

KENYON v. RIGBY: THE STRUGGLE FOR THE CLERKSHIP OF THE PEACE IN LANCASHIRE IN THE SEVENTEENTH CENTURY

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WHEN in 1399 Henry Bolingbroke, son of John of Gaunt, outmanoeuvred Richard II and was himself crowned king as Henry IV, he kept the administration of the duchy of Lancaster, his patrimonial estates, distinct and separate from the administration of the rest of his kingdom. He thought it unwise to carry all his eggs in one basket: if ever he lost the crown, he might perhaps continue to hold the duchy. Edward IV and Henry VII concurred: at least they confirmed the separation of the two administrations. Consequently the legal offices in both the duchy and palatinate of Lancaster were in the gift of the crown, and in Tudor times three officials, the protonotary or clerk of the court of common pleas, the clerk of the crown or clerk in the assize courts held in the county, and the clerk of the peace or clerk of the quarter sessions courts, were appointed, usually for life, under letters patent sealed by the duchy and palatinate seals. If required, the monarch was prepared to seal a second letters patent to ensure that the office would pass on death or on previous surrender to the patentee's heirs. Such arrangements were mutually satisfactory. The crown received substantial fees for the letters patent, and the office-holders, who could always employ a capable deputy to do the work, acquired a property which yielded them a steady annual income. Naturally the impecunious Stuarts had no wish to alter so beneficent an arrangement.

I

On 10 May 1589 Roger Rigby of Blackleyhurst, Billinge, second son of Alexander Rigby of Burgh, Duxbury, was fortunate enough to purchase the clerkship of the peace. His elder brother Edward, an attorney of Gray's Inn, had recently inherited the clerkship of the crown from their father, so that two out of the three most important legal offices in the county were now in the hands of this family of modest means. Roger was not a lawyer. Therefore he needed an efficient deputy, for the clerk of quarter sessions had to perform such technical duties as the enrolling of the proceedings and the drawing of the processes, as well as the less technical reading of the indictments and the recording of rates of wages and of

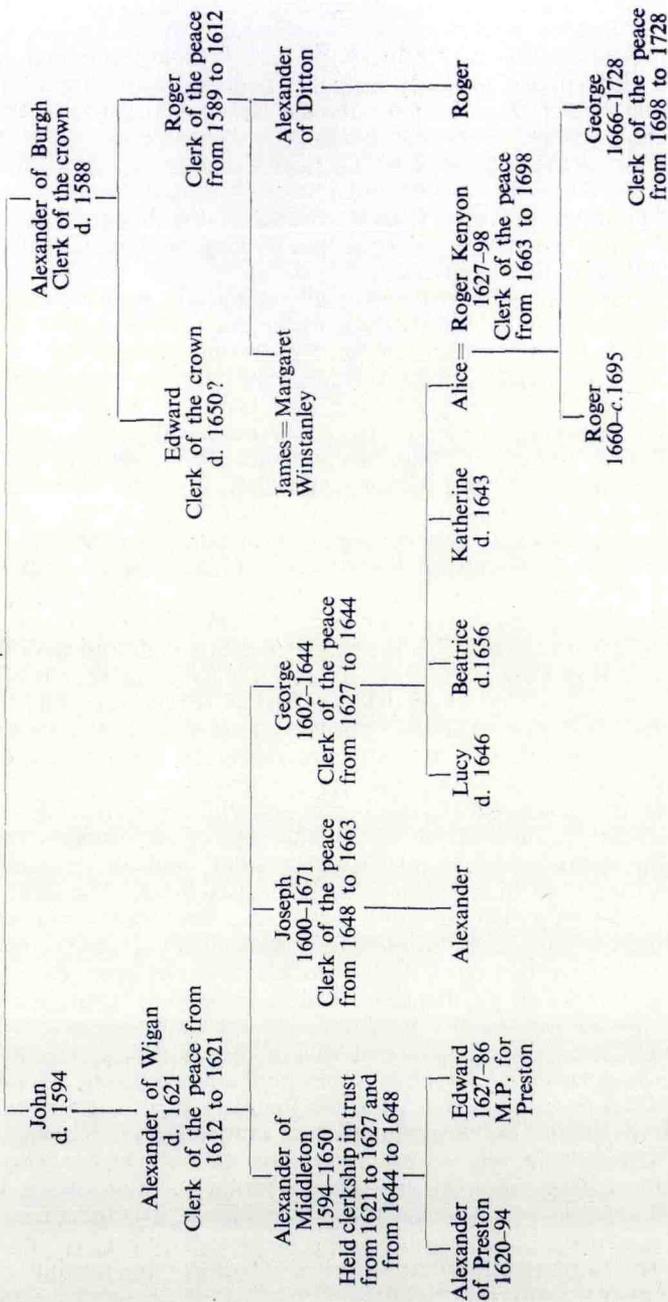
licences granted. The office was no sinecure, and failure to carry out the duties efficiently could lead to the cancellation of the letters patent. Roger chose as his deputy his cousin, Alexander Rigby of Wigan, a rising attorney, who had been educated at Gray's Inn and who had acted as clerk to Sir Gilbert Gerard, master of the rolls. The agreed terms were reasonable enough. Alexander was to take half the annual fees and profits after the first £20 had been paid to Roger, and it became his habit after each series of the sessions to pay Roger £5 together with half the fees and profits of the quarter. For a number of years all went well. Roger periodically renewed Alexander's deputyship, and in February 1607 he bought a second letters patent, which, on his own surrendering of the office by death or otherwise, ensured that the office would pass first to his son, another Alexander, and then to his grandson, a second Roger. Ambition outran means, for Roger could not afford this purchase. That same year his deputy had to pay into court £50 of his own money to forestall Robert Dicconson from suing Roger for debt, and by January 1609 Roger's debts compelled him to seek help from James Winstanley, who had married his daughter Margaret and was living at Blackleyhurst. Alexander of Wigan drew up the agreement. Winstanley undertook to settle two pressing debts of £220 and £100, and for security Roger handed over to him the letters patent of 1589 and 1607. If by 2 February 1611 Roger had repaid Winstanley the £320 together with reasonable interest charges, the deal would be concluded by Winstanley handing back the securities; but if Roger did not settle by that date, Winstanley was to keep both letters patent and pay Roger £400 as a clearance for all claims upon him. This pawning of the letters patent only paid off the old man's two most urgent creditors. A few weeks later he faced another crisis, and attempted to surmount it by handing over his land in Billinge and Ditton and all his movable property to his son-in-law for a mere £26 a year, less than a tenth of its acknowledged value, in order that Winstanley could use the profits from the estate to reduce the growing weight of debt. If this was a solution at all it was necessarily a long-term one, and during the Christmas festivities of 1609 Roger found it convenient to leave Lancashire and become a voluntary exile.

Even Alexander Rigby of Wigan did not know where he had gone, but in the following summer, when he had money for Roger, with the help of family servants he found him at York. Roger refused to discuss his affairs with Alexander. He had got it into his head that his deputy was defrauding him, and in acknowledgment of the last two quarters' payments would only give a receipt which "shold make shewe that the said suplt. [*i.e.* Alexander] after the paymt thereof was yet indebted to the said Roger". Alexander refused to accept anything short of complete clearance. He returned to Lancashire to find that Roger by a letter dated 1 August 1610 had dismissed him as his deputy, and accused him of fraud. ". . . let yt be red in Lancaster Church upon the Sabothe, Preston

upon the Sabothe, Wigan upon the Sabothe, Ormeschurche upon the Sabothe and Manchester upon the Sabothe for his Credit, for hee deserveth this". But Alexander was not the man to be intimidated. Immediately he petitioned the chancellor of the duchy that Roger should be summoned before his court, so that answer could be made to the charge. In November 1610 the chancellor granted the request, and instructed the messenger of the court to warn Roger to appear and answer Alexander's bill of complaint. Apparently Roger thought discretion the better part of valour. He reinstated Alexander as his deputy, and in return Alexander withdrew his complaint.

But neither party was really satisfied. Roger was convinced that Winstanley, aided by his own son, Alexander of Ditton, and Hugh Forster of Ditton, was squeezing all he could for himself and his friends out of the lands he was managing for him, and further that he and Alexander of Wigan were conspiring to seize the clerkship of the peace. Later on he alleged that he went to Blackleyhurst on 2 February 1611 to pay his debts according to his contract with Winstanley, but that his son-in-law deliberately absented himself from home so that Roger could not fulfil the contract to pay the money to Winstanley personally. Moreover, he said, he found on his return to Lancashire that the £100 debt had not been discharged as Winstanley had promised. Several times that summer Roger conferred with his solicitor cousin, and he, Alexander of Wigan, acting as liaison, conferred with Winstanley and Roger's son. Each party including the solicitor played for his own ends. Roger hoped to get his debts paid for him; Winstanley and young Alexander conspired to keep all the property they held without carrying any responsibility for Roger's debts, and Alexander of Wigan had his eye firmly fixed upon the clerkship of the peace. Clearly all could not win. Roger was inveigled into signing an agreement which left most of his property but none of his debts in the hands of Winstanley, and so desperate did his financial position become that he pressed his son to accept Alexander of Wigan's offer to buy the clerkship, so that the money could be used to pay off creditors. Young Alexander showed no inclination to agree, so the two older men exerted pressure. Roger withheld certain small payments he had been making to his son, and then allowed him to be sued, arrested and imprisoned for a debt for which he and his son had shared responsibility. The plot worked wonders, especially after Roger had gone so far, in December 1611, as to make legal provision for the clerkship to revert on his death not to his own son, but to Alexander Rigby of Wigan and his heirs. There was no point in Alexander of Ditton, who possessed the letters patent at this stage, holding out any longer. He eagerly accepted Alexander of Wigan's offer of £250 for their immediate surrender, but most of the cash was seized by Roger. Young Alexander had enough left to buy himself out of prison, but he was still far from solvent.

THE RIGBY FAMILY

Adam Rigby
of Wigan

II

King James I sealed the letters patent, which granted the clerkship to Alexander Rigby of Wigan for the lifetime of himself and his eldest son, on 25 January 1612, the day after the two letters originally granted to Roger had been surrendered to the crown. How much the new clerk had to pay to the king privately has not been revealed, but in addition to the £250 paid to young Alexander, he had to pay £1 6s. 8d. each for the signet and the privy seal, £4 8s. 0d. to the chancellor of the duchy for attaching the duchy and palatinate seals, and a further £1 13s. 8d. in smaller charges and gratuities. But it was worth all the trouble and expense, and the astute Alexander no doubt congratulated himself upon a successful deal. He had more than doubled the income he had hitherto received for acting as clerk, and now he could leave a most suitable inheritance to his son, who at that time was at St. John's College, Cambridge, preparing for a legal career. He could even afford to regard with wry amusement the desperate ventures tried by the incompetent Roger to recover the office once his creditors began again to clamour for payment. In February 1612 Roger went so far as to file a bill of complaint in the court of chancery against his son, his son-in-law, Alexander of Wigan, Hugh Forster and two others, but the defendant's counsel quickly convinced the court that if there were a case to be heard it should be heard in the chancery court of the duchy of Lancaster. Roger did not accept the challenge to sue in the duchy court, but later that year he publicly argued that his son had had no authority to surrender the letters patent, because he had been holding them in trust for him, Roger, still the legal clerk of the peace. This public declaration gave Alexander the chance to attack. In February 1615 the duchy court summoned Roger to justify his statement, but Roger did not appear. Creditors' threats had once again driven him into hiding. Therefore the court instructed the sheriffs of Lancashire, Cheshire and Salop to seek him out, and bring him before the chancellor "to answer unto certain contempts and such other things which att his coming shall be objected and laied against him". The sheriffs' officers failed to find him, but Alexander did not mind, for Roger had been successfully silenced.

Alexander Rigby's growing legal practice in Wigan, and his increasing interest in land purchase and estate management soon made it neither convenient nor necessary for him to exercise the office of clerk of the peace himself. First he appointed William Ireland of Holborn as his deputy, and then, from January 1615 Robert Mawdesley, later to become town clerk of Wigan and the husband of Rigby's daughter, Dorothy. To guard against any unexpected forfeiture, Alexander bought a second letters patent in June 1615. This granted the clerkship to his third son, George, and his assigns "for the term of the natural life of him the said George Rigby and Joseph Rigby [Alexander's second son] . . . and



Bolton Evening News' Photograph

PLATE 3 : THE GATEHOUSE, KENYON PEEL HALL

Both George Rigby and Roger Kenyon used the upper room as the Clerk of the Peace office

during the natural life of the longer liver of them", but this second letters patent could only come into force after the deaths of Alexander himself and his eldest son, Alexander, "or whensoever or how soone the said office by surrender forfeiture or any other manner should thereafter happen to be voyd". It was primarily an insurance against any untoward accident or the incompetence of a deputy, which might give the king a good excuse for cancelling the grant of 25 January 1612, but it was also an indication that Alexander was thinking that of his three sons he would prefer George to succeed him as clerk of the peace. This desire became more insistent as time went on, and on 16 April 1621, before a quorum of J.Ps. gathered around his bedside, the dying Alexander passed over the clerkship to his eldest son, Alexander, in trust for his youngest son, George, who at that time was studying law at Gray's Inn. Two days later the younger Alexander "deputed and in my place putt" Robert Mawdesley as his deputy. On the following day, 19 April, Alexander the elder died. He had appointed as his executors his brother, Adam, rector of Eccleston, and his favourite son, George.

The deed by which Alexander of Wigan appointed his eldest son trustee for George bristled with penalties should Alexander the younger have attempted to keep the office for his own profit. "If then the said Alexander Rigby the son should make default therein and not within one month [of request from George] lawfully assigne over . . . then and immediately after such default the said assignment and every matter and thing therein contayned should cease end and determine and bee utterly voyd to all Intents and purposes". Alexander of Wigan need not have been concerned, for although it meant pecuniary loss for him, Alexander of Middleton carried out the terms of his father's will and trust very generously in spirit as well as in letter. From the very beginning he instructed his deputy, Mawdesley, to account for the profits to George, and the money was used to pay the fees and expenses of George and of his elder brother, Joseph, also a student at Gray's Inn. On 6 July 1627, when George had returned to Lancashire and was permanently established at the Peel, Little Hulton, Alexander officially handed over the office to him. Personal relations between the two brothers were always excellent. Their many common interests and their mutual affection and trust continually caused them to seek each other's advice and help. But Joseph, who lived at Aspull and had strong civic interests in Wigan, had not the same close relationship with either of his two brothers. He tended to be the odd man out.

III

George Rigby's authority to hold the office of clerk of the peace was the letters patent, dated 25 January 1612, which restricted the period of holding to the lives of the two Alexanders. The second letters patent, dated June 1615, would come into operation automatically on the death of Alexander of Middleton, and this would



PLATE 4: GEORGE RIGBY

From a contemporary oil painting in the possession of Lord Kenyon.

continue to be effective so long as either George or Joseph lived. On 31 May 1627, as a precaution against any charge of incompetence or criminal conduct being upheld against him and requiring the surrender of both patents, George assigned the 1615 patent to his friend Thomas Pigott of Booths, Worsley. He requested and trusted Pigott to pass over the office when necessary to his heirs, or to such person or persons as he should direct, or, failing such directions, as his brother Alexander should direct. There is no doubt that George did draw up this deed because it still exists signed, sealed and properly witnessed, but on 2 February 1661 in an affidavit Pigott denied having ever seen it. His evidence was that "thirty-two or thirty-three years ago" he had been asked to ride over to the Peel by John Hey, George Rigby's servant. There George had told him that he was about to fight a duel with Captain Fleetwood, and "since he knew not but that he might either do or receive harm in the fight", he proposed to assign the clerkship of the peace in trust to Pigott. Pigott demurred, but eventually agreed to receive the papers sealed in an envelope. Sometime afterwards, said Pigott, he returned the sealed package, at George's request, by the hand of Saville Radcliffe, and he knew nothing further of the matter. He did, however, hazard the opinion that at their interview in 1627 George had said that if he were killed the office should pass to his brother, Joseph. To recall a conversation after more than thirty years is not easy, but probably Pigott's memory was sound, for in 1627 George was still a bachelor, and, in view of the terms of the 1615 letters patent, it would probably have been his late father's wish in such circumstances that the office should pass to Joseph. Certainly his father's probable wishes would have weighed heavily with Alexander of Middleton, who would have had the gift of the office, had George been killed in the duel.

For the next few years all went well. George was a very active clerk of the peace, and the office kept busy both him and his deputy, his cousin Alexander Tompson of Langtree, Wigan. Indeed at times he found it necessary to employ two deputies. In 1630 George married Beatrice Hulton, and by the time the Civil War broke out had a family of four girls, Beatrice, Lucy, Katherine and Alice. To his great sorrow Katherine died in September 1643. Meantime his elder brother, Alexander, had been elected one of the two members of parliament for Wigan in the Short and Long Parliaments, and in 1642 had jumped to the fore as a military leader in Lancashire. It was when Alexander was busy organising the first siege of Lathom House, that George, who had not enjoyed good health for the previous three or four years, died after a three-months' illness. He was buried at Wigan in April 1644. A worse moment for calm consideration of the various claims upon the office of clerk of the peace, which the war had rendered temporarily almost non-effective, it is hard to imagine. A week after George's funeral the siege of Lathom House reached a climax; in late May and June Prince Rupert's typhoon swept through the county from Stockport

to Bolton, Bolton to Liverpool, Liverpool *via* Lathom to Preston, and then through the Aire Gap to blow itself out at Marston Moor. By the late summer the second long wearying close siege of Lathom House had begun. These military movements were Alexander's chief concern, for he was the local commander at Lathom, had been almost captured or killed at the "massacre" at Bolton, and had been with the main parliamentary army at or about the time of Marston Moor. All that he had managed to do about the clerkship during these busy and dangerous weeks was to instruct Edward Hulton, to whom he was informed Thomas Pigott had handed over his trust, to pass the office to Richard Whitehead the younger of Astley, a neighbour and a close friend of George, who would exercise it on behalf and for the benefit of George's children. The deed by which Pigott, "divers good and reasonable causes and consideracons him movinge", had handed over to Hulton was dated 10 March 1639 and signed by six witnesses, yet at a later date it was revealed that in January 1644 George himself, quoting the letters patent of June 1615 and the document of 31 May 1627, had instructed Pigott should he die to hand over the office to Whitehead "to the onely use and behoofe" of the three girls. These two deeds, both still in existence, are contradictory enough, but at a later date Pigott stoutly denied knowledge of either of them. When about 1627 he had handed back the sealed package to Radcliffe, he affirmed, his knowledge of and action in the matter had ceased. He never gave any papers to Edward Hulton because he had none to give: he had no knowledge at all of the deed signed by George in 1644.

Whatever was the truth, Alexander of Middleton, an astute attorney and man of affairs, obviously had no doubt in 1644 that it had been his brother George's will that Whitehead should act on behalf of his children, and that he, Alexander, legally held the gift of the office. Indeed everyone concerned seemed to recognise his authority. If the sworn evidence of James Barker can be relied upon, about Michaelmas 1645 Major Joseph Rigby pressed Alexander to let him exercise the office, after promising to pay his nieces half the total profits, more in fact than they were receiving after Whitehead and Tompson had deducted their expenses and salary. Alexander refused, and when Joseph renewed his plea he was "much displeased". The war and its aftermath seriously affected the income derived from the clerkship, and the worry and difficulty of struggling to rear her family on a smaller income, together with the shock of her daughter Lucy's death in 1646, made Beatrice Rigby more impetuous and short-tempered than she had ever been. Not unnaturally she relied increasingly upon the advice and guidance of her own brother, Edward Hulton, and in 1647 "a great falling out" occurred between her and her brother-in-law, Alexander of Middleton. Despite his Puritan severity and his incisive, legal mind, Alexander was Beatrice's surest prop if only for the strong, brotherly love he had always had for her husband, but after the quarrel relations between them grew steadily worse. At length on

6 June 1648, "for the naturall love and affeccion wch he beareth unto the sayd Joseph and also for that the sayd Alexander is informed that their late fathers mind and intencon was that if George Rigby deceased . . . should dye in the life tyme of the said Joseph then . . . Joseph should have possess exercise and eniyoue the office . . .", Alexander granted the office to the eager Joseph. But there were conditions. If "by law or equity" there could be shown that part or all of the profits of the office should go to George's daughters, then Joseph was to hand over the profits to his nieces immediately: if arbitration were demanded, then Joseph must agree and appoint an arbiter.

Ten days later George's widow died, and Alexander, for the love he had borne his brother George, would dearly have liked to have been appointed guardian to the two remaining girls, Beatrice and Alice. But the influence of the mother's family was strong. Naturally the gayer and livelier atmosphere of the Hulton home attracted the girls far more than did serious, forbidding Uncle Alexander, whose sternness and wartime ferocity had become almost legendary. Uncle Adam Hulton took charge of the two orphans, and some months later Henry Nowell, an uncle by marriage and a Royalist, became their official guardian. Meantime Joseph Rigby continued to act as clerk of the peace. So long as his elder brother lived, that is until August 1650, he accounted for "the issues and profit of the office" to him, but Alexander probably exercised only a supervisory role, for Alexander Tompson still continued to be deputy, and later stated that from 1648 he carried out the duties of the office "by order and direcon from the said Joseph Rigby". Alexander of Middleton's death did not affect the disposal of the profits.

IV

In 1651, once he had compounded for delinquency, Adam Hulton approached Joseph about transferring the clerkship to the use of his two nieces. Joseph expressed his willingness to discuss the transfer, but also produced a long list of debts, which he claimed were due to him and which he demanded should be paid before negotiations began. Hulton refused to consider this list, and in the name of his nieces appealed to the duchy court. On 2 December 1651 both parties presented their case, but the court agreed to allow Rigby's request for a postponement on the ground that he could not at once lay hands upon the document by which he claimed the office. In the Hilary Term following, though the plaintiffs' counsel went to the trouble of stating their case in full, Baron Thorpe granted Rigby a second postponement, and it was not until 31 May 1652 that the duchy court heard the defendant's case. Edward Rigby, third son of Alexander of Middleton and already recognised as a brilliant advocate, represented his uncle, and produced in court a deed of 15 June 1630, by which he claimed that George,

some six weeks before his marriage, had declared that Joseph should be his successor in office. Now that the death of Alexander of Middleton had made void the 1612 letters patent, Edward argued, this 1630 deed empowered Joseph to claim the office by the authority of the 1615 letters patent, which he freely admitted was insufficient authority in itself. Hulton and Nowell were as perplexed as the court for no one had previously heard of the deed of 1630. Yet here it was being passed from hand to hand in court, and the court was being asked to believe that in 1627 George had transferred the 1615 patent to Pigott, in 1630 to Joseph Rigby, and then in 1644 had acted as if Pigott were still the patent holder. The only course the judge could take was to postpone judgment, in reality a temporary triumph for the defendant. But the plaintiffs did not allow the case to be shelved. In July 1653 both parties again appeared before the court, and this time the judge ordered Bartholomew Hall, the attorney general of the court, to examine the evidence and to report back his findings. That summer plaintiffs and defendant, with all the witnesses they could summon, argued their case in detail turn by turn before the attorney general. On 8 October 1653 Bartholomew Hall made known the findings of his enquiry. He upheld the plaintiffs' claim to the office and considered that justice would be done if Rigby surrendered the office to his nieces and paid them £200 compensation for loss of profits. At last all seemed settled. The duchy court had only to meet, endorse and enforce Hall's findings as it had previously undertaken to do, and the long wrangle would be at an end. But two days later, 10 October 1653, Barebone's Parliament, in a flutter of intended legal reform, suppressed the duchy court. No judgment could be enforced against Rigby. He continued to act as clerk of the peace. He still enjoyed the profits.

As a professing Puritan Joseph Rigby no doubt spoke of this deliverance as the hand of God, but in private he probably chuckled over his amazing good fortune. On the other hand Henry Nowell, stung into a fury first of frustration and then of action, determined that the matter was anything but ended. Only four days after the Instrument of Government had declared Oliver Cromwell lord protector, Nowell, in the names of Beatrice and Alice, petitioned him either to re-establish the duchy court until all pending cases had been cleared, or to transfer the case to another court "the proceedings in the Duchy being therewith certified soe as to receive a determinacon upon the Meritts without beginninge *de Novo*", or to sequester the profits of the clerkship into some responsible hands until a legal decision could be reached. The lord protector chose the third alternative. On 17 February 1654 he instructed Lieutenant-Colonel Charles Worsley, who in the following year was appointed one of Cromwell's eleven major-generals, to appoint "an honest and able person" to take over the office of clerk of the peace in Lancashire, and to hold in trust the profits of the office for whomsoever a court should later determine to be the rightful owner. To

make sure that Worsley carried out his duties honestly and promptly, Cromwell required him to hand over his bond for £500 to Henry Scobell, one of the clerks of the protector's council. This Worsley did on 22 February; on the next day he appointed William Shuttleworth to exercise the duties of clerk of the peace in Lancashire. Henry Nowell must have felt that there were new hopes of success.

On 7 March Joseph Rigby was served with Oliver Cromwell's order of 17 February, and, in obedience to it, he promised to deliver the books and papers concerned with the clerkship to Shuttleworth on 20 March. But he did not keep that promise, and when the quarter sessions met at Lancaster early in April, Shuttleworth arrived at the court to find Rigby, bewigged and robed in his usual seat. Shuttleworth produced his authority properly signed and sealed, and demanded that Rigby should give place to him. Rigby protested that he alone was the lawful clerk, and the justices with some bravado upheld his protest. An angry Shuttleworth rode south from Lancaster as fast as he could to inform the protector's council of the defiance he had encountered: a half-jubilant, half-apprehensive Rigby sat out the sessions, and then hastily followed Shuttleworth to London. The council had already ordered the sergeant-at-arms "to send downe a messenger for the said Major Rigby", but Rigby surrendered to the sergeant-at-arms and then petitioned the council to hear his case. The council fixed a date for the hearing. Though Rigby was technically a prisoner, no restraint was placed on his movements and he had every opportunity to prepare his case. Once again Edward Rigby appeared for his uncle, and his eloquence persuaded the council to cancel Worsley's authority, and allow Joseph to continue as clerk, on the understanding that he would render accounts of all profits, and that he would "duely pay and satisfie" such claims of his two nieces as a court of justice would uphold. On 24 June 1654 as an earnest that this would be done, Joseph and Edward, in place of Worsley, jointly signed a bond to pay £500 to Scobell if they failed to carry out any part of their undertaking. With that settled, the lord protector's council returned to business more important than the clerkship of the peace in distant Lancashire.

Even had they been prepared to risk further heavy legal costs, it is difficult to see how the plaintiffs could have re-opened the case. Not only the duchy court but also the court of chancery had been abolished, and the whole pattern of legal processes in England was changing. Meanwhile Joseph Rigby still held the office and drew the profits. For him present dangers had been cleverly side-stepped, and future troubles could only be faced as they arose. Indeed there was hope that they may never arise. On 19 May 1656 Beatrice, the elder of his two nieces, died unmarried and intestate. If Alice died too the opposition to his claim to the office would collapse. But Fortune gave another sharp twist to her wheel, and Alice, instead of following her sister to the grave, on 17 June 1657 married Roger Kenyon, of Parkhead, as litigious a gentleman as any of the

Rigbys, the very embodiment of infinite patience and bull-dog tenacity, and a husband determined to exploit to the full the inheritance he had married. The new plaintiff was an opponent worthy of both Joseph's and Edward Rigby's steel.

V

For the time being even Roger Kenyon could do nothing. The death of Oliver Cromwell, the disaster of Richard Cromwell's short rule, and the year of administrative chaos which followed, all prohibited him from taking any action at all. But the return of Charles II to London on 29 May 1660 offered him his first chance. He had already left Little Hulton for London, and within three weeks of the king's return, he had succeeded in pouring his grievances into the royal ear and petitioning for the reversion of the clerkship of the peace to himself and his son. King Charles agreed that the matter must be investigated, and on 16 June instructed Lord Seymour, the newly-appointed chancellor of the duchy, to hear the case and "advise what must be fitt to be done". Seymour could not obey immediately because his own letters patent creating him chancellor were still unsealed. This enforced delay gave the Rigbys time to wake up to this new danger. Alexander, Joseph's son, counter-petitioned the king that the reversion of the office should be granted to him, and on 11 July, nearly four weeks later, Charles II referred this second petition to Lord Seymour, who fixed 19 July as the date for considering both the petition and counter-petition in the restored duchy court in London. This time Joseph Rigby appeared in person, and Roger Kenyon was represented by Mr. Booth, an attorney of Gray's Inn. Seymour could come to no immediate decision, and proposed that a third person "indifferently chosen" should hold the patent until the matter was finally settled. Rigby refused to agree. Seymour observed that he must have little confidence in his case, and adjourned the court for the day. Rigby was a little more co-operative the next day. He produced another letter supporting his case, and then offered to outbid Kenyon for the reversion, but these actions did not erase the bad impression he had already made. On 21 July Seymour wrote to the king, "I humbly consider tht. the petitioner Kenyon hath the best title to a grannte of a Reversion of the said office. . . ." Charles accepted the advice, and four days later instructed Seymour to prepare "a bill" granting the office in reversion, that is after the death of Joseph Rigby, to Roger Kenyon and then to his son. This bill the king signed on 31 July. After the seals of the duchy and county palatine had been attached and after the auditor of the duchy had enrolled it, the letters patent was presented to Kenyon on 13 August. This precious piece of parchment, impressive in its size, its formal language and its red and brown seals, represented no more than partial victory. It ensured something for the future, but the present still belonged to Rigby. Indeed

the letters patent, far from challenging his right to be clerk, implied that there was no doubt about his authority, for it granted to Kenyon, after Rigby's death, such rights and privileges as had been previously granted to both George and Joseph Rigby. What was just as bad from Kenyon's point of view was the expense of procuring this new letters patent. On his long ride back to Lancashire, money matters were uppermost in Kenyon's mind. He reckoned that he had spent nothing less than £230 in his three months' stay in London, and in his meticulous way he set down on paper how the money had been spent.

	£	s.	d.
Given to my Ld. Seymour	100	0	0
To Mr. Ayliffe his secretary	10	0	0
To Mr. John Nicholas for procuring Ld. Seymours Report upon our References to be presented to the Kinge, in gold ..	2	0	0
To Mr. Wentworth Mr. Ayliffe for the warrant	10	0	0
To Mr. Auditor Pocock for particulars —£1 10. 0. to himself in gold 2. 6. to his son	1	12	6
To Mr. Philipp deputy clerk to the duchy			
For the signing of the paper draft and bill	1	0	0
Office fee for 2 lives	2	0	0
Figuring of the bill by the Mr. of the office	6	8	
Preparing the bill for the King's hand	1	0	0
Drawing, ingrossing and enrolling the patent (half wax)	2	0	0
Seals of Duchy and Palatinate	4	6	
Seals of Duchy and Palatinate	2	13	4
Given to Mr. Philips for his expedition, in gold	1	0	0
Given to Mr. White (Seymour's man) which he claims for the seals	10	0	
Given to Mr. Auditor Pocock for enrolling the patent	1	10	0
	126	7	0

To this sum Kenyon added "no less than £100" as round expenses for his thirteen weeks' stay in London with two men and three horses, and a further £2 for seeking advice from Mr. Sumner and Mr. Ellis, no doubt two attorneys. All this was more than he could afford. The following March he was compelled to pawn his letters patent for £100 to John Aysworth of Gray's Inn, but fortunately for him his fortunes recouped a little during the summer months and he was able to redeem his pledge in September 1661 by repaying Aysworth his £100 together with £3 "use money".

Meanwhile Kenyon was very busy planning to oust Rigby from the clerkship, and to recover adequate damages for those years, in which, he asserted, Rigby had held office by false pretences. During the Michaelmas term of 1660 he was again in London seeking legal advice, and early in the new year he laid a bill of complaint before the duchy court. Rigby made answer. With some heat he recited his version of the story, and complained that since the death of his brother Alexander he had exercised the office "but with great trouble and molestation from the Complainants, and with much difficulty and little or no profit by reason thereof". He asked the

court to dismiss the bill of complaint with reasonable costs. The court, however, favoured Kenyon, and on 20 February 1661, expressed the view that his case was just. But Kenyon was still left without a commission to put the court's "order" into effect. May found him back in London, and during the first three weeks of June, on the instructions of the duchy court, four gentlemen, William Shuttleworth, John Preston, Alexander Rigby (of the Burgh?), and Henry Whitehalgh, took depositions from many witnesses, for the plaintiffs eighteen, including Charles Radcliffe of Todmorden, a step-brother of Beatrice Rigby, Henry Nowell and Matthew Markland of Wigan, and for the defendants ten, including Alice Rigby of Shevington and John Hey, a carpenter from Tyldesley. With some conviction that victory was measurably nearer, Kenyon rode back to London in the last week of June, but was back in Lancashire a week or two later informing his witnesses that he had obtained a commission from the duchy court. It seemed that at last he had the whip hand, but on 22 August 1661 he agreed to refer the whole affair to arbitration. The vision of speedy and less expensive settlement lured him into a position in which he surrendered his expensively-won advantage, but he might have known that Joseph Rigby did not offer easy settlement without good reason. Each party nominated one arbiter, and in a bond of £2,000 pledged himself to accept the "order award doome and judgment of Thomas Legh of Adlington in the County of Chester, Esq., [Rigby's nominee], and Roger Nowell of Read in the above-said County of Lancaster, Esq." [Kenyon's nominee]. It was arranged that the two arbiters should hear the case at the house of Mr. Norris in Bolton on 18 September. Kenyon nominated Mr. Preston of Appletreeworth near Ulverston as his advocate, and Rigby chose another nephew, Edward Rigby's elder brother, Alexander of Preston. On 11 September, however, according to Kenyon's own account, "Major Rigby came fuddled to Parkhead and stayed all night and att his going away in the morneing sent me word by the osler Mr. Legh could not observe the meeting". Kenyon was eager to set out for Adlington immediately, but his solicitor, his brother-in-law Haworth, persuaded him first to go to Read to see his own arbiter, Roger Nowell. This Kenyon did, and on 13 September, armed with a letter from Nowell, journeyed into Cheshire. But all to no avail. Legh was not at home, and Kenyon had to return disconsolate first to Manchester to inform Haworth and then back home to Peel Hall, Little Hulton. He could not even prevent his advocate, Preston, from making the long journey from Ulverston, for he had already reached Bolton before Kenyon could let him know that the attempt at arbitration was at an end.

Most men would have been too exhausted and discouraged to do anything further for some time, but these continual frustrations seemed to goad Kenyon into even more strenuous and expensive efforts. From 23 October 1661 to 14 February 1662 he was again in London seeking fresh legal advice and trying to initiate new

proceedings. Eventually he succeeded in getting the case referred to the next assizes at Lancaster. He took great pains and spared no money in finding new witnesses. He, his wife, and his man-servant rode well over five hundred miles personally summoning each of his witnesses from different parts of Lancashire and Cheshire. One witness even came from London, and only infinite trouble and persuasion got into the box at Lancaster several of the older witnesses. The court assembled at the end of February, and the case for the plaintiff began by referring to the two letters patent of 1612 and 1615, and went on to relate how Alexander of Wigan had transferred the first patent to his eldest son in trust for George Rigby, and how Alexander of Middleton had faithfully fulfilled his trust until 1627 when he had transferred the office outright to his brother George. That same year George had entrusted the second letters patent to Pigott, and before his death had instructed Pigott to see that the clerkship was transferred to Whitehead in trust for George's children. This instruction had been reinforced by instruction from Alexander of Middleton to Pigott, and the plaintiff acknowledged that for two years or more after George's death the profits of the office had gone to George's children. But in 1647 Alexander of Middleton had quarrelled with George's widow. Alexander Tompson had retained the profits for that year, and since 1648, Joseph Rigby, first under the 1612 and, since 1650, under the 1615 letters patent, had wrongfully held the office. All the relevant documents were placed before the court, witnesses trooped into the witness box to vouch for their validity, and the plaintiff's counsel wound up his case by asking for the office to be transferred immediately to Roger Kenyon, husband of Alice, the only surviving child of George Rigby, and for the court to award suitable damages for loss of profits since 1647. There was no denying the strength of the case.

The defendant accepted much of the plaintiff's story, but argued that the very terms of the letters patent of 1615, that it should be operative during the lives of George and Joseph, shewed clearly that it had been Alexander of Wigan's intention that he, the defendant, should take over the office if he outlived George. Moreover Alexander of Middleton, on 17 April 1621, the day after he had received the office in trust, had signed a document declaring this to be his father's wish, and on 15 June 1630, George, in accordance with his promise to his elder brother to observe his father's wishes, had formally bequeathed the office to the defendant. This was the first time that Kenyon had heard of the document of 17 April 1621. Incredulously he read it through in court, and, then heard first Lucy, Alexander of Middleton's daughter, give evidence that her father had left with her deeds to be delivered after his death to her uncle Joseph, and secondly John Hey, the Tyldesley carpenter, swear on his oath that he had seen the document of June 1630 "sealed by George Rigby and as his acte and deed delivered unto Mr. Alexander Rigby brother of the said George to the use of Joseph Rigby at the house of Mr. Alexander Rigby in

Preston, and that at the sealing and delivery of the said writing hee the said John Hey was a servant to the said George Rigby and that then the said George had no other servant". The defendant had once again scored a tactical victory. Not surprisingly the court found for him, and thus reversed both the inoperative verdict of 1653 and the "opinion" expressed by Lord Seymour in 1660.

To Kenyon's friends this verdict appeared as a cruel but inescapable end. Henry Nowell, who heard the news in the Isle of Man where he was deputy-governor for the earl of Derby, described it as the worst news he had ever heard in his life, and in a subsequent letter to Kenyon he discussed whether it would be better for him to sell the Peel Hall estate or the Parkhead estate as the first step for getting out of debt. But Kenyon himself had no intention of accepting defeat. He was convinced that Hey was a liar, and that the two chief documents of Rigby's case, those of 17 April 1621 and 15 June 1630, were forgeries. He set out to prove his belief. A first calm examination of the documents revealed that the seal of one was missing and that in the other the wrong style had been ascribed to the king, and before long Kenyon felt certain that both documents had been written by the same hand, in the same ink and at the same time. But to attempt to prove the forgery in court would consume both time and fees. It would be far easier, thought Kenyon, to prove that Hey's evidence was false. Kenyon lost no time. On 16 April he had an indictment drawn up against Hey. A week later he was in London, and on 19 May moved in the duchy court for a fresh trial. In July Hey appeared at the quarter sessions held at Ormskirk. Thanks to Kenyon's energetic and thorough preparation witness after witness gave evidence to show that neither George nor Alexander had been in Preston on or about 15 June 1630, and that John Hey had left George Rigby's service at least two months before that date and had never returned to it. Hey broke down under cross examination, confessed to perjury, and was ordered by the court to repeat the true version of the story at the sessions to be held at Wigan in October next. There once again Kenyon assembled his many witnesses for what he hoped would be the kill, but again he was disappointed. Rigby's attorney, Peter Adlington, argued logically that the correct court in which to rehear the case was the assize court at Lancaster. This meant that Rigby had extra time to organize his defence, and that Kenyon had to spend more time and money getting his witnesses for a second time to Lancaster. The court did not sit until the following May, that is May 1663, but even Rigby, ingenious and unscrupulous though he was, could not find an answer to Kenyon's new case. On 19 May the chancellor of the duchy, assisted by Thomas Twisden a justice of king's bench, Sir Christopher Turner baron of the exchequer, and other judges, rejected Rigby's arguments, declared Alice Kenyon the rightful owner of the patent, and ordered that Rigby should surrender the clerkship of the peace forthwith and render an account of his profits. On 25 May the

official granting of the office to Kenyon confirmed this judgment. Certain formalities had still to be observed. On 1 June Kenyon served Pigott's heir, for Pigott himself had died a year before, with the decree of the duchy court. He in turn formally transferred the office to Richard Whitehead, as George Rigby twenty years previously had required him to do. On the next day Whitehead solemnly handed over his trust to "my beloved friend Roger Kenyon of the Peele in the said County gentleman". But it was not so smoothly that formalities were transacted with Joseph Rigby and Alexander Tompson. When Kenyon and Whitehead arrived at Rigby's house at Aspull on 2 June they found the gates locked. A woman answered their call and told them that Rigby had left home for Chester an hour ago, but most probably had gone first to Wigan to see Henry Rowe, who of recent years had been acting as his deputy. But at Wigan Kenyon and Whitehead were no more successful than at Aspull. Rigby had not been, Rowe was away from home, and Tompson was neither at his house in the town nor at Langtree. The next day was even more frustrating, for when the patient seekers again called at Rowe's house they discovered that Joseph Rigby and two men servants had arrived in the early hours, and had taken away "in a portmantu the Comission of the Peace and such of the said Books and Records as were chiefly materiall for the present execucon of the office". Kenyon postponed any further attempt to get into touch with his opponent, especially when he learned that Rigby had armed members of his household with a variety of lethal weapons and had vowed that he would never be served with the decree. Three weeks later after considerable difficulty Kenyon got as far as the front door of Rigby's house. Alexander, Joseph Rigby's son, refused to bring his father to the door or to receive a copy of the decree on behalf of his father: he even declined to confirm or to deny that his father was in the house. Whereupon the exasperated Kenyon pitched the copy of the decree on to the floor of the hall "telling him the said Mr. Alexander Rigby that since he could not come att his said Father to deliver itt, he thought he could not leave itt in a likelier place for him to find itt". This was not the moment of triumph that Kenyon had dreamed about for so long, but incensed and resolute he rode straightway from Aspull to Wigan to thrust his second copy of the decree into the hands of Tompson's wife, who promised to deliver it to her husband without fail. Kenyon need not have played this humiliating part in this pantomime, for two days previously at Westminster the duchy seal had been placed on an official decree, which ordered Rigby to obey the decision of 19 May under penalty of £1,000.

VI

Joseph Rigby was no longer clerk of the peace in Lancashire, but the difficult problem of damages had still to be solved. From 1660 Kenyon had kept a detailed account of all his expenses and his

journeys connected with the case, and with the help of this account book, he drew up the following bill. Hopefully he headed it, "An account for Mr. Joseph Rigby".

	£	s.	d.
June 6 1648 he confesseth he entred upon the office wch. is givene to be worth £200 per ann after wch rule for 14 years and five months he hath recd	2883	6	8
the simple Interest wereof comes to	1119	6	0
	<hr/>		
	4002	12	8
Mr. Hulton and Mr. Nowell the guardians of Mr. George Rigbyes daughter by the ptticulars of their Acc. the last of wch. was given the 2 ^d . of December 1656 spent in this suit	1022	17	10
The simple Interest whereof from that tyme amounts to	0368	04	6
	<hr/>		
	1391	2	4
Disbursed by mee in the suite now defending as by a ptticular truly appears	0449	17	6
	<hr/>		
The totall of the plts disbursments	1890	19	10
	<hr/>		
The totall of all viz ^t . his receipts and the plts Disbursemts are	5843	12	6

For good measure Kenyon added a postscript: "The myles rid about it as by the acct. of Mr. Hulton, Mr. Nowell and myselfe kept may appeare are 22622 Myles". To Kenyon and his friends these figures were convincing enough, but, against the active opposition of Rigby, he had to persuade Mr. Jessop, the deputy clerk of the duchy court, that they were right. Jessop held several meetings with the two parties, and on 1 February 1664 gave his report, which declared that justice would be done if Tompson paid Kenyon £142 5s. 2d. as compensation for the lost fees of 1647, and if Rigby paid him £1,892 4s. 6d. compensation together with £100 costs. The duchy court accepted this report, and on 17 February 1664 ordered the money to be paid. To the ordinary defendant there would have seemed to be no way out—"it is ordered that the order of February 1st be declared absolute, and the sums paid on demand"—yet Rigby found ways of continuing the argument and postponing the settlement. In the words of the exasperated Kenyon his estate was "soe cunningly and secretly disposed" that it was impossible to distrain for the money, and when Kenyon and his legal advisers tried to enforce the bond for £500 which Joseph and Edward Rigby had jointly given to Henry Scobell in June 1654, they found that Scobell was dead and his executor knew nothing of the bond, and that Edward Rigby was prepared to use to the full his immunity as member of Parliament for Preston in order to avoid being called before a court. By 1669, a full five years after the assize court order had been made, Kenyon had not received a penny. Indeed in that year Rigby tried to take advantage of the sudden death of Lewis Ashton of Little Hulton, to whom Kenyon had

entrusted the reversionary letters patent, to plead the technical surrender of that patent and to petition the crown for a new patent for his son, to come into force after the lapse of the 1615 letters patent upon the authority of which the office of clerk was still being held. The prospect of another long legal battle with Rigby reduced poor Kenyon to tears. His seventy-year old tormentor was personally pressing his suit in London, and in some panic Kenyon wrote hurriedly to a legal friend in London imploring him to counter Rigby's petition. His letter went through the whole pitiful story, and ended, "and if hereby they be freed from accounting for meane profitts and as ready as ever for obtayneing a new patent and destroying my grant in reversion I appeale to your pittty to Judge of my Case". Kenyon was only just in time. Rigby's brazen attempt to obtain a new reversionary patent almost succeeded. It took the duchy court a full month to reinvestigate the case and check Kenyon's agitated story, but at length on 22 June the chancellor confirmed his holding of the reversionary patent, and once again ordered Rigby to pay the compensation and costs which had been demanded in 1664. This latest order brought the money no nearer to Kenyon's pocket, but at considerable cost, the sudden Rigby counter-attack had been forestalled.

The stalemate continued despite continual petitions by the plaintiff until on 7 November 1671 Kenyon received a letter from his wife's cousin, William Hulton, informing him that Joseph Rigby was dead and had been buried the day before. At Peel Hall *Te Deum* must have seemed more fitting than any dirge or *Nunc Dimittis*, for the letters patent of 1615 had lapsed at last, and Roger Kenyon and his son to follow him would henceforward hold the clerkship of the peace by the unchallengeable authority of the letters patent granted specifically to them in July 1660. And Kenyon still held hopes that the bond money could be squeezed out of Edward Rigby. When Charles II had prorogued Parliament in April 1671 and so temporarily deprived Edward of his privilege, Kenyon had renewed the attack, but he was handicapped by lack of the bond itself. In November 1672 he swore an affidavit that he had made several unsuccessful attempts to lay hands on it, and believed that Edward Rigby had it or had destroyed it. He even asserted that Rigby, having unsuccessfully approached Scobell's widow and her second husband, Sir Richard Braham, had intrigued with one of Scobell's clerks, Samuel Hartlibb, to steal the bond from the file at Westminster and destroy it. But Baron Windham, who heard the case in the chancery court, took the view that Kenyon had not proved his case and upheld Edward's argument that it was essentially Joseph Rigby's bond, and that when Joseph had signed it he was under duress. Once again apparent finality merely goaded Kenyon to extraordinary effort and further expenditure. He briefed no less a team of advocates than the Solicitor General, Mr. Montague, Sir John Churchill, Sir Thomas Stringer and a junior counsel to plead his cause before the lord keeper himself, and,

despite the argument of Rigby's chief counsel, the attorney general, that a rehearing of a settled case would be contrary to all form and precedent, the lord keeper ordered the case to be reheard. Further delay ensued, for Rigby used various devices, including a renewed plea of parliamentary privilege, to keep the matter out of court. Eventually, however, on 1 June 1674 the final argument began before the lord keeper. An adjournment over Whitsuntide interrupted the case, but on 30 June judgment was given. Sir Heneage Finch, the lord keeper, took the same view as Baron Windham, "that Oliver Cromwell without any colour of authority did sequester or cause to be sequestered into the hands of Charles Worsley . . . the profit of the said office", that Joseph Rigby "for several weeks was unjustly kept in prison", and that Edward Rigby had answered his uncle's urgent plea to act as surety in order "to obtain his liberty from that illegal imprisonment". All this, said the lord keeper, had been established before Baron Windham, and since no new facts had been put forward "the plaintiff could not be reheard in equity. Therefore it was ordered that the defendant shall stand allowed and that the plaintiff's bill be henceforth dismissed out of this court". Perhaps it was as well that Joseph Rigby, one time major in the parliamentary army and a jubilant supporter of Commonwealth and Protectorate, had not lived long enough to hear this verdict. His wicked chuckle and his gleaming eyes would have shown how well he appreciated the irony of the argument, but his undeserved self-satisfaction would have been difficult to tolerate. As it was a rueful and disconsolate Roger Kenyon rode back to Lancashire through those long midsummer days to break the bad news to his wife, Alice. He had the clerkship safely enough, and it was likely to pass without more trouble to his son and probably to his grandson, but the struggle had well nigh ruined him. It was difficult to know where victory lay.

AUTHORITIES

Scattered references to the different legal actions which occur in this extraordinary story can be found among the various court calendars preserved in the Public Record Office. These, presumably, J. E. Bailey used in preparing the paper which he read to the Lancashire and Cheshire Antiquarian Society at Kenyon Peel Hall on 14 June 1884, and which was printed in *The Palatine Note-Book*, Vol. IV, pp. 143-147. Unfortunately Bailey got off on the wrong foot by confusing clerkship of the crown with clerkship of the peace, and the evidence he found in London was insufficient to build up a continuous story. Another and richer source of evidence is now available. Among the Kenyon Muniments (DDKe) deposited in the Lancashire Record Office are eight boxes of papers, referring to the clerkship of the peace. Some of the papers belonged to Alexander of Wigan, some to George Rigby, but most to Roger Kenyon. Kenyon could throw no scrap of paper away: even his rough copies and unfinished drafts he hoarded with a miser's care. From these papers has come this family saga, and to these papers the author gladly refers those who wish to see for themselves. He himself is grateful to Mr. R. Sharpe France, the county archivist, and to those of the staff of the Lancashire Record Office, who bade him and helped him seek and find, as well as to Lord Kenyon, who graciously allowed the muniments to be examined and gave permission for this story to be published.