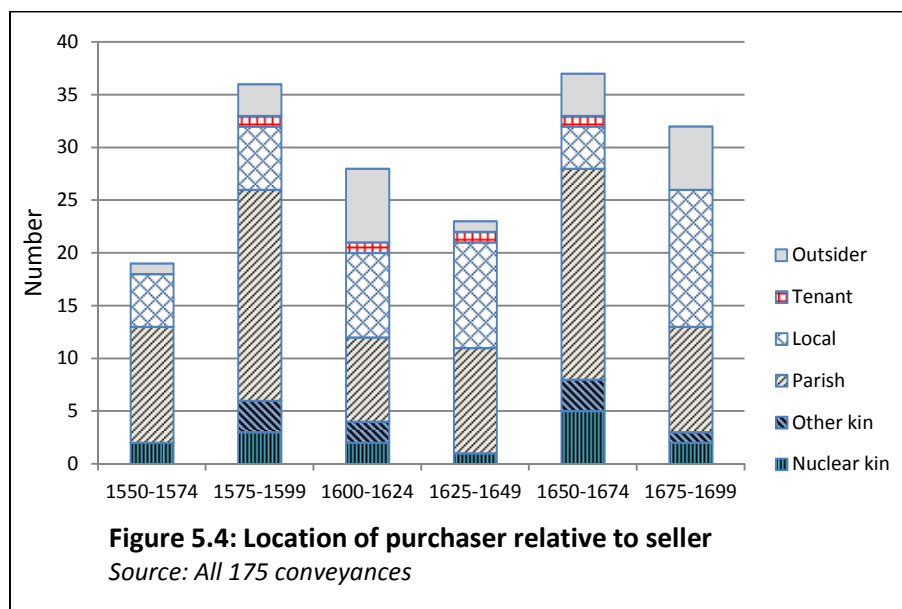
Case Study 14: Beechenwood, Division and Reassembling ⁶³



Brief History

- 1571 Owned by Thomas Wickenden.
- 1590 Devised between sons Thomas, Anthony & John.
- 1592 Anthony sold his 10a. land to brother Thomas for £51.
- 1600-8 Thomas transferred 10a. to Richard Tichborne and back, twice, for £70 - mortgage?
- 1613 Thomas sold (Anthony's) 10a. to John Wickenden, gent, for £70.
- 1614 John sold his 8a. and a new cottage to John Wickenden, gent, for £62.
- 1616 Thomas Wickenden sold (his original) 7a. to John Wickenden, gent, for £70 and brother sold 4a.
- 1620 John Wickenden left a manor to eldest son, land to second son, cash to third son Robert, who eventually inherited the land.
- 1658 Robert Wickenden of Dover sold to Robert Jemmett with Polefields 138a. £1,160.
- 1662 Death of Robert Jemmett and inheritance by son Richard.
- 1677 Death of Richard Jemmett. Share of sister Timothea: messuage & 34a., value £320.
- 1681 Death of Timothea Jemmett. inheritance by sister Margaret Reddich. Repeatedly mortgaged.
- 1681 Leased to Edward Still, yeoman, for £16 p.a. (messuage & 40a.).
- 1689 Sold to Henry Streatfeild.

Figure 5.4 shows the purchaser, giving his relationship to the vendor. 'Nuclear kin' includes parent, sibling, child, niece or nephew (potential heirs); 'other kin' includes step-families. Those who share the same surname are only treated as kin if they can be linked on a family tree: the sale in 1625 of Browns Hoath near Care's Cross by Thomas Care to Henry Care is probably a transaction within the family, but with the link unproven he is treated as a neighbour.⁶⁴ Neighbours are divided into those who lived in the parish in which the land was situated and 'locals' who lived in an adjacent parish. Some 'locals' were closer geographically than some 'parish' neighbours, but using the actual distance would be an estimate, whereas the parish is factual.



What is most striking is the local nature of the market. There are examples of outside purchasers in this area as early as the sixteenth century but they were infrequent, representing only 13% (twenty-two) of the 175 transactions. Overall eleven outsiders date from the midpoint of 1625 or before and eleven after. They were at their greatest in the first quarter of the seventeenth century at 25% (seven), rising slightly again in the last quarter to 19% (six). Purchasers from the parish and local area represent 71% (125), and only fall below two-thirds in the period 1600-1624. Nuclear and other kin amount to 14% (24), reaching a high of 22% (8) in 1650-1674 and a low of 4% in 1600-1624. Only four purchasers over the whole period were the tenants of the property; few were able to move into land ownership through purchase of the property they

64 KHLC U908 T217.

actually occupied. However, those who began life as tenants and ended as yeomen are more frequent, as the example of John Floyd illustrates.

This picture of a local market is strengthened by a closer examination. Of the outsiders six were from London, but only three seem to have had no links at all to the area, and none remained for long. One was from Sevenoaks, four from the Sussex side of the county border, and the remainder from further afield in Sussex, Surrey and Kent. Of these, William Terry of Sussex was settling near his married daughter, and one was a miller who perforce had to look afield when he set up on his own.⁶⁵ Others include Bernard Hyde, purchasing the Bore Place estate, and a lawyer younger son of the Streatfeild family, one man with local links and two from nearby Withyham. Hyde notwithstanding, the picture of a predatory city merchant cannot be sustained.

The nuclear kin in the 1650s include the Dixon brothers of Hollenden, who gradually sold their inherited sixth shares of Funks Farm to their eldest brother, and sales by two of the sons of recently deceased Thomas Seyliard.⁶⁶ Multiple sales by siblings appear to distort the figures but in fact sales of shares are the essence of gavelkind: shares might be sold to one brother as here, or leased in the market and profits shared. Otherwise family transactions do not rise above 17% of the whole in any period.

In summary, although political and economic conditions may have been a factor in sales, demography and family reasons dominate. The outstanding character of the market was its localness; neighbour sold to neighbour, generally to increase a holding rather than for investment. The market was dominated by gentry and yeomen; tradesmen were purchasers in the second half of the period but were selling by the end of the seventeenth century. Although numbers are small, it does seem that gentry were able to purchase in difficult economic times when yeomen were selling.

65 KHLC U908 T30, T32, T90, T162, T169, T171.

66 KHLC U1823-1 T12.

IV. Price and Plot Size

The activity of the market is often taken to be a key indicator of capitalism, but it cannot be seen in isolation: analyses of the land market by transaction and by acreage often produce differing results.⁶⁷ The interplay of activity, price, and plot size is revealing of underlying trends. Low activity, low price can indicate shortage of demand, perhaps due to reduced utility, whereas low activity, high price indicate shortage of land. High activity, high acreage suggest engrossment, whereas high activity, low acreage suggest fragmentation. Demand and supply reflect the constant tension between the availability and the utility of land. Availability depends on population, and legal restrictions. Utility depends on the availability of labour, and market conditions. The role of husbandry is significant: intensive cultivation in small acreages is only possible in a market-oriented economy, arable cultivation on large acreages is only possible where labour is freely available.

With assets, the principle of demand and supply is complicated by expected return on capital. A system of valuing land based on the rental value had developed by the sixteenth century: in 1717 Giles Jacob held this to be fourteen years' purchase for copyhold, fifteen for a house and twenty for freehold land.⁶⁸ More than this people would be reluctant to pay unless there were expectations of capital growth.⁶⁹ The critical factor was whether the rent fully reflected quality: whether the land was improved or unimproved, open or enclosed, and the quality of the buildings. Habakkuk quotes Francis Bacon in 1608 valuing his own land at sixteen years' purchase but his wife's at twenty because it was capable of achieving a higher rent.⁷⁰ Rental values are in turn a key measure of availability and utility. The leasing of land is discussed in more detail in Chapter 7.

67 Whittle, *Agrarian Capitalism*, pp.105-110

68 G. Jacob, *The Country Gentleman's Vade Mecum* (1714), pp.47-8; H.J. Habakkuk, 'Marriage settlements in the eighteenth century', *TRHS* 32 (1950), p.22n; H.J. Habakkuk, 'The long-term rate of Interest and the price of land in the seventeenth century', *ECHR* 5.1 (1952), p.29; C. Clay, 'The price of freehold land in the later seventeenth and eighteenth centuries', *ECHR* 27 (1974), 173-189; S. Primatt, *The City and Country Purchaser and Builder* (1667). It cannot be assumed that rise and fall in years' purchase is a direct measure of price fluctuations as does Clay in 'The price of freehold land'; at most this implies anticipation of future rises or falls.

69 Beckett, 'Pattern of landownership'; B.A. Holderness, 'The English land market in the eighteenth century', *ECHR* 27.4 (1974), 557-576.

70 Habakkuk, 'Long-term Interest', p.31.

Price

Whittle found that prices in Norfolk rose sharply in the sixteenth century to reach about £6 an acre mid-century, but this did not continue into the seventeenth century. John Habakkuk, using contemporary treatises and reports of the Charity Commissioners, also found that price was stable during the seventeenth century, and Clark found an average national rent of 13d per acre in the sixteenth century, rising to about 9s per acre in 1640, then remaining static until 1740.⁷¹ Contemporary views even complain of decline. The preambles in the 1623/4 *Act agaynst Usurie* say '*at this tyme there is a very great abatement in the value of land*' resulting in debt, and by the 1670s Edward Dering of Kent commented on the 'decay of rents'.⁷² Land values here are examined through lawyers' valuations, lease rents, and sale price.

There are three examples where the valuation of a property has survived. The first is Thomas Willoughby's valuation of Bough Beech Furnace, shown in *Table 5.1* with figures for percentage return added.⁷³ Land cost him £8 to £12 an acre, already considerably more than found by Whittle, and the return on capital varied from 5% for arable land to as much as 16% for the furnace itself. Not only was he building the furnace, the house and cottages, but he was marling the land and reconstructing the holding, so making agricultural improvements alongside industrial investment. A few years later his son was providing bricks for the improvement of buildings at Baileys nearby, and requiring from his tenant the planting of a '*[hop] garden and orchard*'.⁷⁴ Investment in the infrastructure was producing a good return. A second example is a lawyer's valuation of a manor.⁷⁵ In 1627 Thomas Streatfeild left his four infant daughters the Manor of Cowden Leighton. In 1675 their cousin Henry Streatfeild calculated the value of Frances's quarter share: the demesne land with rents of £30 17s 6d was valued at £617 11s 4d. To this were added the lord's quit-rents, heriots, and reliefs at £40, coppice wood at twenty times the rent of 8s an acre, and the capital

71 Whittle, *Agrarian Capitalism*, pp.102-3; Habakkuk, 'Long-term rate of Interest'; 21.JaI.c17, *Statute of the Realm* Vol.4-2 (1819); G. Clark, 'Land rental values and the agrarian economy, 1500-1914', *European Review of Economic History* 6.3 (2002), pp.281-308.

72 E. Dering, 'On the decay of rents', c.1670, in A. Browning ed., *English Historical Documents, Vol.8 1660-1714* (London, 1953), S.35.

73 NUL Mi5 162-49.

74 Mi5 161-3-17.

75 KHLC U908 E31.

value of the timber at £100.⁷⁶ Coppice wood still attracted a high value, providing an alternative to bringing marginal land into cultivation as population rose.⁷⁷

Table 5.1: Valuation of Furnace Lands 1589⁷⁸

DETAILS	COST	RENT	RETURN
<i>First the furnace land cost me #</i>	£800	<i>Lett for £63 6s 8d</i>	8%
<i>The buylding of the furnace #</i>	£500	<i>Lett for £80 0s 0d</i>	16%
<i>The buylding of Wychys house & barne #</i>	£160	<i>Lett for £6 0s 0d</i>	4%
<i>James Bassadge house cost me #</i>	£40	<i>Lett for £2 0s 0d</i>	5%
<i>Carpes house & Lavenders house cost #</i>	£60	<i>Lett for £3 0s 0d</i>	5%
<i>I have bestowed in Marling of the land more then the [purchase] cost above</i>	£100	~ £0	
<i>Chantes land cost me #</i>	£200	<i>Lett for £16 0s 0d</i>	8%
<i>Cranstead land 25 acr[es] at £8 #</i>	£200	<i>Lett for £12 10s 0d</i>	6%
<i>The Amery & Cransted meade 7 acr[es] cost #</i>	£93 6s 8d	<i>Lett for £6 0s 0d</i>	6%
<i>Twoe acres di[midi] before the Hammer cost #</i>	£33 6s 8d	<i>Lett for £1 13s 4d</i>	5%
<i>Fiftene acr[es] called the Marles cost #</i>	£160	<i>Lett for £7 10s 0d</i>	5%
[Total]	£2346 13s 4d	£198 0s 0d	8%

The third example, shown in *Table 5.2*, is dated 1680 and comes from the estate of the Jemmett family in which a brother and two sisters died in quick succession, a partition occurring with each death.⁷⁹ The capital value was calculated at twenty years' rent, so the valuer assumed that this was 'rack' or market rent. There were some interesting anomalies; Merchants Farm was bringing in nearly 13 shillings an acre, whereas Skeynes, the 'capital messuage', under 9 shillings an acre, and Upper Ware Lands with no house at all 14 shillings an acre. The explanations provide a salutary check to the use of unmediated statistics: Skeynes was encumbered with a jointure, and Upper Ware Lands were irrigated ('floated') meadowlands. The smaller the holding the more, proportionately, it produced, or the greater the value of the buildings: John Jessup's cottage with three acres was paying £2 10s per annum.⁸⁰ New buildings enhanced the value: Glathredge 'with a new built house and malthouse' was paying 14s 6d an acre, a

76 Wood was a revenue crop, timber a capital asset.

77 R.B. Outhwaite, 'Progress and backwardness in English agriculture 1500-1650', *ECHR* 39 (1986), p.7.

78 NUL Mi5 162-49.

79 KHLC U908 T20.

80 £2 10s 0d recurs on several occasions as the price of a cottage in the late seventeenth century. Whittle also found that small plots were more expensive than large ones: *Agrarian Capitalism*, p.112.

capital value of £14 10s 0d per acre.

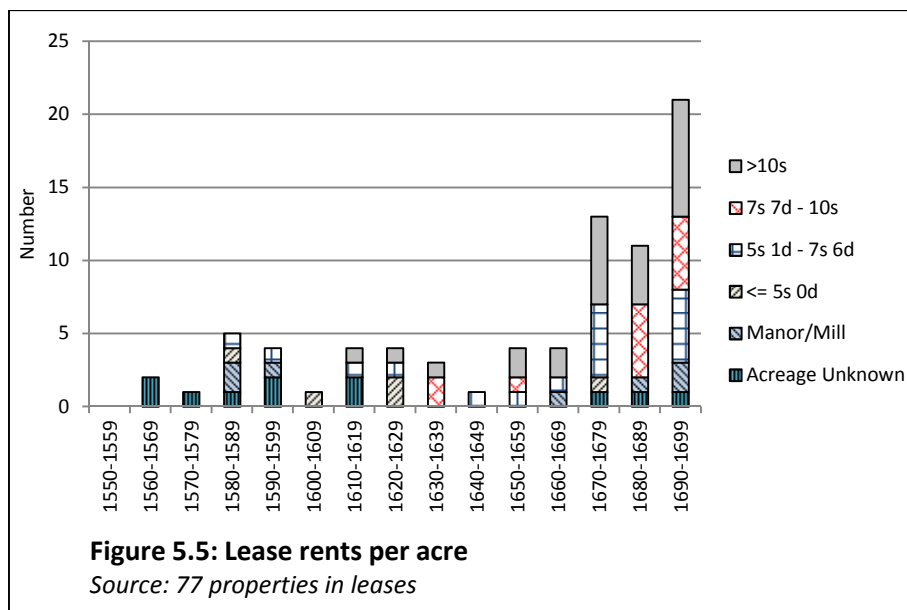
Table 5.2: Valuation of the Jemmett estate in 1680

SHARE	PROPERTY	MAIN PARISH	ACREAGE	Rent			Value		
				£	s	d	£	s	d
Margaret	Skeynes and land in Limpsfield	Edenbridge	203a.	90	0	0	1800	0	0
	Stanfords End, Brasted Fields and Lower Warelands	Edenbridge	139a.	68	0	0	1360	0	0
	Cottage	Edenbridge	3a.	2	10	0	50	0	0
	Cash adjustment			2	13	4	53	6	8
	TOTALS			163	3	4	3263	6	8
Anne	Merchant's Farm	Crowhurst	233a.	148	0	0	2960	0	0
	Upper Warelands	Edenbridge	25a.	18	0	0	360	0	0
	Cash adjustment			-2	-16	-8	-56	-13	-4
	TOTALS			163	3	4	3263	6	8
Timothea	Glathredge	Edenbridge	22a.	16	0	0	320	0	0
	Beechenwood	Cowden	34a.	16	0	0	320	0	0
	Plawefields (Polefields)	Cowden	60a.	30	0	0	600	0	0
	Liveroxhill	Cowden	60a.	32	0	0	640	0	0
	Foyle, Dean and Rapkins	Oxted	160a.	69	0	0	1380	0	0
	Cash adjustment				3	4	3	6	8
TOTALS			163	3	4	3263	6	8	

Source: KHLC U908 T22.

The second measure of value is lease rents. *Figure 5.5* shows the rents on 77 surviving leases. Those from the sixteenth century are few (a significant point covered in [Chapter 7](#)), but prices were clearly rising: rents of 10s an acre occur first in the early seventeenth century; between 1650 and 1675 they represent 50% of leases, falling to under 40% in the last quarter of the century.⁸¹

81 KHLC U908 T18, T73. This puts into perspective the high values found on Romney Marsh, where land in the early seventeenth century could fetch 20 shillings an acre: S. Hipkin, 'The structure of landownership and land occupation in the Romney Marsh region, 1646-1834', *AgHR* (2003), p.86.



The rise in rents had come to an end in the 1670s. Stanfords End Farm with 140 acres had been valued at £60 per annum (£8 11s 4d per acre) in 1626; it appears in the 1680 schedule at £68 per annum (£9 13s 4d per acre), a rise of only 13% in 54 years. Few properties were entirely static, extra land being purchased, waste brought into cultivation, plots sold, and timber cropped, as at Beechenwood (*Case Study 14, page 167*). This makes comparison of prices for the same property complex, but examples support the pattern. Brook Street was leased in 1466 for £1 6s 8d with 60 acres, just over 5d per acre.⁸² By 1692 it included 105 acres and was leased for £40 per annum (7s 7d per acre), an increase of nearly 200%, but in 1735 it was still being let for £41. Small properties generally commanded higher rents, but they are not numerous enough among the leases to distort the picture in the figure.⁸³

The third measure of market value is the price obtained in a sale. Unlike those in feet of fines, prices in the conveyances are actual; the receipt for the purchase price is commonly written on the dorse. Again there are anomalies, but a rapid rise in the first fifty years is clear. Brook Street was sold in 1575 for £290 and again in 1581 for £400.⁸⁴ At Beechenwood in Cowden, also part of the Jemmett estate, four parcels, 10 acres,

82 KHLC U908 T49.

83 R.C. Allen, 'Tracking the agricultural revolution in England', *ECHR* 52.2 (1999), p.221. His suggestion that properties of less than ten acres do not represent farms is only partly true; while they include coppices and smallholdings, farms were (then as now) made up of agglomerated plots.

84 KHLC U908 T49.

sold for £51 in 1592 and £70 in 1613; a rise of 37% in less than a quarter of a century.⁸⁵ The price then steadied: the whole of Beechenwood, 34 acres, rose 20% pro rata in the next 65 years (*Case Study 14, page 167*); Liveroxhill, valued in 1680 at £640 (*Table 5.2*), had been purchased by Richard Jemmett in 1635 for £540, an increase of 18% over 45 years. Thereafter there was even a slight decline: Rock House sold for £180 in 1666 but only £100 in 1695; Bishops Land Green sold for £70 in 1685, £55 in 1691 and £50 in 1697.⁸⁶

Few holdings with more than ten acres were sold without a house, which complicates the picture. A problematic example is The Red House in Chiddingstone, with a walled garden and orchard, which sold for £30 in 1593, £300 in 1597 with '*a house new built*', £300 again in 1611, but for £100 in 1619 and 1622, and finally, partitioned, in 1650 for £32 for a half share. Such fluctuations are not obviously accounted for by a new house, and remain unexplained.⁸⁷ Very small plots increased most in value: the four acres of arable land in Little Target Field in Chiddingstone sold for £10 in 1551 and £25 in 1574, four acres of meadow in Hunts Bridge Mead in Penshurst sold for £54 in 1632.⁸⁸

If gavelkind was valued differently from freehold land elsewhere it does not appear to be particularly to its advantage. In the Jemmett estate there is no obvious difference between the farms in Oxted and Crowhurst (Surrey) and those in Kent (*Table 5.2*). There is too little copyhold land in the hundred to make a comparison of prices possible; the cottage and shop at the church gate in Chiddingstone was leased for 28s a year in 1593; in 1693 it was occupied in return only for the cost of repairs.⁸⁹

Conclusions are that, as elsewhere, prices rose rapidly in the late sixteenth century, had steadied by 1625, and then remained stable for a century.⁹⁰ It may be a step too far to conclude that supply and demand were in balance.⁹¹ Price tracked the rapid rise in population in Somerden in the sixteenth century which stabilised in the mid seventeenth century ([Chapter 3](#)).

85 KHLC U908 T33.

86 KHLC U908 T64, T94, T45, T22, T23.

87 KHLC T18, T60, T6. The house does not survive, being demolished to make way for the new road and park.

88 KHLC U908 T44, T2, T136 and T160.

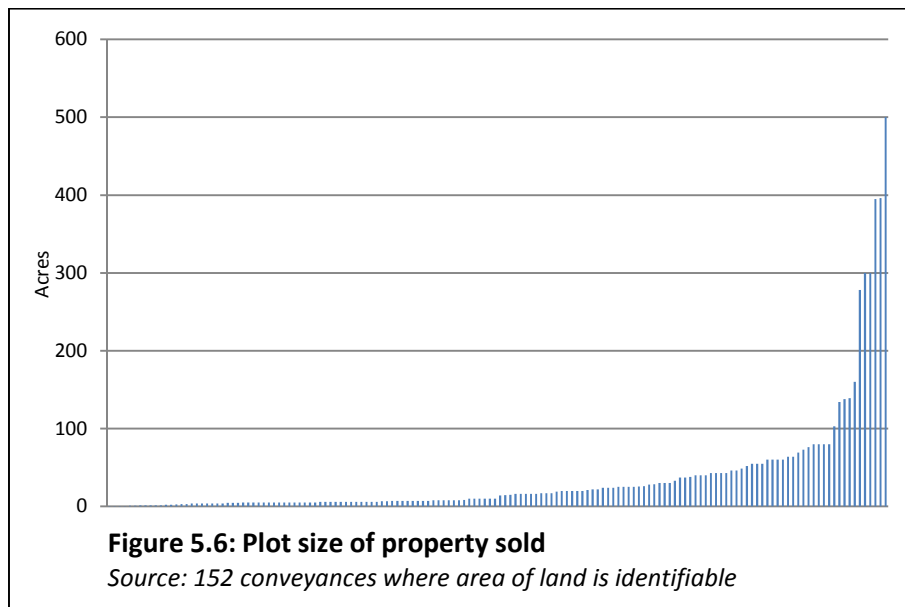
89 KHLC U908 T7.

90 Clark, 'Land rental values', p.292.

91 Thirsk, 'Sales of royalist land'.

Plot Size

John Broad found that the sale of the Chaloner estate, Buckinghamshire, at the end of the seventeenth century was in blocks of which only a third were 'a viable size for a family farm', at 30-40 acres.⁹² *Figure 5.6* shows sales for which an acreage can be established. If we accept Broad's definition of 'viable' as 40 acres, then for the period as a whole 38 sales were for properties of this size or larger, 114 were smaller; the remainder were manors or mills or the acreage is unclear. The mean size is 37 acres, but this disguises a preponderance at the lower end of the scale. The median size is 10 acres, and the figure clearly illustrates how small the majority of properties were.

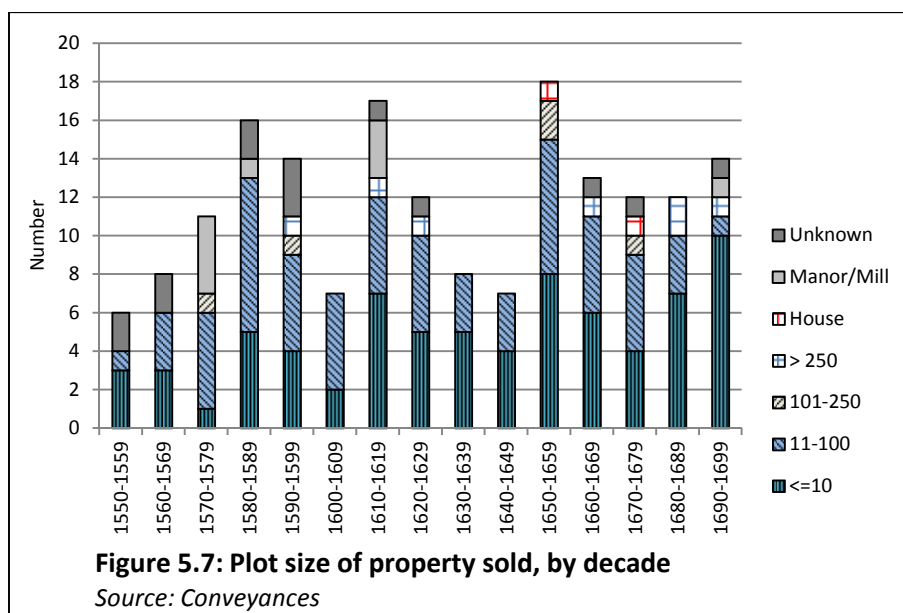


In terms of total acreage, the 1590s stand out with 705 acres sold, the 1680s with 1,063. Only in these two decades did the mean size of property sold rise above 60 acres. The majority of purchases were of small plots being added to existing holdings, some were shares of a partitioned property, a few were cottages. Of the 68 properties of 10 acres or less, 43% (29) included a cottage, house or shop; 68% (46) were purchased by aristocracy, gentry or yeomen adding to existing property. However, 21 of the purchasers were tradesmen or husbandmen, probably in occupation, all after the mid-point of 1625. They included Thomas Wakelin using land for stock for the

92 Broad, 'Fate', p.342. The concept of a 'viable family farm' is further discussed in Section V.

butchery, a tanner and a carpenter probably purchasing for timber, but most small plots appear to have been to add to an existing agricultural holding. [Section III](#) suggests that tradesmen were losing out as landowners towards the end of the century, sales exceeding purchases.

To estimate movement in the size of property being sold over time, *Figure 5.7* breaks down the acreage of the holdings in the individual transactions, with a residual category of 'Manor or Mill' (including shares, mills and forges), and a category of 'unknown'.



The 1680s and 1690s are distinctive; the majority of properties sold were small, fitting with the impression given by *Figure 5.2* that the small owner was beginning to lose ground. Small plots and high prices are one indication of fragmentation. Whittle found that in the period 1440-1579 an acreage equal to the whole manor of Hevingham Bishops, Norfolk, changed hands every 15 years; however this included inheritance, so was unlikely to have been more than 25 years in most generations.⁹³ Although family circumstances have been highlighted, [Section V](#) looks at the impact of cultural and economic factors in this pattern.

93 Whittle, *Agrarian Capitalism*, pp.102-4, 112.

V. Cultural and Economic Influences

Introduction

The rise of 'capitalist' as opposed to 'family' farms (discussed in [Chapter 1](#)) depends on the idea of a free and active land market, and, by implication, on the sale of family (inherited) land. The reach of customary law (the rights of heirs and widows) was declining with the increasing support of courts and state for individual ownership and a free market. However, land represented status as well as money: the pedigree made the gentleman (heraldic visitations continuing until 1688), and the gentleman had land. It is significant that the Court of Chancery privileged lands held to be of 'Ancient Inheritance'.⁹⁴ It is also questionable whether sale of family land represents a change in *attitude* ('structural change') or response to economic or other pressures.⁹⁵

Sreenivasan put the issue in terms: '*none of this allows for the possibility of compulsion; for the possibility that the tenants lost their land despite their own efforts or desires*'. In difficult times, to which the smaller freeholders were the most vulnerable, debt could result in the loss of land.⁹⁶ The manorial dues were not a significant feature in Somerden; however, pressure from portions has emerged as an issue, plus the practicalities of geographic mobility.⁹⁷

Indebtedness is discussed in [Chapter 6](#), and changes in land ownership in [Chapter 7](#). This section looks first at the 'family-land bond'. It then considers the role of gavelkind, and finally looks at the alternative, economic explanations for sale.

Attachment to Land

Sugarman and Warrington described the idea of 'attachment to land' as of landowners who '*treated their landed estates with the same reverence as a miser was supposed to treat gold*'.⁹⁸ For Robert Brenner the attachment to land was great because it

94 D. Waddilove, 'Why the equity of redemption?', C. Briggs, & J. Zijderduijn, *Land and Credit: Mortgages and Annuities in the Medieval and Early Modern European Countryside* (Turnhout, 2017), S.5.4.

95 Béaur & Chevet, 'Institutional change', p.44; Glennie, 'In search of agrarian capitalism', p.12.

96 G. Sreenivasan, 'The land-family bond at Earl's Colne (Essex), 1550-1650', *P&P* 131.2 (1991), p.21.

97 KHLC U908 E2. Sreenivasan, 'Land-family bond', p.28.

98 D. Sugarman & R. Warrington, 'Land law, citizenship, and the invention of 'Englishness': the strange world of the Equity of Redemption' in J. Brewer & S. Staves, eds, *Modern Conceptions of Property* (London, 1995), p.111.

represented subsistence and survival, lords wielding power over tenure.⁹⁹ Macfarlane argued that individualism was evident very early, land changing hands rapidly, only 8.4% of property in Earls Colne in 1677 was in the same hands as in 1598. However, faults were detected in his methodology.¹⁰⁰ Reworking the data, French and Hoyle estimated that in Earls Colne 6% of land was subject to a transfer each year, of which two-thirds remained within the family. '*From this it could be argued that land was inherited every 25 years and sold every 50, and sales were much more likely in some periods than others.*'¹⁰¹ Jane Whittle in her research on Norfolk found little evidence of a family-land bond by the sixteenth century: *inter vivos* transfers dominated over inheritance.¹⁰²

Most of these studies which are based on manorial records emphasise copyhold land: Whittle recognised the poor representation of freehold land in her Norfolk sample. In a comparable study David Clarke re-examined Macfarlane's argument in three East Sussex parishes for the period 1580-1770. In Wealden Brede, gavelkind was the predominant custom with freehold land in the majority.¹⁰³ In the other parishes Borough English predominated, with copyhold land in the majority. He found that 55% of transfers of land in manor court rolls of the downland parishes were within the family, and 60% in the Wealden parish. Continuity in the seventeenth century was notably less than in the ensuing century, and was contrastingly low among freeholders.¹⁰⁴

In Somerden, a peak in market sales occurred in the 1650s, tailing off again towards 1675 then rising again, with smaller holdings increasingly being disposed of in the last quarter of the century. The time for which a property being sold had been held is shown in *Figure 5.8*. The Somerden sample is perforce less complete than the database of French and Hoyle, based on a wider area and on different sources. The figures include a large number of 'unknowns'; this identifies properties where length of

99 Brenner, 'Agrarian class structure'.

100 Macfarlane, *Individualism*; Sreenivasan, 'Land-family bond'; G Sreenivasan, 'The land-family bond in England: a reply', *P&P* 146.1 (1995), 174-187; Hoyle, 'Land-family bond'; J.V. Beckett, 'The peasant in England: a case of terminological confusion?', *AgHR* 32 (1984), p.113; Hoyle, 'Tenure'.

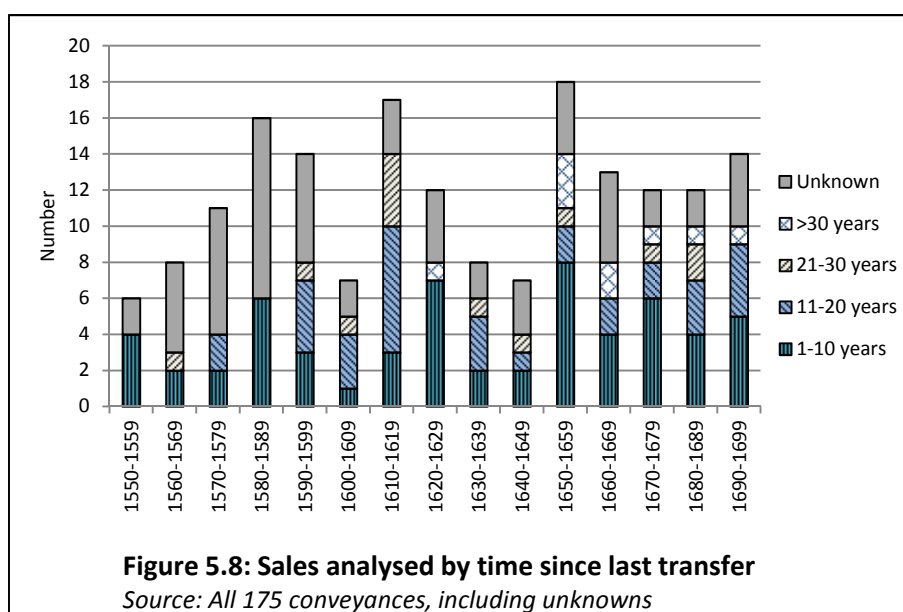
101 French and Hoyle, 'English Individualism - reasserted'.

102 Whittle, 'Individualism'.

103 Clarke, 'Land-family bond'. Under Romney Marsh Rules, land 'inned' from the marsh was deemed to be gavelkind even when over the county border in Sussex.

104 Clarke, 'Land-family bond'.

ownership is uncertain (and would not be evident in a manorial rental).¹⁰⁵ Half represent the first transaction in the record; some are those which a holder had inherited but there is no surviving will or burial record, some a purchase noted in recitals but without a date. A few are plots probably carved from a greater holding; several plots sold by Thomas Willoughby are not in the schedule of lands held by his ancestor Sir Robert Rede, or evident from subsequent purchases, but may have been a part of a larger plot.¹⁰⁶ This is not perfect, but it leaves 114 of the 175 records where the last transaction can be identified.



Sales of holdings held for more than 10 years rose from 1590 to 1620: in the recession years of the 1610s they were 65% of sales. In the 1630s, again years of economic difficulty, 50% of sales were of land held for over 10 years. The 1640s were a low point for sales, during the years of the Civil War, but in the 1650s land held for over 30 years is notable. From the 1650s sales of land held for over 30 years remain a feature, and land held for over 10 years never falls below a third of sales. In the 1620s were the lands Percival Willoughby had inherited from his father in 1596, and three properties sold by the Wickenden family, inherited more than twenty years before (*Case Study 1, page 43* and *Case Study 14, page 167*). In the 1650s sales include the land which John Seyliard sold to pay his sisters' portions, in the family for over fifty years (*Case Study 12,*

105 Hoyle, 'Land-family bond'.

106 NUL Mi5 161-1-43.

page 146).¹⁰⁷ This case exemplifies the issue of land being settled and tied up to the point where daughters and younger sons could not be provided for (Chapter 4): there may not have been a 'crisis of the aristocracy', but landowners were creating problems for future generations, where income was not set aside and too much property was tied up to allow portions to be paid. Other sales of long held land are those by non-residents Edward Everest of London, watchmaker (*Case Study 5, page 53*), and Frances Shatterden née Streatfeild of Chester, and also of local man Henry Care of Rendsley Hoath, each selling land inherited from a father years before (in Frances' case, 54 years). However, an analysis of transactions misses property which was not sold, the family continuity.

Continuity

Small plots dominated the sales transactions, but larger holdings were more likely to have remained in the family and not come onto the market.¹⁰⁸ Gabriels in Edenbridge came into the Seyliard family sometime around 1425-30 when Robert Seyliard married Eleanor Gabriel. The surviving records are sparse; although its owners appear frequently in other contexts its history depends on a handful of wills. At the death of Thomas Seyliard in 1536 it became the portion of a younger son, Nicholas. It passed down to his son, Nicholas (Master of Cliffords Inn), grandsons Robert and John, and great-grandson Robert. When the younger Robert had no sons he chose to leave the estate by his will of 1712 to a cousin in the female line rather than in the male, Seyliard, line.¹⁰⁹ So for three hundred years it passed down without leaving the family until it was finally sold in the eighteenth century (*Case Study 12, page 146*).¹¹⁰

Such land might be covered by a settlement, or simply descend to the customary heir. Coles shows how few sons and the use of settlements preserved the patrimony while conditions were favourable (*Case Study 15, page 183*). Even where the change is recorded in a manor court roll the relationships are not always clear. John Sedley did fealty for Gilridge in 1600 'in right of his wife Joane', but he was her second husband,

107 NUL Mi5 162-13 & 71 to 83, KHLC U908 T33, T34, T164, T51, T54, T125, T11.

108 Buckhurst Park, just over the county border in Withyham, has reputedly been in the Sackville family for over 900 years. [www.buckhurstpark.co.uk, accessed February 2016].

109 KHLC U116 F8, T2; PROB 11/125, 65, 145, 195, 530.

110 Hasted, *History of Kent*, Vol.3.

and since she had remarried she had an interest only during the minority of her Ashdowne sons, the heirs in gavelkind.¹¹¹ Equally, land which appears to have changed hands may in reality have stayed in the family. The Manor of Cowden Leighton was purchased in 1591 by Henry Streatfeild, was inherited by his grandson, Thomas, and descended to Thomas' daughters as coheirs. When Dorothy Powell's fourth part was purchased by the senior branch in 1728 it had had six owners, including the change of name from Streatfeild to Powell and back, and one arms-length sale, but in reality had been in the same family throughout.¹¹² Transactions can be deceptive.

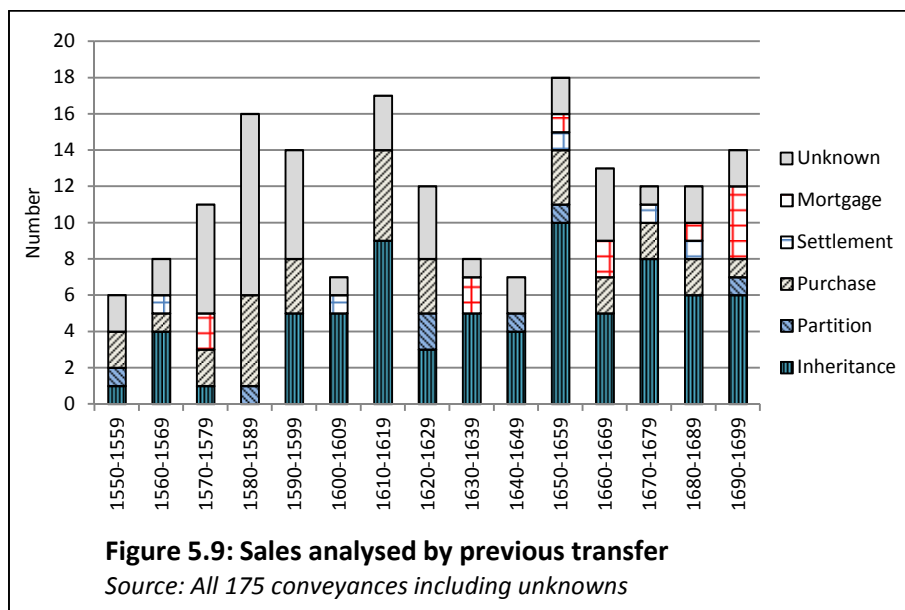
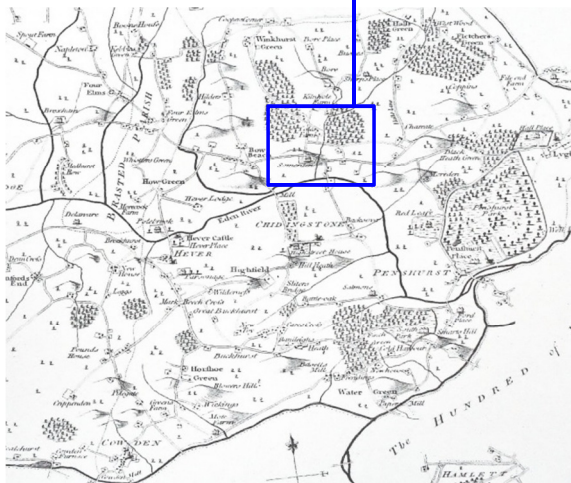
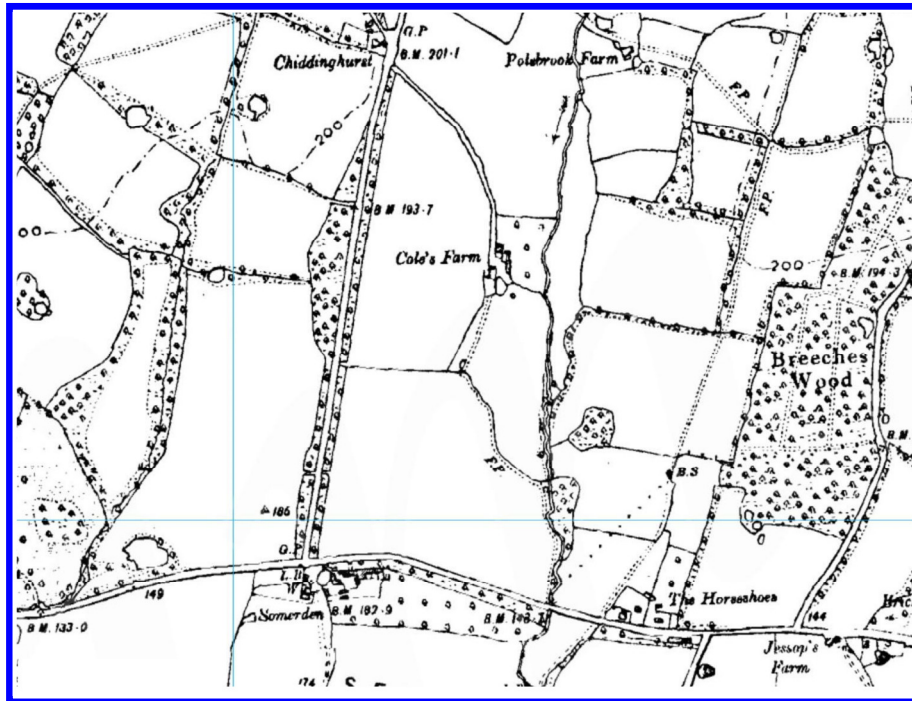


Figure 5.9 illustrates how the land on the market was made up, based on the previous transfer. Again, the early part of the period is affected by a high level of transactions before the title deeds records begin. There are periods, such as in the 1600s and 1670s, when inherited land was a larger proportion of the sales (70%). Comparing this with Figure 5.8 suggests that purchased land was more likely to be held for fewer years and predominated earlier in the period whereas inherited land was likely to be held much longer, and to be sold towards the end of the century.

111 Chapter 3 above, KHLC U908 T178, M50.

112 TNA PROB 11/152, KHLC U908 T3.

Case Study 15: Coles, Continuity and Failure¹¹³



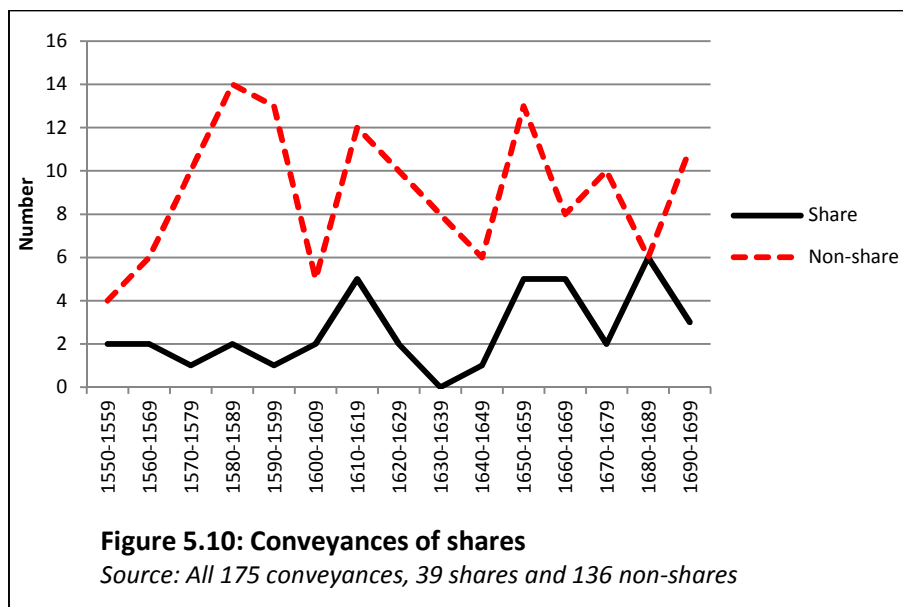
Brief History

- c.1510 Sir Robert Rede of Bore Place recorded that Thomas Nicholas 'of Coles' was the tenant of Courtlands.
- 1588 John Hollamby alias Nicholas I of Coles purchased Smithyham, 25a., from Thomas Willoughby of Bore Place. Now 80a.
- 1606 John Hollamby I settled Coles on his eldest son Richard on his marriage.
- 1635 Richard Hollamby settled Coles on his only son John, and retired.
- 1668 John Hollamby II settled Coles on his only son John.
- 1701 John Hollamby III died and left his property one third to eldest son John, one third to second and third sons, one third to fourth and fifth sons.
- 1708 John Hollamby IV mortgaged Coles. The mortgage was not repaid.
- 1750 John Hollamby IV died, and his sons sold to repay the mortgage, and became tenants.
- 1841 Owned by Henry Streatfeild, occupied by Francis Elverton.

113 KHLC U908 T129, T130, T131, T133; Mi5 160-18, 161-02-33, 162-23; LPL VH96/4714.

Gavelkind

It has been shown that plots sold were overwhelmingly small. The accusation was often made that subdivision into shares which were not viable was responsible for family decline: '*independently of settlements and wills, it must, in a few generations, break down ancient families, and cause a subdivision of the land unfavorable to agriculture*' said the 1832 Royal Commission.¹¹⁴ However ownership and farm size were not coincident. The majority of landowners, large and small, would lease out at least part of their land as a way of managing their scattered and fragmented holdings or in response to family circumstance.¹¹⁵ Chapter 7 considers leasing in more detail; here the market in shares is examined, represented in *Figure 5.10*. Of 175 conveyances, in only 7 cases was the immediately preceding transaction a partition, but in a further 32 cases the property sold was the share of an estate, either undivided or recently divided. In all 22% were such shares. There is no way of comparing this proportion with elsewhere in the country, but these figures confirm that joint inheritance, whether partitioned or not, was widespread in Somerden.



Another way of looking at this is to see how long shares were held. Sales of shares within ten years of the last transaction are more than average at 54% of the 39, as

114 T. Robinson, *The Custom of Kent or the Law of Gavelkind*, (1858), p.187.

115 Zell, *Industry*, p.37 et seq.

opposed to the overall average of 34%, but a third were held for more than twenty years. Only ten were sold within five years of the last transaction and that might be many years after the division. It cannot be concluded that a share was sold because too small to be a viable farm; most of these properties were forty acres or less and yet might be held undivided for many years and the proceeds shared. There is no evidence that shares held in common were undesirable; some purchasers would buy a share hoping to buy the remainder in due course, those purchasing for rental income or investment would take a proportion of the income. The data supports the suggestion made by Béaur and Chevet, summarising research, that '*far from handicapping the market, this fragmentation of ownership into a myriad of small rights tended to make the circulation of property more fluid and thereby invigorated the market*'.¹¹⁶

Economic and Social Influences

Hoyle has suggested that it was the economic conditions which dominated the market and led to the decline of the small landowner, rather than tenurial conditions, or indeed cultural attitudes.¹¹⁷ Rising rents and food prices in the late sixteenth century were identified as favouring purchases by yeomen, whereas after 1625 inflation and taxation halted this trend.¹¹⁸ The Somerden statistics suggest that gentry were at an advantage during periods of recession, perhaps with greater resources to withstand economic vicissitudes. However, overall the yeomen were holding their own in the land market up to about 1670; thereafter their sales exceeded their purchases. Individual and family circumstances are the key to most transactions, but political and economic conditions could put a whole class at a disadvantage on a long time-scale. After 1670 the conditions were disadvantageous to the yeoman, and to a lesser extent the small gentry. Apart from a brief recovery in the 1690s, grain and wool prices were lower in the 1700s than in the 1640s; prices for livestock were at best static.¹¹⁹ Taxation was increasingly levied on those of middling wealth, and on stationery assets such as

116 Béaur & Chevet, 'Institutional change', p.40.

117 Hoyle, 'Land-family bond'.

118 Chalklin, *Seventeenth-Century Kent*, pp.53-55.

119 M. Overton, *Agricultural Revolution in England: The Transformation of the Agrarian Economy 1500-1850*, (Cambridge 1996), p.64. Bowden makes the point that cattle prices in the south-east suffered less than the south-west: P.J. Bowden, 'Agricultural prices, wages, farm profits and rents', in J. Thirsk ed. *The Agrarian History of England and Wales Vol.V(ii): 1640-1750 Agrarian Change*, (1985). Hops were an exception, but were still a small acreage as compared with livestock and grain. See Chapter 3, Section IV for a description of the agrarian regime in Somerden.

land.

Reasons for purchase could be to build up an estate, or for temporary needs of a family, or for provision for children as they reached adulthood, seen in Chapter 4. Rising men were also likely to invest in land, not just for security but for status; the acquisition by Richard Streatfeild the ironmaster of two manors raised his sons into the gentry.¹²⁰ Reasons for sale were very variable. The economic conditions of rising food prices only favoured the small holder where he had access to a market, and the increasing dominance of the London market favoured the larger supplier. Elton notes the emergence of the 'grazier', the large-scale pastoral farmer, during the sixteenth century.¹²¹ Rising prices of land restricted the small owner, although the availability of small plots aided him. This encouraged farmers to intensify production of the new garden crops, but these were capital intensive. During difficult market conditions the small owner might become indebted, and ultimately be forced to sell.

In conclusion, despite the inhibitions of complexity, cost, encumbrances, and rising prices, there was already an active market in land from the beginning of the period, but it (and prices) rose steadily. The pattern of sales and purchases show the importance of individual circumstances: physical move of residence, impracticality of a holding, failure of heirs, or the need to provide portions. But analysis shows that alongside these were the more general and long-term economic pressures which were to lead in the following century to the decline of the yeoman.¹²²

120 G.R. Elton, *England under the Tudors*, 2nd edn, (London, 1991), pp.224-238; KHLC U908 T1.

121 Elton, *England*, p.230.

122 C. Chalklin, *Seventeenth-Century Kent* (London, 1965), pp.52-55.

VI. Summing Up

This chapter set out to investigate the land market, the first stage in analysing the effect of gavelkind on family and property. Over the period 1550 to 1700 there was a steady if not dramatic rise in market sales of land. Peaks occur in the data in the 1580s, 1610s and 1650s, with lows in the 1600s, 1640s and 1670s, and a slower pace of increase in the 1680s and 1690s. While it is true that the inheritance practices discussed in [Chapter 3](#) had the effect of adding encumbrances to those that already existed by custom, conveyancing practice adapted. This in turn added complexity and cost to transactions, and yet very small properties could change hands, and some did so repeatedly.

The land market was essentially a local one. This is unsurprising, for people do not purchase land on a random geographical basis, but the involvement of outsiders is remarkably low given the proximity to London. Purchasers of land were overwhelmingly local and neighbours; there were a few purchases for medium-term investment, but most were yeomen purchasing to increase the size of their holdings for the long term. Sales, particularly among the gentry, can be explained by individual and family circumstances. The payment of portions was a stimulus to sales, and [Chapter 4](#) identified life cycle of the family as a major stimulus to purchases.

There are small but discernible differences in the prospects of different classes over the period. Yeomen were faring best in the years before 1590, when their purchases exceeded their sales. Gentry were favoured in the late seventeenth century, purchasing more than they sold. Aristocratic sales were dominated by the Willoughby and Seyliard sales, and their purchases were evenly spread for the first hundred years, but declined after 1660. Tradesmen were few in the market in the sixteenth century, were more prominent in the seventeenth, but like the yeomen seem to have been selling more than they purchased towards the end of the century. This view is reflected in plot size: the sale of small plots dominated in the 1690s; larger plots were evident in the 1580s, 1610s and 1650s, associated with the few gentry families.

Figures for both sales and lease rents suggest that prices rose rapidly at the end of the sixteenth century, but after about 1625 stabilised with a slight fall at the very end of the century. In this respect, gavelkind land follows the pattern found in other parts of

the country. The mean size of property sold was under 40 acres throughout the period, with two brief exceptions, and the typical property only 10 acres. This supports the idea that small plots of land were a stimulus to the market, although building up a large estate would be difficult.

The 1610s, a period of demographic and economic difficulty saw one of the highest levels of transactions, the highest proportion of long-term holdings sold, the highest level of sales by yeomen, the highest level of purchases by gentry, the highest level of purchasers from adjacent parishes or outside the area, an above average level of small plots being sold, and the second highest level of inherited land.

Analysis by prior transaction suggests that in the second half of the seventeenth century there was a rise in the sale of land which had been inherited rather than purchased, and land which had been held for a long period. About a third of property sold had been owned for less than ten years, and another third for eleven to twenty years. Where the land had been inherited in common, whether partitioned or not, the sales are the same proportion overall, but there is a slight tendency for them either to be sold early or kept for a very long time. In the absence of an extensive record of every plot, it is difficult to assess the exact proportion of the overall land 'bank' which was never sold but descended down to the heir or heirs over many generations, but there are numerous individual examples.

Studies of the early modern land market have generally been based on manorial records which emphasise copyhold land and former ecclesiastical estates. Provided the increasingly nominal quit-rents were paid, rights of manorial lords over gavelkind land were negligible, which could not yet be said of copyhold land. Subject to encumbrances and residual customary rights land could be freely disposed. A significant proportion of sale was of shares, the inheritance of coheirs, whether partitioned or held in common, indicating its ubiquity, but they are not disproportionately identified with subsequent sale. Provided capital was available, land could be purchased and improved, and that capital finance is the subject of Chapter 6.

CHAPTER 6 : FINANCE

I. Introduction

One of the propositions of those who defended gavelkind was that it allowed every man to have a start in life in the form of a small share in the parental land. The consequences of this could be radically altered if land could be treated as a commercial asset, producing an income through leasing or raising capital through mortgaging. Leasing is treated in Chapter 7, this chapter looks at mortgages.

Since the capital was a prerequisite for agricultural improvement and sustained economic growth, the role of mortgages in the rural economy has been surprisingly neglected until recently.¹ Research has shown how central everyday credit was to society from the middle ages, even in rural areas.² Anthony Poole's study of probate accounts in the Cranbrook area of the Weald found that 90% of men dying between 1660 and 1699 left debts.³ However, these were trade debts, unpaid wages, bills, taxes, bills and bonds; Thomas Willoughby's outlay of over two thousand pounds on Bough Beech Furnace illustrates the order of spend required for industrial development in the late sixteenth century (*Table 5.1, Chapter 5*).⁴ Investment on this scale required long-term finance, which depended on good security and a return on investment. A mortgage on land could provide this, given legal protection for lender and borrower.⁵

Mortgages were known even in the middle ages, and even for copyhold land, but were exceptional, because of the dangers for the borrower.⁶ This began to change in the

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- 1 C. Briggs, & J. Zijderdijn, *Land and Credit: Mortgages and Annuities in the Medieval and Early Modern European Countryside* (London, 2017). An article based on the research in this chapter was published as Chapter 4: 'Mortgages and the Kentish yeoman in the seventeenth century'.
 - 2 S. Matthews, 'Money supply and credit in rural Cheshire, c.1600-c.1680', *C&C* 24.2 (2009), 245-274; C.J. Muldrew, 'Hard Food for Midas: cash and its social value in early modern England', *P&P* 170 (2001), 8-120, *The Economy of Obligation: the Culture of Credit and Social Relations in Early modern England*, (London, 1998); B.A. Holderness, 'Credit in English rural society before the nineteenth century, with special reference to the period 1650-1720', *AgHR* 24.2 (1976), 97-109; M. Postan, 'Credit in medieval trade', *ECHR* 1.2 (1928), 234-261.
 - 3 A. Poole, 'Debt in the Cranbrook region in the late seventeenth century', *AC* 123 (2003), p.83.
 - 4 NUL Mi5 162-49.
 - 5 C. van Bochove & H. Deneweth, & J. Zijderdijn, 'Real estate and mortgage finance in England and the Low Countries, 1300-1850', *C&C* 30.1 (2015), 9-38; N. Jones, *God and the Moneylenders: usury and law in early modern England* (Oxford, 1989); R.D. Richards, *The Early History of Banking in England* (London, 1929), p.140, R.H. Tawney, *Sir Thomas Wilson: A Discourse upon Usury* (London, 1925), p.25.
 - 6 C. Briggs, 'Mortgages and the English peasantry, c.1250-1350', in Briggs & Zijderdijn, *Land and Credit*.

sixteenth century, and the seventeenth century saw a rapid expansion, following developments in the law legalising interest, protecting the rights of borrowers, and providing remedies for the lender.⁷ By the mid seventeenth century mortgage finance was readily available to the aristocracy, through the intermediation of London brokers.⁸ However, the borrowing practices of yeomen and small landowners have been less well studied, given the poorer survival of records at this level of society. John Kew's study of Devonshire was an exception but dealt with an earlier period and a county at a greater distance from London.⁹ Briggs and Zuijderduijn's recent volume of studies illuminates the picture, not just for England but beyond.¹⁰ This chapter investigates the availability of finance to rural landowners in Somerden, the operation of the market, how the capital raised was used, and how often land changed hands as a consequence. Although the works of enclosure, reclamation and drainage seen elsewhere do not play a great role in West Kent, the period saw new crops being planted - apples, cherries and hops - which were lucrative but slow to produce a return and capital-intensive, requiring permanent planting and infrastructure. Building of furnaces, kilns, chimneys and barns was going on apace: John Hollamby 'of the Kell' (kiln) operated a brickworks near his cousin at Coles.¹¹ As early as 1557 Thomas Tusser could write:

*Some skifullie drieth their hops on a kell
And some on a sollar, oft turning them well.
Kell dried will abide foule weather or faire,
Where drieng and lieng, in loft doo dispaire.*¹²

Freeholders, taking both risk and reward, were best able to invest in such long-term ventures - 'Oak only grows on free land' as the proverb has it.

The rest of this section considers the legal changes, [Section II](#) looks at the expansion of mortgages, [Section III](#) at lenders, borrowers and intermediaries, and [Section IV](#) at the effects of finance on family and property.

7 J. Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1580* (Oxford, 2000), pp.110 & 116-9; C. Briggs, *Credit and Village Society in Fourteenth-Century England* (Oxford, 2009).

8 F.T. Melton, *Sir Robert Clayton and the Origins of English Deposit Banking, 1658-1685* (Cambridge, 1986); D.C. Coleman, 'London Scriveners and the Estate Market in the Later Seventeenth Century', *ECHR* 4.2 (1951), 221-230.

9 Tawney, *Sir Thomas Wilson*, pp.31-42; J.E. Kew, 'Mortgages in mid-Tudor Devonshire', *Report and Transactions of the Devonshire Association* 99 (1967), p.167.

10 Briggs, & Zuijderduijn, *Land and Credit*, 'Introduction', p.2.

11 He is so described in the parish register; his inventory includes bricks and tiles, fired and unfired [VH96/4710].

12 T. Tusser, *Five Hundred Points of Good Husbandry* (1580 edn), p.56.

Legal Developments

Three developments took place during the period which had a major impact on long-term credit: the Usury Acts which reformed the law relating to interest, case law in the 1620s which provided protection in equity for the borrower, and the establishment of legal principles in the 1670s when the right to redeem a property was crystallized as the 'equity of redemption'.

The permanent break from the medieval ban on usury was signified by the *Usury Act* of 1571, after which interest was never again banned, although it was regulated and penalties for those who stepped outside the law were severe.¹³ As so often, law followed practice: various devices had been developed to disguise interest, largely based on fictional risk, and evasion was widespread.¹⁴ Devices found in the Somerden data are a conveyance and lease back, so that rent was being paid rather than interest (all occurring before 1625) and the grant of an annuity, where it could be argued that risk was being shared (75% occurring before 1625).¹⁵ Towards the end of the sixteenth century an intermediate type appeared, payment of a premium at the end of the term (in the data, 82% of these occur after 1625), and in the mid seventeenth century the modern form of payments during the term with the principal paid at the end.¹⁶

The 1571 Act set a maximum interest rate of 10%, but this was reduced to 8% from 1624, and to 6% by Ordinance in 1651, the latter ratified in 1660.¹⁷ Some have seen the 1623/4 Act as marking a change in attitudes, others say this had already occurred.¹⁸ The probable turning point was the action of the equity courts in upholding the interests of the borrower; this provided a means of paying the mortgagee without transferring possession.¹⁹ During the medieval period the normal practice was for the property to be transferred to the mortgagee who could use the profits for repayment of the debt; the property would then be transferred back to the borrower on

13 Tawney, *Thomas Wilson*; Jones, *Moneylenders*, pp.1, 3, Chapter 4.

14 Tawney, *Sir Thomas Wilson*, p.20.

15 KHLC U908 T2, T54, T120, T169; NUL Mi5 162-22, 160-27, 162-26 & 28, 161-2-5, 11, 22 & 28; KHLC U908 T38, T109, T136.

16 KHLC U908 T8, T68.

17 13.Eliz.c8, 21.Jacl.c17, 12.Carll.c13, *Statutes of the Realm, Vol.4.2*, (1819); Ordinance made 8th August 1651 in *Acts and Ordinance of the Interregnum 1642-1660* (HMSO 1911).

18 J. Coral, 'Anxious Household: theft and anti-usury discourse in Shakespeare's Venetian Plays', *The Seventeenth Century* 30:3 (2015), 285-300; 21.Jacl c17, *Statutes of the Realm Vol.4.2* (1819); C. Sullivan, *The Rhetoric of Credit: Merchants in Early Modern Writing* (London, 2002).

19 Kew, 'Mortgages', p.167.

completion of the contract. The disadvantage to the borrower is obvious: the onus was on him to establish his right to re-enter. Early mortgage deeds were prescriptive and the common law courts would uphold them to the letter.²⁰ The development of equitable remedies protected the interests of the landowner; where the common law courts were failing to deliver justice the Equity courts would step in.²¹ The case *Emmanuel College v. Evans* (1625) may have been the break-through which established that the mortgagor was the 'true owner' of the land, the mortgagee holding it only as security.²²

The final working out of the theory of Equity of Redemption occurred under the Chancellorship of Lord Nottingham (1673-82).²³ This may have been a result of the courts' wish after the Restoration to assist Royalist landowners in recovering lands mortgaged, compounded for or repurchased after sequestration.²⁴ Perhaps they were increasingly concerned to protect ancestral property, or perhaps simply reflecting social reality.²⁵ Thereafter borrowing by mortgage grew rapidly, a pattern reflected in the Somerden data, although it cannot be concluded that *post hoc ergo propter hoc*.²⁶

Conveyancing practice also developed in the period. At the end of the fifteenth century the most common instrument was the mortgage in fee, a feoffment with a proviso for re-entry or re-conveyance; after the 1536 *Statute of Uses* a bargain and sale was sufficient.²⁷ The disadvantage of this was that the transfer of the fee simple attracted dower and feudal incidents, so a form was developed based on a long lease or 'term of years'; in Somerden this form came to dominate after 1650, but was not without its own technical difficulties.²⁸ One of the problems for lenders was identification of prior charges and other interests, which were manifold. Feoffments were public documents, a bargain and sale was not, though required by the *Statute of Enrolments* to be

20 KHLC U1986 T35.

21 R.W. Turner, *The Equity of Redemption* (London, 1931).

22 D. Waddilove, 'Emmanuel College v. Evans and the history of mortgages', *Cambridge Law Journal* 73.1 (2014), 142-168. Waddilove suggests that the case does not quite bear the burden placed on it.

23 J.H. Baker, *An Introduction to English Legal History*, 4th edn (London, 2002), p.313; Melton, *Sir Robert Clayton*, 128.

24 I. Ward, 'Settlements, mortgages and aristocratic estates, 1649-1660', *JLegH* 12:1 (1991), 20-35.

25 D. Waddilove, 'Why the Equity of Redemption?', in Briggs and Zijderdijjn, *Land and Credit*, Ch.5.

26 Melton, *Sir Robert Clayton*, p.156; I. Wedd, 'Mortgages and the Kentish yeoman in the seventeenth century' in Briggs, & Zijderdijjn, *Land and Credit*, Chapter 4.

27 Baker, Introduction.

28 van Bochove, Deneweth & Zijderdijjn, 'Real estate and mortgage finance'; D. Veall, *The Popular Movement for Law Reform 1640-1660* (Oxford, 1970); Melton, *Sir Robert Clayton*, p.132.

enrolled in court. The absence of a central registry meant that searches had to be done in the rolls of the royal and local courts, and there was no certainty that the registration would be in place.²⁹ England was held back by its accretion of customary law and the vested interests involved, despite movements for reform during the Commonwealth.³⁰ Furthermore, since landowners did not necessarily want their transactions to be on the face of the record, lawyers devised methods of conveyancing which were outside the legislation. Scriveners or lawyers were worthy of their fee partly because they could search the court rolls, partly because of their knowledge of a particular client's affairs.³¹

Improvements in the process of foreclosure took place protecting the lender, but despite this, the risks were real. Henry Seyliard mortgaged his land to Lewis Gollage of London, but he had already taken out a mortgage with William Gamble, secured with a Statute Staple, and Gollage had to buy Gamble out. Henry Streatfeild (himself a lawyer) had to buy out the interest of an annuitant secured on Beechenwood which he had purchased (*Case Study 14, page 167*). James Everest took out two mortgages within six months on the same land; one lender was his brother, leading to a cooling of relations.³² Concurrent mortgages were not necessarily untoward where a single lender could not be found to cover the whole sum; an experienced conveyancer would provide for notice to be given clearly to a second mortgagee, who often witnessed the new deed.³³

Whatever the conveyancing precautions there could be be difficulties. In 1688 opinion was sought on the conveyancing of Stanford's End in Edenbridge, where counsel was advised that '*Mrs. Dobbs was a Woman Excessively addicted to Drinking and we have some reason to Apprehend she was in liquor when she Executed the Deed and acknowledged the Fine and was hardly Sensible of what she was about...*'³⁴ The major cause of litigation in Somerden related to prior encumbrances.

29 van Bochove, Deneweth & Zijderduijn, 'Real estate'; P. Mayer, *A Short History of Land Registration* (H.M. Land Registry (London, 2000), p.4; S. Rowton Simpson, *Land Law and Registration*, [www.landadmin.co.uk, accessed 2016].

30 van Bochove, Deneweth & Zijderduijn, 'Real estate'; Veall, *Movement for Law Reform*, pp.219-224.

31 Melton, *Sir Robert Clayton*, p.144.

32 KHLC U55 T661; U908 T38, T82, and L43-45.

33 For example KHLC U908 T178.

34 KHLC U908 T22, T134.

The Defeasance Difficulty

Identifying a mortgage is not always straightforward. The sixteenth-century mortgage deed was essentially a sale of the property incorporating a condition that the property would be sold back to the original owner if the principal was repaid. In the earliest form, this 'condition' or 'proviso' was often in a separate document, perhaps because of legal issues with conditional transfers.³⁵ If the separate 'defeasance' has been lost, the transaction can appear to be a simple conveyance - and why keep it, once the property had been transferred back? Although this type was discouraged in the seventeenth century there is still evidence of it in the sample.³⁶ A case in point is that of the transfers of Beechenwood in Cowden from Thomas Wickenden to Richard Tichborne and back again twice in the space of eight years (*Case Study 14, page 167*).³⁷ Such transactions may be shown to be mortgages only by the fact that the property was still with its original owners some years later. Transactions can be disguised, too, by the use of trustees. Occasionally sufficient details can be extrapolated from the context, perhaps the 'recitals' of a dependent deed, but frequently the missing parts leave gaps which cannot be filled and transactions have had to be omitted.

35 J. Biancalana, 'The development of the penal bond with conditional defeasance', *JLegH* 26:2 (2005), 103-117; J. Rabinowitz, 'The common law mortgage and the conditional bond', *University of Pennsylvania Law Review* 179 (1943), 179-184.

36 W. Cruise (ed.), *A Digest of the Laws of England Respecting Real Property* (London, 1835), S11-20.

37 KHLC U908 T33.

II. The Growth of Mortgage Finance in Somerden

The Rise in Mortgages

For the Hundred of Somerden in the period of this study there are 112 transactions which survive in sufficient detail to be analysed.³⁸ This level of survival, compared with 175 conveyances, itself suggests that borrowing secured on land was commonplace. The total includes 67 first mortgages, twenty remortgages, nine assignments, and three purchase mortgages. There were also six assignments which were part of the formalities of a sale, and seven redemptions. Here 'first mortgages' are defined as those where the borrower took out a loan secured against a property for the first time; 'remortgages' are those where he took out a second loan or a further advance, or secured additional property, with the same or a new lender; and 'assignments' those where the existing lender contracted directly with a new lender, the assignee, to transfer the loan, the borrower being a third party. 'Purchase mortgages' are secured purchases on instalments. *Figure 6.1* shows the data by decade for the 99 transactions initiating a loan.

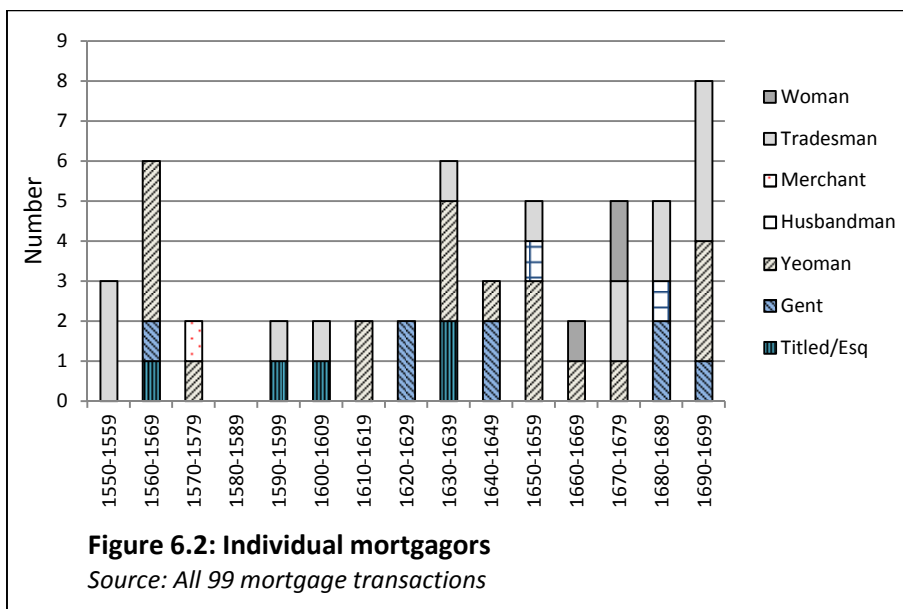
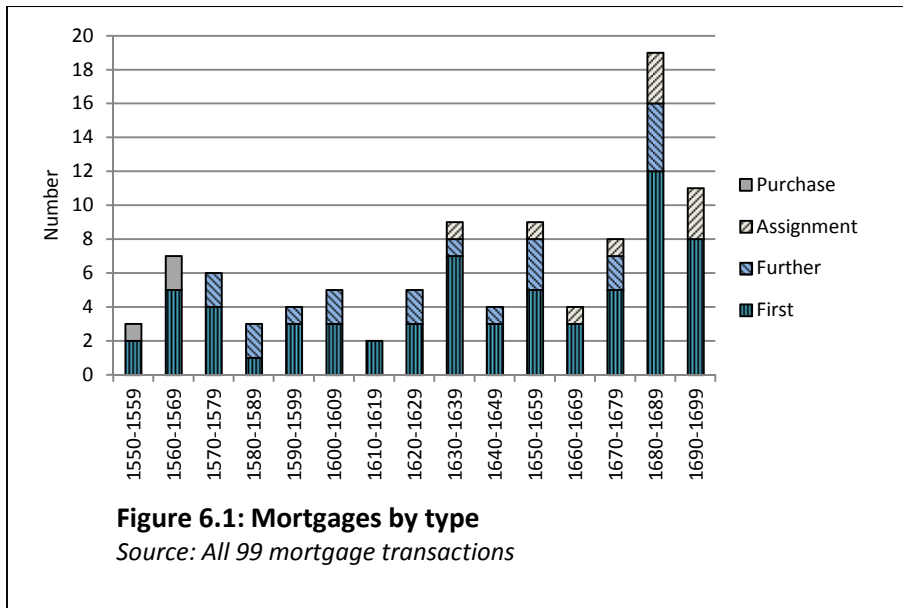
At first sight the results from Somerden show high points in the 1630s and 1650s, dropping back again in the 1640s and 1660s, but remaining high in the last three decades of the seventeenth century. However, the data could be affected by repeat borrowers; although the majority borrowed once or twice, nine mortgages survive for Thomas Willoughby of Bore Place, and twelve for the serial debtor John Reddich of Skeynes. *Figure 6.2* therefore shows the fifty-three borrowers by the date of their first mortgage, grouped by status; this includes three purchasing on instalments. Even in this, 68% appear after the midpoint of 1625 confirming a rise in the later seventeenth century.³⁹ The rise is greater than, but does not track, the rise in sale conveyances.

It might be expected that lending at interest would increase after the 1571 *Usury Act*, but the results do not bear this out, the 1580s in fact being a low point for new mortgages. It could, of course, simply have taken a while for attitudes to change; moral resistance to usury did not end in 1571. Sir Philip Sidney, the 'soldier poet' from the

38 Seven were excluded where parts were missing, unclear or supplementary to a former deal.

39 Jones, *Moneylenders*, pp.6-8.

Penshurst family whose Puritan credentials were described in [Chapter 2](#), put a clause into his will of 1586 that his daughter's portion be used for purchase of land or lease 'but in no case to let it out for any usurie at all'.⁴⁰ Significantly, interest is named in a deed for the first time in 1699.⁴¹ The rise in fact occurs in the period after 1625, which fits the theory that legal protection made the mortgage more attractive to borrowers.⁴²



40 TNA PROB 11/74.

41 KHLC U908 T20, T78.

42 B.L. Anderson, 'Provincial aspects of the financial revolution of the eighteenth century', *Business History* 11:1 (1969), 11-22.

III. The Market Place: Lenders, Borrowers and Intermediaries

Development of a Market

By the end of the seventeenth century lending at interest had been legalised, the mortgage instruments refined and developed, and protection extended to the borrower. However, key infrastructure changes in the financial world - the founding of the Bank of England, deposit banking, emergence of the stock market, the move to fractional reserve banking, and the expansion of negotiable instruments - only took effect at the very end of the century and beginning of the next.⁴³ Landowners in the seventeenth century therefore had no formal market place for finance. There were no institutional lenders; a borrower had to locate a lender individually. Merchant bodies fulfilled a role in cities and boroughs, but the position in a rural area was more fluid. Mortgages generally were rising, but could small freeholders access capital, practically speaking? Who was borrowing, who was lending, and who was acting as intermediary?

Borrowers

In Chapter 5, 175 conveyancing transactions by 139 individual vendors were analysed; here there are 99 mortgages representing 53 mortgagors. *Table 6.1* compares the two by status.

	Vendors		Mortgagors	
Titled/Esquire	14	10.0%	5	9.4%
Gentleman	22	15.8%	8	15.0%
Yeoman	51	36.7%	19	35.9%
Merchant	3	2.2%	1	1.9%
Tradesman	34	24.5%	15	28.3%
Husbandman	5	3.6%	2	3.8%
Woman	10	7.2%	3	5.7%
TOTAL	139	100.0%	53	100.0%

Source: All sale conveyances and mortgage deeds; each individual counted once

43 F.H. Capie, *A History of Banking*, Vol.1, (1993), pp.xvii-xvi.

The proportions are very similar, no doubt primarily reflecting the make-up of the population; if anything yeomen are slightly under-represented as mortgagors, and tradesmen make up the difference, but the difference is not statistically significant. *Figure 6.2* shows a scattered picture. Yeomen are noticeable in the 1560s, and increasingly conspicuous after 1630, but there is not a strong trend. The rise of yeoman mortgages in the 1690s may, however, indicate the start of a change.

Of the fifty-three borrowers who make up the sample of mortgagors, eighteen appear more than once: of these nine appear twice, and six more appear three or four times. Most repeat borrowers were remortgaging the same property for a further advance or an extension of time. Of those who appear twice, two were mortgaging parts of a property to two different lenders; of those who appear four times, one (William Wakelin), mortgaged one property three separate times and another property once. Three borrowers can be described as 'serial debtors', all from the gentry or aristocracy.⁴⁴ Dorothy Powell, widow, one of the four daughter coheirs of Thomas Streatfeild, took out a mortgage on her quarter share of the Manor of Cowden Leighton in 1668 for £180, renewed in 1679 for £400, a mortgage on The Red House in 1670, and a mortgage on her quarter of the Manors of Chiddingstone Cobham and Tyehurst in 1681. It does not appear that any was repaid; all the property eventually changed hands. The later mortgages include her son Bernard Powell, and the final mortgage of her property was after her death, when her daughter Elizabeth joined with Bernard as their mother's executors in a remortgage.⁴⁵ The property should have brought her in a comfortable income; was she living above her means, or was she using the money for her son Bernard's business? B.L. Anderson found that mortgages of rural property were sometimes being used for urban investment, a 'flow of loanable funds' from country to town which funded the industrial revolution.⁴⁶ However, the cause may be the ejection and imprisonment of her husband by Thomas Seyliard to obtain his church living for a son. He remained in prison for more than three years, and died in 1652.⁴⁷

44 Dorothy Powell's mortgages include one signed off by her executors shortly after her death.

45 KHLC U908 T3, T8, T18.

46 Anderson, 'Provincial aspects', p.16.

47 A. Everitt, *The Community of Kent and the Great Rebellion 1640-60* (Leicester, 1966), p.222; KHLC U908 T54;

Thomas Willoughby of Bore Place repeatedly remortgaged his lands between 1567 and his death in 1596; payment of portions may be implicated but he was clearly 'improving', not just building a furnace but farm buildings and cottages, and marling the land (*Table 5.1*). Surviving mortgages for this period represent borrowing of £1,200.⁴⁸ His son, Percival, was obliged to sell the property in 1610 but this seems to have been unrelated. Percival had married his cousin and succeeded to the estates of the senior branch of the family, but execution of his father-in-law's will had obliged him to sell his Kentish estate; he was at least £12,000 in debt, and the purchaser of the estate, Bernard Hyde, complained of outstanding encumbrances.⁴⁹

John Reddich, however, is surely an example of the profligate. He first appears as John Reddich, clothier and citizen of London in a deed dated 1678.⁵⁰ Sometime in the early 1670s he had married Margaret Jemmett. In [Chapter 3](#) it has been described how, on the death of her brother and sisters, she became the heir of the whole Jemmett estate in Hever and Edenbridge consisting of eleven holdings worth around £10,000.⁵¹ After that first reference, John became 'gent, of Edenbridge' and almost immediately he was found selling and mortgaging parts of the estate. Within a very few years the whole of the inheritance of his wife was encumbered; it was ultimately lost, and the legal consequences continued for many years.⁵² Perhaps the most telling detail is the will of John and Margaret's son, Richard Reddich '*Captain of His Majestyes Regiment of Foot, now in Flanders*' (proved 1714) in which he left his little salvaged property in trust to provide his mother with an income '*so long as she shall live and shall not join in any Sale Mortgage Assignment Conveyance or Anticipation thereof*' and after her death on the same terms to his father; if the condition was breached the income during the father's life was to go to Christ's Hospital and the freehold to his sister Anne Smith.⁵³ He clearly thought his father a profligate.

TNA C7/277/43.

48 See Chapter 5; NUL Mi5 162-49.

49 NUL Mi5 162-13, 71-83; W.H. Stevenson, Report on the Manuscripts of Lord Middleton preserved at Wollaton Hall, Northamptonshire (HMSO, London, 1911).

50 KHLC U908 L41.

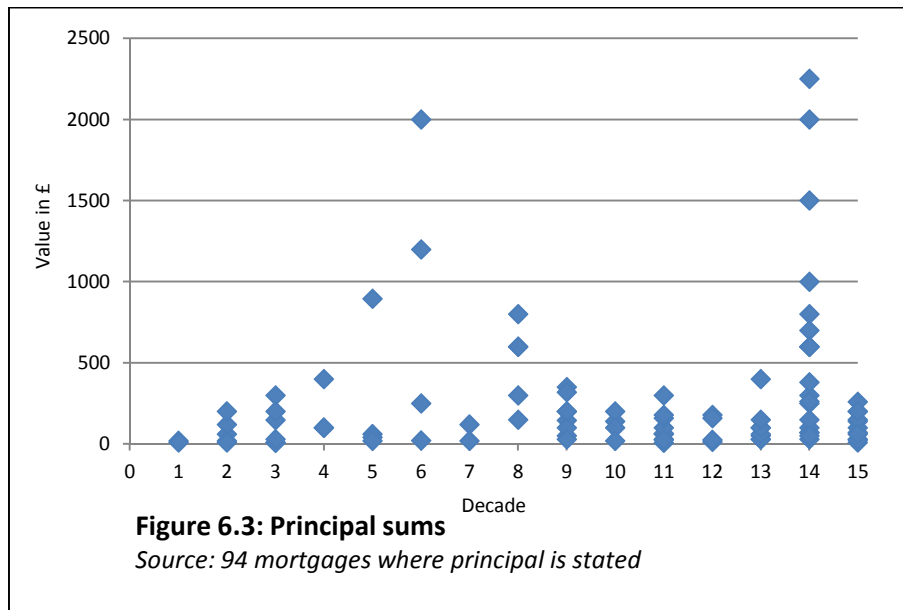
51 KHLC U908 T22.

52 KHLC U908 T21, L39-46.

53 TNA PROB 11/538 1714.

Principal, Interest and Term

How much was borrowed? Given the costs of borrowing alluded to above, one would assume that only large sums could be borrowed; yet in the first quarter of the period there are sums as small as £10 (perhaps eight months' wages for a craftsman).⁵⁴ Figure 6.3 shows the principal sums which were borrowed over the period.

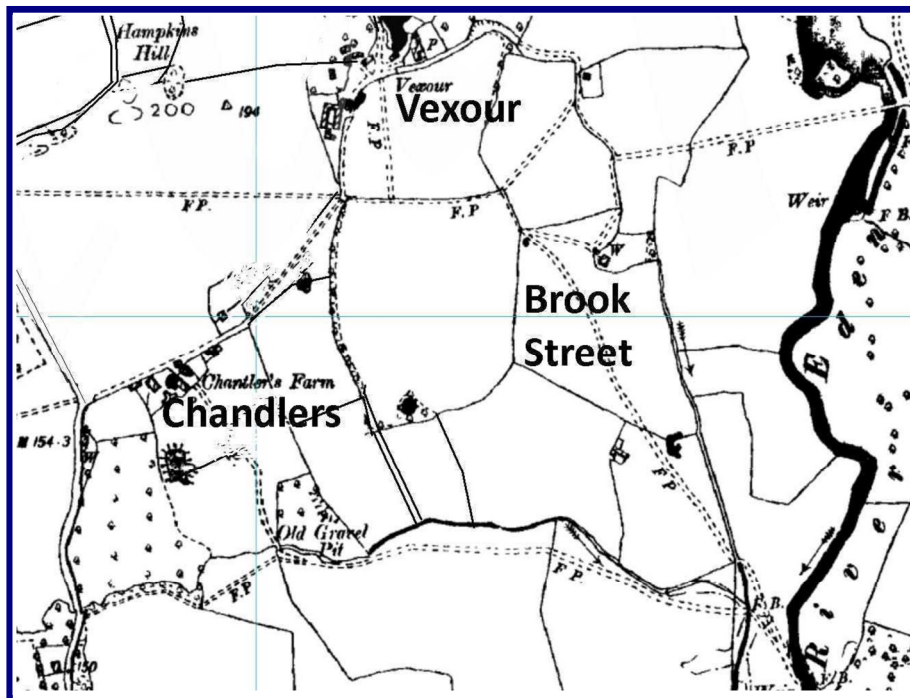


27% of all loans were for £50 or less, and nearly half £100 or less. It is immediately clear that any size of holding could be used as security. In 1576 John Beecher of Penshurst raised £7 by granting an annuity to his neighbour John Piggott, with a proviso for repayment, secured on Brook Street, a house and five acres of land. When he did not repay the sum John Piggott assigned the annuity to Henry Streatfeild. John Beecher died leaving a small son, James, and in 1582 his kinsman John Beecher of Wickhurst bought back the annuity, and transferred it to James as part of the account which he was required to make to James as his guardian on his coming of age in 1592. James, 'shoemaker of Sevenoaks', sold the whole property three years later (*Case Study 16, page 201*).⁵⁵

54 KHLC U908 T69, T16, T2; E.H. Phelps-Brown & S.V. Hopkins, 'Seven centuries of building wages', *Economica* 22:87 (1955), 195-206. The figures are for the south-east, including Kent.

55 KHLC U908 T136.

Case Study 16: Brook Street Chiddingstone, Mortgages ⁵⁶



Brief History

- 1550 Property of John Beech.
- 1559 Death of John Beech.
- 1567 Settled by Elizabeth Beecher, née Beech, on her younger son, John: house with 5a. [With other land.]
- 1576 Mortgaged by John Beecher for £7, term 1 year: house and 5a. land.
- 1579 John Beecher died leaving son James.
- 1592 John Beecher of Wickhurst, guardian, redeemed the mortgage as part of his account to James.
- 1595 James Beecher, shoemaker, sold to William Jessup: house & 5a. for £80, to be paid in two instalments.
- 1604 William Jessup devised to son Godfrey.
- 1625 Godfrey Jessup devised to son James. Part sold, leaving 2 parcels, 2a. and 1a. respectively.
- 1651 James Jessup mortgaged as parcels or whole 3a. over the next eleven years: see left.
- 1662 Death of James Jessup; infant sons William and James inherited.
- 1670 Mortgaged by widow and heirs of James over the next fifteen years.
- 1685 Death of William, son of James.
- c.1700 Sold to William Streatfeild, who also acquired adjacent property of Chandlers.

Mortgages after 1650

- 1651 James Jessup, weaver, mortgaged 2a. to Thomas Alchin, cordwainer of Chiddingstone, for £30 for 3 years. Later assigned to John Grayland, husbandman of Penshurst.
- 1662 James Jessup, weaver, mortgaged 1a. to William Silcock, yeoman of Penshurst, for £14 for 6 years.
- 1665 Mortgage for 2a. assigned by John Grayland to William Silcock who then held mortgages on whole.
- 1670 Remortgaged by Elizabeth, widow of James for £30 for 5 years. William Silcock witnessed it, so repaid.
- 1683 William Jessup mortgaged land occupied by John Grayland to Benjamin Wakelin for £30 for 4 years.
- 1685 James Jessup, sawyer of Penshurst, mortgaged 3a. to William Pinnock of Penshurst, gent for £70 for 1 year.

At the opposite end of the scale, the largest loan was £2,250; this was by John Reddich in 1688. Loans over £500 include that in 1596 by Thomas, Lord Burgh, mortgaging the two manors of Chiddingstone Burwash and Chiddingstone Cobham for £895; this was never repaid, and in this case was the subject of lengthy litigation.⁵⁷ Percival Willoughby borrowed in the 1600s, prior to the sale of Bore Place. Reynold Holmden of Crowhurst took out three loans in the 1630s on property at Stanford's End which later passed to the Jemmett family. Those in the 1680s were mainly to John Reddich, but include two by Stephen Streatfeild who had to pay his sisters a penalty portion (Chapter 4).

Large loans were not typical, however. *Table 6.2* shows the largest, smallest and mean loan, broken down by the status of the borrower.

	All mortgagors				Yeomen borrowing				Yeomen lending			
	Small	Large	Mean	No.	Small	Large	Mean	No.	Small	Large	Mean	No.
1550-1574	£10	£300	£83	9	£10	£120	£53	4	£10	£300	£104	6
1576-1599	£7	£895	£182	11	£7	£7	£7	1	£7	£895	£187	6
1600-1624	£20	£2000	£602	6	£20	£120	£70	2	£20	£120	£70	2
1625-1649	£20	£800	£253	17	£20	£350	£133	6	£30	£350	£145	7
1650-1674	£8	£300	£92	16	£60	£300	£144	6	£8	£300	£96	7
1675-1699	£26	£2250	£391	35	£70	£260	£155	4	£30	£150	£80	6
Not stated				2								1
Totals				96				23				34

The largest sum lent by a yeoman was £895 by Richard Streatfeild, yeoman and ironmaster, and the largest sum borrowed was £350, but the mean varied from £53 at the beginning of the period to £155 at the end. These are still significant sums; Lockskinnors with 73 acres sold in 1597 for £440, and even £7 is four or five months' wages for a labourer in southern England in the sixteenth century.⁵⁸

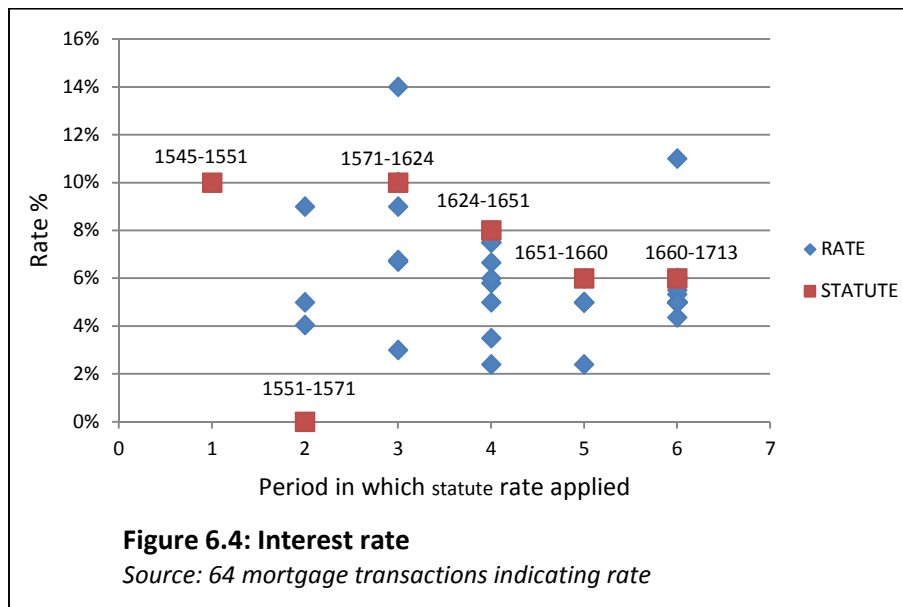
There has been debate on whether interest charged was always at the maximum rate.⁵⁹ While there are examples of lending in wills and settlements where the rate is the statutory one, or even where the rate is specified to be the statutory one, this does not

57 KHLC U908 T8.

58 Phelps Brown & Hopkins, 'Seven Centuries of building wages'.

59 Jones, *Moneylenders*, p.76.

seem to be the case with the mortgages.⁶⁰ Most cluster around the 4%-6% level regardless of the statutory rate; only two exceed it: *Figure 6.4*.



It seems that, as Habakkuk has said, the market in land was *sui generis*; a convention had arisen on the price of enclosed land based on twenty years' purchase, and that extended to mortgage finance.⁶¹ Interestingly, Juliet Gayton found a different result with copyhold land; this seems to have been treated similarly to a contract debt.⁶² There seems to have been no adjustment for risk; even borrowers known to have been in financial difficulties received the usual rate.

The contrast between the term of day-to-day debt, which tended to be days or at most weeks, and mortgages is significant.⁶³ The ostensible term of a mortgage tended to be at least a year, and the actual duration was often much longer. The largest percentage, 48%, were for one year or less and 35% for two to five years; only seven, or 7%, were for longer than five years (*Table 6.3*). (Of those that are unknown, most are mortgage assignments where the legal estate had been forfeited.)

60 KHLC U908 T255 1614 and 1617, will of Robert Friend TNA PROB 11/267 1657.
61 H.J. Habakkuk, 'The rise and fall of English landed families', *TRHS* 31 (1981), p.203; 'The long-term rate of interest and the price of land in the seventeenth century', *ECHR* 5.1 (1952), 26-45.
62 J. Gayton, 'Mortgages raised by rural English copyhold tenants 1605-1735', in Briggs and Zuijderduijn, *Land and Credit*, Chapter 3, pp.53-4, 66.
63 Briggs, *Credit and Village Society*, pp.68-74.

	<= 1 year	2-5 years	6-10 years	>10 years	Lease/Life	Not given	TOTAL
1550-1559	1		1				2
1560-1569		3	2				5
1570-1579	3	2		1			6
1580-1589		3					3
1590-1599	3	1					4
1600-1609	1	3			1		5
1610-1619	1	1					2
1620-1629	4	1					5
1630-1639	7	1				1	9
1640-1649	1	3					4
1650-1659	2	5				2	9
1660-1669		1	2			1	4
1670-1679	4	4					8
1680-2689	10	5		1	2	1	19
1690-1699	9	1		1			10
TOTAL	46	34	5	3	3	5	96

These findings are similar to those of Kew, who interpreted them to mean that mortgage finance was short-term credit.⁶⁴ I do not agree with this interpretation; studying the original documents rather than enrolments shows that this was implicitly long-term finance. The lender was often happy for a mortgage to continue to roll as long as interest was paid, perhaps for many years. William Wakelin mortgaged three fields in Chiddingstone in 1679 for £100, ostensibly for one year with interest of £5, but the mortgage actually continued for twelve years before being assigned and for another eight years before the land was actually sold.⁶⁵ Some mortgages continued to be extended and assigned for decades; Sir John Burgh borrowed £500 from John Mabbs, goldsmith of London, in 1582; the benefit descended to his son, also John Mabbs, then to the son's widow, and in 1635 it had come down to Abigail, widow of Thomas Payne, goldsmith of London.⁶⁶ John Hollamby mortgaged his third share of Coles in 1708; the mortgage was still outstanding when he died in 1750 (*Case Study 15, page 183*).⁶⁷

64 Kew, 'Mortgages', p.179.

65 KHLC U908 T78.

66 KHLC U908 T3.

67 KHLC U908 T130.

The fact that interest continued to be paid after the end of the theoretical term is shown in one or two mortgages where receipt of the interest is marked on the reverse. The repayments for William Wakelin's mortgage of £5 a year were to be made each April from 1680.⁶⁸ In April 1683 he paid £7, in May 1684 £5, then followed seven further payments (undated but presumably annually) of £10 10s, £5, £6, £3, £2, £5, and £6, a total of £49 10s, so when the mortgage was assigned in 1691 the arrears were £10 10s at simple interest. Similarly his later mortgage dated 1699 for £105 was marked up with annual payments of £5 5s; in 1700 the first year's interest was paid, in 1701 the second year's interest, 1702 was missed and the payment in 1703 was clearly marked to be the third year's interest; thereafter each payment was for the previous year and the arrears were still outstanding in 1707 when the mortgage was assigned.⁶⁹

Further mortgages frequently granted the borrower not only an extension of time, but also additional money. In these circumstances overdue interest was often rolled up into the new loan, the only occasion on which interest upon interest was lawful.

Lenders

Tawney wrote that in the sixteenth century lending had become a by-employment among merchants, but by the early seventeenth century professional financiers were emerging.⁷⁰ Jones describes how the 1570/1 Royal Commission in the south-west found several instances of professional lenders, viewed with much suspicion, but he suggests that these were in the minority; more commonly, neighbour lent to neighbour, the wealthier to the poorer, within a community.⁷¹ Matthews, who was working from the perspective of the lender, concluded that most borrowers and lenders were local to each other.⁷² In Devonshire Kew found similar results; he thought that lenders among the London merchant class had little interest in an area so far distant from London and concentrated their activities in the Home Counties. On the rare occasions when London men lent, it was to the upper gentry, and in general 'class

68 KHLC U908 T78.

69 KHLC U908 T78.

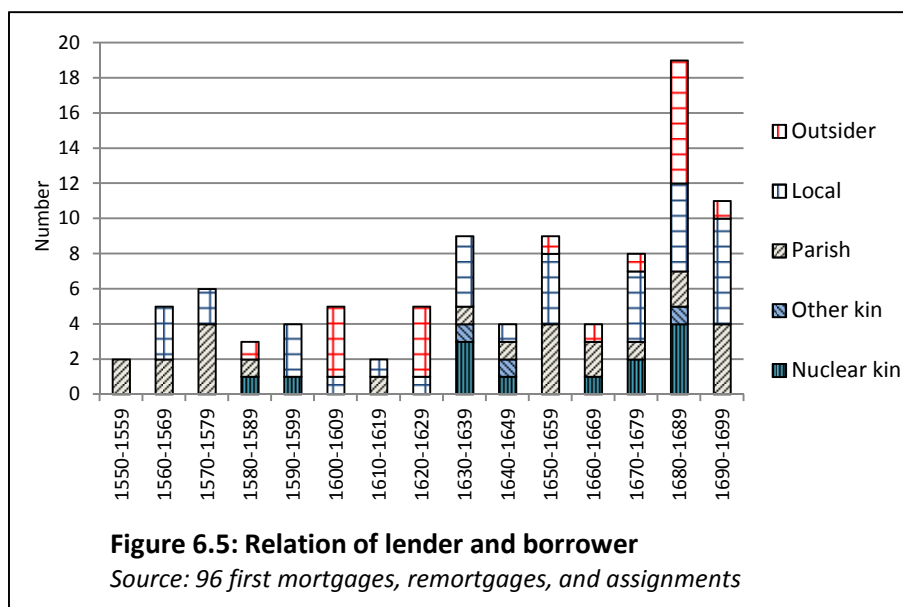
70 Tawney, *Sir Thomas Wilson*, p.89.

71 Jones, *Moneylenders*, pp.71-72.

72 Matthews, 'Money supply'.

lent to class'.⁷³

Poole's work on Cranbrook showed kin were important in lending for general debts, even where the sums were greater than £100, but Gayton found only 10% of Hampshire mortgagees were kin.⁷⁴ However she found that 64% of lenders lived in the manor or an adjoining manor and a further 25% within ten miles.⁷⁵ This study concurs: in 63% of the 99 mortgages (including purchase mortgages), the parties were neighbours, 17% were kin. Only 21% were outsiders, even in an area of Kent which is within easy reach of London. In the absence of registration of charges, personal reputation and knowledge of a property would have been important.⁷⁶ The analysis is shown in *Figure 6.5*.



As with the analysis of sales in Chapter 5, for 'nuclear kin' parents, siblings, children, nephews and nieces have been included; 'other kin' are cousins, in-laws and other family members. Neighbours are divided into 'parish', those living in the parish itself, and those from a contiguous parish, described as 'local'. 'Outsiders' are those from beyond the parish. Although those from another parish might have been closer geographically, parishioners would know each other through church attendance and parish duties. The use of a neighbour to lend would avoid many difficulties, especially

73 Kew, 'Mortgages in mid Tudor Devonshire', p.175.

74 Poole, 'Debt in the Cranbrook region', pp.88-9.

75 Gayton, 'Mortgages raised', pp.71-2.

76 Bochove, Deneweth & Zijderduijn, 'Real estate', p.32 n.5.

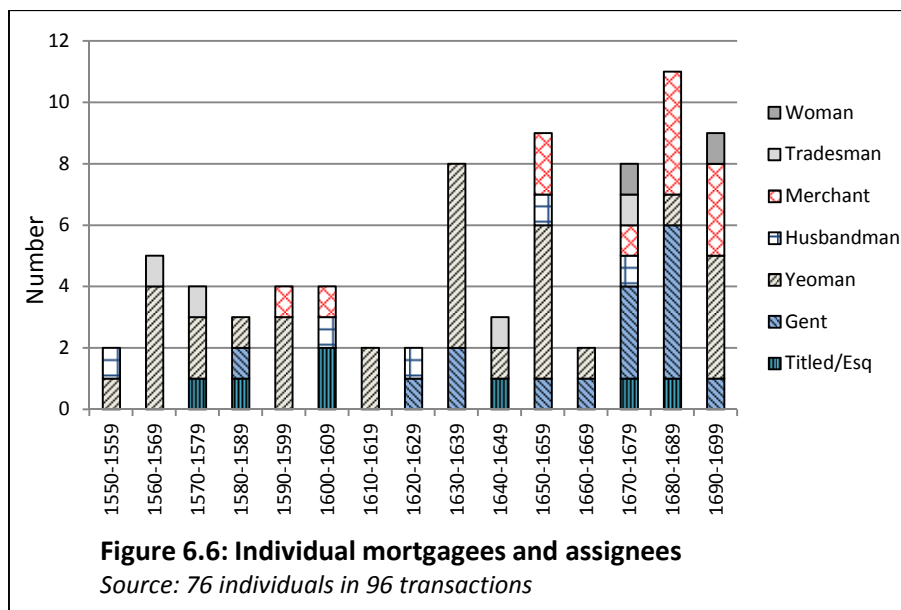
in the early years of the period. There would be no need to survey the property to establish its value, as Melton tells us was often done by London scribes such as Sir Robert Clayton, saving in both cost and convenience, nor the need to evaluate credit- and trust-worthiness.⁷⁷

Of the 'outsiders', there are three occurrences of loans by Abraham and John Jacob, esquires of London, who lent to Robert Heath of Brasted and Reynold Holmden of Edenbridge, both themselves gentry landowners. William Warne, scrivener, Henry Wade, vintner, William Killingworth, serjeant-at-law, and George Arnold, probably also a lawyer, all lent to the serial debtor John Reddich. Unsurprisingly, most loans from outsiders were for large sums, averaging over £900. Even some who were themselves outsiders, with closer examination often had local links: Richard Shipton lent to John Bowden, also of London, who had inherited property in Edenbridge in the right of his wife; he was probably a kinsman. Others include Mary Goodman of East Malling, the spinster who lent only £10 to William and Richard Lockyer £10 on Butt House in Chiddingstone. Thomas Taylor of Sevenoaks lent £200 to Francis Combridge of Speldhurst against his property in Penshurst.

The 96 mortgages, excluding purchase mortgages, include 76 lenders lending to 51 borrowers; serial lenders do not occur in the same degree as borrowers, although 12 lenders were involved in more than one loan. John Reddich's mortgages alone account for seven lenders in the 1680s. *Figure 6.6* shows the individual mortgagees by status. Kew found that in Devonshire 15% of lenders were local merchants, 8% were yeomen and husbandmen, and there were one or two churchmen and London merchants, but the great majority were gentry, amongst whom lawyers were prominent.⁷⁸

77 Melton, *Sir Robert Clayton*, pp.53-5.

78 Kew, 'Mortgages'.



The data from this study gives a very different picture: yeomen dominate in all periods except the 1670s and 1680s. Of course, a man with freehold land was likely to call himself a yeoman regardless of the source of his income, like Jasper Jessup of Penshurst who was clearly by trade a weaver; the complexities of this definition were discussed in [Chapter 1](#).⁷⁹ Nevertheless, these were not gentry. It is unfortunate that Kew rolls up yeomen and husbandmen together; as discussed in [Chapter 1](#), the latter would usually be a tenant smallholder, the former a landowner, but this serves to emphasize the difference rather than otherwise. It may be that the nature of Kew's data, enrolled mortgages, skews the sample towards the gentry. There may also be a contrast between his short period, 1536 to 1558, and this study which covers 1550 to 1700; however, there is not a noticeable concentration of gentry among the lenders of the earlier period. This prominence of yeoman lenders is surely attributable to gavelkind and their dominance in the population.

Holderness also highlighted the role of clergy, but there are none in the Somerden sample at all.⁸⁰ It has been suggested that major lenders would be orphans and single women; in the great usury debates in the sixteenth century even the most severe traditionalists saw that it was necessary to provide for orphans through interest.⁸¹

Testators in this study often asked for cash to be 'put out' to provide for their children,

79 TNA PROB 11/129.

80 B.A. Holderness, 'The clergy as moneylenders in England 1550-1700' in R. O'Day & F. Heal, *Princes and Paupers in the English Church 1500-1800* (Leicester 1981).

81 B.A. Holderness, 'Widows in pre-industrial society: an essay upon their economic functions', in R.M. Smith, *Land, Kinship and Life-Cycle* (Cambridge, 1984), p.428; Jones, *Moneylenders*.

and if the need to invest money on behalf of orphans was accepted, increasingly there was a need for women too, widows or spinsters, to put money to use. A study by Stephen Matthews looked at probate inventories from several parishes, rural and semi-urban, in Cheshire. As he so cogently says, lenders were any people who had spare cash, crossing the social boundaries, but the proportion of women rose from 11% to 30% in the period 1600-1680. The value of loans was greatest for the gentry, but women lent most as a proportion of their total wealth. In all groups, 80% of inventories made mention of debtors.⁸² Using wills from Lincolnshire, but supplemented by data from Durham and Kent, Spicksley found that the number of women investors expanded greatly in the period, partly because of delay in marriage, and partly because bequests of cash rather than goods increased from 41% in the 1570s to 86% in the 1690s.⁸³ However, only one lender in the Somerden mortgages was a spinster; Mary Goodman mentioned above.⁸⁴ In addition, in 1679 Elizabeth Speed's trustees invested £150 in a mortgage of Highfields to secure her marriage portion.⁸⁵ There were also two widows, but both were taking over previous mortgages when their husbands had died. There is a strong possibility that widows and spinsters were involved in unsecured lending to a greater degree, and perhaps for smaller loans.⁸⁶

Of the multiple lenders, Abraham Jacob of London lent to two unrelated local families, the Jemmetts and the Heaths. Members of the Ashdowne, Wickenden and Medhurst families were lenders in several unlinked instances. There are two more frequent lenders, both of families which were rising gentry: the Seyliard family were involved in four unlinked transactions; the Streatfeild family were involved in twelve unlinked transactions. The remainder of the sample were mortgagees or assignees in one case or in linked transactions for the same property.

It has been shown that lenders were often stigmatised in the popular imagination; in practice things were more complex. With deposit banking embryonic, most people

82 Matthews, 'Money Supply'.

83 J. Spicksley, 'Usury legislation, cash and credit: the development of the female investor in the late Tudor and Stuart periods', *ECHR* 61.2 (2008), p.285.

84 KHLC U908 T94. Butt House looked out on Target Field, perhaps the name suggests why the latter was unfenced longer than most land, see Chapter 2.

85 KHLC U908 T82 1679.

86 B.A. Holderness, 'Credit in a rural community 1660-1800', *Midland History* 3.2 (1975), 94-116.

had little choice but to invest their money themselves. The alternative was to keep cash in the house, with the attendant risks of theft. It is clear from inventories that some people did just this; Henry Streatfeild had in excess of £300 in his house when he died intestate in 1648, more than twenty years' wages for a craftsman.⁸⁷ More typical, however, is the inventory of John Willard, yeoman of Hever, whose inventory in 1697, worth £65 6s 6d, included cash and clothing worth £2; he was owed £15 on bond.⁸⁸ Most of those who had accumulated cash would surely have put it to use in this way, not just for physical security but for the purpose of generating income.

One such was Sir John Heath of Brasted Place, son of Sir Robert Heath, who lent his money on several occasions. £4,000 was lent to Sir Edward Hungerford, a notorious spendthrift.⁸⁹ This was part-paid in 1675, and the lengthy details of the repayment and the depositing of security for the balance with a third party suggest that recovering the principal was a protracted experience.⁹⁰ Two years later, the sum of £2,300 was invested in trust to provide an annuity for Sir John and his wife Margaret or the survivor, and then to go to their children, £2,000 in a mortgage for Sir Charles Bickerstaff of The Wilderness, Seal (six or seven miles east of Brasted) and the balance of £300 on a recognizance from Sir Charles.⁹¹ Sir John Heath's objectives are clear. In addition to his own income from his office of Solicitor General to the Duchy of Lancaster and from his estates, he had received estates from his marriage to Margaret the widow of John Pretymann, and in 1670 he inherited the estates of his elder brother, Sir Edward Heath of Cottesmore. With no sons, it seems he chose to invest his surplus cash in mortgages rather than purchase more land. By the time of the loan to Sir Charles Bickerstaff he would have been approaching sixty, and was buying an annuity for himself and his wife.

There were secondary motives, however. The lender might have an eye on the property itself. Lawyers and scriveners were accused by their contemporaries of acquiring the property of their clients through onerous mortgages. William Harrison in 1577 said *'For, as after the coming of the Normans the nobility had the start, and after*

87 KHLC U908 T304; Phelps-Brown, 'Seven Centuries of Building Wages'.

88 LPL VH96/6814.

89 www.historyofparliamentonline.org/volume/1690-1715 [accessed February 2012].

90 KHLC U55 T38-6.

91 KHLC U55 T38-7.

them the clergy, so now all the wealth of the land doth flow unto our common lawyers'.⁹² In the sample, mortgagees and assignees who were lawyers include William Warne and William Killingworth from London, Francis Heath of Brasted and George Hooper of Tonbridge. In addition to these were several described in the documents as 'Gent' who were in fact lawyers: including three members of the Streatfeild family.

The lawyer, Henry Streatfeild (1639-1710), expanded his estate in Chiddingstone over a number of years. In a sense, by taking the assignment of a mortgage he was taking out an option to buy. When he and William Wickenden acted as trustees for Elizabeth Speed (see [Chapter 3](#)) they could have used her portion to purchase land, but opted instead to give a mortgage on Highfields which provided income without the obligation to manage an estate; however he purchased the property thirty years later, after the death of Elizabeth, when the mortgage was not repaid.⁹³ Abraham Jacob acquired one of the properties on which he lent, Stanfords End in Edenbridge, bequeathing it in his will to his sons.⁹⁴ Abraham was originally from Cambridgeshire, made his money as purveyor of wine to the Royal Household, and settled in Bromley by Bow, his son John becoming a baronet.⁹⁵ Twenty-seven years later the property in Edenbridge was sold to Robert Jemmett.⁹⁶ However, the instances of the property remaining with the mortgagee are surprisingly low; generally even after default it would eventually be sold, apparently on the open market. Mortgagees do not appear to have been unduly acquisitive.

Intermediaries

How lender and borrower contacted each other in rural areas is still debatable.⁹⁷ In merchant centres money-changers were probably the first financial middle-men: the instruments, systems and infrastructure in which money was lent and borrowed were developed in the context of international exchange where a bill would be traded some,

92 W. Harrison, *A Description of England* (1577), p.51.

93 KHLC U908 T82 1679.

94 KHLC U908 T25, TNA PROB 11/155.

95 TNA E115/224/70; DD/P/6/1/1/60.

96 KHLC U908 T25.

97 M. Miles, 'The money market in the early industrial revolution: the evidence of West Riding attorneys, c.1750-1800', *Business History* 23.2 (1981), 127-146; Holderness, 'Credit in a rural community', p.110; Coleman, 'London scribes'.

perhaps many, days after issue.⁹⁸ Richards identifies the four types of intermediary who developed in England during the expansion of trade in the late sixteenth century as merchants, brokers, scriveners and goldsmiths.⁹⁹ In the seventeenth century scriveners were the most prominent; Robert Abbott and Robert Clayton who operated in London were well known.¹⁰⁰ Frequent (largely derogatory) references were made to scriveners both in case law and legislation, and in the literature of the times.¹⁰¹ The Company of Scriveners was incorporated in 1617, and developed something like a monopoly in the drawing up of conveyancing documents which gave them strong connections which could be used to link those with money and those with need of it, not just in London but in major urban and legal centres around the country.¹⁰²

The position in rural areas is another question. Kew found the existence of a few intermediaries in Devon, and David Coleman found some evidence of scriveners arranging mortgages; part of his data relating to Kent itself.¹⁰³ References to twenty-seven scriveners operating in Kent and East Sussex between 1550 and 1700 were found in the National Archives catalogue, and a further five were found amongst the wills for the county. Most of these were resident in London but there were men centred on Chatham, Bromley, Sevenoaks, Tonbridge, Hawkhurst, Hythe, Newington, and several in Canterbury. Commercial centres like Cranbrook, Tenterden, and Biddenden must have had their local scrivener, not to mention Maidstone, the legal centre for West Kent. In the sample, there are several identifiable scriveners responsible for drawing up deeds and documents, some of whom were mentioned in Chapter 5. The Hooper family appear in seven transactions, three for yeomen, three for tradesmen and one for a gentleman.¹⁰⁴ Charles Bostock was the scrivener for one mortgage between Reynold Holmden and Abraham and John Jacob in 1626.¹⁰⁵ Bostock was a London scrivener, and this is one instance where it is very likely that he acted as a broker for the loan; at £800 it was one of the larger mortgages in the sample, and there is no obvious connection between the Jacob and Holmden families.

98 Tawney, *Sir Thomas Wilson*, pp.72-80,94; Turner, *Equity of Redemption*, p.40.

99 Richards, *Banking*, pp.1,10-19.

100 Melton, *Sir Robert Clayton*.

101 Usury Acts, 12.CarII.c13 & 12.Anne.Stat2.16, *Statutes of the Realm Vol.5, Vol.6*; T. Powell, *The Art of Thriving* (1636); T. Dekker, *English Villaines* (1638); D. North, *Discourse upon Trade* (1691).

102 <http://www.scriveners.org.uk/history> [accessed June 2017].

103 Jones, *Moneylenders*; Kew, 'Mortgages'; Coleman, 'London scriveners'.

104 Chapter 4.

105 KHLC U908 T25.

Where the intermediary is not obvious, the place of repayment can often give a clue as to his developing role: the church porch as a place of payment appears regularly in the period 1550-1599 but from 1670 onwards repayment at the office or Inn of a lawyer occurs increasingly frequently.¹⁰⁶ Only one of these was a yeoman mortgage, however, and that is where the lawyer concerned was acting as trustee.¹⁰⁷ The majority of repayments were to be made at the house of the mortgagee, a few at the house of the mortgagor, the tenanted premises, or the house of a third party, which gives weight to the suggestion that the contact point was local.¹⁰⁸ Chris Briggs has suggested that in the fourteenth century contacts in the wider community may have been made at the local market, and this is entirely probable in the context of later centuries too; for gentry this might include the Assizes, but there is no evidence of this in Somerden.¹⁰⁹

The increasingly complex nature of mortgage law probably led to the more frequent recourse to an attorney or lawyer.¹¹⁰ A glimpse of the role of a lawyer is found in the mortgage then conveyance of a house in Edenbridge, property of the Bower family. What survives is an indenture of bargain and sale with proviso in 1655 by George Bower, husbandman, mortgaging the property to William Welfare of Edenbridge, yeoman, then a conveyance in 1696 consisting of articles of agreement, a bargain and sale, a bond, a deed to lead the uses of a fine, and the fine, Edward Bower selling to Nicholas Welfare.¹¹¹ The lawyer was Thomas Peyton, a London practitioner of Kentish origins. The total bill was £4 8s 11d, of which £3 0s 5d was for court costs; other costs come to £1 7s 6d as follows:

<i>For draweing & ingrossing the deed of Feoffm[en]t & bond & stamp for my Journey to Eatonbridge to seale the writeinge</i>	<i>£00 : 13 : 06</i>
<i>for another Journey to receive the mony for drawing & engrossing the deed to Lead the use of the Fine & stamp</i>	<i>00 : 03 : 04 00 : 06 : 08 00 : 04 : 00</i>

The lawyer was travelling twice in the course of this transaction to Edenbridge, once

106 For example, KHLC U908 T8-13.

107 KHLC U908 T38.

108 No instances have been found in this rural area where the intermediary was an innkeeper.

109 Briggs, *Credit*, pp.66-68.

110 Miles, 'Money market'.

111 KHLC U908 T79.

for the documents to be signed and sealed, and once for the payment of the money. The implication that he was managing the transaction is clear.

Melton pointed out that the overlap between contract law, land law and lending law resulted in great legal complexity, so that lawyers came to have a major role in banking, but only after the end of the seventeenth century.¹¹² Miles in his study of West Yorkshire saw that they had a particular advantage in the breadth of their contacts, for example their presence at the Quarter Sessions.¹¹³ Henry Streatfeild, senior and junior, were members of Lincoln's Inn and played a major role in the commercial life of the area, as conveyancers and as trustees; examples of lawyers entirely recognizable to modern eyes. Henry senior was the conveyancer for ten documents, and frequently acted as trustee, such as when Elizabeth Everest bought land on which her jointure could be settled.¹¹⁴ Both these properties ended up in Streatfeild hands, although there is no suggestion of sharp practice. Two London lawyers occur frequently in the documents, William Warne and Stephen Dawling.

The results concur with the suggestion of Holderness that '*the country attorney, who regulated the local mortgage market, seldom operated beyond the range of his own local knowledge and experience.It was only for the relatively few large 'estate mortgages' that outside help was often required.*'¹¹⁵

112 Melton, *Sir Robert Clayton*, p.126.

113 Miles, 'Money market', p.130.

114 KHLC U908 T82.

115 Holderness, 'Credit in a rural community', p.110.

IV. Effects of Mortgaging Land

Foreclosure

By the end of the sixteenth century if a lender could not repay his debt, the Court of Chancery would fix a date and ultimately order an extent (forfeiture order).¹¹⁶ With the development of the equitable right of redemption in the seventeenth century, it became necessary for the mortgagee to take further action after default had given him the legal estate, in order to acquire the equitable estate. In the worst case, he would have to bring a law suit to take full possession. Such cases occur with recognizances; however, there is only one example of land in Somerden which was forfeited in this way by court order. The 1582 mortgage by Lord Burgh, referred to above, was still outstanding in 1635. A deed of assignment and transfer records that the properties '*were delyvered by Edward Chute Esquier High Sheriff of the saide Countie of Kent unto the said Thomas Payne and Abigail his wife*', and now the executor was assigning '*The said Extent of and in the said p[ar]cells of landes*' to a new owner.¹¹⁷

More commonly, the mortgagee could obtain a release from the equitable owner; after 1625 it was usual to draw up a further deed recording that the mortgagor had given up his right of redemption. A mortgage was seldom granted for the full value of a property: where this can be established, as for the property of John Reddich recently valued for partition purposes, the loan-to-value ratio was about 60% so the release required an additional payment. Usually the mortgagor sold the property, incorporating the agreement of the mortgagee and assignment of his charge in return for payment, with any balance being paid to the mortgagor. 20% of first mortgages were next followed by a sale, although not necessarily as an immediate result of the mortgage, and 5% by forfeiture; 20% were followed by a redemption, inheritance or settlement.¹¹⁸ Overall 36% of first mortgages (24) led to sale within fifteen years.

A typical example of a mortgage which was never repaid was the loan to Jessup Beckett by the trustees for Elizabeth Speed in 1679 secured on Highfields (*Case Study 11, page 139*). This was framed to be for five years; however, the next that is heard of it is

116 Turner, *Equity of Redemption*, p.27.

117 KHLC U908 T3.

118 Jane Whittle found as few as 3 out of 17 mortgages were repaid: Whittle, *Agrarian Capitalism*, p.117-118.

thirty-two years later in 1711. Beckett had defaulted, and the Speeds had taken possession of the property. Now they wished to sell, and a conveyance was drawn up by which Jessup's two sons and heirs released the property, the interest on the mortgage being deemed to be satisfied out of the rents and profits received by the Speed family.¹¹⁹

Even before the principle of the equity of redemption was established, there was some sense of a moral obligation to re-convey. In 1590 Henry Streatfeild released seven pieces of land in Chiddingstone on which Peter Woodgate clothier had defaulted, but his mother in law had paid the outstanding sum. He was willing to do so '*not minding the hinderance of the said Peter in taking the Benefyt of the said Provisoe and for the sum of Thirty and fyve poundes of good and lawfull money of England to mee by Johane Bassett of Chedingstone aforesaid, mother in law of the said Peeter in hand paied ... Have of myne owne free will and accorde, beeing moved thereunto w[i]th a neighbourlike pitie, delyvered, demised, feoffed and confirmed..*'¹²⁰

It is chastening to note that the settlements and entails described in [Chapter 4](#) were not a sure protection against the profligate heir. By 1687 John Reddich had mortgaged and remortgaged all his wife's estate. Early in 1688 the bulk of the property was sold to Henry Streatfeild for £3,680, of which £1,680 was paid out to the mortgagees William Warne, Henry Wade and William Chapman. The mansion house, Skeynes, and the small remaining property were settled to provide an income for Margaret Reddich.¹²¹ Unfortunately further unpaid loans emerged and had to be secured against this trust the following year, and three years later Henry Streatfeild bought a further part of the estate in order that these loans could be repaid.¹²² By 1700 a further unpaid loan of £350 was secured against the settled estate, and in 1702 £150.¹²³ By 1703 even Skeynes had had to be sold, and John Reddich had been arrested and was in the Fleet Prison.¹²⁴

A similar case occurred after the death of the last Seyliard baronet in 1701 left his widow Elizabeth in possession with two daughters. Over the next twenty years she

119 KHLC U908 T82.

120 KHLC U908 T251.

121 KHLC U908 T20/6.

122 KHLC U908 T21/4 & 5.

123 KHLC U908 T21/21 & 23.

124 KHLC U908 T21/3.

repeatedly got into debt, and her daughters were eventually persuaded to part with their portions which had formed part of a settlement; whether they finally received any of the estate is not clear.¹²⁵ Many years ago Anderson suggested that the development of the Equity of Redemption, with similar equitable relief for penal bonds, gave an impetus to borrowing, to the point that many people became too readily indebted.¹²⁶ For some borrowing risked financial difficulty, but for others it could be the stimulus to the entrepreneurship which has been suggested, with the mortgage being redeemed.¹²⁷

Redemption

If the majority of first mortgages were followed by remortgage, assignment or sale, there were still a fifth in which the next transaction was redemption, inheritance or settlement. The most common instrument for the redemption of a mortgage was a release, by which the mortgagee gave up his rights over the secured property in return for the final payment of principal and interest. In the Somerden data there are six deeds of this type. A typical example is the release by Alexander Cross of his title to Stones Land, part of Thomas Everest's share of Lockskinners. Thomas' widow repaid the mortgage by selling the west part of Lockskinners, but freed Stones Land to descend to her son as his portion.¹²⁸

Redemptions do not represent the entirety of redeemed mortgages, the ultimate evidence being the future of the property. There remained 64% of properties which were not sold within fifteen years, even if the mortgage remained outstanding. Meanwhile, the owner had raised capital, so that a critique must consider the use to which such capital was put.

Use of Capital

Mortgages for the Purchase of Land

Holderness suggested that even into the eighteenth century, the main reason for

125 KHLC U908 L7.

126 Anderson, 'Provincial aspects'.

127 Anderson, 'Provincial aspects', p.11.

128 KHLC U908 T61.

borrowing was for the purchase of land.¹²⁹ Gayton, however, found that less than 10% of copyhold mortgages in her study were used for this purpose.¹³⁰ There is limited evidence for this in Somerden, but there are occasional examples. On 20th September 1697 Thomas Ashdowne purchased a second moiety of Whistlers, a small property in Hever, for £120. Two weeks later, on 4th October, he mortgaged the whole property for £140. Allowing for conveyancing costs, the two sums are suggestively similar. He clearly wished to reunite the two parts of the property, and it looks as though he mortgaged in order to do so.¹³¹ If so, it appears he over-reached himself, for by 1709 the mortgage had increased, and the property was sold to the mortgagee's son. John Buss, a tenant farmer, took a mortgage on land clearly hoping (from the wording of his will) to obtain the property, but died before he could achieve this.¹³² In a more successful case, William Webb, a miller from Hadlow, purchased a three-quarters share of Edenbridge Mill from Andrew Furminger in 1685, immediately mortgaged it, and two years later purchased the remaining quarter share. When William Webb died he left Edenbridge Mill to his wife for life then to his eldest son, two properties in Tonbridge to his second son, and Hadlow Mill which he had recently purchased to his two youngest sons, so he had prospered on the back of his mortgage.¹³³

In addition to the mortgages for the purchase of another property, it was not unusual for those who purchased land to do so in instalments, or at least by delayed payments; three 'purchase mortgages' are included in the data. In November 1563, John Ashdowne of Chiddingstone sold a moiety of land near Crippenden in Cowden, which he had recently acquired himself through an unpaid mortgage after a partition in the Wickenden family. It was purchased by William Turner of Withyham, for £85, to be paid £30 at once, £15 the following month, and the remaining £40 in four quarterly instalments of ten pounds. These payments were completed, and John Ashdowne released his rights in the property in January 1566. In similar circumstances, John Pullinger sold Little Buckhurst in 1572 to William Luck, £40 to be paid four months later and the balance of £20 in a further eleven months, and when Brook Street was sold in 1595 it was on two instalments (*Case Study 16, page 201*). Sometimes there is

129 Holderness, 'Credit in English rural society', p.107.

130 Gayton, 'Mortgages raised', p.59.

131 KHLC U908 T104.

132 TNA PROB 11/48.

133 KHLC U908 T171; Anderson, 'Provincial aspects', p.11. Andrew Furminger meanwhile had a retirement income.

reference to such arrangements in other documents, for example, when Richard Jemmett died in 1666 he had recently purchased two farms from Sir Francis Coston, and the final payment had not been made, so he arranged in his will for other property to be sold or mortgaged.¹³⁴

Mortgages to Raise Capital for Industry and Agricultural Improvement

The role of the mortgage in raising capital for industry is a significant part of the debate. Gayton found a connection in 24% of mortgages, generally those for larger sums and wealthier borrowers, and late in the seventeenth century.¹³⁵ It is tempting to highlight Thomas Willoughby here, but the connection generally has to be inferred. This is the case with Sir John Heath's mortgagors. Sir Edward Hungerford was later involved in a project to set up a market in The Strand, although he was a known profligate.¹³⁶ Sir Charles Bickerstaff invested in a project to pipe water to Rochester and Chatham, perhaps in emulation of Sir Hugh Myddelton's New River in Hertfordshire.¹³⁷

Even a farm would require what would now be called working capital. As the stock on a farm was deemed to be chattel property, it was at the disposal of the executors to use for legacies and portions. The new heir would be obliged to re-stock. This could be the reason for the first mortgage by Thomas Everest of Lockskinners for £180 in 1655 (*Case Study 5, page 53*).¹³⁸ In addition, there might be the expenses of 'improvement'. Although this area of the country was already enclosed, there might have been drainage and irrigation works, in addition to the planting of orchards and the building of new farm buildings.

Mortgages and the Family Venture

One purpose for which a property might be mortgaged was for the payment of portions, although it appears to have been common for these to be owed for some years.¹³⁹ Wills not infrequently bequeath a sum in lieu of unpaid portions; in 1677 Thomas Wakelin bequeathed his daughter Dorothy's portion to John Hollamby;

134 KHLC U908 T22-2, T159, T162.

135 Gayton, 'Mortgages raised', p.62.

136 www.historyofparliamentonline.org [accessed February 2012].

137 E. Hasted, *A History and Topographical Survey of the County of Kent*, Vol.4 (Canterbury, 1797), pp.463-70.

138 J. Thirsk, *Agrarian History of England and Wales*, Vol.5.2, (Cambridge, 1985), p.118.

139 Staves, 'Resentment or resignation?', p.203 concurs with this finding.

Dorothy had died in May 1675 after three years of marriage (*Case Study 15, page 183*).¹⁴⁰ Thomas Willoughby's loans of £100 in 1585, £400 in 1586 may be related to the marriages of two daughters in those years. Perhaps it is not coincidental that as portions rose, mortgages increased.

Mortgages were sometimes required for payment of legacies. In one case, it is stated that this was so. Nicholas Ashdowne (d.1653) left Geers to his nephew John Sage, subject to the payment of £100 to John's three younger brothers. When John sold the property in 1665 it is recited that he had mortgaged the property to pay these legacies.¹⁴¹

Often, in practice, it is impossible to know what the mortgage money was used for. Thomas Everest's first mortgage of Lockskinnors could have been to stock his farm; the use of a further £200 two years later, for a man with only one young child and a small estate, is difficult to imagine. When he died in 1658 his will directed that his share of Lockskinnors should be sold to repay the mortgage and provide for his child, keeping only Stones Land to descend to his son (*Case Study 5, page 52*).

Mortgages and Consumption

One of the purposes for borrowing was probably for consumption. Indeed, Holderness suggests that in the seventeenth century people did not have the same concept of the distinction between capital and revenue items. Such an attitude was not necessarily pernicious, he said, indeed it stimulated the economy (a process which might be thought somewhat less harmless today). His conclusion was '*In England the combination of a considerable surplus above immediate consumption for a broad spectrum of agrarian society, at least in a long period analysis, the habit of using the surplus as credit, and the wide diffusion of lending among country people, was of particular importance in the process of economic development.*'¹⁴² [Chapter 7](#) looks at this proposition in more detail.

The distinction between consumption and general financial difficulties is hard to make. Gayton found that financial stress was evident in a quarter of mortgages, but

140 KHLC U908 T94, parish registers of Chiddingstone SoG KE/R86.

141 KHLC U908 T120.

142 Holderness, 'Credit in English rural society', p.108.

surprisingly this did not rise in the economically difficult times at the end of the seventeenth century.¹⁴³ In Somerden, there was a rise in mortgages in the 1630s, 1650s, and 1690s. This fits the pattern described for sales in Chapter 5, and the proposition that small owners were beginning to show signs of stress at the end of the century. This was not so in the 1590s or 1610s: perhaps before mortgages increased in popularity sale was the only option.

The possibility arises of seasonal variation in relation to the agricultural year, for example the sowing of a new harvest, or a shortage of funds in winter, or the date of payment of rent or tithes, which would tend to emphasize some months above others. In fact, this does not seem to be the case. *Table 6.4* shows the number of mortgages which occur in each month.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
1550-1559			1		1								2
1560-1569				2				1	2				5
1570-1579			1	2					3				6
1580-1589		1	1	1									3
1590-1599		1		1					1	1			4
1600-1609	2					2						1	5
1610-1619						1						1	2
1620-1629			1			1	1				2		5
1630-1639	4	1		1	1					2			9
1640-1649	1			1				1		1			4
1650-1659		2	3	2		2							9
1660-1669			1				2		1				4
1670-1679					1	2		2	2	1			8
1680-1689		2			1	2	2	3	1	1	4	3	19
1690-1699	1	1				1	1	1	2	3		1	11
TOTAL	8	7	8	10	5	11	6	9	12	9	5	6	96
%	8%	8%	8%	11%	4%	12%	6%	8%	13%	10%	6%	6%	100%

While September is the highest it is only marginally above June. These two months contain the main harvests of the year and there would be an element of costs preceding sale. These figures could be skewed by the assignment of mortgages as they

143 Gayton, 'Mortgages raised', p.63.

fall due, but in fact removing assignments makes little difference to the overall pattern. It is unlikely, therefore, that the cause of mortgages was seasonal demand for capital; perhaps unsecured debt and trade credit performed this function. Gayton found a similar result in Hampshire.¹⁴⁴

In summary, the mortgaging of property released capital which could be used in commercial activity and improvement. How far this was in fact its destination is hard to calculate. Certainly there are examples of borrowers who were involved in improvements or large projects. There are also examples where it is clear the proceeds were being used to purchase land or a business. It is likely, however, that usually investment was being made in the family, in the form of portions for daughters or settlements on sons. Often it must have been spent on conspicuous consumption or a failing enterprise, but even consumption can foster economic development. There is little evidence in the sample of seasonal variation, but there may have been some investment in agricultural improvement.

144 Gayton, 'Mortgages raised', p.53.

V. Gavelkind and Mortgage Finance

It is clear that very small holdings could be used to release capital, in 1662 just one acre of Brook Street was mortgaged for £14 (*Case Study 16, page 201*). (At a typical rent of 10s an acre in this period, this must have been an instance where the principal was at the top end of the land's value.) A system of property ownership in which all sons inherited therefore gave access to capital to the many. Of the nine properties mortgaged in the first quarter alone, two were undivided shares, and two were plots recently apportioned in a father's will. However, any time-link between the two is tenuous; only 4% of mortgages were taken out within a five-year period of partition, comparable to sales ([Chapter 5](#)). The earliest is the mortgage in 1556 by John Collins of Leigh to Walter Free of Peshurst of his share in a tenement at Cinderhill in Leigh which was formerly the property of his father and had been divided between him and his brother.¹⁴⁵ This mortgage appears to have been repaid, because the land was settled on John's two daughters in 1570. Two instances follow the partition in 1653 of William Everest's property at Lockskinners; both halves being mortgaged in 1655, and both properties being eventually sold.¹⁴⁶

Mortgages on undivided shares seem to have presented no difficulty. The 1684 mortgage taken out by Dorothy Powell was on her quarter share of the the Manor of Chiddingstone Cobham, inherited on the death of their father in 1627 by her and her three sisters.¹⁴⁷ For over fifty years the four daughters and their husbands had shared the rents and profits of the manor equally, and a quarter share could easily be passed to a mortgagee or a purchaser. Similarly, the Lockyer brothers mortgaged Butt House in Chiddingstone, which they owned jointly, for £10 0s 0d.¹⁴⁸ Both were wheelwrights, but William worked in Yalding and Richard in Horsmonden. Since the property was tenanted, the rents were presumably being divided between them, and they repaid the mortgage in two equal parts. Undivided shares did not lead to disharmony.

Edenbridge Mill and Whistlers provide examples of mortgages taken out for the purpose of reassembling shares, and the mortgage of Cinderhill by John Collins was

145 KHLC U908 T16-18.

146 KHLC U908 T61, T62.

147 KHLC U908 T8.

148 KHLC U908 T95.

probably also for this purpose.¹⁴⁹ One means of offsetting the supposed fragmenting nature of gavelkind was for one heir to buy out another, and these are examples where the ability to mortgage made this possible.

Gavelkind could stimulate mortgage finance in creating a wide spread of small holdings. The Lockyer brothers, wheelwrights, James Everest, tailor, Richard Beecher, blacksmith, James Jessup, weaver, and Matthew Sanders, tailor, all raised small sums on a few acres.¹⁵⁰ Those in a larger way of business raised larger sums: John Bowden, merchant-tailor of London, borrowed £400 against land in Edenbridge; William Wakelin, butcher of Chiddingstone, raised £100 against Pemells Fields and Francis Combridge of Groombridge, mercer, raised £200 against his share of the ancestral holding in Penshurst.¹⁵¹

One of the main accusations against gavelkind was that it created very tiny shares, and the result was poverty. The decline of John Hollamby the fourth after the partition of Coles has been described, so this immiserating effect cannot be dismissed totally (*Case Study 15, page 183*). However, the major interposing factor is surely the ability to raise capital. Half a dozen acres will not support a family, but if the the owner is a tailor, butcher, mercer or merchant-tailor, it is a commercial asset. [Chapter 4](#) showed how such small plots could be used to secure a jointure or portion, and this might be sufficient to ensure a good marriage, often the success or failure of a family; this chapter shows how capital could be raised on such plots. Shares were also, of course, an accessible purchase for a new man. The case of the miller William Webb has shown how, starting with a part-share, a man could build up an estate through mortgages and purchases.

149 KHLC U908 T171, T16, T104.

150 KHLC U908 T95, T82, T136, T124, U1986 T35.

151 KHLC U908 T106, T78, T160.

VI. Summing Up

The purpose of this element of the research was to see what commercial advantages accrued from a small holding in land. Section I looked at the increase in mortgages in the seventeenth century, Section II at the market place, and Section III at the effects of the ability to raise mortgage finance. What is clear is that by the mid seventeenth century it was possible for anyone who had property, however small, to use it as security to borrow. The market does not seem to have been greatly affected by the *Usury Acts* or the statutory rate of interest; the intervention of the Equity Courts in the later seventeenth century were more closely associated with the rise, but neither would have occurred without demand.

By the second quarter of the century mortgages were well-established as a means of raising capital among the lower strata of landowners, but the market was essentially a local one. The London market could be accessed, but this was largely by gentry and for the larger loans. Yeomen preferred to use family, friends and neighbours to lend to them, perhaps using two lenders to raise sufficient funds. Neighbour loans were the lower in value, then family, then outsiders. Women, either spinsters or widows, were not lenders in any numbers. Nor are professional lenders conspicuous.

The motives of the lenders were perhaps much as they are now, to keep their money safe and increasing in value, this being before country banks emerged. They might also wish to use capital to produce an income. There was an added incentive where the property itself was desirable, because a mortgage acted as an option to buy; but as was shown in the first part of this chapter, by this time protection for the borrower was such that default was not in itself enough to cause the property to change hands.

The vast majority of borrowers appear in only one set of linked transactions. However, there were three 'serial borrowers'. Thomas Willoughby might have been using the capital to improve, but Dorothy Powell may have overspent, and the case of John Reddich surely represents profligacy. The sums borrowed could be as little as seven pounds up to the largest of two thousand pounds. The most common term was a year, although terms were for as long as seven years, and in the case of a lease-back of the property even longer. However, it is clear that the ostensible term was not the full intention of the parties. Even after the end of the term, when the legal estate was

technically lost, the mortgage could continue for many years provided the interest was paid; if the original lender wanted his money the mortgage could be assigned.

The evidence for intermediaries is thin. With such a high incidence of within family or neighbourhood transactions, perhaps no intermediary was needed in most cases. Where it was, the scriveners were probably serving this role in the early years and towards the end of the century the lawyers, as indicated by the place set out for repayments to be made.¹⁵²

The money raised could be used as capital for business ventures, for investment in the family, or in land and property. The lender in turn could secure his spare cash and obtain an income from it; if required he could provide himself with an annuity, and the law provided him with a means of reclaiming his money in the event of long-term default. A mortgage could act as an option to buy, where a piece of land was particularly desirable to him. Mortgages might be a sign of financial stress, but even here if the alternative was to sell, they provided a respite and opportunity to recover.

Section IV discussed the connection with gavelkind. The link between the land market and partible inheritance is clear: the more people had a stake in the land, the more people could raise capital. Since the land was freehold, it could be readily mortgaged. A very few acres could supply a tradesman with capital, or buy an apprenticeship, or pay a portion, or secure a jointure. The effect on the land market was potentially threefold: some heirs would sell their property entirely; some would mortgage their land and fail to repay the principal; but others used mortgages to reassemble shares or build up a holding in small stages. Chapter 7 considers the consequences for land ownership.

152 Solicitors were still acting as agents between lenders and borrowers after 1945, and even lending themselves (personal communication from former colleagues).

CHAPTER 7 : LAND OWNERSHIP

I. Introduction

Chapters 2 and 4 considered the first proposition of the research, that the idea of gavelkind as merely a residual system of inheritance does not reflect the reality on the ground. Chapters 5 and 6 approached the second objective of the research, to review the criticism of gavelkind that it produced small, non-viable holdings which led to fragmentation of holdings and family failure. The land market and mortgage figures emphasised the small size of plots being sold, and suggested that after 1670 the yeomen were under stress, with gentry estates rising. However, those results were based on transactions rather than outcomes. This chapter looks at outcomes: change in family land ownership in Somerden over the period.

The period is commonly seen as one of agrarian change, in which increased agricultural productivity took place, paving the way for early industrialisation.¹ The theory is that one agrarian model was replaced with another, changes which in Jane Whittle's words had '*by the mid nineteenth century transformed a medieval system of landholding into a capitalist one: replaced small farms with large farms over 100 acres; multiple-use rights with clearly defined proprietors; and manorial land tenures with contractual leaseholds based on market-determined rents*'.² Implicit are three related ideas: the rise of the large estate, tenurial change, and the emergence of the landlord-tenant-labourer farm model replacing the owner-occupier.

The rise of the large estate speaks directly to a study of gavelkind. Its proponents

1 J. Whittle, 'Land and people', Chapter 7 in K. Wrightson, ed., *A Social History of England* (Cambridge, 2017); E.A. Wrigley, 'Urban growth in early modern England: food, fuel and transport', *P&P* 225 (2014), 79-112, pp.94-5 quotes Dejongh and Thoen's analysis of Flemish agriculture in B.J.P. Bavel & E. Thoen eds. *Land Productivity and Agro-Systems in the North Sea Area (Middle Ages - Twentieth Century)*, (Turnhout, 1999), p.57; G. Béaur & J-M. Chevet, 'Institutional Change and Agricultural Growth', in G. Béaur, P.R. Schofield, J-M. Chevet & M.T. Perez Picazo eds. *Property Rights, Land Markets and Economic Growth in the European Countryside* (Turnhout, 2013), p.20; B.J.P. van Bavel & P. Schofield, *The Development of Leasehold in North-Western Europe, c.1200-1600* (Turnhout, 2008), in particular their introduction, 'The emergence of lease and leasehold in comparative perspective' and J. Whittle: 'Leasehold tenure in England c.1300-c.1600: its form and incidence'; H.R. French & R.W. Hoyle, *The Character of English Rural Society, Earl's Colne 1550-1750* (Manchester, 2007), pp.1-41; T. Williamson, *The Transformation of Rural England: Farming and the Landscape 1700-1870* (Exeter, 2002), pp.7-21; T.H. Aston & C.H. Philpin, *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe* (Cambridge, 1985); R.H. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912), pp.98-110, 118-122; A.H. Johnson, *The Disappearance of the Small Landowner* (Oxford, 1909), pp.150-154.

2 Whittle, *Agrarian Capitalism*, pp.306-9.

argued that it favoured the yeoman and inhibited engrossment.³ Unrestricted it was distributive. However, free alienation and partible inheritance, together with an active land market and the availability of capital, could produce a very different outcome: the fragmentation of holdings and decline of the middle, squeezed by the small and the large, the very result suggested by the 1832 Commission on Real Property. Which was true? Was the result consistent over time?

Tenurial change is a concept which is of apparently limited application in Kent where tenure was overwhelmingly freehold and the strengthening of copyholders rights was of lesser relevance, but the move from feudal relationships to those based on contract is of wider significance. The replacement of the owner-occupier by the tenant farmer is predicated upon the rise of leasing. Leasehold had existed from the earliest times, but in the early sixteenth century rights of leaseholders were strengthened, and the nature of the lessee's interest moved from a chattel, relatively unprotected, to a chattel real, so that the land itself was recoverable by the tenant, not just damages.⁴ The interplay of small gavelkind estates with the rise of leasehold is an important question.

The rest of this section looks at the historiography of engrossment and the capitalist farm. Section II considers the changing pattern of land ownership, reconstructing the southern part of the parish of Chiddingstone in 1600 and 1700. Section III looks at landlord and tenant through leases and conveyances. Section IV discusses the pattern of ownership considered typical of gavelkind.

Engrossment and the Capitalist Farm

Although it is generally agreed that the period before 1600 saw small owners prosper and at some point after 1670 they were eclipsed by the large owner, as Whittle points out the 'how', 'when', and 'why' are still disputed. John Broad has categorised the mechanisms through which engrossment took place, the 'how', as manorial manipulation, purchases on the land market, mortgages, the 'attenuation' of

3 H. Kingsford & W. Beale, *An Address to the Freeholders of the County of Kent on the Subject of Gavelkind*, Kent Law Society, (Maidstone, 1836).

4 J.H. Baker, *An Introduction to English Legal History*, 4th edn, (London, 2002), p.298 *seq.*; B.M.S. Campbell, 'Land Markets and the Morcellation of Holdings in Pre-Plague England and Pre-Famine Ireland', in G. Béaur et al *Property Rights, Land Markets and Economic Growth in the European Countryside Thirteenth to Twentieth Centuries* (Turnhout, 2013), p.202.

inheritance, and migratory inheritance.⁵ Gavelkind places an intermediary factor into the equation; unchecked it was distributive, but it may have introduced a vulnerability in periods of low prices. In Somerden there was no eviction of customary tenants, no wholesale enclosure of open fields or common land, no customary primogeniture. Sales and mortgages were predominantly to neighbours. However, gavelkind with its freeholds and partible inheritance was susceptible to attenuation and migratory inheritance, the vulnerability of a small family holding to successive subdivision, non-viability and ultimately to sale.⁶

The 'when' has been particularly contentious. Robert Allen called into question the whole idea of an eighteenth-century agricultural revolution, suggesting instead that productivity increased in the open fields and earlier than supposed.⁷ This has been contested by others, notably Mark Overton.⁸ Much depends on definitions: Arthur Johnson's 1909 analysis used holding sizes of 6 acres, 40 acres, 200 acres and 1,000 acres as dividing small holdings from medium, large and great, but there has been no consensus among historians as to what constitutes a large holding, or a large farm (which might be held of several owners).⁹

The 'why' of engrossment depends on economic conditions: demand, availability, access to capital, and a market economy, and on legal protection for primogeniture.¹⁰ Whittle also drew a symbiotic link with social conditions: freedom to alienate and low rents and fines led to a free market, and this in turn to social polarization and engrossment.¹¹ In 1600 prices and population were high; by the mid seventeenth century all had access to capital and to a market characterised by small plots (Chapters 5 and 6). The conditions were present.

5 J. Broad, 'The fate of the Midland yeoman: tenants, copyholders and freeholders as farmers in North Buckinghamshire, 1620-1800', *C&C* 14:3 (1999), p.328.

6 J. Broad, 'English agrarian structures in a European context, 1300-1925', in J.P. Bowen & A.T. Brown, *Custom and Commercialisation in English Rural Society* (Hatfield, 2016), pp.57-61.

7 Whittle, 'Land and people', pp.153, 157; R.C. Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands, 1450-1850* (Oxford, 1992).

8 M. Overton, *Agricultural Revolution in England: The Transformation of the Agrarian Economy, 1500-1850*, (Cambridge, 1996).

9 Whittle, 'Land and people', p.157; J.V. Beckett, 'The decline of the small landowner in England and Wales, 1660-1900', in F.M.L. Thompson, *Landowners, Capitalists and Entrepreneurs: Essays for Sir John Habakkuk* (Oxford, 1994), p.89 & Fig.3.1; A.H. Johnson, *Disappearance of the Small Landowner* (London, 1909), pp.150-154.

10 See Chapter 3 for the role of strict settlement.

11 J. Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1558* (Oxford, 2000), p.309.

The transition to a landlord-tenant-labourer model is also generally accepted, but not how it is to be measured and dated.¹² Farm size has not proved robust: historians such as Whittle, Spufford, Wrightson and Levine, Mingay, and Wordie took conflicting measures, and any average comes up against the problem of an 'unrewarding mean'.¹³ An alternative definition based on wage labour employed, which Shaw-Taylor recommends, lends itself more readily to statistical analysis and to local and regional variation, but is still by no means straightforward.¹⁴ Data are hard to find in this period, landowners were also involved in the iron, cloth and timber trades, and as Shaw-Taylor recognises, it takes no account of the intensity of cultivation as in, for example, a ten-acre hop garden. Quantifying labourers is hindered by invisibility in the record, not least under the cloak of invisibility provided by live-in 'servants in husbandry'. Production for the market is even more complicated. The ten-acre hop garden would produce for the market, but so would many farms in the Middle Ages: the production of monastic demesne farms has been shown to have been highly commercial.¹⁵ Even largely subsistence farmers would have had a little surplus to sell: a mixed pattern of home consumption and local and regional sales was common.¹⁶ Whittle suggested *degree* of market production as the criterion, the period of transition spanning the end of feudalism in the fourteenth century to the dominance of wage labour in the eighteenth, but how is this to be measured?¹⁷ Here holdings rather than farms are considered, but [Section III](#) considers occupiers.

12 L. Shaw-Taylor, 'The rise of agrarian capitalism and the decline of family farming in England', *ECHR* 65 (2012), 26-60; 'Family farms and capitalist farms in mid nineteenth-century England', *AgHR* 53:2 (2005), 158-191.

13 French & Hoyle, *Character*, p.2; R. W. Hoyle, 'The land-family bond in England', *P&P* 146 (1995), p.162.

14 Shaw-Taylor, 'Rise of agrarian capitalism'; 'Family farms'.

15 B.M.S. Campbell, *English Seigniorial Agriculture, 1250-1450* (Cambridge, 2000).

16 R. Hoyle, 'Why was there no crisis in England in the 1690s?' in R. Hoyle ed. *The Farmer in England, 1650-1980* (Farnham, 2013); Shaw-Taylor, 'Agrarian capitalism', p.31.

17 Whittle, *Agrarian Capitalism*, pp.10-16.

II. The Owners

The Pattern of Land Ownership

In 2007 John Beckett and Michael Turner, looking at the figures for the supposed crisis of the aristocracy in the years 1918-21, highlighted how difficult it is to be accurate on land ownership where there is no central register of land. They suggested, but hesitantly, that what appeared to be a sudden crisis in ownership looked very different seen in a long-term perspective.¹⁸ Even the Tithe Award of 1841, New Domesday of 1873 and the survey of 1909 provided them with only partial and variable data.¹⁹

If reconstruction is difficult for the twentieth century, even less can be expected for the sixteenth and seventeenth. Studies of freeholders have been based largely on two sources: the ownership of manors, and assessments of land tax. Neither lends itself readily to assessing the small holder. Ted Collins and Michael Havinden, cross-checking the work of Richard Tawney, Lawrence Stone and John Habakkuk on gentry land ownership, used ownership of manors (in Berkshire and Oxfordshire). Unfortunately, this almost inevitably excludes any owner below the level of gentleman and any freehold property other than demesne.²⁰ In addition, as J.P. Cooper pointed out, counting manors introduces anomalies; in the sixteenth century the Sidneys of Penshurst sold 60% of their manors by number, but only 28% by value, and meanwhile bought freeholds within their existing manors in Kent and Sussex.²¹ Attempts to trace the wealth of individual families inevitably limit the evidence to the aristocracy. Land tax assessments come too late for comparisons to be made over the period 1550-1700. None of these methods can be used to assess the supposed issue of the decline of the yeoman freeholder in the late seventeenth century, at least in Kent.

In one exceptional study for Kent, Stephen Hipkin was able to reconstruct the land ownership changes between 1654 and 1834 from the surveys of the drainage authority

18 J. Beckett & M. Turner, 'End of the old order? F.M.L. Thompson, the land question, and the burden of ownership in England, c.1880-c.1925', *AgHR* (2007), p.271-3.

19 Beckett & Turner, 'End of the old order?', p.277.

20 T. Collins & M. Havinden, 'Long-term trends in landownership 1500-1914, Berkshire and Oxfordshire', *Oxoniensia* (2005), 27-39; L. Stone: *Crisis of the Aristocracy* (Oxford, 1965); R. H. Tawney, 'The rise of the gentry: a postscript', *ECHR* 7.1 (1954), 91-97; R. H. Tawney, 'Rise of the gentry, 1558-1640', *ECHR* 11:1 (1941), 1-38; H.J. Habakkuk, 'English landownership, 1680-1740', *ECHR* 10:1 (1940), 2-17.

21 J.P. Cooper, 'The Counting of Manors', *ECHR* 8:3 (1956), 377-389.

in the Romney Marsh region.²² These records show in detail the occupier of land, and in more general terms the owner, and enabled him to track changes over a considerable period. He found that over the long term there was a decline of the middling owner, but there were periods of recovery when conditions were conducive. Although this is a useful comparison, the marsh area was a very particular agricultural region; it was rich grazing lands of relatively high value where institutional and aristocratic owners were much in evidence. Although Hipkin suggests the effect was not limited to the marsh, different results would be expected for the poorer land in the Weald.²³ In any case, no such source exists for this area. This study of land ownership turns, therefore, to reconstructing properties from the sources which are available.

Three sources have been used, including those from the early eighteenth century. The first consists of the property histories, tracked back to 1600 using all the available sources, parish, probate and legal records, but particularly title deeds. Only some of the title deeds, and those mostly the later ones, describe a property field by field, so the 1841 Tithe Survey has been used as a cross-check (as has been done by others).²⁴

An invaluable resource has been the estate maps, but they date entirely from the eighteenth century. The second source is the 1709 land tax, from Gordon Ward's transcript.²⁵ Early work on the Land Tax was criticised for over-dependence on a consistency which has proved illusory.²⁶ Donald Ginter found there were differences between the quotas for different counties and even parishes, that assessment failed to move with the times, so that any attempt to assess acreage from the assessment was misguided. Also smallholders appeared and disappeared, casting doubt on any analysis of their volume in the population. Above all the distinction between landowner and tenant was erratic.²⁷ In looking at Chiddingstone in 1709 the question of comparison over time and space does not arise. The loss of smallholders from the record and the identification of tenants has been addressed by using the 1664 Hearth tax and the title

22 S. Hipkin, 'The structure of landownership and land occupation in the Romney Marsh region, 1646-1834' *AgHR* (2003), 69-94.

23 Hipkin, 'Structure of landownership', p.92.

24 J. Rhodes, 'Subletting in eighteenth-century England: a new methodological approach', *AgHR* 66.1 (2018), 67-92.

25 G. Ward, *A History of Chiddingstone* (1939, re-issued Chiddingstone, 2013).

26 K.D.M. Snell, *Annals of the Labouring Poor, 1660-1900* (Cambridge, 1985), p.140-141; J.M. Martin, 'Landownership and the land tax returns', *AgHR* 14:2 (1966), 96-103.

27 D.E. Ginter, 'Measuring the decline of the small landowner', in B.A. Holderness and M. Turner (eds.), *Land, Labour and Agriculture, 1700-1920: Essays for Gordon Mingay* (London, 1991), Chapter 2. Stephen Hipkin has suggested verbally that his criticisms are not apposite to the later eighteenth century land tax, at least in Kent.

deeds. The third source is the record of rights to the pews in the church made in 1724, which recorded owner and occupier. (That the question of pews was a sensitive one is shown by the fact that John Ashdowne of Leigh was sued in 1708 for extending his pew into the space of his neighbour, William Edmeads. In the eighteenth century each man literally had his place.²⁸) The transcription by Ward is also used here. Acreages are drawn from the title deeds; where these are unclear or conflicting a degree of estimation has been involved.

For much of the hundred the records have proved inadequate to the task, but for Chiddingstone South a reasonable synthesis has been achieved. Although only a part of the hundred, this is an area of 2,800 acres and covers most of three manors.²⁹ Some properties present considerable difficulties: Brookers Farm at Rendsley Hoath appears like Venus from the waves, naked of any detail, when William Streatfeild settled it on his new wife in 1714. Was it part of the Woodgate property around Stonewall? When and why did it pass to William Streatfeild? The results, as Johnson said, involve an uncomfortable degree of inference, at best an approximate indication of land ownership at one time.

The results are shown in *Table 7.1*, giving owners and acreages. The bands of 5, 50, 100, 250 and 1,000 acres for cottage, small, medium, large and great estates are a simplified analysis, but sufficient for comparing one period with another where the numbers are small.³⁰ Cottages, shops and inns have been given a notional acreage of two acres in the absence of more accurate data. Out-borders are those whose holdings were centred in an adjacent parish. There is no implication at this stage that any of the owners were occupiers. In *Table 7.1* and *Table 7.2* the position in the 1841 Tithe Award is included, in order to give perspective.

28 KHLC U1290 E33.

29 By comparison, French and Hoyle's database from Earl's Colne covered 1,103 acres: *Character*, p.181.

30 Shaw-Taylor, 'Rise of agrarian capitalism', p.31.

Size of holding	1600			1650			1700			1841		
	Owners	Acres	%	Owners	Acres	%	Owners	Acres	%	Owners	Acres	%
1,000 +										1	1847	64%
250-999	3	1031	36%	3	807	28%	2	843	29%	1	517	18%
100-249	2	229	8%	3	525	18%	6	874	30%	1	147	5%
50-99	10	767	27%	8	582	20%	5	441	15%	1	54	2%
5-49	13	270	9%	15	334	12%	12	202	7%	6	90	3%
Subtotal	28	2297	80%	29	2248	78%	25	2360	82%	10	2655	93%
Cottages, shops		30			27			10		9	5	
Out-bounders		200			200			200		5	207	
Unidentified		343			395			291				
TOTAL 1841		2870	100%		2870	100%		2870	100%	24	2870	100%

The identifiable acreage is about 300 acres less than that in the 1841 Tithe Award, but the results are interesting. The holdings of 100 acres or more went from 44% of the total acreage in 1600 to 46% in 1650 and to 59% in 1700. Meanwhile, holdings of 50-100 acres fell from 27% in 1600 to 20% in 1650 and 15% in 1700. Small holdings of 5-50 acres increased between 1600 and 1650, but had fallen by 1700 and had fallen significantly by 1841. Chalklin's estimate that more than half of all seventeenth-century holdings were less than 50 acres is not borne out by these findings.³¹

The criticism is often made that this type of analysis does not identify those who held significant property elsewhere; it takes no account of family wealth.³² A reduced holding in this parish may simply represent consolidation in a different place; several of these families come into this category, notably the Woodgates. This difficulty is not easily overcome; even a national survey would miss owners' overseas estate; only the range of such purchases is new.³³ The treatment of mortgaged land, where the legal estate was separated from the equitable one, is complicated: the heirs of Lord Burgh are treated here as owning the manorial demesne of two manors in 1600, although mortgaged to Richard Streatfeild and never recovered. Such is historical data, at best

31 Chalklin, *Seventeenth-Century Kent*, pp.68-71.

32 Hipkin, 'Structure of landownership', p.72; Cooper, 'Counting of manors', p.384.

33 By the late eighteenth century the Streatfeilds of High Street House owned land not just in Kent, Sussex and Surrey but in Warwickshire and Glamorgan. See French & Hoyle's comments on this issue, *Character*, p.179.

an approximation, so patterns and trends are hedged about with provisos.

FAMILY	1600	1650	1700	1841
Burgh/Willoughby [aristocracy]	3			
Woodgate	3	3	4	
Ashdowne	3	3	1	
Streatfeild	2	5	5	1
Piggott (and Constable)	2	2	2	
Everest	2	1	1	
Beecher	2	1	1	
Combridge (and Eldridge)	2	1	1	
Seyliard	1	4	2	
Medhurst	1	1	1	
Bassett	1	1	1	
Luck	1	1	1	
Jemmett	1	1		
Saxby	1	1		
Walters	1			
Hayward	1			
Jessup		1		
Saunders		1	1	
Care		1	1	
Beckett			1	
Cronk			1	
Rector	1	1	1	
Newcomers after 1700				9
OWNERS: 5+ acres	28	29	25	10

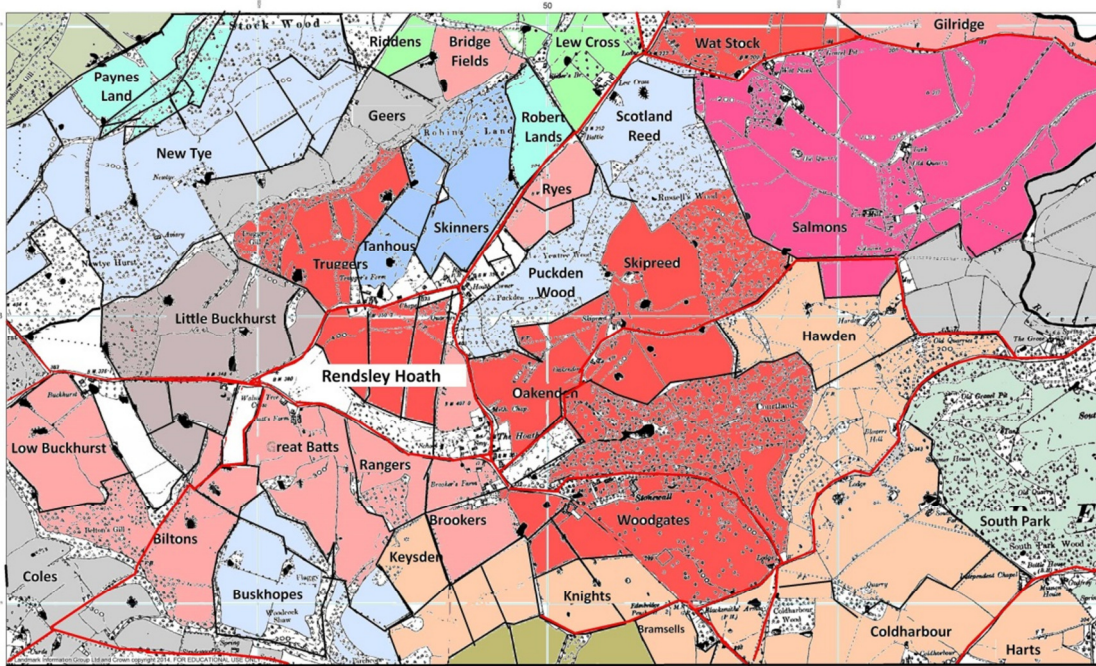
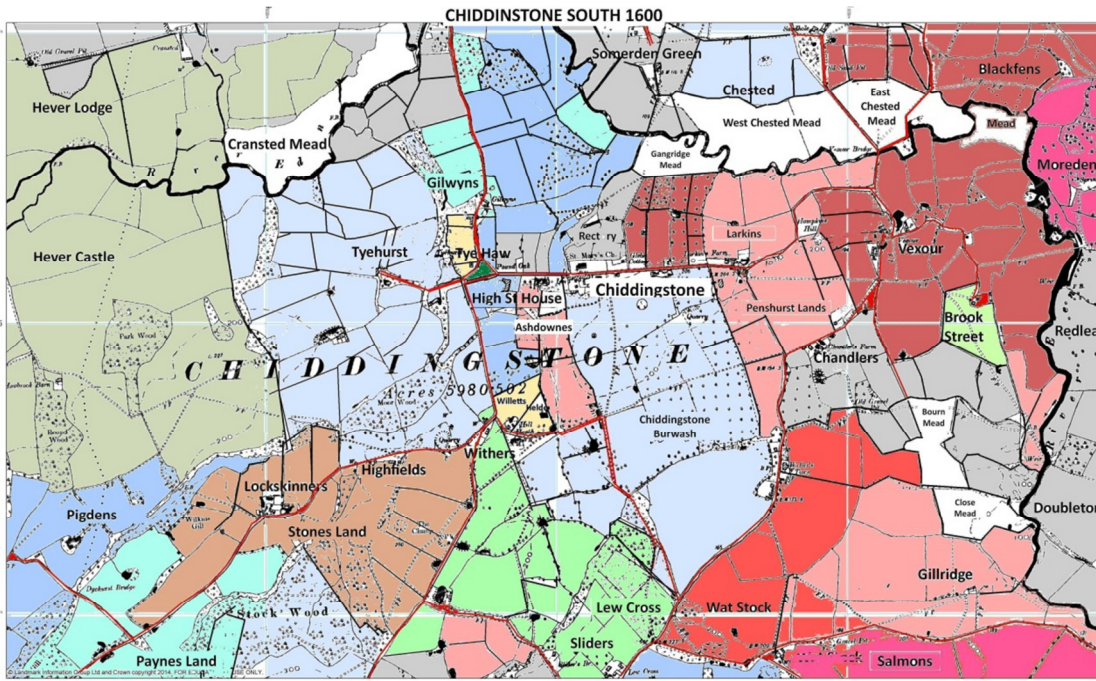
Table 7.2 looks at the individual owners in more detail. At the beginning of the seventeenth century the 28 freeholders were spread among sixteen families; in 1650 there were 29 freeholders from sixteen families; the Burghs and Willoughbys had gone, and the Streatfeilds had acquired most of the Burgh property; there were now five members of the family holding parts of the property, evidence of their willingness to divide ([Chapter 4](#)). The Woodgates had increased to four family members, but most of their acreage was outside the area. The Walters had gone from Cransted Mill, the heirs of Thomas Hayward from Tye Haw (*Case Study 4, page 52*). Three new owners held less than fifteen acres each. By 1700 the owners were reduced to 25, from 15 families, the Jemmetts had failed, the Jessups and Saxbys concentrated elsewhere. The fall in

numbers is supported by the falling numbers of wills and settlements in *Figure 4.1* and *Figure 4.3*.

Despite the changes, the continuity should not be overlooked. About a quarter of the properties were in the same family in 1700 as in 1600. The Luck family held a small property, Little Buckhurst or Walnut Tree Farm, which they had always leased out. The Bassett family still held Bassetts Mill (*Case Study 7, page 94*). The Ashdownes still held Batts and High Buckhurst, and the Piggotts still held Withers, and also Skinners which they had acquired from the Streatfeilds shortly after 1600 (*Case Studies 3 and 10, Chapters 2 and 4*). The Beecher mercers still held Chiddingstone Shop and Shop Lands. The Medhursts held Pilbeams; the Care family still held their houses (but not land) at Rendsley Hoath, and Thomas Saunders' heirs held his tiny holding at Sliders Bridge. These can be seen on *Map 4*.

To highlight continuity as well as change, the results from 1600 and 1700 are shown in map form: *Maps 2 and 3*. The base map is the 1870 Ordnance Survey 1:10,560. From this post-1700 intrusions have been removed and the old field boundaries replaced using the estate maps. This is at best an approximation: river, streams, road, woods and shaws have changed over the centuries. Both the Streatfeilds and the Woodgates moved roads in the eighteenth century, to make parks around their rebuilt houses. However, the old lines are usually visible in the landscape or can be retraced from the maps. Onto this roughly regressed map has been coloured the ownership pattern. Where the 1600 and 1700 property boundaries are uncertain, the estate maps have been taken as representative. Most of these date from the purchase or consolidation of new acquisitions, so long-term holdings are more difficult to map, but can usually be identified from the metes and bounds of adjacent properties. With these caveats and despite the resulting approximations, the maps do show the pattern of land ownership in a way that it would be hard to see in any other way.

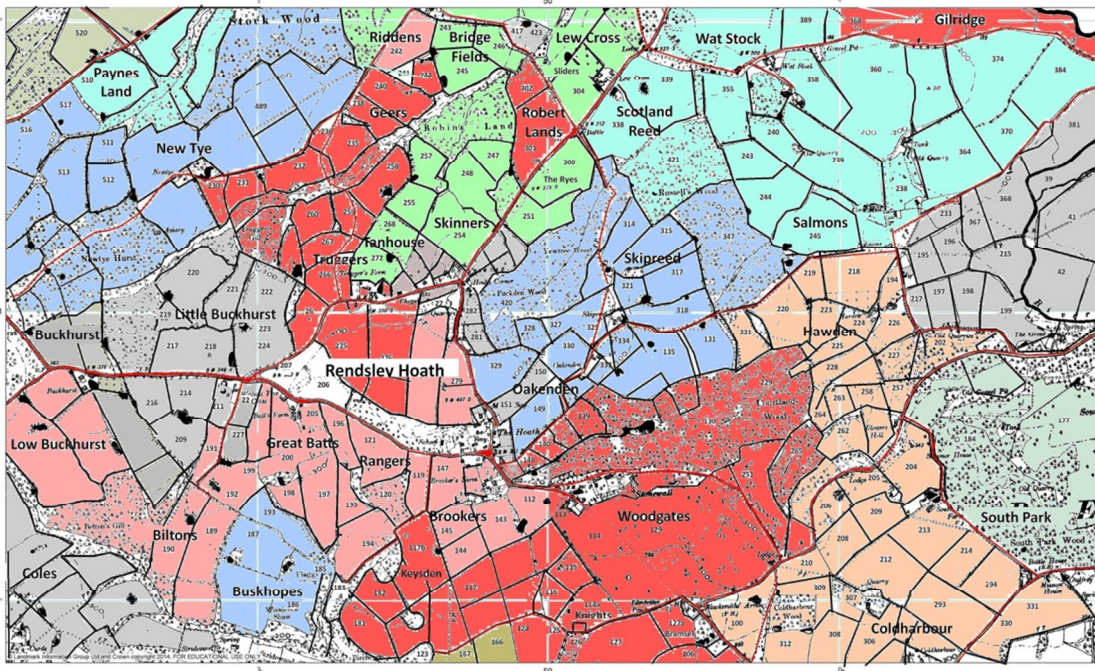
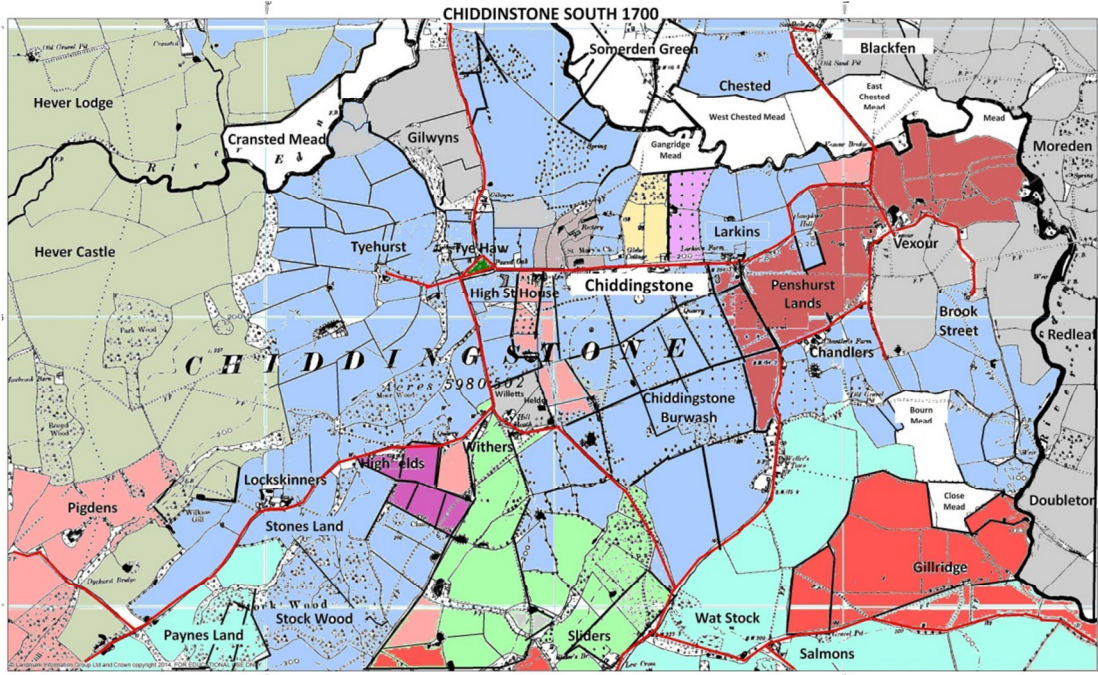
Map 2: Chiddingstone South 1600





















KEY TO MAP 2

Ashdowne		Everest		Seyliard		Willoughby	
Bassett		Hayward		Sidney		Woodgate	
Beecher		Hyde		Streatfeild		Other owners	
Burgh, Lord		Jessup		Waldegrave		Common	
Combridge		Piggott					

Map 3: Chiddingstone South 1700



KEY TO MAP 3

Ashdowne		Everest		Seyliard		Willoughby	
Bassett		Hayward		Sidney		Woodgate	
Beecher		Hyde		Streatfeild		Other owners	
Burgh, Lord		Jessup		Waldegrave		Common	
Cambridge		Piggott					

Firstly, the multiplicity of different owners is clear from the coloured pattern. Seventeen named families are shown, with other owners indicated in general grey. Secondly, most of the families present in 1700 were old established ones; the Streatfeilds and Piggotts had been in the parish for a century or so, but the Woodgates, Ashdownes, Combridges and Seyliards for significantly longer, some back to the thirteenth century. Continuity of families was considerable, though their position relative to one another had altered. Thirdly, there is evidence of engrossment. *Map 2* shows amalgamation in the sixteenth century in numerous examples such as the incorporation of Stones Land into Lockskinners (*Case Study 5, page 53*), Penshurst Lands into Larkins, Biltons and Low Buckhurst into Batts (*Case Study 3, page 49*). By 1700 there was a further level of amalgamation: engrossment began to increase at the end of the century. To give but one example, the Manor of Tyehurst was described in [Chapter 2](#) as having ten free tenants in 1612, eight in 1700. In 1704 an estate map showed it as a farm of 93 acres, and in 1747 there remained only four tenants paying 2s 10½d in quit-rents and these were all leasehold tenants.³⁴ The shape of the original demesne is shown in *Map 2*, in the blue of Lord Burgh. In *Map 3* the property was in the ownership of the Streatfeild family, and the acquisition of the surrounding holdings of Lockskinners, Stones Land and Tye Haw had created a block of land from the river to Rendsley Hoath. By 1841 the whole of Tyehurst was included in the lands of High Street House, with Henry Streatfeild as owner-occupier, and the area of South Chiddingstone in the maps would appear almost entirely blue (*Case Study 19, page 256*).

The trends just discernible in 1700 could have been short-term, but the 1841 tithe award figures suggest that they were not. To identify the critical period of change would require another project, but it is possible to say that 1841 presents a startlingly different picture. By 1841 the proportion of land in holdings of 100 acres was 87%, with 64% in the hands of a single owner; holdings of 50-100 acres had fallen to 2% and those of under 50 acres to 3%. If cottagers and out-borders are excluded, only one family, the Streatfeilds, had been in the parish since before 1700. The Ashdownes, Beechers, Piggotts and Seyliards had moved to new locations, and their prosperity had declined. The Woodgate family had been brought down by the failure of the Tonbridge

34 KHLC U908 P3.

Bank. There were newcomers at Stonewall, Pilbeams, Prinkham and Hobbs Hill. Meanwhile, the Streatfeilds held a greatly increased acreage, in the hands of one man. One cannot help wondering to what extent the comment of the Hammonds that the village community was broken up applies.³⁵ What would Henry Streatfeild (1586-1647), surrounded by his network of cousins and kinsmen, in his house overlooking the village street, have made of his nineteenth-century descendant, Henry Streatfeild (1784-1852), owning most of the parish, residing in his remodelled 'castle', isolated from all neighbours by his north and south parks?

This is a striking finding. During the early sixteenth century, conditions favoured the amalgamation of holdings of subsistence dimensions into yeoman holdings of at least 80 acres, perhaps sufficient to provide the owner with the status of a voter. Thereafter, although there was engrossment it was slight, at least before 1670. Given the results of the examination of the land market in Chapter 5, there is no suggestion that those who sold were deliberately restricting the market, but because the market *place* was almost entirely local, and there was no need to look wider, there was effectively a churn in properties among local families. After about 1670, the yeoman holdings were increasingly amalgamated into gentry holdings, but the gentry were local families who had prospered. It would take further research to identify the forces which brought about the change in the eighteenth century which culminated in the very different picture of 1841.

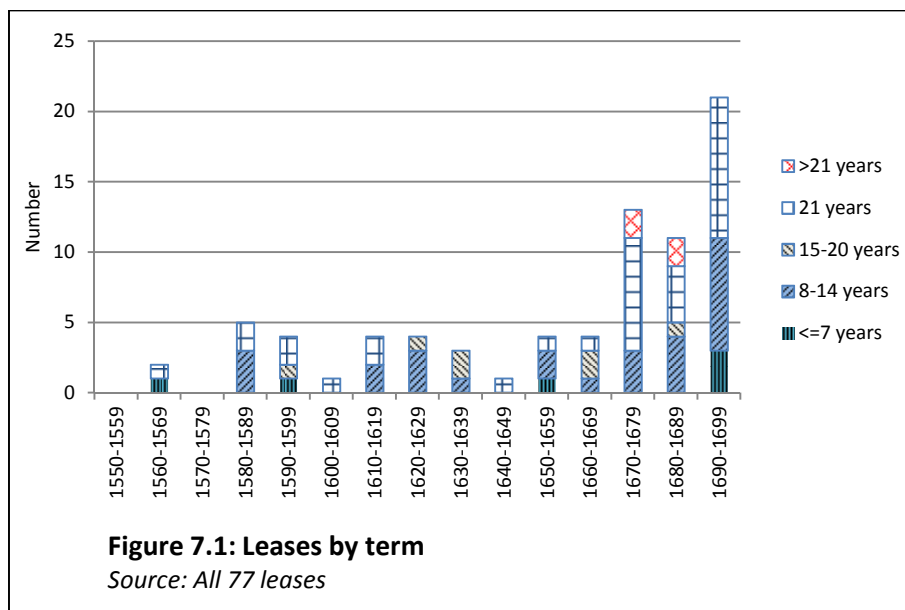
35 J.V. Beckett, 'The disappearance of the cottager and the squatter from the English countryside: the Hammonds revisited', in Holderness & Turner, *Land, Labour and Agriculture*, p.50.

III: The Occupiers

The Evidence for Leasing

Michael Zell concluded from estate records that by the sixteenth century the Weald saw 'an almost universal tendency on the part of landowners to lease out a major share of their holdings', not least because holdings were scattered. This might overly represent gentry estates, but he found a similar position for yeoman estates in the evidence of wills. Quantifying leasing and analysing rents and terms he found impossible from these sources.³⁶ This is done here, albeit on a small database.

We might expect to see a rise in leasing as a consequence of legal change.³⁷ In fact, title deed data for Somerden show the greatest rise from the beginning of the 1670s; seventy-seven leases survive for the period 1550-1700 of which 58% (45) are in the last thirty years (*Figure 7.1*). If this represents the reality on the ground, engrossment rather than legal change seems the probable cause.



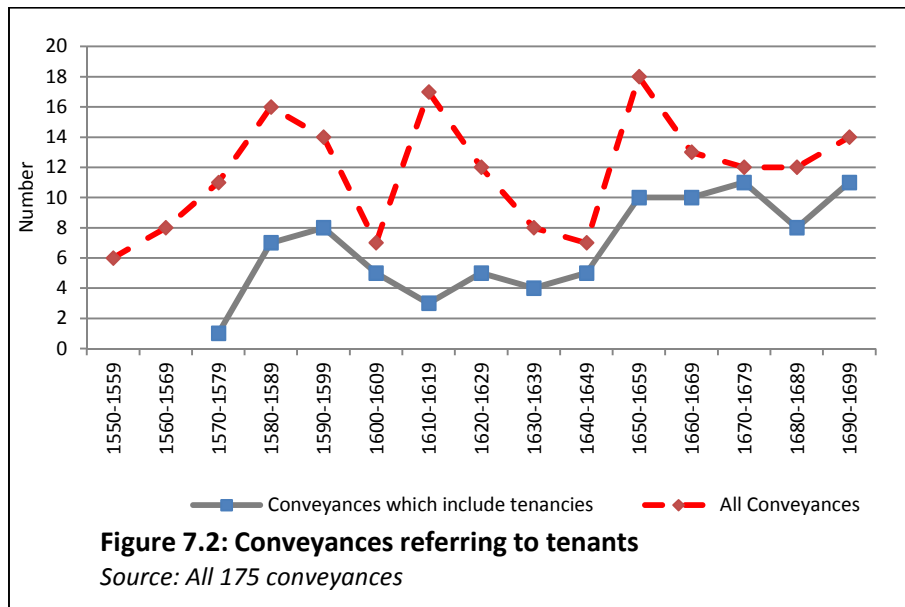
Over the period as a whole, a term of 21 years was most common at 43%. However, shorter terms were more common in the 1610s, 1620s, and 1650s. In the 1640s, only one lease survives. Towards the end of the seventeenth century some even longer

36 M. Zell, *Industry in the Countryside: Wealden Society in the Sixteenth Century* (Cambridge, 1994), pp.37-44.

37 In what follows the term 'tenant' has been used to denote a lessee. The term 'subtenant' is often used in a manorial context to distinguish a lessee from a customary tenant of the manor, but would be confusing here.

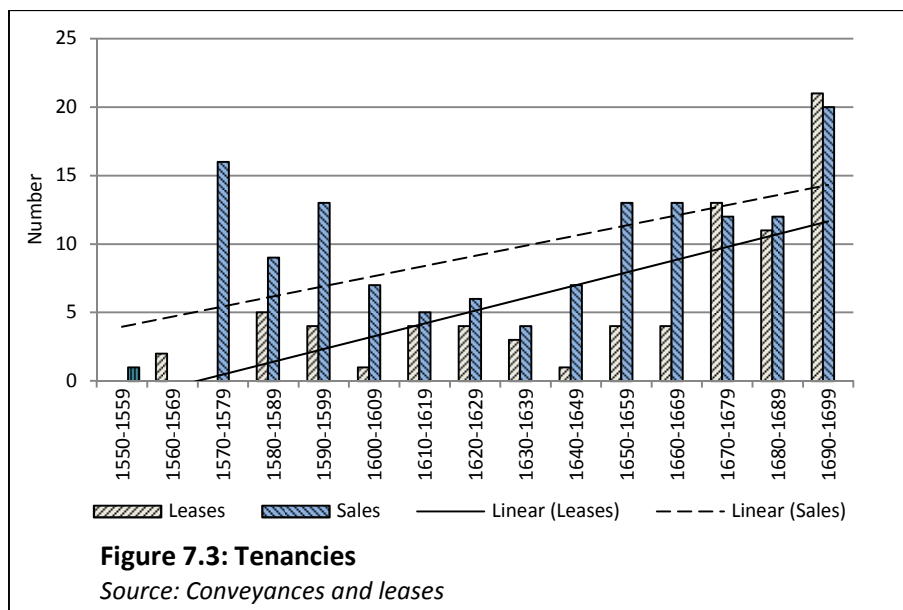
terms appear, but these are exceptional, involving family transactions. *Figure 5.4* in Chapter 5 showed that rents per acre increased over the periods, those over 7s 6d occurring for the first time in the 1610s, those over 10s 0d being half in the 1650s and 1660s, before falling back in the 1680s and 1690s. This suggests that insecurity fostered shorter commitments, and it reinforces the view that prices were static or falling at the end of the period. However, the numbers are small.

The issues of survival are particularly difficult here - why keep an expired lease? - so a second source of data has been added, the naming of existing tenants in sale conveyances. Of these, 50% (88 of 175) refer to tenants, 148 tenancies in number (*Figure 7.2*).



Adding the tenancies from the leases, less duplicates for which the lease referred to in a sale survives, gives 214 tenancies (*Figure 7.3*). These represent 171 tenants, the remaining 43 tenancies being renewals or the leasing of additional property by an existing tenant.³⁸ The date in a conveyance is the date of the sale not the start date of the lease, but the trends are suggestive: the rise in tenancies in sales tracks the rise in surviving leases; a trend line is added for comparison.

38 In two instances, entries for the same name are treated as one but may be different men, so this may be an underestimate.



There are caveats: land held as owner-occupier over many generations would not appear. Equally, tenants are not always mentioned, particularly in the first quarter-century when feoffments are extremely short. Nevertheless, it is notable that apart from the anomalous decade of the 1610s, in at least 40% of sale transactions by number at least part of the land sold was in the hands of tenants. This is over 70% of sales in five decades: the 1600s, the 1640s, the 1660s, the 1670s and the 1690s. From the 1660s onwards the level never falls below 66%. The conclusions are clear; the surviving leases underestimate the actual level of letting, but there was a rise after 1650, supporting the suggestion that the owner-occupier was in retreat.

Considering the question of farm size, it is difficult (as Zell found) to estimate the acreage leased at any one time; however some large-scale tenant farmers are evident. William Streatfeild of Hever leased Delaware and other property totalling over 300 acres between 1663 and 1699 (*Case Study 2, page 46*). Thomas Medhurst leased parts of the Manor of Cowden Leighton (*Case Study 17, page 251*). On a smaller scale, Thomas Wakelin the butcher occurs as tenant of four small pieces of pasture and James Saxby as farmer of Lockskinners (*Case Study 5, page 53*).

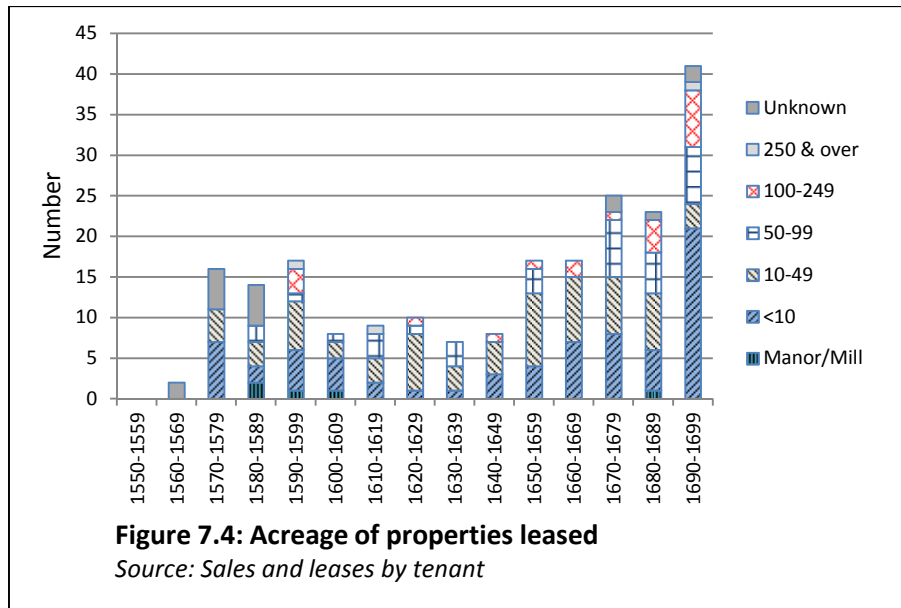


Figure 7.4 shows the acraege in tenancies, by tenant. In 214 tenancies, 5 were for manors or mills, 17 of unknown acraege. Of the remaining 226, 57 were over 50 acres; 135 less than 50 acres. The mean size of properties was 75 acres; both the median and the mode were 60 acres, and this did not change significantly over the period. Of the 171 tenants, 24% (41) can be identified as holding property of their own and the real total is probably more. Some may also have leased from more than one landlord, so farm size is an estimate, but less than 100 acres must have been typical, and after 1670 not only was the level of tenancy increasing but also the size of property leased.

The proportion of each landlord's estate which was leased is also difficult to measure. Sales do not always give acraeges for each tenant, are not usually a whole property, and may in themselves be atypical as the majority of those selling were non-resident or had moved away, leasing the whole property to one tenant. However, two-fifths of sales were of property with more than one tenant. When Lord Burgh of Starborough Castle sold fifteen properties totalling 134 acres to Thomas Willoughby in 1574 they were occupied by eleven different tenants; only four properties were over 10 acres. By contrast, when Thomas Richardson, Lord Cramond, sold his three-quarters share of the Starborough Castle estate in 1668, all 396 acres were in the occupation of two tenants. This is suggestive of an increase in farm size; however, a distinction is to be found between manorial demesne and other land. Delaware was an estate entirely of separate freeholds. When it was sold in 1699/1700 it was occupied by nine

tenants (*Case Study 2, page 46*). These included everything from Adam Farmer with 225 acres in Edenbridge and William Streatfeild at Delaware itself with 150 acres, to John Parker with 4 acres and Widow Blackman with a house: the mean was 94 acres.³⁹

The Evidence for Owner-Occupation

In 1724 only 23% of properties by number were in owner occupation. Backtracking to 1600 presents a challenge. Prior to the Land Tax, the evidence is circumstantial. Naming of owners provides one level of evidence; thus Henry Stanford in 1590 and his son Andrew in 1641 are 'yeoman of Lydens' in their wills. Although we cannot be certain that they did not let out particular fields, portions of meadow, or a cottage, this tells us at least that they were resident on the property. Naming of occupiers provides a second level. Occasionally we are told that a property is 'in my own occupation', usually we have to draw an inference. When Andrew's son died in 1663, he gave a lengthy list of properties with their tenants. No occupier was given for Lydens which was to go to the eldest son, Henry. This suggests he was in occupation himself, supported by the fact that when Henry died in 1679 he was again 'yeoman of Lydens', as was his son, another Andrew, in 1705. It is reasonable to conclude that they were owner-occupiers, although small parts of the holding might be let out at some times. In a similar way, the first leasing of Withers can be traced to 1688 (*Case Study 10, page 131*). Finally, although there are not adequate data to establish the level of tenants (or absence of them) in 1600, thirteen can be specifically identified, and by adding in absentee landlords and properties known to be leased out, it is estimated that at least half the properties were not in owner-occupation.

Johnson found that by the third quarter of the eighteenth century about a third of parishes had no owner-occupiers at all, including some in Kent.⁴⁰ He identified the critical period of change as slightly later, after 1688. The decrease in small owners shown in *Table 7.1* cannot wholly explain this. While those owning property of 100 acres or more rose from 44% to 59%, and these were less likely to be farming their own land, other factors were involved.

Quantifying the level of owner-occupation can never be exact, but inference from this

39 NUL Mi5 162-23; KHLC U908 T76; KHLC U184 T2.

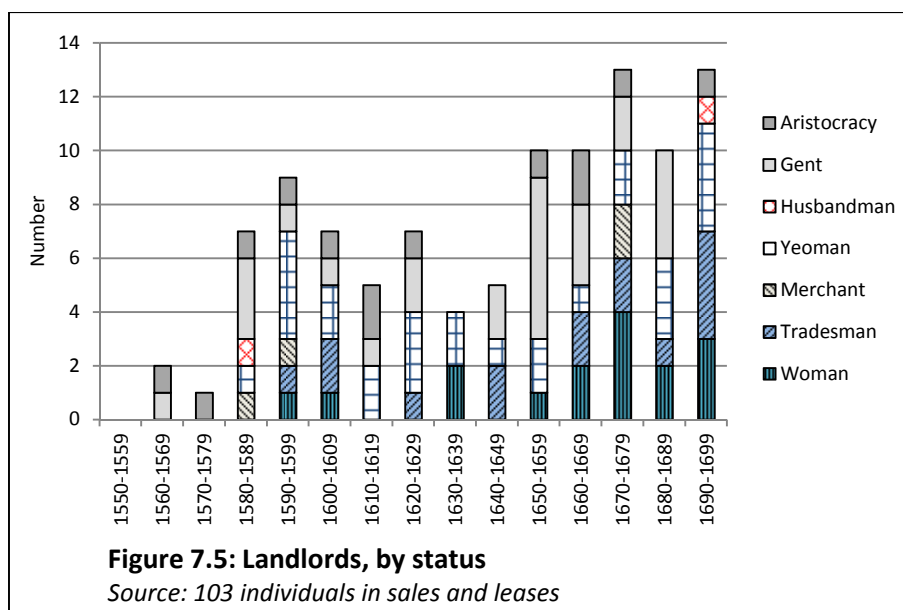
40 Johnson, *Disappearance*, p.135.

is that although leasing was commonplace by 1600, owner-occupation was still significant before 1670, but down to 23% by 1724. While Zell's suggestion that leasing a major portion of an estate in the sixteenth century was 'almost universal' seems overstated, what the data suggest is that by the mid-seventeenth century a significant portion of land was in the hand of tenants. It would be interesting in future research to correlate engrossment and tenancy over the eighteenth century; a close relationship seems likely.

Landlord and Tenant

The Landlord

The 86 sales and 77 leases represent 103 individual men and women as landlords. In *Figure 7.5* these are shown by the date of their first mention, broken down by status. It is unsurprising that 38% of landlords by number were gentry or aristocracy; these would be the landowners who would seldom farm for themselves. There is an element of selection by survival here; many of the surviving leases come from the Streatfeild, Seyliard and Willoughby families, partly an issue of their retention in the family archives, but partly a valid reflection of their relatively large estates.



Of the aristocrats, all were resident in the hundred except the owners of Starborough Castle. Plot size leased averaged over 70 acres, varying from a small piece of meadow

to in excess of 250 acres. Of the gentry, only three were non-resident, one of whom was a Streatfeild heir, Samuel Dillingham (*Case Study 17, page 251*). The average plot size in their leases was 75 acres. Yeomen make up 26% of the individual landlords. The average plot size was 16 acres, including shops, houses, cottages, a mill, a forge, and plots of land varying from less than 5 acres to 76 acres. Perhaps more striking, though understandable, is the high number of women at 16%; the average plot size was again 75 acres. For example, in the 1670s, Anne Dillingham, one of the Streatfeild coheireses, and Mary Northey née Beecher who had inherited after the death of her two brothers in quick succession, leased their own property. Timothea Jemmett, widow of Robert, and Mary Seyliard, widow of Sir John, leased jointure property. Tradesmen make up 15%, 18% if larger enterprise merchants are included. Throughout the period only two husbandmen leased property; one of these was Edward Whistler leasing out Moorcocks which he and his wife had reacquired.

Zell highlighted as drivers of leasing inheritance by minor heirs, retirement, and scattered holdings, plus non-residence. The influence of gavelkind could be seen in the leasing of small inherited plots and the ownership of land by coheirs. A few properties leased were gavelkind shares such as Tye Haw, held by five sons (*Case Study 4, page 52*) or Butt House held by the Lockyer brothers. However, there are only three instances of tenant and landlord being related, and the only one of a man leasing his brothers' shares is at Coles in the early eighteenth century (*Case Study 15, page 183*). The reasons why a landowner would lease his land are usually self-evident. In 66% of cases the landlord was a gentleman, aristocrat, or woman.⁴¹ Among the remainder the most frequent factor was distance, usually when property was received as a result of marriage or inheritance, but the heir was living elsewhere. The next most common reason was that the property was specialist: a shop, forge, or smithy. Some were houses without land, such as those occupied by the parish clerk and schoolmaster Stephen Arnold. The remainder were fields held by tradesmen, and a few plots at a distance from the main holding.

The survival issues makes these statistics tentative, but they are sufficient to show that, while the gentry dominated, landowners of all qualities could be lessors at times.

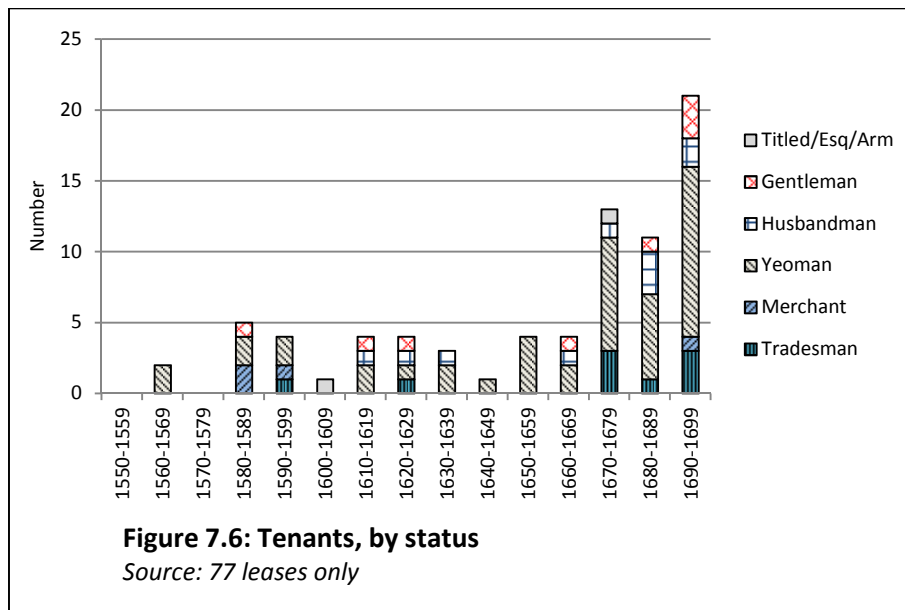
Reasons for letting, in addition to non-farming status, include non-resident inheritance

41 We cannot assume that no woman would farm. Elizabeth Friend was a considerable tenant: KHLC U908 T76.

or specialist function, and multiple ownership by gavelkind heirs. Land held to produce an income was the overarching objective.

The Tenant

The tenants in 86 sales and 77 leases are made up of 171 individual men and women. Leased properties ranged from forge to mill, manor to cottage. In 1587 Thomas Browne leased Canserne forge for £30 a year, in 1592 John Moody the tailor leased a shop in Chiddingstone for 28s.⁴² In 1615 Thomas Walters leased the demesne of Chiddingstone Burwash for £50 a year, in 1619 Silvester Streatfeild leased Hemp Land for 5s 0d.⁴³ The highest value was William Streatfeild's lease of Delaware; the price was £180 in 1663 with 339 acres, £190 when renewed in 1676 with 349 acres.⁴⁴ Such leases were commercial in nature, and possibly the tenant was the highest bidder, though protection of land value would be important.



Only the leases give status, so *Figure 7.6* shows the tenants of the leases only.

The yeomen represent 57%, and husbandmen 14%, but gentry and aristocracy are 11%, and merchants and tradesmen 18%. The aristocrats and gentry were leasing small additional plots of land, ranging from a single house to 143 acres, the yeomen

42 KHLC U908 T461, T7.

43 KHLC U908 T55, T18.

44 KHLC U908 T48.

leased everything from a cottage to 349 acres, the husbandmen leased a more modest 20 to 85 acres, and the tradesmen up to 45 acres.

One of the men designated 'merchant' in this analysis was an apothecary returning to his native parish, aged about 50. This was Richard Tichborne leasing Crippenden from his older brother, John, who was living elsewhere and had no sons (*Case Study 6, page 93*). Of the tradesmen, three were renting cottages, one a shop with ten acres of land, one was the palemaker George Hunt renting a coppice called The Elvens. The remaining tradesmen were builders - carpenters, bricklayers, joiners - and were probably using the premises primarily for materials: Claycrofts speaks for itself.

Of the tenants, 25 appear more than once; either new or additional property was being leased, or a lease on an existing property was being renewed, or the tenant appears in multiple sales of the same property. Tenants who appear multiple times (four or more) include John Floyd for Polefields in Cowden and later Wat Stock in Chiddingstone, over twenty years, Thomas Medhurst for four different properties in Cowden over thirty years, Giles Nicholls for Funks as the shares were sold over ten years, James Saxby for Lockskinners over twenty-five years, and Thomas Wakelin, the butcher, for several small pieces of pasture. There is little evidence of physical mobility here; typically the tenant was resident on an owned or tenanted farm and was adding a few acres, or taking on a larger enterprise. Typical of the latter was the large tenant Adam Farmer who leased Skinners in 1673 and Bellmans in 1698; the properties were adjacent and he was still the tenant of both, over 300 acres, in 1699.⁴⁵ The most prominent tenant was William Streatfeild, who appears four times as tenant of Delaware and three times as tenant of extra land in Hever and Edenbridge, including four renewals.

It would be misleading to suggest that large-scale tenants like William Streatfeild were a phenomenon of the late seventeenth century. *Case Study 17* on page 251 shows the history of the Manor of Cowden Leighton. When sold in 1591 the demesne land of 280 acres was leased to only two tenants, the Wickings and Saxbys, both fathers and sons. The Wickings occupied 173 acres of land, including Mapletrowes, Huckfields, and eight other parcels of land. The subsequent history of one of these, Huckfields (50 acres), is

45 KHLC U184 T2, U908 T58 & T59.

shown in *Case Study 18* on page 252. Sometimes it was leased with Mapletrowes, sometimes as a separate property. The Saxbys were members of an extensive family in Cowden. A week after the Streatfeilds had purchased the manor, they sold to another John Saxby a portion of the demesne land occupied by the Wickings, which then became known as Saxbys, while Saxbys occupied by Hugh Botting became known as Bottings.⁴⁶ Such are the pitfalls of historical reconstruction.

Broad's work on the Verney estates at Claydon suggests that the landlords sometimes deliberately found tenants from outside the area.⁴⁷ Omitting the period 1550-1600 when it is not likely that parents could be identified, the number of tenants in the data was 141. 90 tenants were identifiably local. 51 tenants were not, but of these a number must have come from nearby parishes; Shaw-Taylor and Wrigley make the point that migration in this century was still largely local.⁴⁸ An example from the 51 was John Floyd, tenant of Polefields in Cowden and Wat Stock in Chiddingstone. He and his brother Isaac, later tenant of Liveroxhill, were probably the sons of John Floyd of Hartfield (partly in Cowden parish) who married in Penshurst in 1656, but their christenings have not been identified so they have not been categorised as local.

In summary, the tenants cover the whole range from tradesman to aristocracy. Leaseholders may have been less secure than freeholders, but this supports work on copyholders that they were not a class apart in wealth or status from owners.⁴⁹ Leased property ranges from small additions to an existing farm, or a source of timber for a craftsman, to a major farming enterprise. Were a minimum size such as 10 acres to be set as a 'farm', this would risk including the woodland trades, and taking more would exclude the smallholder.

46 KHLC U908 T3.

47 Broad, 'Fate', p.330.

48 L. Shaw-Taylor & E.A. Wrigley, 'Occupational structure and population change', in R. Floud, J. Humphries, & P. Johnson, eds, *The Cambridge Economic History of Modern Britain Volume I, 1700-1870*, 4th edn, (Cambridge, 2014), p.81.

49 Rhodes, 'Subletting', pp.75-78.

Case Study 17: Manor of Cowden Leighton ⁵⁰

Gavelkind Freeholders and their Dues : 1591			
<i>Property</i>	<i>Holder</i>	<i>Rent</i>	<i>Hens</i>
Clayden	Frances Saxby	5s 0d	
South Lands	Heirs of William Gainsford	1s 1d	1
North & South Lands and Wick Mead	Henry Saxby	1s 3d	
Gate Lands	Matthew Turner	9s 7½d	2
Crippenden and The Marles	John Tichborne	6s 6d	1
Ludwells	Thomas Browne	3s 0d	
The Park	William Turner	1s 0d	
Polefields	John Wickenden	1s 0d	
Ivy Lands	John Bowling	7s 6½d	2
Saxpes and Parryes alias Clarkes	Hugh Botting, gent	5s 8½d	4
Pieces of Ludwells and meadow	Thomas Wickenden	0s 9d	
TOTAL		42s 5½d	15 hens

Demesne Lands and their Leasehold Tenants: 1591					
Thomas Wicking and Son	173a.	Mapletrowes, Huckfields, Cox Lands, The Deans	John and Henry Saxby	105a.	The Sernes, The Riddens, The Lords Hill and other lands

Brief History

- 1550 Property of Lord Burgh through his grandmother Anne Cobham.
- 1582 Sir John Burgh, second son, mortgaged to John Mabbs for £500.
- 1587 Death of John Mabbs, mortgage descended to son John.
- 1591 Sold by Sir John Burgh to Henry Streatfeild, yeoman, and his son Richard, for £610.
- 1601 Devised by Richard to his second son, Thomas.
- 1613 Widow Lady Katherine Burgh disputed title to the property. This ended only with her death in 1622.
- 1616 Death of John Mabb the son; mortgage accrued to his widow Anne.
- 1627 Devised by Thomas to his four daughters, Frances, Jane, Dorothy & Anne, in common.
- 1631 Anne Mabb devised mortgage to her daughter Abigail. Son-in-law Thomas Payne, goldsmith, obtained an extent.
- 1635 Mortgage had to be repaid to Payne.
- 1682-1726 The four shares were sold to Henry Streatfeild.

Quarter Share of Frances (c.1616-c.1690)

1682 Sold her share to Henry Streatfeild.

Quarter Share of Anne (1627-1703)

1703 Death of Anne, inheritance by son Samuel Dillingham, with quarter share of Jane.

Quarter Share of Jane (1621-1699)

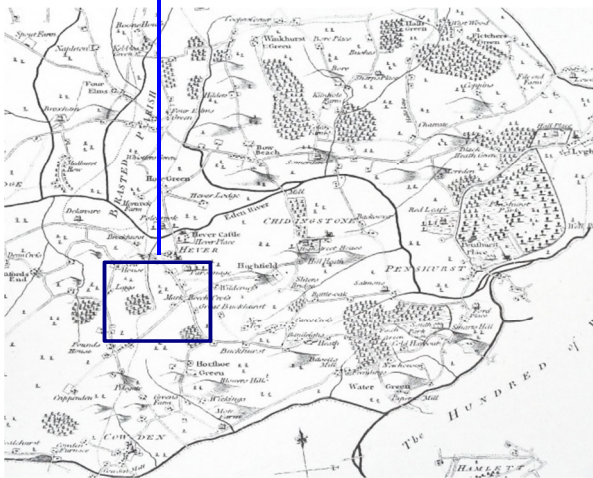
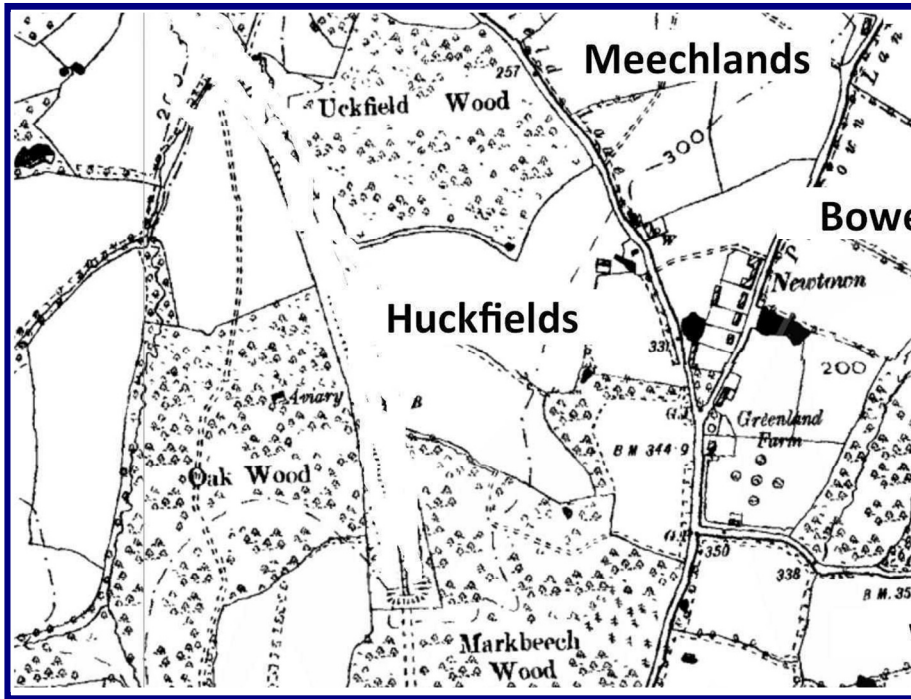
- 1699 Jane devised her quarter share to her daughters for life, then to her nephew Samuel Dillingham, and if he died without heirs to her half-brother's son, John Seyliard of Salmons.
- 1725 Samuel died without heirs.
- 1726 John Seyliard, now of Pendhill, sold to Henry Streatfeild.

Quarter Share of Dorothy (c.1623-1682)

- 1668 Dorothy Powell mortgaged her share of Mapletrowes, Huckfields, and other land for £180 to cousin Stephen Streatfeild for three years. Not repaid.
- 1679 Dorothy Powell remortgaged with the manor and other land for £400. Not repaid.
- 1684 Mortgage assigned to Henry Streatfeild for £418 3s 6d.
- 1685 Dorothy Powell sold her quarter share to Henry Streatfeild with other lands and manors.

50 KHLC U908 M66-M80 & M86 (1620-1717 mostly missing), T3, T18, T267, E7, L33.

Case Study 18: Huckfields, Owners and Occupiers ⁵¹



Brief History

50 acres with no house.

- 1591 Sold by Lord Burgh of Starborough Castle to Richard Streatfeild with current lease to 1599 to Thomas Wicking father and son, with Mapletrowes (67a.) and other land (56a.) for £10 p.a. and 4 capons.
- 1601 Richard Streatfeild devised it to son Thomas.
- 1617 Extent of land owned by Lord Burgh in 1595, as part of litigation. 50a., valued at £5 p.a. (Mapletrowes valued at £10 p.a.)
- 1622 Leased to John Willard the elder for 10 years at £9 10s 0d and two capons p.a. for 50 acres.
- 1627 Thomas Streatfeild devised it to daughters in coparceny; thereafter in shares into 18th century.
- 1649 Leased to William Piggott with Mapletrowes (67a.) and 57 acres in Cowden, all at £56 p.a.
- 1652 Leased to John Wickenden for 21 years.
- 1674 Leased to Thomas Medhurst for 21 years at £16 10s for 50 acres.
- 1696 Leased to Henry Bannister for 21 years at £16 10s for 50 acres.
- 1841 Owner Edward Waldo, occupier John Collett

IV. Gavelkind and the Pattern of Land Ownership

The Kinship Hamlet

One feature of land ownership attributed to gavelkind was a pattern of small settlements occupied by groups of coheirs, sometimes holding in common.⁵² Jolliffe said that compared to the Midland system, *'the hamlet expresses in a single-field system the opposite qualities, freehold right, tempered by the close association of a peasant group which is primarily a group of coheirs.'*⁵³ South Chiddingstone is an example, dominated by the Ashdowne, Combridge, Woodgate, Streatfeild and Piggott families: Maps 2, 3 and 4.

In 1600 three brothers, Anthony, Oliver, and Andrew Combridge, held respectively Newhouse alias Harts, Hawden, and Coldharbour. Bramsells, Keysden, Knights, Frienden and Walters Green belonged to two cousins, Andrew and Robert Combridge. By 1700 the Combridge property was reduced. In 1673 Newhouse passed out of the Combridge family when the holder, another Oliver, died leaving only three daughters. Hawden remained in the family until the early eighteenth century. Coldharbour was divided between the sons of Francis Combridge in 1689. Bramsells, Keysden and Knights passed to the Woodgates in 1602, settled on Andrew Combridge's only child Joan when she married William Woodgate, and Frienden passed to them on the death of Andrew in 1624. The Combridge family had disappeared altogether by 1841.

The Woodgates expanded their property over the period. In 1600 Woodgates, Oakenden and Skipreed at Rendsley Hoath belonged to John Woodgate. Truggers belonged to a cousin, Peter Woodgate, and Wat Stock to Peter's sons, inherited from his brother Thomas. When John Woodgate's son married Joan, daughter of Andrew Combridge of Frienden, her sons inherited Andrew's property, but when the younger, Thomas, died in 1656 he left his property not to his Woodgate nephews but the sons of his sister, married to Robert Streatfeild of Chested.

In 1600 the Streatfeilds held Skinners and High Street House, with much of the

52 J.E.A. Jolliffe, *Pre-Feudal England: The Jutes* (Oxford, 1933) p.13; G.C. Homans, 'Partible inheritance of villagers' holdings', *ECHR* 8 (1937-8), 48-56; 'Rural sociology', p.42; W. Lambarde, *A Perambulation of Kent*, (1570), pp.7-8; A. Everitt, *The Community of Kent and the Great Rebellion 1640-60* (Leicester, 1966).

53 Jolliffe, *Pre-Feudal England*, atp.13.

property between the latter and the river. They also held Chested. Scotland Reed, Puckden, Buskhopes, New Tye, Chiddingstone Burwash and Tyehurst were part of Lord Burgh's property, mortgaged to Richard Streatfeild. When the mortgage litigation ceased, Richard's sons divided the property. In the meantime Lockskinners had been purchased from the Seyliards, Stones Land from the Everests and Tye Haw from the Combridge daughters. Larkins was acquired by marriage from the Ashdownes. Later acquisitions including Gilwyns purchased in 1700, Highfields in 1711, Withers in 1713. The three manors of Tyehurst, Chiddingstone Burwash and Chiddingstone Cobham were amalgamated in one block and shares in Cowden Leighton reunited. Truggers and Geers were acquired in 1759, Sliders Bridge in 1761, Salmons in 1774, Batts in 1794, Lew Cross in 1798, Skipreed in 1808 (*Case Study 19, page 256*).

In 1600 John Ashdowne held Batts, Biltons, and Low Buckhurst, inherited from his uncle with Bridge Fields and The Ryes. His first cousin Henry held Larkins, Gilridge, a house in Chiddingstone Street and the land behind, Martins Field and Kitchen Croft. By 1700 Henry's property had passed to the Streatfeilds and the Woodgates, but his grandson had acquired Pigdens, which later became the portion of his illegitimate granddaughter. The property of John continued in the family until the early eighteenth century.

The fifth family was the Piggotts. Withers, Lew Cross alias Sheppencrofts, Sliders, and Riddens belonged to the three sons of Henry Piggott, described in [Chapter 2](#). In 1700 their property had descended to two cousins, but passed out of their hands early in the eighteenth century when they were concentrated in Lingfield, most were sold, but Sheppencrofts alias Lew Cross passed into the Constable family by marriage.

The kin connections between these four families are almost too numerous to describe. William Woodgate married Joan Combridge. Thomas Woodgate's widow, Abia, had married to Anthony Combridge as her third husband. John was married to Joan Combridge, sister of Anthony, Oliver and Andrew. The sister of the three Piggott sons married the eldest son of Peter Woodgate of Truggers. All these families were grouped around Rendsley Hoath. Not all the properties were held by this network of cousins. Robert Lands, Gilwyns and some other small properties belonged to the Seyliards of Delaware. Salmons was held by Kenelm Willoughby, grandson of Bridget Rede, and occupied by his brother Christopher. It was later sold to John Seyliard (*Case Study 12,*

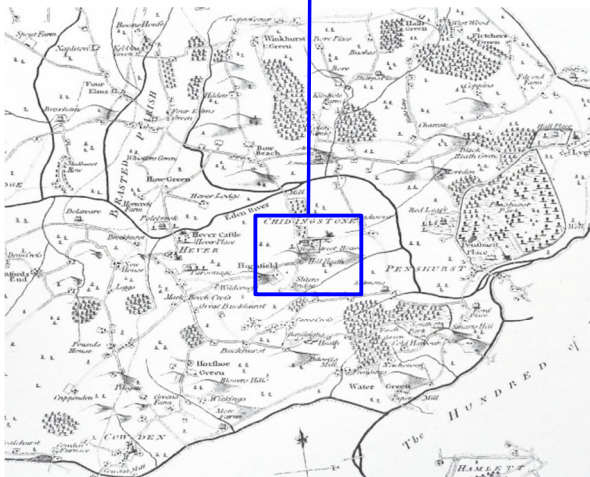
page 146). Little Buckhurst was owned by the Luck family and rented out, but the current owner Richard Luck of Penshurst was the grandson of Richard Streatfeild of Chested. By 1700 the extension of the Woodgate and Streatfeild properties is clear on *Map 3* and had taken place at the expense of the Combridges and Piggotts, the Willoughbys and Lord Burgh.

Holding in Common

A second characteristic of gavelkind land-ownership, part of the social system described by Jolliffe and Homans, is holding in common. In South Chiddingstone this was usually found among, but not confined to, coheirs who were minor sons or daughters. In 1600 the Piggott property was held by three sons while the two younger sons grew to their majority (*Case Study 10, page 131*). After the death of Henry Ashdowne in 1602 his property was held by his grandsons until partitioned in 1615. Hawden was held by Christopher Combridge's grandsons until 1673 when Oliver married at the age of 22; his brother was then 19. Much of the Streatfeild property was held by the four daughters of Thomas Streatfeild (d.1627) before being reacquired by the elder branch of the family (*Case Study 19, page 256*).

The ubiquity of shares, divided or undivided, was shown in *Figure 5.10*. Where the land was held in common, undivided, the length of time held was not significantly different from other inherited land: shares as a percentage of all sales were 16.7% in the first ten years, 21.1% at 11-20 years, 37.5% at 21-39 years, and 25% over thirty years. Of 44 conveyances of recently inherited property, the average length of time held was nineteen years, for purchased land it was twelve, but perhaps the most comparable figure is for land previously settled, where the average holding was eleven years.

Case Study 19: High Street House, A New Gentry Estate ⁵⁴



1709 Henry of High Street House paid tax on ten properties in Chiddingstone, and four cousins held other property.
 1841 Henry Streatfeild held 26 properties and four manors in the hundred and more elsewhere. No cousins in the hundred.

Brief History

1598 Henry Streatfeild of High Street House died, having given portions to three daughters and land to his only son, all now married.

1601 Richard Streatfeild, yeoman, devised High Street House and lands and 2 properties to eldest son Henry; a tannery & house to second son Silvester (who died childless); Manor of Cowden Leighton to third son Thomas (*Case Study 16, p.199*). Mortgage from Lord Burgh to be divided, or each to have a manor; £300 to daughter Margaret, all at age 21. They were aged 15, 13, 11 & 9. Lands for *life* as wife Anne's jointure. Inventory included iron in a forge and two furnaces.

1602 Anne remarried to William Birsty of Hever: see *Case Study 4, p.50*.

1647 Henry Streatfeild, gent, died intestate, but had made settlements of land on his children in 1636, 1644 & 1646. Eldest son Richard received High Street House, daughter received Bramsells (30 acres). Inventory £648.

1676 Richard died; land had been settled on son Henry. Sons William and Thomas who had received their mother's property now given £200, purchased land left to Robert and £650 to John. Alice had received £500 on her marriage to William Woodgate in 1663.

Morcellation or Engrossment

The main accusation made by opponents of gavelkind was that it led to successive subdivisions of property. This was not a phenomenon limited to Kent: Paul Glennie, in his study of the Lea Valley, found that intra-family transfers had a fragmenting effect, and extra-family ones a consolidating effect, perhaps unsurprisingly.⁵⁵ However, this depended on economic conditions, as Hipkin's study of the Romney Marsh area illustrates.⁵⁶ As Bruce Campbell has said of an earlier period: '*under conditions of economic expansion, rising prices, and increasing population, land markets were as, if not more, likely to lead to the morcellation as to the engrossment of holdings.*'⁵⁷

Although the inheritance strategies of the yeomen in this study tended towards division, the demographic effects offset this to the point that successive divisions are seldom found. During the period a number of properties were partitioned and divided. Some were held in common by a number of parties. None in the sample supports the accusation that property came to be held by numerous parties; there is a passing reference to a twelfth part of a piece of land at Chested in 1555, and over the parish boundary in the small parish of Ashurst there is one example of a property, Leggs, being held by nineteen parties; the Turner family of Leigh subdivided their property in the eighteenth century to a position where there were multiple shares.⁵⁸

Part of this criticism was that it led ultimately to sale. That partitioning did not automatically lead to loss is shown by Henry Piggott's elder sons, who took a third share each of Withers; all five sons prospered. Of course, there are cases where a property which was partitioned *was* lost: John Hollamby of Coles, who on his father's death in 1701 succeeded to only a third share of Coles, took out a mortgage which was not repaid until the property was sold on his death nearly fifty years later (*Case Study 15, page 183*). Thomas and William Everest sold their shares after the partition of Lockskinners (*Case Study 5, page 53*). There is no single cause; John Hollamby took over at a time of low prices, Thomas Everest died before he could establish himself. A small sample of this nature tends to highlight the individual circumstances, but

55 P. Glennie, 'In search of agrarian capitalism: manorial land market and the acquisition of land in the Lea Valley, c.1450-c.1560', *C&C* 3.1 (1988), p.20.

56 Hipkin, 'Structure of landownership', p.75.

57 B.M.S. Campbell, 'Land Markets and the Morcellation of Holdings in Pre-Plague England and Pre-Famine Ireland', in Béaur et al *Property Rights, Land Markets and Economic Growth*, p.198.

58 KHLC U908 T177, T240, U1986 T2, T13, T22, T30.

dependence on agriculture alone has always been risky.

The partition deeds in this study represent forty-six portions or shares. Looking at these, the number which were sold shortly thereafter is surprisingly small, given that one motive for a formal partition would be to facilitate sale: *Table 7.3*.

	Sale	Settlement	Inheritance	Union	Partition	Mortgage	Unknown	TOTAL
1550-1559				2				2
1560-1569								0
1570-1579			3					3
1580-1589		1	2					3
1590-1599								0
1600-1609		1	2					3
1610-1619			1			1		2
1620-1629			3	2		2	1	8
1630-1639	1		1	1				3
1640-1649			2					2
1650-1659			1			3		4
1660-1669								0
1670-1679		2	3	1			1	7
1680-1689	2		3		1	1		7
1690-1699	1					1		2
TOTAL	4	4	21	6	1	8	2	46
%	8.7%	8.7%	45.7%	13.0%	2.2%	17.4%	4.3%	100.0%

The next transaction for 54% (25) of the shares was descent by inheritance or settlement, 13% (6) were reassembled by purchase or death of the other party, 9% (4) were followed by a sale and 17% (8) by a mortgage. The sole partition which was followed by another was not a subdivision but the opposite: the reapportionment of

the share of one of the Jemmett daughters.⁵⁹ Not shown in this table is the long-term fate. 15% were sold within ten years, 30% within thirty years; over 40% were still in the same family's hands over a hundred years later. A small number, 13%, cannot be dated, usually because of a dating gap in the record.

This is a complex picture, however. In the first place, only a minority of the partitions divided a single property. The examples of Lockskinners or Swaylands, divided even as to the house, are exceptional ([Chapter 2](#)). Most represent the allocation of parcels of land which might or might not be farmed together. A typical example is the partition in 1689 by George Johnson's married daughters: Mary Goatley and her husband took a property in Molash (East Kent), a property in West Peckham, and Shernden in Edenbridge with thirteen acres, while Jane Stevens, widow, took a house called Mustards, a croft called Lord's Garden, a piece of meadow in a common mead, a house called Paradise and a piece of meadow called Shoebridges Croft, all in Edenbridge and Hever. These small properties were occupied by eleven tenants, in addition to the parties themselves. The division, sale of individual fields and plots, realignment and renaming make it impossible to do other than give an approximate analysis of fate. Of those in *Table 7.4* where sale was the next transaction, one was Mary Goatley's share, 51 years later. One was a property of John Reddich the profligate ([Chapter 6](#)), one was Tye Haw (*Case Study 4, page 52*) which was probably partitioned exactly in order to effect a sale, and the fourth was a part share of Bassetts Farm in Chiddingstone, sold six years later (*Case Study 7, page 94*).⁶⁰

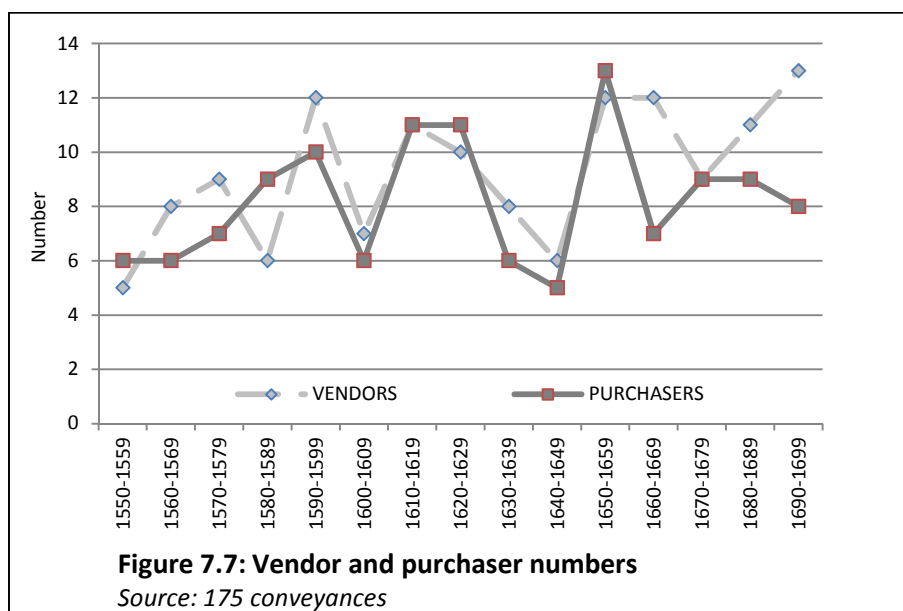
Figure 7.7 shows the number of individual men and women who were selling and purchasing, analysed by the date of their first transaction. During periods of fragmentation one would expect to see that purchasers exceed vendors; during periods of engrossment vendors would exceed purchasers. In fact there is a fairly steady state except for the 1580s and 1590s when there is a trend towards engrossment, and a slightly more obvious trend in the period after 1670. This is entirely consistent with the evidence in this chapter. To prevent fragmentation, one or more sons might purchase the shares of the other brothers. The Dixon brothers each inherited a sixth

59 KHLC U908 T16.

60 KHLC U908 T193, T22, T74.

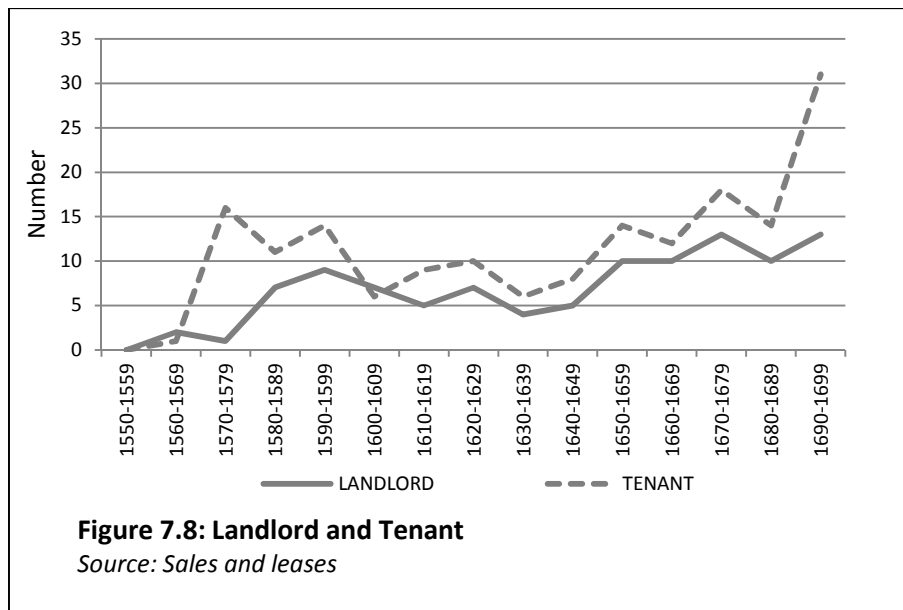
share of Funks Farm and gradually sold to their eldest brother.⁶¹ Although this is commonly cited as a means of preventing fragmentation, in fact there are few examples. More common was for a son with a portion to buy a small piece of an estate and build on it. In this way William Webb bought a three-quarters share of Edenbridge Mill in 1685, mortgaged it immediately, and purchased the remaining quarter share two years later, (Chapter 5).⁶² The figures in Section III do not indicate a rise in the size of acreage leased, in farm size. To investigate this, *Figure 7.8* shows the relationship between landlord and tenant. Engrossment of estates should show as a rise in tenants per landlord, increase in farm size by a reduction in tenants per landlord. The former is seen in the 1570s, 1580s, and 1590s and in the 1680s and 1690s, supporting other findings.

The conclusion must be that engrossment of ownership was taking place in the late sixteenth century and at the very end of the seventeenth. However, it was a slow process; there was beginning to be a loss of mid-sized holdings, particularly after 1670.



61 KHLC U1823/1 T12.

62 KHLC U908 T171.



One man's gain was another's loss. Kentish men strenuously denied the charge that gavelkind caused immiseration, and they had reason: it presupposed that the community was dependent on agriculture. In Somerden this was an outdated notion before 1600; where the seventeenth century differed from previous ages was in the growth of employment in the secondary and tertiary sectors (*Table 3.2, Chapter 3*).⁶³ Even those who were farming as their sole occupation were doing so at least in part for the market; Thomas Willoughby's cattle sales were mentioned in *Chapter 3*.⁶⁴ As Johnson said, here: 'the modern capitalist had already appeared'.⁶⁵ Even a small piece of land was a commercial asset which could be used as security for a marriage settlement (*Chapter 4*), or for the raising of capital for an apprenticeship or business (*Chapter 6*). Those sons who took a small share of a family holding were able to lease it for income. Numerous sons went to one of the emerging local towns or to London to pursue a trade. Alternatively, they could rent an additional small acreage and invest in intensive crops; in fact, the tendency to small holdings must surely have encouraged gradual investment in these cash crops, offsetting any immiserating effect.

What is obvious is the complexity of this process: demography, personal attributes, economic and political trends, not forgetting luck, all played their part in the fate of men with small holdings. The research has produced examples of the failure of a

63 Shaw-Taylor & Wrigley, 'Occupational structure and population change', p.83.

64 Zell: *Industries in the Countryside*, p.105; J. Thirsk, *England's Agricultural Regions and Agrarian History, 1500-1750* (Basingstoke, 1987).

65 Johnson, *Disappearance*, p.75.

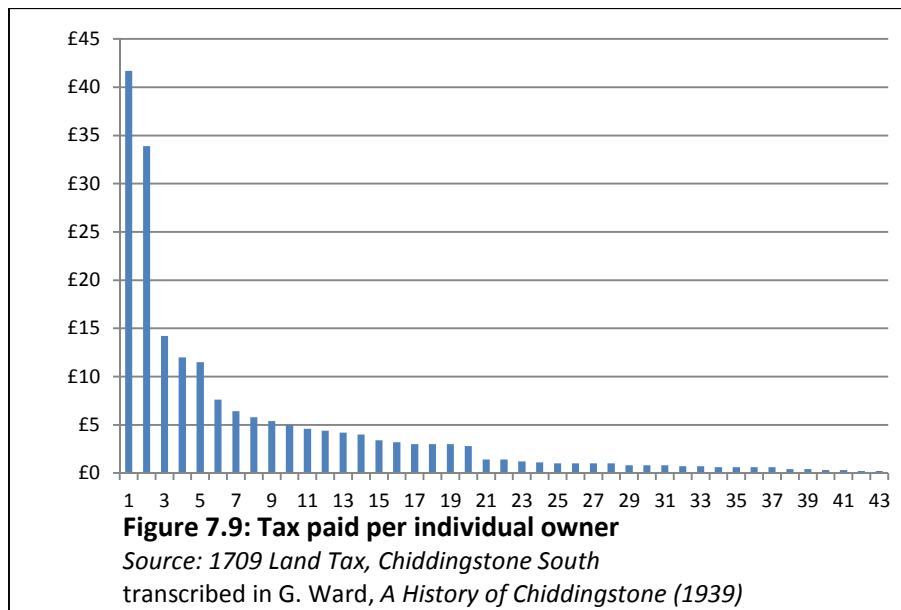
significant land owner through profligacy or lack of heirs. Evidence for heirs of small shares going into farm service is slight, but there are undoubtedly those who declined in status from yeomen to husbandmen. That the level of non-landowning poor was high is also probable; the continuity of leading families disguises a larger shifting population. The same principle must have applied where sons were bequeathed a cash portion rather than land. There are few examples of the smaller men buying land and rising through that means, but many who prospered through trade, such as the merchant younger son, John Seyliard (1588-1666) (*Case Study 12, page 146*). Overall, the commercial nature of society prevented the fragmentation of holdings to the point of immiseration.

Social Stratification

Estates might be smaller and landowners more numerous than elsewhere, but by 1600 there was already considerable social stratification, which increased towards the end of the seventeenth century (and was endemic by the nineteenth).⁶⁶ The land tax of 1709, based on 'raw' tax data, despite the difficulties of identification and interpretation which it presents, is an indicator of relative wealth.⁶⁷ The results for Chiddingstone South are shown in *Figure 7.9*. The two dominant landowners, Henry Streatfeild and William Woodgate, were quite separate from the rest of the owners, paying between them 38.5% of the total tax. Below this were three owners who paid more than £10. Five paid £5 or more. Ten paid between £2 and £5. The remaining 23 paid under £2. Some smaller owners were out-bonders, but the majority were local cottagers, craftsmen and smallholders. The figures support those for 1700 in *Table 7.1*: the top two landowners then held 29% of the acreage and now pay 39% of the tax, the next six held 30% and now pay 29%, the next five held 15% and now pay 12%. Although some families owned properties elsewhere, this does not alter the fact that in Chiddingstone South a small handful of families dominated, if not yet on the scale of 1841.

66 Whittle, *Agrarian Capitalism*, p.307. Barry Reay's work on labourers is drawn from *East Kent: The Last Rising of the Agricultural Labourers: Rural Life and Protest in Nineteenth-Century England* (Oxford, 1990), *Microhistories: Demography, Society and Culture in Rural England, 1800-1930* (Cambridge, 1996), and *Rural Englands* (Basingstoke, 2004).

67 D.E. Ginter, *Measure of Wealth: The English Land Tax in Historical Perspective* (London, 1992); 'Measuring the decline'.



In [Chapter 3](#) it was shown how a relatively small proportion of the population was sufficiently settled in the community for numbers of children to be registered in one of its parishes (*Tables 3.1 and 3.2*). Looking at Chiddingstone more closely, the christening registers for 1650-1699 record 179 surnames. Less than a third appear as owners or tenants in the 1709 land tax or the property records for the relevant years. These are, of course, family names not individuals, but it does suggest that the wage-earning class was a large one. *Table 3.3* gave occupation data for Chiddingstone burials in 1679-1699, where yeomen were 22% of the male population, husbandmen 30% and tradesmen 30%: labourers were few, husbandmen and craftsmen many. This does not suggest a 'capitalist' social structure: the picture is more in keeping with Whittle's observation on sixteenth-century Norfolk: the division was between lords, yeomen and a varied group of smallholders and servants rather than landlord, tenant and labourer.⁶⁸ Yeomen dominated land-ownership and were at least a fifth of the population overall.

Putting all the records together from the preceding chapters, it can be estimated that by the second half of the seventeenth century only a third of male Somerden residents held any property as owner or occupier, excluding 'out-bonders' who live outside the parish. About a third more were tradesmen, and a third must have been in Whittle's group of smallholders and servants, dependant on wages but not yet wholly so. This

68 Whittle, *Agrarian Capitalism*, p.313.

supports Chalklin's estimate that *'two-fifths of the people may have been landless or occupied holdings insufficient to maintain themselves and their families'*.⁶⁹ By 1709 the yeoman class, while still dominant, was holding less property. But the yeomen family continuity remained, and it was this that had changed by the nineteenth century.

69 Chalklin, *Seventeenth-Century Kent*, pp.68-71.

V. Summing Up

This chapter has looked at the structure of land ownership, and found results that confirm the suggestions in Chapter 5 that the second half of the seventeenth century saw the size of land holdings increasing, at the expense initially of the 50-99 acre holding, then those of 5-49 acres. By 1709 two owners had far outstripped their neighbours, and by 1841 one owner held the bulk of the southern part of Chiddingstone parish. Up until 1700 the majority of the families of 1600 were still in place, the networks of cousins had increased; by 1841 they had disappeared, and the yeoman with them.

The exact proportion of land which was leased rather than owner-occupied is difficult to assess from the available sources for the sixteenth and seventeenth centuries, but leases were commonplace. From the proportion in sales, it is likely that by the seventeenth century this was approaching half; by 1724 it was over three-quarters.

Landlords from the gentry were prominent, but they came from all walks of life. This was also true of the tenants, although the nature of their properties varied, the husbandmen on the whole leasing smaller properties, and the tradesmen shops, cottages and land to provide materials. If the tenant was conspicuous, the labourer is less obvious from the records, disguised by the incidence of 'husbandmen' who could be tenants or wage labourers.

The nineteenth-century position as described by Whittle was not the culmination of a process, however. In the small parish of Cowden, the 1841 Tithe Award shows that fifteen people owned 89% of the acreage of the land, and the mean farm size, excluding cottages with under five acres, was 110 acres, but the process did not end here. By 1941 this size of farm would have been considered small; 500 acres would have been desirable. In 2016 a farmer fifteen or so miles to the north spoke of the loss of the lease of a 500-acre farm; it left him only 5,500 acres.⁷⁰ The 500 acre farm in 1900 would have employed at least ten men; by 2016 the 5,500 acres was farmed by a handful of contractors with large machinery.⁷¹ There has been a progressive

70 Personal communication.

71 A local farm of 200 acres in 1950 employed seven men in addition to the farmer and his son: a cattle man, a shepherd, a carter (horse man), two tractor drivers, and two general farmhands. There were seven cottages.

enlargement of farms since the middle ages and it is continuing; on this long view any definition of capitalism based on farm size looks arbitrary; one based on labour fails to meet the reality of mechanisation.

Chapter 8 draws these strands together to suggest what the data from Somerden can offer to the debate on the land market and changes in society in the period 1550-1700.

CHAPTER 8 : CONCLUSIONS

I: Introduction

Despite extensive discussions of the role of land tenure in the economy and society of early modern England, and specifically of partible inheritance, there has not to date been a detailed study of how Kentish gavelkind operated in a specific community. This project set out to reconstruct the landowning families and their property in the Hundred of Somerden. It considered the elements of gavelkind, inheritance of land, sale of freeholds, the role of mortgages, and changes in land ownership and tenancy over a period of social change, 1550-1700. Although all landowners are discussed, the role of yeomen has been emphasised, redressing an imbalance in most research in favour of gentry or copyholders resulting from the nature of the available data.

The next part of this concluding chapter summarises the findings of the research. It describes the characteristics of land and property in an area dominated by gavelkind. Some evident conclusions can be drawn on the economic and agrarian consequences. However, the social implications also repay attention. Gavelkind has been associated with particular features such as the strength of the yeoman class, kinship networks, reduced social stratification, a strong sense of local identity, and a propensity to dissent. Opinions both contemporary and subsequently have been divided on their importance; the research on Somerden supports those who emphasise its social importance.⁷²

In the third part of this chapter, suggestions for further investigation are offered, and a brief analysis of methodological issues. The fourth part looks at wider issues in the historiography of the early modern period, including the debates on the decline of the yeoman and the rise of agrarian capitalism. It concludes with discussion of a theoretical paradigm.

72 J.E.A. Jolliffe, *Pre-Feudal England: The Jutes* (Oxford, 1933), p.13; G.C. Homans, 'Partible inheritance of villagers' holdings', *ECHR* 8 (1937-8), 48-56; 'Rural sociology', p.42; W. Lambarde, *A Perambulation of Kent*, (1570), pp.7-8; A. Everitt, *The Community of Kent and the Great Rebellion 1640-60* (Leicester, 1966).

II: Research Findings and Implications

Gavelkind and the Land Market

The reconstruction of properties and families has shown that in Somerden gavelkind was a continuing feature of life, with most, though not all, of its traditional customs still living and vital. The persistence of gavelkind for a millennium, and the resistance to its abolition, are clear evidence that it served the social, economic, and political ideals of the people of Kent.

To this day it is common to say that it had been reduced by wills and settlements to a method of establishing the heir in intestate inheritance.⁷³ This research has raised three objections to this view. Firstly, wills were made by a minority of landowners, and settlements were not (as Lloyd Bonfield has already pointed out) predominantly made to resolve issues of male inheritance, at least before the eighteenth century. Any assessment has to take account of lifetime provision for sons, not least joint purchases which have not been sufficiently studied, and the probability that failure to make a will represented an acceptance of the default system. Secondly, demography played a major part in inheritance; nearly half of men had one or no sons, and did not have to decide whether to divide an estate. Thirdly, a closer consideration of yeomen freeholders shows a willingness to divide their property between all sons and sometimes between all children which is not seen in a study limited to the aristocracy. The contemporary controversy on the fate of younger sons in areas of primogeniture and the representation of Kent in drama illustrate the living significance of gavelkind.

The treatment of daughters and widows follows the pattern in other areas more closely. It was rare for daughters to receive land although there is rather greater equality of treatment than in areas of primogeniture. The importance of portions to the marriageability of a young woman and the rise in their value follow the national trend. Changes in the treatment of widows from dower to jointure to annuity show a similar propensity to over-ride custom. However, this was not universal and where it applied Kentish dower was more generous to widows than common law 'thirds'.

Of the other features of gavelkind, there is little evidence that testators saw any

73 Personal communication with historians reveals that this is still a commonly prevailing view.

particular value in the customary age of majority of fifteen, but it was still the legal default. The rule of no escheat for felony is different: its occurrence was rare but its value to a family great. Finally, gavelkind was free or frank tenure. By the seventeenth century the practical difference from copyhold was narrowing, but the cultural difference was significant, carrying with it status and political rights. The major influence must have been on the culture of Kentish communities who saw themselves as free men with special rights over their property.

The market in land saw an overall increase in sale transactions over the period, though with decline in some difficult decades. It was a remarkably local market and dominated by yeomen up to the very end of the seventeenth century when they appear to have been in retreat and when sales of inherited land rather than purchased land increased. As elsewhere, the price of land rose sharply in the sixteenth century, but had steadied by 1625 and was falling back by 1700. Three quarters of sales were of plots of under 40 acres; the median plot size was a mere 10 acres; only in the 1590s and 1670s were larger holdings dominant. The effect of small holdings and multiple shares was that it was harder for a purchaser to accumulate a large estate, but easy for someone starting out to purchase a small holding and build on it. What emerges again and again is the willingness of owners to hold in common, and it was by no means unusual for active provision to be made to this end. There is little evidence of partible inheritance leading to sale, the length of holding of shares, whether divided or undivided, being similar to other inherited land.

Investigation of mortgages shows that secured long-term finance was freely available in a rural community: mortgages are over a third of surviving land transfers. The incidence rose after 1625, and was particularly high for the last quarter of the seventeenth century. The principal borrowed varied from £7 to £2,250, but nearly half of loans were for less than £100. As with sales, the market was surprisingly local, outsiders being involved only for the very largest sums. Mortgage debt was clearly intended to be long-term, up to fifty years has been found, and assignment and remortgage were commonplace. There is occasional evidence of mortgage debt being used to finance land purchase, but equally there is evidence of profligacy. Money could be raised on land, it could be used as capital for expansion, investment, or for trade and industry. However, among the gentry at least, the payment of portions can

sometimes be directly linked to borrowing, and is often coincident in timing.

Mortgages were commonly repaid, but under hard times, or pressure of portions, could lead to failure.

Studies of land market transactions can over-emphasise change; the continuity of families holding land over the period 1550-1700 is striking. The reconstruction of land ownership in Chiddingstone South shows that the same sixteen families held 80-82% of the land throughout the period. Holdings were still relatively small but, contrary to frequent suggestion, were not unstable. However, engrossment was proceeding slowly. It appears that there had been a phase of amalgamation of holdings prior to 1550; in 1600 55% of properties were in holdings of less than 100 acres, by 1700 this was 27%.

The capability to let even a small acreage meant that an income could be derived from it, adding to flexibility of holding size and reducing the need to sell. Leasing increased over the period. From the sixteenth century a significant proportion of the land in Somerden was leased out, and this applied to the land of small holders as well as large. By the end of the period the owner-occupier was in the minority. The rising gentry were the main landlords, but absent owners, owners of small shares, and artisans were as likely to lease their land for an income as the gentry. Those who remained on the land could lease in and lease out at various stages in life.

Clearly, the yeoman was not synonymous with the owner-occupier. However, the concern about his decline serves to highlight that his presence was seen as significant for social structure and adhesion.

The Social System of Gavelkind

For G.C. Homans, partible inheritance, a commercial market in land, weak manorial organisation, joint families and scattered hamlets went together as elements of a *social system*, which he considered to be as important as the economy in historical explanation.⁷⁴ It is a contention of this study that Homans was correct; gavelkind was embedded in society and it is this which is its real historical importance.

In the right economic conditions gavelkind was distributive in effect, counteracting

74 G.C. Homans, 'Partible inheritance of villagers' holdings', *ECHR* 8 (1937-8), 48-56; 'Rural sociology', p.42.

engrossment and social stratification and favouring equality. Although it is clear that there was already a considerable body of the landless in Somerden by 1600, the strength of the yeoman class was retained up to the end of the seventeenth century. The most physically conspicuous result was the clustering of kinsmen around a hamlet or green, and the intermarriages between them. The landscape of enclosed fields and scattered settlement owes its origins in part to woodland clearance, but was perpetuated by small holdings and individual ownership which made building up a large estates or farms more difficult.

Gavelkind had a more subtle influence on society in that it was individualistic. This was mitigated by common meadow, coparcenary, and communal effort in the fields, but individual ownership and the ability to raise capital, combined with the trading opportunities with which the area was endowed, had social as well as economic consequences. The confidence engendered among freeholders with token dues to the manorial lords must be one factor in the disposition to dissent. It would be a mistake to see this dissent as radicalism; it was, rather, conservatism: gavelmen saw themselves as having ancient rights, which they expected the authorities to support. This is seen in the adherence to old language and forms. Perhaps as a reflection of independence, there is ample evidence of Puritan sympathies in the hundred, not just among the Sidneys of Penshurst but in the Polhill, Petley, Petty and Streatfeild families.⁷⁵ The men of Somerden were active in Wyatt's rebellion at the beginning of the period and again in the lead-up to the civil war, but interference from the Republic was resented as much as from an absolute monarchy; even a modest yeoman like John Hollamby could find himself at odds with authority.⁷⁶

Gavelkind is but one of many factors influencing society. Trade and industry were a feature of the Weald in the first half of the period, and the families who rose to prominence in the sixteenth century did so on the back of trade rather than agriculture, although examples suggest that supplying food to London and timber to the coast were important sources of wealth. The ubiquity of trade, the relationship with London, and the demographic conditions meant that the accusation of morcellation of holdings is not born out by the statistics. Similarly, partible inheritance

75 See Chapter 3.

76 M. Ellis, 'Was Sir Thomas Wyatt able to draw on a culture of rebellion in Kent in 1554?', AC 129 (2009), 77-102.

was not associated with immiseration because few landowners were involved in self-sufficient agriculture.

The combination of these various elements has been seen as promoting a commercial attitude to land at an early date. It is true that the Somerden data illustrate the constant sale and leasing of land and its increasing use as security for annuities and mortgages. However, this was only to a point. Land was seen as an investment, to produce a return on capital but it was *sui generis*, there was an acceptable level of return regardless of the statutory interest rate. The continuity of holdings, the preference given to inherited land over purchased property, especially where it was an ancient patrimony, reflect the limitations. Land was more than just a commercial asset, it represented status, security, and roots. Geary has suggested that in the medieval period land was not only the route to wealth and social position, it was central to identity: '*land was the means by which a family knew itself in historical perspective*'; '*inheritance of land clarified ego-centric kinship networks*', land '*created families as well as sustained them*'.⁷⁷ The saying 'all Kentish men are cousins' applies here. By the seventeenth century, change was coming with the growth of the merchant class and the expansion of London. Defoe commented on the acquisition of estates around London not for income generation but for security, status, and leisure. The development in the eighteenth century of the strict settlement to preserve the land holding indicate how important land remained.

It is the creating and sustaining element in the ownership of land which is at the heart of the questions relating to gavelkind's effect on society. The social and cultural impact was something more subtle and more wide-reaching than an undue concentration on the practical rules of inheritance would suggest.

77 P. Geary, 'Land, Language & Memory in Europe 700-1100', *TRHS* 9 (1999), 169-184, p.170-1.

III. Issues Arising and Indications for Future Research

Issues which arise from this research include both the virtues and the limitations of the source material. Research which uses title deeds is able to fill in deficiencies in manorial and central records for freeholders. It is particularly valuable where the whole of the material is used as in this study, because the context is all-important in understanding the purpose and consequences of transactions which, seen in isolation, can be misleading. The detailed contents including recitals and disposition clauses, together with ancillary documents, give a complete picture which records taken out of context are unable to do. In this way, knowledge of assets such as irrigation and buildings or encumbrances such as jointure or small changes in acreage were needed to explain the prices of land in Chapter 5, which could otherwise be misleading, and a detailed knowledge of family relationships altered interpretation of conveyancing transactions. Without context, mortgages could be mistaken for sales, and their long-term significance missed. Study of original documents rather than enrolments shows actual prices rather than cash payments.

Offsetting these virtues, title deeds are particularly subject to the difficulty of records being a patchwork picture of the past. There are practical difficulties of time and scale: how to identify the possessions of a particular man (or woman) at a particular moment in time, at a particular stage in his life-cycle. Past research has concentrated on aristocrats or copyholders where data are easier to analyse. Yeomen freeholders are hard to research and it requires piecing together of a multitude of data sources. There is the same difficulty here as elsewhere of pin-pointing how one segment of society prospered or floundered when today's yeoman is tomorrow's gentleman or vice versa, or when status is self-assigned and may bear limited relation to sources of income. Likewise, there is difficulty in establishing where wealth arose (or indeed where it was spent), when land was the measure of status, and occupation a flexible concept.

The greatest difficulty is that faced by all historians. In order to deal with a manageable quantity of data, the research has to be limited in both space and time. It is too easy to perceive the forces of change in the period of study, without seeing the impact of a long period of time. This is evident in the analysis of sales, where close study reveals the circumstances of individuals but disguises the long-term trends of

their class.

This study points to the need to consider questions of land tenure in asking historical questions, particularly those based on data from the county of Kent. It may be that gavelkind is not a sufficient condition to explain the peculiarities - and there were many - of Kentish society, but it is a necessary one. The implication of research into agrarian capitalism is that the late fifteenth and early sixteenth centuries saw a change in the nature of tenure, which led to a free market and engrossment of holdings. There is evidence in the Somerden landscape pattern of amalgamation of holdings during the sixteenth century. Carrying back this research to the preceding period might date the change and identify whether Kent did, indeed, lead the trend for engrossment.

In order to reconstruct size of holdings, Chapter 7 back-projected from the Tithe Award of 1841, the first complete schedule of land since 1086. In the process it became obvious that there was a startling discontinuity with 1700. Although there were signs of change at that date, the families present were essentially the same. By 1841 ten owners held 93% of the land in Chiddingstone South, and Henry Streatfeild, an individual man rather than a network of brothers and cousins, held 64%. A similar project of reconstruction for the eighteenth century could perhaps identify the critical moment of change in this particular area. The evidence of this chapter suggests that Jane Whittle's conclusion that the trend was long-term and cumulative is correct, but a tipping point must have occurred in the eighteenth century in this particular area.

Finally, there are some aspects of this study where research on freeholders holding by other tenures is too limited to allow comparison. A reconstruction based on the analysis of all the documents in sets of title deeds for another, comparative area of the country was considered at the beginning of the study, but was not feasible in the timescale. This would be a worthwhile exercise.

IV: Theoretical Context

Decline of the Yeoman

The historical literature has long been bewailing the loss of the yeoman, from Hugh Latimer in 1549 to Arthur Johnson in 1909. Johnson suggested that changes in land law and enclosures were not in themselves enough to explain the loss of the small landowner, who had survived similar changes in France. It was the impact of the '*social, political and economic peculiarities of England*': these changes precipitated the land ownership ones, not vice versa.⁷⁸ He argued that copyholders and small freeholders could flourish where the agriculture remained arable, or there was sufficient surviving common and waste, or there was alternative employment. He prefigured the political dimension raised by Robert Allen: the rejection of land reform to limit enclosure and engrossment, a political decision with long-term social consequences.⁷⁹

The evidence for South Chiddingstone is that yeomen continued to dominate land-ownership up to 1700, but the medium-sized holding was less common in 1700 than 1600. Gavelkind had within it the seeds of decline in that it kept holdings small, unable to meet competitive challenges: it was vulnerable to a strong external force. It survived manorialisation because of its freehold tenure, but in the early modern period the challenge was from commercial might. By the end of the seventeenth century yeomen were in retreat. By the end of the eighteenth century Grose went so far as to suggest that yeomen were largely extinct.⁸⁰ By 1841 they had gone.

It has emerged that one of the most important issues in family survival in Somerden was demography. Half of all men dying left one son or none, therefore partition was irrelevant to many, and failure of heirs counteracted division. Smaller families were able to provide for their sons to have a better start. The Piggott family repeatedly had only one son and prospered; the Hollamby family survived while there were few sons, failing immediately when there were many. This demographic issue gave rise to

78 A.H. Johnson, *The Disappearance of the Small Landowner* (London, 1909), p.74.

79 R.C. Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands*, (Oxford, 1992), pp.303-4. He also points out that copyhold enfranchisement, subject of campaigns in the seventeenth century, had to wait until 1922, by which time it was irrelevant.

80 F. Grose, *A Provincial Dictionary* (London, 1787), p.214.

heiresses, and marriage alliances were extremely important in family success. Although daughters without brothers would inherit in common even under a system of primogeniture, the role of suitable marriage was important to landowners.

Some of the economic pressures on this middling owner have emerged from the analysis of inheritance, sales and mortgages in previous chapters. Portions rose faster than incomes; too many sons or daughters, or too few, could lead to division or sale.⁸¹ The return on investment in land declined at the end of the century and the imposition of the land tax reduced profitability. Access to markets became an issue when large holdings started to dominate.⁸² The Streatfeild, Woodgate, Sidney, Seyliard and Ashdowne families could depend on profits from trade, industry, or service at court; the Hollambys, Everests, and Haywards could not. Engrossment started in the late middle ages and continued, but it was not a straight-line trend: certain periods favoured the advance of the middling sort and others their decline, as Ladurie found in medieval France and Hipkin on Romney Marsh.⁸³ During these fluctuations, the make-up of the land-owning class could and did change.

Francis Grose's definition suggested that the terminology had changed rather than the personnel, '*the term Gentleman being almost as universally claimed in England as in Wales*'.⁸⁴ Although the end of the seventeenth century saw a rise of gentry families in Somerden, those families, notably the Streatfeilds and Woodgates, were the yeomen of 1600 albeit with much more land. It was only in the eighteenth century that the established families disappeared, to be replaced by newcomers. The causes of these changes were probably political and economic: the constitution of the governing class, the imposition of land taxes and death duties, access to markets, and the increasing dominance of capital. It is worth remembering that Johnson's original research showed a rather lesser decline in Kent than elsewhere. Stephen Hipkin has shown that in the right economic circumstances the yeomen could even increase.

81 C. Clay, 'Property settlements, financial provision for the family, and sale of land by the greater landowners', *Journal of British Studies* 21:1 (1981), p.26.

82 B.J.P. van Bavel & R.W. Hoyle eds., *Social Relations: Property and Power* (Turnhout, 2010), 'Introduction', p.4-5.

83 Hipkin, 'The structure of landownership and land occupation in the Romney Marsh region 1646-1834', *AgHR* 51.1 (2003), 69-94; E. Le-Roy Ladurie, *The Peasants of Languedoc* (1966, trans. Day 1974).

84 F. Grose, *A Provincial Dictionary* (1787), p.214.

Theoretical Framework

The historiography of agrarian capitalism was raised in Chapter 1. Robert Brenner's thesis emphasised the importance of power relations between those who worked the land and those who only drew its profits.⁸⁵ In this the role of land tenure is central, not just in protecting the small owner from power, but in creating a sense of identity and a secure view of legal and community rights which enabled him to stand up against a threat. Land tenure reform is also used to explain the increase in productivity which allowed an expanding urban population to be fed, and paved the way for the development of labour-intensive industries. A feature of this model was the replacement of the owner-occupied farm with the tenant farm worked by labourers. This is not a model which the data from Somerden freeholders supports. Béaur and Chevet recently said of England's early industrialisation: '*in reality the economic context seems to have been much more decisive than institutional changes*'.⁸⁶ Land tenure cannot sustain the role ascribed to it by Brenner in the agrarian capitalism model, demographic, economic and political factors playing a larger role than he supposed. Nor can farm size or wage labour be taken as indicators of a qualitative change. Jane Whittle suggests that land values altered society when they outstripped wages so that wage-earning became for a lifetime rather than a stage in life.⁸⁷ When capital earns more than labour, there is a new relationship between the elements of a society. Increases in agricultural productivity depend on technological change and access to markets as much as farm size. A full explanation of the change in society has to encompass all these. B. L. Anderson suggested that economic historians should pay more attention to capital markets than to income growth: growth in the securities market has been a prerequisite for industrialisation wherever it has occurred.⁸⁸ There was no one moment at which the agrarian régime in Kent became capitalist, but the hold of capital was increasing, and has continued to increase in the long time-scale.

85 R. Brenner, 'Agrarian class structure and economic development in pre-industrial Europe', *P&P* 70.1 (1976), 30-75; T.H. Aston & C.H. Philpin, *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe*, (Cambridge, 1985).

86 G. Béaur & J-M. Chevet, 'Institutional change and agricultural growth', in G. Béaur, P. Schofield, J-M. Chevet, & M-T. Perez-Picard (eds.): *Property Rights, Land Markets and Economic Growth in the European Countryside, Thirteenth to Twentieth Centuries* (Turnhout, 2013) p.39.

87 J. Whittle, 'Land and People', Chapter 7 in K. Wrightson, ed., *A Social History of England* (Cambridge, 2017), p.164.

88 B.L. Anderson, 'Provincial Aspects of the Financial Revolution of the Eighteenth Century', *Business History* 11:1, (1969), 11-22, p.11.

If the Somerden data fit poorly with a theoretical framework based on agrarian capitalism, Michael Lipton has an explanation based on development studies:

*'In countries with plentiful labour and scarce capital, such as most developing countries, small farms' advantage (via labour-linked transaction costs) outweighs their disadvantage (via capital-linked transaction costs), giving a net plus to smaller-scale, more equal farm operation – and, if lease markets are imperfect or costly to engage in, to smaller and more equal farm ownership.'*⁸⁹

His argument is a technical one: optimal farm size depends on economic and social circumstances. But it is also a deeply political one, reflecting the concerns of Allen. A capitalist structure, he says, depends on the tolerance of inequality, of the social and ecological consequences of free roads and long distance transport, and of issues of employment and food security.

The study of gavelkind in an industrialising economy suggests some theoretical propositions. Firstly, although Kent in the sixteenth and seventeenth centuries had its industries, both industry and agriculture were based on human or animal labour. Probate inventories show that oxen were still the main draught animals and remained so into recent history.⁹⁰ Defoe describes seeing south of Tonbridge a lady's coach drawn by oxen, *'the way being so stiff and deep that no horses could go in it'*.⁹¹ In this type of society, labour productivity was likely to be higher on a small, family-owned farm than on a large commercial enterprise; in this Lipton cannot be wrong. The arrival of mechanisation on farms was far away in 1700, and was slow to take effect.⁹²

Secondly, the small enterprise depends on access to markets, at first to the end-user, latterly wholesale; the example of Rev. John Crakanthorp in Cambridgeshire, with his local and regional sales of grain, is typical.⁹³ Timber was heavy haulage, but went at least as far as the shipbuilding towns of the county's north coast. For cattle, the markets at Sevenoaks and Tonbridge served the local area, although markets as far away as London were already being used by larger producers. As a generalisation, the market-place moved from the village to the town, and by the end of the seventeenth

89 M. Lipton, 'Property Rights and Property Wrongs: Notes for World Bank Talk 11 March 2009', [siteresources.worldbank.org/INTIE/Resources/M_Lipton.doc downloaded August 2018].

90 B. Copper, *A Song for Every Season: A Hundred Years of a Sussex Farming Family*, 2nd edn, (Rottingdean, 2015), p.17.

91 D. Defoe, *A Tour through the Whole Island of Britain* (London, 1726, Penguin edition 1971), p.144.

92 The use of horses on a farm in Chiddingstone is a childhood memory of the writer.

93 R.W. Hoyle, 'Why was there no crisis in England in the 1690s?' in Hoyle, R. ed., *The Farmer in England, 1650-1980* (Farnham, 2013); P. Brassley, A. Lambert & P. Saunders, eds, *Accounts of the Reverend John Crakanthorp of Fowlmere 1682-1710*, (Cambridgeshire Records Society, Cambridge, 1988).

century was increasingly national; later it would become international. Under such conditions economies of scale were likely to trump labour productivity.

Third is the role of technology and thence capital which Lipton highlights. Examples were given of oast houses in the late seventeenth century, required for the production of the profitable hop harvest; access to capital became key even in agriculture. Access to income from the secondary and tertiary sectors, trade, industry, court service, and law, gave individuals the ability to accumulate capital at a level not possible from a purely agricultural society. Only a Thomas Willoughby could have invested over two thousand pounds in the construction of a furnace in the late sixteenth century, and reap the returns on capital which his figures reveal.

Fourthly, social 'norms' can have a profound influence on economic factors. It has been described how the provision for widows based on the husband's land moved to the provision of a pension based on the woman's portion. There is clear evidence that families struggled to pay the rising level of portions required, and that sale of land was often the consequence. De Vries has suggested that productivity was increased by consumer demand; emulative consumerism could also result in debt and decline.⁹⁴

Given these conditions, it can be seen that gavelkind operated in a complex system, but it was not nugatory. It is significant that it lasted in the county from the thirteenth century (and probably from the English Settlement) until the early twentieth century; it was an enduring system. The evidence of this research is that it was not widely evaded. Largely it favoured family survival: the contrast between the dividers with many sons with the families with primogenitive practices or with single sons is noticeable.

During periods of rising prices and innovation, yeomen prospered and small properties were viable. Once conditions became more challenging, capital-intensive estates and families with industrial and professional income prospered at the expense of the small. The beginnings of change are seen after 1670; the yeomen could have recovered - and there is evidence that there were periods in which they did to an extent - but glancing into the future shows that by the mid nineteenth century they had lost out. This does not mean that the 'family farm' had ended; the process was long and slow.

94 de Vries, J., 'The Industrial Revolution and the Industrious Revolution', *JECH* 54.2 (1994), p.256; *The Industrious Revolution*, (Cambridge, 2008), Chapter 1.

It is a conclusion of this research that partible inheritance was not the single determining characteristic in the impact of gavelkind; equally important was the fact that it was freehold property and could be bought and sold, devised and mortgaged, settled and leased, largely at will. This could and did mean that even a small holding was a commercial asset in the short term. The view that the smaller men would be less stable and less established than the gentry is a view which the Somerden research does not support. However, in the long term it could make the small property vulnerable to take-over, just as now the small company is seen to be vulnerable to take-over by the large, even where the former is innovative and the latter sluggish, simply by the forces of capital. While it did prevent one owner from accumulating a large estate in a short timescale, it enabled families starting as yeomen in the sixteenth century, to become major landowning gentry in the eighteenth. But these families illustrate a final point, that at some point any estate, whether family or corporate, will come to an end and be sold. In the case of the Seyliards it was the result of the failure of heirs, in the case of the Woodgates the failure of a bank.

In the country during the period of research, which can reasonably be described as 'developing', the small owner and indeed the small farmer, could prosper. The decline of the yeoman was declared in 1549 and again in 1909; the trend was long and slow. At this point the political becomes most important, for the institution of death duties and the First World War were to play a major role in the decline of family estates, small and large. Gavelkind was not proof against these larger forces.

V: Conclusions

The character of Kentish society was influenced by many things. It had been an independent kingdom. It had a dual personality: looking towards London one way and the Continent the other; divided into East Kent and West Kent, Canterbury and Rochester, downland and Weald. A paper on the Kentish dialect describes it in terms which speak of the county's paradoxical nature, and is worth quoting for its wider application:

*'Kentish is interesting to linguists because on the one hand its sound system shows distinctive innovations (already in the Old English period), but on the other its syntax and verb inflection are extremely conservative; as late as 1340, Kentish syntax is still virtually identical with Old English syntax.'*⁹⁵

This tension between innovation and intense conservatism is the county's most characteristic feature, perhaps to this day, and its historical roots are surely at least in part the cause.⁹⁶ In some ways rural society in the seventeenth century was advanced, in others it shows little change from the sixteenth-century picture described by Whittle.⁹⁷

Undoubtedly gavelkind was generally popular in Kent and envied by some elsewhere. The features of it were significantly described as 'privileges'. For more than five hundred years, families such as the Ashdownes, Combridges and Woodgates had held their own: small to medium owners, mostly yeomen, in a geographically-based kin group. By dividing their property, they ensured the survival of the family. Despite the changes in law, agriculture, and commerce during the period, the overall pattern in land ownership before 1670 was one of continuity. Underlying this was a rise in individualism; fields were divided with hedges instead of markers, common meadow and common grazing passed into private hands, land was freed where possible from rights of dower, retired parents were accommodated not in the family home but in a cottage.

It is not just that there were differences in social norms and practices; there was a change in the attitude to the world. In the area of south-west Kent which this study

95 www.ling.upenn.edu/~dringe/CorpStuff/Thesis/Dialects.html [Accessed May 2017].

96 Kent is one of only two counties to have stubbornly resisted political pressure and retain its grammar schools.

97 J. Whittle, *The Development of Agrarian Capitalism: Land and Labour in Norfolk 1440-1558* (Oxford, 2000).

covers, rural society was hardly bucolic even at the beginning of the period; there was a constant movement of sons and daughters to and from the town. Nevertheless, one detects a different view at the end of the period: it is suggested that the seventeenth century in Kent saw a change in society. This is not amenable to discovery from an examination of the land tenure, the land market and the land ownership over the period, but is a more subtle thing requiring a different sort of research.

The initial approach to this research was that gavelkind would have a significant effect on the society of Kent. It represented a prevailing custom of freehold tenure, additional privileges under the law, and division of property between sons. The evidence of a closer analysis is that the treatment of women and daughters followed the prevailing trends of the rest of the country, although a little extra 'fairness' may be detected in apportionment of wealth, but the treatment of sons remained predominantly division, certainly among yeomen and often among gentry. The consequences, however, were heavily dependent upon the economic times. Where prices were high, a small holding could prosper; when they fell the owner did not have the margins to survive. When revenue could be generated through agricultural endeavours, timber sales, iron and cloth working, small holders could flourish; when capital came to dominate over revenue, they could not compete. The small prospered in the new and the short-term, but not in the long-term. In the absence of the political will to bring about radical legal change, estates became ever larger, dominating an ever larger element of capital, whether economically efficient or not.⁹⁸ Periodically, economic and political conditions fostered a break-up of these large estates, but soon they regrouped under the new conditions. The Kentish yeoman flourished in the rising prices and redistribution of land in the sixteenth century, assisted by trading interests, but started to decline after 1670, and will not return.

98 Allen, *Enclosure and the Yeoman*, Chapter 15: 'The Yeoman Alternative'.

Glossary

Alienability/alienation	Transfer of land by sale or devise.
Borough English	A system of inheritance where the youngest son received the paternal property; most common in Sussex but occasionally seen elsewhere.
Chattel	Personal goods at the disposal of a testator or executor.
Common fields	Large arable fields containing the strips or portions of many holders, where the cultivation (and sometimes allocation of individual holdings) were decided by the community. See <i>Open Fields</i> .
Common law	The law which was universal and which had supposedly existed since time immemorial. It was the law of the King as opposed to local custom which nevertheless continued to apply locally.
Coparceners	Those who hold an estate in common as heirs. Shares were undivided but descended to individual heirs not to the survivor.
Copyhold	Land held of a lord under customary law, that is, by copy of court roll. In Kent it occurs rarely, usually where waste land has been taken into cultivation with the permission of the manorial lord.
Courtesy	The customary right of a widower in his wife's land.
Den	Kentish term for an area of wood pasture, in medieval times used for pannage for pigs, allotted to a manor usually on the uplands.
Demise	Transfer of possession, usually by lease.
Devise	Bequest of land in a will.
Dower	The customary right of a widow in her husband's land.
Entail	An estate in land which is limited; the current holder or 'life tenant' can only pass it to a particular a class of heir, usual heirs male.
Equity	The systems and law which developed to mitigate injustices which arose from the common law. Application was made to the Chancellor, or the Chancery. In time equity courts and a body of equitable remedies developed.
Equitable estate	An estate which was recognized by the courts of equity but not the common law courts, for example an interest under a trust.
Escheat	Reversion of property to the lord from whom it was originally held, as a result of failure of heirs or the commission of a felony.
Estate	A current or future interest in property. More than one person might have an interest in the same land, for example the right of dower was

	an estate which the wife held in her husband's land.
Fee	Inheritable estate derived from the concept of a feudal tenancy where a fee was land granted to a vassal. The strongest fee was a fee simple absolute in possession, that is without condition or limitation and where the holder is in current possession of the property. It was and is the basic legal estate which carries the right to sell or devise the property. All equitable estates derive from the fee simple. A fee tail was an estate limited to a person and his heirs; most commonly it was a fee tail male, limited to male heirs.
Felony	A crime, not misdemeanour, normally holding the penalty of death.
Foreclosure	An application to the courts to terminate the <i>equity of redemption</i> so that a mortgaged property can be sold and the loan recovered.
Frith	Scrubby or heathy woodland.
Garden	A small enclosed field for intensive cultivation.
Gavelkind	The customary law which applied by default throughout the county of Kent.
Haw	Hedged enclosure.
Hoath	Heathland or waste usually associated with an outcrop of sandstone (similar to <i>hoo</i> or <i>heugh</i>).
Honour	A group of manors held by one lord. The Honour of Otford, formerly a possession of the Archbishop of Canterbury, covered Shoreham, Otford, Chevening, and parts of Leigh and Speldhurst (Hasted).
Hurst	Wooded hill.
Inter vivos	During the settlor's or grantor's life-time.
Joint tenancy	Joint interest in property with right of survivorship.
Jointure	Originally, property settled jointly on husband and wife for the survivor.
Knight service	Land held in return for the provision of knights.
Liberty	A district with special privileges relating to governance and judicial authority by the ecclesiastical or secular lord, or by town burgesses.
Life tenant	The holder of a life interest in property.
Lowy	A 'liberty' centred on a town; the bounds extended one league (three miles) from the town boundary, e.g. the Lowy of Tonbridge.
Messuage	Property comprising house and land.
Military tenure	Land held in return for military service.

Mortgagee/Mortgagor	The mortgagee is he who is granted the security, i.e. the lender, and the mortgagor is he who grants it, i.e. the borrower.
Open fields	Fields which were not enclosed by hedges or fences, in which individual holders' areas were marked only by posts or stones. See <i>Common Fields</i> .
Partible Inheritance	The system of inheritance whereby a property descended to joint heirs rather than unigeniture where it devolved on one heir, (in the case of primogeniture, the eldest son). The property might be divided between the heirs but might be held in common.
Personal estate	Goods which are possessions of a person and not attached to land
Precedent	<ul style="list-style-type: none"> i) A decision of a higher court which binds the court in question ii) A standard form or previously used document which can be tailored to the needs of the lawyer in an individual case.
Primogeniture	A form of inheritance by which real estate passed to the eldest son. This was the predominant system in England by 1550.
Quit-rent	Money payment in lieu of feudal services; also occurs as 'quittance'.
Rack rent	A full economic rent, equivalent to market rent.
Real estate	Interests which are attached to land rather than to a person; rights which 'run with' the land regardless of the person who holds them.
Recital	A clause in a deed in which the terms of a previous agreement are 'recited'.
Remainder	The interest in land which takes effect after a life interest has ended.
Reversion	The interest in land which reverts to the original grantor on failure of a grant or occurrence of a condition.
Rowen	Grass growth after the first cut of hay or corn; particularly valuable on meadow land after a hay crop.
Seisin	The symbolic transfer of title to a fee; originally possession, but after the fourteenth century more accurately the right of possession.
Sess or Cess	Tax rate or assessment; hence 'Sessors' who made the assessment.
Severalty	Individual, unshared tenure.
Shift	Kentish term for the process by which property held in common was divided between heirs to be held in severalty, each being allotted an equal part and giving up rights to the rest. Literally, a shift of rights in land, implemented by a deed of partition.
Socage	Land held in return for non-military services or rent; the main form of

	freehold land outside Kent after 1660.
Tenement	Permanent property held under the common law, including land, houses, and interests arising out of land.
Tenure	The legal term used to define the nature of a holding of land.
Trust	A device whereby land is held by trustees, but for the benefit of a beneficiary; the beneficiary cannot reduce the capital value. The rights of the beneficiary would not be enforced by the common law courts, but would be by the equity courts; the 'legal estate' was thus separated from the 'equitable estate', the former being held by the trustee and the latter by the beneficiary. It developed from the 'Use'.
Tye	Common pasture (often wood pasture).
Use	A legal device from which the Trust developed; land was held by the feoffee (trustee) for the 'use' of the <i>cestuy que use</i> (beneficiary). Feoffees could be replaced without legal title to the land passing. Meanwhile the beneficiary could not dispose of the land. The 'legal estate' was separated from the 'equitable estate'.
Waste	Illegal reduction in the capital value of a property by trustees or life tenant, for example by felling of timber trees.
Weald	Originally used to mean 'forest', it has come to refer to the low-lying, elliptical basin between the North and South Downs.

Appendix: Families and Properties Named in the Text

FAMILY NAME	RANK IN REGISTER ⁹⁹		MAIN PROPERTIES IN THE HUNDRED,
	1550-99	1650-99	
Wickenden	1	5	Beechenwood, Pilegate, Polefields, The Hole, Ludwells
Moyse	2	122	Swaylands, Durtnells
Beecher	3	25	Vexour, Beechers, Chested
Jessup	4	6	Brook Street
Woodgate	5	2	Woodgates (Stonewall), Truggers
Goldsmith	6	8	Durtnells, Somerden Green
Ashdowne	7	11	Batts, Gilridge, Larkins, Skinners
Rogers	8	267	[None known]
Cronwell	9	66	[Tenant]
Walters	10	83	Painters
Bassett	11	40	Bassetts Mill, Bassetts, Pilbeams
Piggott	12	27	Withers, Hilders, Piggotts
Hollamby	13	10	Coles, The Kiln
Willoughby	14	-	Bore Place, Manor of Millbrook
Everest	15	15	Lockskinners, Hale
Saxby	16	23	Saxbys, Friendly Green
Skinner	17	58	[None known]
Still	18	36	Waystrode, Cowden & Scarletts
Hunter	19	-	[None known]
Beech	20	-	Brook Street
Combridge	21	16	Coldharbour, Hawden, Walters Green, Harts Land
Wells	22	9	[Tenants]
Budgen	23	64	[None known]
Rivers	24	45	Harts, [Chafford]
Constable	25	38	Lew Cross (Sheppencrofts)
Hayward	26	78	Tye Haw, Helde House, Lockskinners
Fullman	27	49	[None known]
Harris	28	-	[None known]
Salmon	29	-	Cottage in Leigh, tenants
Streatfeild	41	3	High Street, Manors of Chiddingstone & Tyehurst
Medhurst	46	1	Medhurst Row
Tichborne	80	-	Crippenden
Waller	-	-	Hall Place
Sidney	-	-	Penshurst Place
Birsty	-	-	How Green
<i>Outbounders</i>			
Burgh	Lincolnshire		Manors of Chiddingstone & Tyehurst
Children	Hildenborough		Bough Beech
Dixon	Hildenborough		Funks
Holmden	Crowhurst		Stanfords End
Jemmett	Edenbridge		Beechenwood, Skeynes
Seyliard	Brasted (detached)		Syliards, Gabriels, Delaware, Salmons
Waldegrave	Somerset		Hever Castle

⁹⁹ Ranking is by frequency of the name in the consolidated christening registers over each 50-year period.

Map 4: Somerden Properties

- Piggotts
- Bore Place
- Winkhurst
- Baileys
- Sharp's Place
- Funks
- Hilders
- The Kiln
- Wickhurst
- Skeynes, Brook Street, Cords and Gabriels are west of the map here
- Hall Place
- Coles
- Syliards
- Furnace
- Chested
- Bough Beech Farm
- Cinderhill
- Moreden
- Cransted
- How Green , Whistlers, & Moorcocks
- Red Leaf
- Delaware
- Polebrook
- Vexour , Chandlers, Brook Street, & Larkins
- Delaware
- Gilridge
- Hever Castle
- High Street House
- Tye Haw & Tyehurst
- Withers
- Highfields , & Towers' Cottage
- Lockskinners
- Lydens
- Salmons
- Sliders Bridge, Sheppencrofts, Lew Cross, Wat Stock
- Hawden & Harts
- Skinners
- Truggers
- Woodgates
- Cole Allens
- Coldharbour
- Buckhurst, Little Buckhurst, Low Buckhurst, Bramsells
- Batts
- Bassetts Mill
- Keysdens, Knights, Frienden
- Pilbeams
- Beechenwood
- Crippenden
- Ludwells
- Leighton Manor
- Liveroxhill
- Waystrode
- Cowden Furnace
- Scarletts



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