

BERKHAMPSTEAD FRITH,

OR COMMON,

AND

ASHRIDGE

IN THE

NINETEENTH CENTURY.

BY

M. ALFORD.

*FOR PRIVATE CIRCULATION ONLY.*

1873.

BERKHAMPSTEAD FRITH, OR COMMON,

ETC., ETC.

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#### MY REASONS FOR WRITING THIS.

My object in writing a true version of facts which have been placed before the world in a garbled form, either intentionally, or through ignorance, is to show exactly the position in which my eldest son was placed, his actions and motives.

He can no longer defend himself, or judge whether silence or truth will, in the long run, be most likely to revive controversies, which at one time caused much ill-will.

Those who knew him best have deemed it unnecessary to vindicate his character as a country gentleman, a neighbour, and a landlord. During his short life he made many friends, who can bear witness to his unselfish, generous nature, his earnest desire to ameliorate the condition, and to add to the pleasures of his own people, and of the poorer classes in general.

These considerations deterred us from answering the attacks upon him in a pamphlet printed and distributed in 1866, entitled "Berkhampstead Common. A Statement by A. Smith, Ashlyns Hall, in the Parish of Great Berkhamptead;" and most unwillingly do I now refer to it. Mr. Smith's family has since his death become

connected with ours by marriage, and no one can respect more sincerely than I do its living members. But I am forced to dissect, as it were, this unlucky pamphlet, so widely circulated and so well known, as on Mr. Smith's mistaken impressions a false estimate of my son's character continues to be founded. It will be printed *in extenso* in the Appendix, with remarks on the inaccuracies in each paragraph.\*

When, in 1877, I was first made aware that Mr. Froude had made it the text of one of his essays, in vol. iii. of "Short Studies on Great Subjects,"† I felt that something should be done in my lifetime towards leaving a *true* record of the dealings of the owners of Ashridge with regard to Berkhamstead Common. No one knows the truth so well as I do; and as a guardian, I have been sometimes wholly responsible for what has been done, sometimes partly so, till my son came of age.

If Mr. Froude had not revived the old grievance by reprinting the essay "On the Uses of a Landed Gentry," and if he had even then confined himself to the relation of facts as he understood them, I should perhaps have taken no notice of his assertions. He tried, however, to give a dramatic interest to his narrative by making a hero of Mr. Smith, and attributing base motives to Lord Brownlow, for which he has since expressed his regret.‡

\* Appendix, page 27.

† Appendix, page 39.

‡ "BERKHAMPSTEAD COMMON.

"To the Editor of the *Times*.

"Sir,—In an address delivered by me last year at Edinburgh, and since republished, I am informed that I did some injustice to the late Lord Brownlow. I was speaking of the attempted enclosure of Berkhamstead Common, which I regarded, and which I am obliged to say I still regard, as wrong and unjustifiable.

"But although the enclosures were made in Lord Brownlow's name, and Lord Brownlow was therefore formally responsible, I am assured by those whom I am bound to believe, that he was a generous-minded, excellent man, incapable of doing or of sanctioning any act which he had not supposed to be right.

"I shall be obliged to you, therefore, if you will give me an opportunity of expressing my regret for having spoken of Lord Brownlow in terms too harsh for the occasion, which have given pain to his family and friends.

"Your obedient servant,

"J. A. FROUDE.

"5, Onslow Gardens, Nov. 25, 1877."

I do not find that Mr. Froude took any steps to ascertain whether he had been mistaken in any of his statements regarding the Berkhamstead Common enclosure; and I cannot allow that his apology really wipes out the stigma cast upon my son's name. Mr. Froude's accusation is that he was of the "Ahab" type of selfish and covetous landholders; Mr. Smith's, that he acted dishonourably towards him and others about the Berkhamstead Common enclosure. My denying these will have little weight. I could bring endless proofs of his charity, his generosity, and his public spirit, but I am neither writing my son's life nor his panegyric. One who knew him well, Mr. Gerald Massey, the poet, speaks of him with touching truthfulness and grace in the following lines:—

"Indeed, indeed, as the old poet saith,  
He was a very perfect, gentle knight;  
A natural noble, by the grace of God;  
Perfection in the dearest human form.  
Yet, gentle as he was, how gallantly  
He bore his sufferings, kept the worst from sight;  
He had the heroic flash of English blood!  
How freely would he spend his little hoard  
Of saved-up strength with spirit lordly and blythe  
To enrich a welcome, and make gladder cheer.

"And to the poor he was all tender heart;  
The very last time that he talked with me  
His trouble was to know how poor folks lived  
Upon so small a pittance, and he sighed  
For life, for strength, to do more than he could,  
And in his kingly eyes great sadness reigned."

I hope I may be forgiven for quoting some words in a letter from Lord Northbrook, on receiving Mr. Massey's "In Memoriam," which I had sent to him:—

"I am very sensible of your kindness in having sent me the book in memory of Brownlow. Even with my short friendship for him I can say that there is not a word that is not just and true. There were few such men in the world. I can more especially appreciate the lines in page 31, 'Yet gentle as he was,' &c., for I saw this every day. . . ."

I reprint portions of two newspaper notices of the day, as witnesses to a life of which all record would soon disappear in the

whirlpool of time; and of which the true memory is to me and a few more so precious.

The first is by an anonymous writer in the *Northampton Herald* of March 16, 1867:—

"Few individuals go to their last resting-place without leaving a void in some faithful hearts. A sudden and untimely death not only moves but shocks us; but when the life cut short is one of active benevolence and exemplary goodness, the case surely deserves more notice than the formal words of a common obituary.

"We are alluding now to the late Earl Brownlow, who brought his numbered days to a close, at Mentone, towards the end of last month.

"Although not a resident in our county, we claim some interest in that good life and early death, seeing that his mother is a member of one of our oldest families, and her early youth was passed at Castle Ashby. Earl Brownlow had large estates, which yielded a princely income; he was descended from ancestors of historical reputation, and he had, moreover, the happiness of being encircled by affectionate and accomplished relatives.

"To crown all, he was in the prime of life. These numerous advantages were, however, cankered in their bloom by a fatal complaint, which gradually undermined his constitution and doomed him to an early grave. But it was not in the power of fortune to corrupt, or of disease to overthrow, the native excellence of his heart and mind. He employed the gifts and accepted the will of Providence like one to whom duty was pleasure, and resignation no sacrifice. A total absence of selfishness and a generous, yet modest, kindness of nature characterized his demeanour in everything. He could not be known without obtaining the love and respect of all. The progressive decline of his health, which necessarily slackened exertion, failed to repress his inherited taste for literature and art. . . . Considerate, observant, and conscientious, he proved himself equal to the various demands upon his attention, and turned the pity claimed by his sufferings into the esteem commanded by his moral and intellectual endowments. . . ."

The following extract from the *Court Journal* of that month also tells a true story.

"THE LATE EARL BROWNLOW.— . . . His life was one long struggle against the weakness of illness. For many years he had not known a day's health. What volumes does not that speak! But his own affliction only seemed to inspire him with the desire to confer acts of kindness and charity upon others. By the extensive circle of his family connections he was regarded with well-merited affection. To his numerous tenants and dependants he was the justest and most generous of landlords and masters; and to the outward world his charity was unbounded. One instance of the latter is so striking and so illustrative that we cannot refrain from mentioning it. So delicate was he, that the winters of this climate would have been

fatal to him, and for several years he passed them in Madeira. On these occasions he used to discover individuals afflicted with the same delicacy of constitution as himself, but who were totally unable to afford themselves the solace which his wealth procured for him. These, sometimes to the number of six or seven, he prevailed upon to accept his invitation to 'accompany him on a voyage in search of health,' as he delicately termed his noble act of thoughtful kindness, . . . and all was as freely at the disposal of his poor friends as at his own. He had no greater gratification than to perceive that glow of health on theirs which, alas, was destined never to be seen on his own cheek. He was once described by one who knew him intimately as the most amiable man he had ever known. . . ."

#### LEASE OF DUCHY LANDS.

I will now give a slight sketch of the connection between the Ashridge and Duchy of Cornwall Estates.

In the year 1807, John William, Earl of Bridgewater, became <sup>1807</sup> the tenant of the Castle Park under the Duchy of Cornwall. (This had been previously held by a Mr. Rooper.) Since 1805, Lord Bridgewater had held the waste lands of the Manor of Berkhamstead, under a lease which was renewed for the last time to Lord Bridgewater's trustees in 1826, at an annual rent for "The Park <sup>1826</sup> and Demesnes of Berkhamstead," while a separate lease was granted for the "Honor and Manor." Three fines were paid for the renewal of the leases; £3,563, £210, and £4,390. The last fine was paid in 1856 for the renewal of the "Lease of the Park and Demesnes" for eleven years from January, 1856; but no such lease was actually granted. (I would remark here that the Park and Demesnes of Berkhamstead pertained to Berkhamstead Castle, and not to Ashridge, of which the Park and Demesnes are in another parish.)

The result of further negotiations with the Duchy was that at length the lease of the "Manor, Honor, and Royalties" was renewed for the same period as the other lease above mentioned.

On the death of Lady Bridgewater in 1849, the Duchy Council <sup>1849</sup> ordered that the whole of the farms, of which Lord Alford became the tenant, should be placed in thorough repair, revalued, and relet according to the new valuation.

Lord Alford died in less than two years after succeeding to the 1851. property; and the Duchy then declined any promise of a renewal of leases at the termination of the term last granted. Thus the holding of the Duchy lands had become a very anxious and onerous charge to the owners of the Ashridge Estates.

### NARRATIVE OF PURCHASE OF DUCHY LANDS AND MANORIAL RIGHTS.

It was in the year 1853 that the Bridgewater Estates were 1853. awarded to my eldest son, John William Spencer, then Lord Alford, by the final decision of the House of Lords.

In January, 1854, I went to reside at Ashridge with my sons. 1854. By my husband's will I was one of their guardians; my father Lord Northampton, my father-in-law Lord Brownlow, and his brother Colonel Cust, being the other three. Lord Northampton died a fortnight after my husband Lord Alford, in January, 1851. Lord Brownlow at the time that the law-suit was decided, was so ill, that no business of any kind could be placed before him, nor had been for some time past. Colonel Cust was mostly living abroad with an invalid daughter; and the conduct of the Bridgewater law-suit had fallen upon me.

I was well and ably assisted by my friends and lawyers, and on its most satisfactory conclusion, I became the acting guardian of my son, and therefore I claim to know better than any one else all that was done, and also the animus and the reasons that inspired our actions. These I shall try and make plain to all who are interested in them.

Not long after my return to Ashridge I received a deputation which came from Berkhamstead on the plea of consulting me as to the desirability of cultivating the Commons of Berkhamstead and Northchurch. Spade-labour was then the crotchet of the day. The memorial laid before me represented that such a measure would be

for the benefit of the poor of the town of Berkhamstead, and of the Ashridge Estates.\*

I replied that our rights over these commons were more than shared with the Duchy of Cornwall, and, moreover, that I could not during my son's minority, consent as a guardian, to the disfigurement of the beautiful Frith, which I considered as the glory of that part of the country. I reminded the deputation how Linnæus, when visiting England, came to Berkhamstead, and seeing the gorse in full blossom, knelt down, and thanked God for showing him so glorious a sight.

From that time I heard no more of spade-labour from the people of Berkhamstead. The idea gradually died out, and another generation had gone mad on another tack. The wise wish for the preservation of commons and forests for enjoyment and usefulness, had grown into a frantic desire on the part of the public to assert its absolute right over every piece of waste land.

In the year 1858 there was a revival of the idea of an enclosure; 1858. and a scheme was prepared and forwarded to the Council of the Duchy,† in accordance with the expressed wishes of the people of Berkhamstead and nearly all the tenants of the Duchy. I believe we were then advised that the Duchy might be induced to sell the greater part of the Estate, and that we had better wait and look forward to such a possibility.

When, therefore, in 1860 it was understood that the Prince 1860. Consort, then guardian of the Duchy Estates, would listen to the project of selling these lands to the owner of Ashridge, it became a matter for serious consideration whether it would not in the end be a saving, and certainly in many other respects an advantage

\* I would here observe, that when I use the word "common" or "commons," I do so as a generic name for all the waste lands of Berkhamstead and Northchurch. The common of Berkhamstead used formerly to be called the Fryth or Frith, and was in fact mostly forest land, till the trees were cut down and sold in the time of Charles II. I believe the Lord of the Manor of the Fryth of Berkhamstead has really much larger rights than my son claimed, as he was not aware of these facts at the time. It is curious to find as one enters into details, how marked are the individualities of each case of disputed common right.

† Appendix, page 39.

that the farms and the Duchy manorial rights over the Common should be purchased at a fair valuation. I asked my son if he would prefer, on coming of age, to find a large sum of money—say £100,000, in the Bank, or that all the savings of his minority should be expended in securing the Common and the farms between Ashridge and Berkhamstead. He deliberately chose the purchase, which would secure the Common adjoining the Park, and preserve the beauty of the neighbourhood, especially when it appeared that the Duchy Estate would probably be thrown into the market, and become the property of the highest bidder.

I will not enter into the details of this transaction. But the fact was that two or more persons were desirous of acquiring the Duchy property, in the hope of making a large profit by cutting up the Park and Demesne and Common Lands into small holdings, and then building villas.\* An offer was actually suggested by a spirited speculator of £200,000, with this view. However, the price was ultimately fixed at £144,546, of which £43,682 was the value paid by Lord Brownlow's trustees for the share of waste land purchased from the Duchy—including the Manor and Honor.

And so the estate with all its manorial rights was made over, 1862. in 1862, to Lord Brownlow; and only some comparatively small claims on the Common stood between him and the sole possession of this wild and beautiful tract. The final arrangements were not completed till the following year, when Lord Brownlow came of age, and it was only then that the question of right to enclose and protect "Berkhamstead Common" was mooted.

### BERKHAMPSTEAD COMMON.

The distance from London, thirty-six miles, placed the Common outside the area which the late Act of Parliament had protected.

\* Mr. Smith asserts that this was Lord Brownlow's intention, but surely no one could have so strong an interest in preserving at least a great part of this feature of the county. Perhaps this was an unintentional mistake, founded on the fact that the Heath Estate, in the distant Parish of Cheddington, now the property of the owner of Mentmore, was then for sale, and there was an idea of its purchase by a capitalist, who proposed to build villas there.

Though Lord Brownlow's family traditions had only lately become known to the Hertfordshire world, they had sufficient experience to be aware that no churlish or illiberal policy had been inaugurated at Ashridge. Lord Alford's creed was, that the good things he possessed should be a source of enjoyment to all to whom they could be extended, and his sons inherited this creed.

Every possible improvement was continually discussed; and amongst others, a system of roads for traffic across the Estate and Common was planned and mapped, and partly completed with the concurrence of the Parish authorities, at the expense of Lord Brownlow. Communication was facilitated from Berkhamstead to the highroads along the valleys, to Potten End, Nettleden, Little Gaddesden, Water End, Great Gaddesden, &c. The resolutions of the Vestry will be found in the Appendix,\* giving its sanction to opening new roads and closing the old ones.†

It has always been the custom at Ashridge to allow free ingress and egress to and from the Park, even up to the house doors, only closing the gates at stated times to maintain the privileges of private roads.

Lord Brownlow, believing it was in his power, gave to Berkhamstead a cricket ground on the Common near the town, and enclosed it,—but it was found to be inconveniently distant; and the inhabitants begged it might be exchanged for one nearer the Castle. A field was therefore used for the purpose till the contemplated park should be agreed upon.

The ruins of the Castle, which were and are still rented by the owner of Ashridge from the Duchy of Cornwall, having been retained by the Crown, as being the nucleus of the Duchy Estates, were put in order by my son's wish during his minority, without destroying their picturesque interest. The large space within the enclosure was devoted to fêtes of all kinds: Horticultural shows, Odd Fellows', and Freemasons', and Archery meetings; and a pretty cottage was built by his guardians for the accommodation of the guests.

Besides, from time immemorial, upwards of one hundred keys

\* Appendix, page 40.

† See map No. 2.

(now as many as a hundred and fifty) have been granted to the neighbours, that they might have free access to the woods and drives of Ashridge, enabling them to cross the Park and go through the gates on to the waste lands in every direction.

I have only named acts referring especially to the Commons question. But I think these alone will show that Lord Brownlow had every wish to promote the pleasures of his neighbours of all classes.

The state of the Commons, and the means of traversing them, had forced themselves on the attention of the owners of Ashridge.

In the lifetime of Lady Bridgewater, who by the will of her husband, John William Lord Bridgewater, had enjoyed the possession of Ashridge for twenty-five years, the guardianship of the Commons had been a subject of constant irritation. An army of keepers warned off the people (other than *bond fide* tenants of the manor) who came to cut furze and destroy every shrub that attempted to grow on the waste land.

As the woods and forests of Italy were usually the refuge for brigands and outlaws, so in a greatly modified degree, the unenclosed Commons had become the resort of the unfortunate and least respectable members of the community. Few others took their pleasure there except on horseback.

When we first visited Lady Bridgewater, shortly after our marriage in 1841, she took us to a ball at Berkhamstead, and we were guarded by outriders with loaded pistols in their holsters, for fear of our being attacked and robbed as we passed over the Common.

Lady Bridgewater had cut green drives through the Commons for recreation, not traffic, but her object was continually thwarted by the grass being cut up in every direction, and the drives rendered impassable, as heavy carts were, from the spirit of contradiction, and also for purposes of illicit traffic, driven through and across them till they were reduced to ridges and furrows of mud. It was no use repairing them as long as the custom continued, and in order to prove there was no right of way, small ditches were cut across the entrance to several of the drives, greatly to our own

Lady Bridgewater's green drives.

inconvenience, as well as to that of others. When the purpose for which these impediments were placed was accomplished, some of the ditches were filled up. Those it was unnecessary to restore, were on the contrary deepened.

Mr. Smith in his pamphlet mentions that on his representation "this nuisance was abated," which was not exactly the case.

This was the first grievance against Ashridge on the "Commons" question. As soon as the rides were reopened, the carts resumed their erratic courses, carefully avoiding the hard roads, cutting up the turf ones, and making ruts in all directions.

There is no doubt that the tenants of the Duchy (except two or three persons) and the inhabitants of Berkhamstead in general, agreed in wishing for an enclosure, as they knew they would lose nothing in the way of pleasure or profit, but that, on the contrary, each individual would be really benefited by exchanging his rights on the Fryth or Common for other advantages besides the enfranchisement of their copyholds and freeholds. It must be remembered that the public had no rights on the Common, as was proved by the evidence before the Master of the Rolls, and adjudged by him. No one could pretend to believe that a small country town, distant from all mining and manufacturing industries, was in danger of losing its "lungs," as the phrase is to describe the little oases of green amidst wildernesses of brick and mortar, and the Common and Forest lands closely surrounding crowded cities. Where it is supposed that the health of the people is concerned, this is evidently an excuse, if not a reason, for ignoring private property and interests, on the part of a socialist jury, or a paternal government. But where there is no such excuse, possession should be respected, both as to the power to sell, and the power to purchase property—whether it be land, or rights over land.

Lord Brownlow came of age, at Madeira, in the spring of 1863. His health obliged him to spend his winters abroad, and for this reason all business matters requiring his presence or opinion were slower of transaction than would otherwise have been the case.

Before leaving Madeira, in the spring of 1865, Lord Brownlow wrote to his agent at Ashridge, instructing him to find out the

Lord Brownlow  
attains his Majority.

wishes of the Commoners, and inquire what compensation they might be willing to accept in lieu of their rights of Commonalty real or presumed. Accordingly the following letter was addressed "To the Copyholders and Freeholders, tenants of the Manor of Great Berkhamstead, in the County of Hertford."

"GENTLEMEN:—

"Earl Brownlow, the Lord of this Manor, having now acquired sufficient interest to enclose this Common, under the General Enclosure Act, is desirous of concurring with you and the inhabitants of Berkhamstead generally, in regard to the best method of making a just and liberal compensation in lieu of the existing trivial outstanding claims on the Common; and as various proposals have been suggested for such compensation, I wish, in order to prevent any misconception of Earl Brownlow's views, to inform you that his Lordship is willing to give land somewhere near the Town for the purpose of recreation, provided the same be on the west side of the railway, and be generally acquiesced in. Permit me, therefore, to suggest, that you convene a meeting to consider the matter. I shall be glad to hear the result as early as possible, Lord Brownlow being expected in England in the beginning of June.

"I remain, gentlemen,

"Your obedient servant,

"WILLIAM PAXTON.

"Ashridge Estate Office,  
"April 30, 1865."

1865.

It seems that Mr. Augustus Smith considered it uncourteous that he should be addressed simply as one of the Tenants of the Manor, and that he ought to have been privately consulted. The fact is, that though we were on perfectly friendly terms with Mr. Smith, his non-residence in England made us imagine that his interests were of course represented by his man of business, and that no personal reference was necessary: also, till the matter was ventilated, we could not be aware of the extent of rights he or any one else claimed, and for which compensation would be expected.

We had also believed, and thought we had reason to do so, that he would willingly compound his rights for a portion of the Ashridge Estate, near Ashlyns, the release of his copyhold and freehold estates, and likewise the acquisition of some pieces of the

waste land on the other side of the valley adjoining Ashlyns Hall, which seemed placed there to answer the purpose. This land had, in fact, been once enclosed by a former owner of Ashlyns—and Lord Bridgewater, as tenant of the Commons, had thought it his duty to pull down the fence which had been erected.

On the 20th of April there was a Vestry Meeting held by the Freeholders, Copyholders, Tenants of the Manor, and other inhabitants of the Town of Berkhamstead, to consider Mr. Paxton's letter above quoted, and this meeting was adjourned till the 26th of June, when a memorial was drawn up and subsequently signed by 186 persons, having presumably Commonable rights. Of the forty-nine tenants of the Manor, thirty-four had signed this memorial, nine others had signed a requisition in favour of a different site for the Park or Recreation Ground, belonging to Mr. Smith Dorrien, Mr. A. Smith's brother, to which he had refused his assent. Six tenants had refused to sign any memorial.

Lord Brownlow was accused of discourtesy at a public meeting, for not having answered the requisition with nine signatures. His letter in the Appendix will explain this matter.\*

Likewise in the Appendix will be found the copy of the Memorandum prepared by the Vestry Meeting. To this I have not Lord Brownlow's reply,† but he agreed to the proposals contained in it.

Next follow Resolution of Vestry adjourned to 26th June, 1865, and Memorial to Lord Brownlow signed by 186 persons—praying for exchanges of their Common right, for land near Berkhamstead as specified.‡

The next document is the unfinished deed of release prepared and signed by 415 persons interested in the Berkhamstead common lands, covenanting for the exchange of their rights for 43 acres of land, to be granted by Lord Brownlow in perpetuity to the parishes of Great Berkhamstead and Northchurch, as a park and recreation ground. In addition to these Lord Brownlow

\* Appendix, page 40.

† Appendix, pages 42—43.

‡ Appendix, page 43.

had promised, on the enclosure taking place, to rectify the outline of ground to be given up, by purchasing the small inequalities, altogether making the estate ceded to Berkhamstead to consist of about 50 acres, including a valuable water-mill and four cottages.\*

Lord Brownlow's signature was never affixed to this document. The accompanying map will show what land the town and parish desired, and under the enclosure they were to have received it.

I will now give the measurement of the Berkhamstead lands purchased from the Duchy, and a list of the unsettled claims upon it in August, 1865.

	A.	R.	P.
Total area of enclosed lands, including site of houses, with curtilages in Berkhamstead ...	2,906	3	28
Extent of waste or Common lands ...	1,046	0	0
Roads ...	38	0	0
	<hr/>		
	3,990	3	28

*Unsettled Claims.*

	A.	R.	P.
Extent of Bourne's Blue Coat School Estate ...	6	1	0
Sayer's Almshouses " " " ...	0	1	12
Mr. Augustus Smith—Ashlyns Estate† ...	176	0	24
Colonel Smith Dorrien—Haresfoot Estate ...	301	3	20
Other small tenants, about ...	24	0	0
	<hr/>		
	508	2	16

The exchanges with the Trustees of Edward the VI's Grammar School (by which their rights on the Common were to be given up for land in Berkhamstead and Northchurch) were, in October, 1865, approved before the Inclosure Commissioners, Lord Brownlow

\* Appendix, page 48.

	A.	R.	P.
† Mr. Smith's Ashlyns Estate ...	127	0	13
Do. acquired from Grammar School... ..	49	0	9
	<hr/>		
	176	0	22

agreeing to give 50 per cent. added value, for all rights belonging to the Grammar School Estate. The Commissioners had also agreed to separate bargains, then before them, or absolutely concluded, with the Bourne Blue Coat School and Sayer's Almshouses, on the same terms. Some other exchanges, which had been privately agreed to, or arranged by the assistance of the Inclosure Commissioners, had given some trouble; but by liberal consideration of the convenience of those dealt with, all seemed satisfied.\*

Matters being so far advanced, the question arose how we were to assert and prove our right over the waste land, and whether the best way would be to enclose a portion, leaving plenty of room for the pasture and furze cutting of those three gentlemen, Mr. A. Smith, Col. Smith Dorrien, and Mr. Whateley (whose right was doubtful), and those few small Commoners whose claims were not yet fully ascertained. We had reason to believe that Mr. Smith did not object to the enclosure, either on public or private grounds: but that he chose to assert his own claims, and to have a voice in the decision of the parish interests.

And if one may say it without ill-nature, his absolute autocracy in Scilly had given a bias to his mind which made it difficult for him to refrain from dictating, when he felt that his family interests gave him a voice, though his constant residence elsewhere had caused him to be looked upon as an absentee who had no real affection for Berkhamstead. Two letters addressed to him and to his lawyer had not been received or answered in a friendly or conciliatory spirit.

Still we did not think it necessary to adjust our differences with these gentlemen before proving the right of Ashridge over at least two-thirds of the Common; one-third by the widest calculation being sufficient to cover all other claims on the manorial

\* Letter from Lord W. Compton to Mr. Paxton, Nov. 11, 1863:—

" . . . —Lord Brownlow, in writing to me, asks whether it is not the case that a recreation ground appointed by law is to be set out for the parish under every enclosure. So that the people of Berkhamstead may perhaps be entitled to one, besides and distinct from compensation of Common rights. Lord Brownlow adds:—'Please find this out, as we ought to be scrupulously just and not drive a hard bargain.'"

rights of the Duchy Estate,—therefore so much was to be left untouched.

When Lord Brownlow left Ashridge in the end of October, he was so ill that his medical advisers enjoined complete rest, as far as possible, and therefore, through our family friend and lawyer, Mr. Nicholl, I had begged Mr. Smith that all the business that concerned him should pass through our two lawyers, and not be addressed directly to my son. Had he been well enough to attend personally to the details of business, I feel certain that his straightforwardness and his frank wish to be just in all his dealings (which justness in him was nearly allied to generosity) would have won everybody's confidence. Unhappily Mr. Smith neither understood him nor believed in the honesty of his advisers, and forced upon him a correspondence with which he was at the time through bodily weakness after a sharp attack of illness quite unable to cope.

Perhaps it will be asked, why was there so much haste to conclude this business at once, when Lord Brownlow was ill, and no apparent necessity existed for a speedy completion of the exchanges and releases of the copyholders and freeholders.

I answer that we were advised to lose no time, because the society for the protection of waste lands and commons had threatened to widen the radius drawn round London for preventing enclosures under the last Act of Parliament. But another and more cogent reason was, my son's anxiety to perfect and finish in his lifetime the transaction which he felt would leave his mark on the estate and neighbourhood. His friends knew the ideas he entertained, and all strove to help him, and to save him fatigue and vexation. His intentions were well known to me and to those with whom he spoke on the subject.

When he had arranged all the outstanding claims, and proved his rights over the whole Common, he would then carry out one of his schemes for the improvement of the poor little village of Potten End, which skirted its southern extremity. He proposed to enclose and cultivate all the waste land to the right of the old road from Berkhamstead to Ashridge (nearly a third of the waste), giving

Reasons for hurrying on the Enclosure.

allotments and employment in spade labour to the men who were amongst the poorest of the population.

The desire to make every experiment towards benefiting the poor was with him a passion, and he would have spent his last penny, and given the coat off his back, if necessary, for the accomplishment of such a purpose.

He looked on the enclosure of a part of the Common on the left side of the road as a temporary measure for proving his rights—or rather for ascertaining them, and when it had served its purpose, it would have been removed, and the waste land it enclosed would have been converted partly into grazing ground for cattle, and partly planted for shelter and ornament. Thus the first use of his possession of the Common would have been for the benefit of those whose small privileges would have been absorbed.

Some one will say—Why did he not publicly announce his intention?

The motto he had selected and appropriated to himself from those belonging to his family was “*Esse non videri*,” which he freely translated “To do and not to talk.”

On leaving Ashridge for Bournemouth, whence he was to start for Madeira, my son asked me to call a meeting of his friends and lawyers, to consult on the next step. Some I invited could not attend; but those present were my brother Lord William Compton (now Lord Northampton), who had greatly helped and advised my son on estate matters; my brother-in-law, Hon. F. Leveson Gower, Mr. Grover (the Steward of the Manor), Mr. Paxton (the Land Agent), and myself. After much deliberation, we resolved to lose no time, but at once to enclose a part of the Common, and leave it to any one who should oppose us to prove that we had not the right to do so. Mr. Smith's letter (No. 2) in the pamphlet is supposed to refer to this meeting.

I must here discuss the letters on which Mr. Smith founded his accusation of dishonourable conduct. This to the friends who knew Brownlow's transparent truth and honour seemed at the time ridiculous and unworthy of notice. But I find that erroneous notions of his character continue to be founded on them, and therefore some explanation seems necessary.

Enclosure determined.

Though the correspondence is printed at full length in Mr. Smith's Pamphlet in the Appendix, I here give the three letters to save the reader the trouble of reference.

Tresco Abbey, Isles of Scilly, Cornwall,  
1st November, 1865.

DEAR LORD BROWNLOW,

I have received a letter from your Agents, Messrs. Nicholl, Burnett, and Newman, of which I send you a copy, in case you should not have seen the letter itself, together with my answer. At the same time, I feel bound to open a communication with yourself on this occasion, though I trouble you very unwillingly, as whatever takes place in reference to this matter the responsibility must rest with yourself. Many rumours have from time to time reached me on this subject, which were very unsatisfactory, but I had determined neither to believe or take notice of such till they came before me in a definite shape.

I cannot understand why the enclosure of Berkhamstead Common is to be taken out of the usual category of such proceedings, which pass the Commissioners who have been expressly created by Act of Parliament to give them legal effect, as affording the best means of securing the rights of all parties concerned. The attempt to accomplish the object in any other way has both a suspicious and unfavourable aspect, and cannot work satisfactorily, while I am sure it will cause you in the end a far larger amount of that very trouble which your friends so deprecate on your behalf.

I cannot help further observing,—taking the privilege of my years and any experience I may have acquired thereby,—that in these days owners of great estates are especially interested in disarming the invidious character,—so apt and too often very unfairly,—to be ascribed to them, by taking care that all proceedings connected therewith shall bear a really liberal, just, and legal aspect, when brought in contact with the rights of others, as the best security for their own interests, and position. My chief object, then, in writing is, that I may be assured that you are really cognisant of what is being done by your managers, for, whoever they may be, they are neither known to nor tangible by me. The gentlemen of Carey Street seem not to be advisers, but merely to be acting under instructions either from yourself or those other impalpable parties to whom I have referred.

Believe me, dear Lord Brownlow, yours truly,

AUGUSTUS SMITH.

Earl BROWNLOW to Mr. AUGUSTUS SMITH.

Bournemouth, November 10th.

DEAR SIR,

You must not expect me to concur in your opinion concerning the conduct of my advisers. I think a settlement of our mutual common rights, without going before the Commissioners, would give the same results, and

save much needless expense, and hope you may still be inclined to such an arrangement; but I shall be equally willing, if it suits you better, to bring the enclosure before the Enclosure Commissioners.

Yours truly,  
BROWNLOW.

The Italics are Mr. Smith's. Any one can see that, as the questions which needed an umpire had already as they arose been placed before the Commissioners, (of which possibly Mr. Smith was unaware), Lord Brownlow's meaning was that he was willing to go before them with Mr. Smith and settle his share of the transaction, instead of continuing to attempt to do so by private agreement. He would hardly offer to begin *de novo*, and commence an enclosure under the Commissioners. But his letter certainly did not convey this impression to Mr. A. Smith, who announced that Lord Brownlow had consented to place *the whole* of the enclosure before the Commissioners. At this time I was on my way to Mentone (where Lord Brownlow had gone at the last moment instead of to Madeira, on account of alarms of cholera and quarantine brought by the last Steamer from the Island); and when on my arrival I told him the meaning attached to his words, he immediately wrote to Mr. Smith the letter No. 5, which he believed would explain everything.

Earl BROWNLOW to Mr. AUGUSTUS SMITH.

Hotel de la Paix, Mentone.

DEAR MR. SMITH.

As I fear you are labouring under a false impression with regard to the letter I wrote to you, in which I stated my readiness to go before the Enclosure Commissioners, I wish to explain more clearly my meaning. I am at the present moment settling a question of exchange of lands, and extinction of common rights, with the Governors of the Grammar School at Berkhamstead, with the assistance of the Enclosure Commissioners. My offer was to deal with your claims in the same way; and I shall be glad to hear, at your earliest convenience, if this method of proceeding will suit your views.

Allow me to refer you for particulars to Mr. Grover, of Hemel Hemstead, in whose hands the arrangements alluded to are placed.

Yours truly,  
BROWNLOW.

He had kept no copy of his first letter to refer to, and I had not seen it, but only heard Mr. Smith's report of it, and my son

was unaware how far he might have compromised himself by what he had written.

I wish with all my heart that he had been able to carry out the sense his words conveyed to Mr. Smith, and from a refined feeling of conscientiousness, he enquired if this was feasible; but his lawyers considered that matters had gone too far for retrogression, and that he was bound to carry out the agreement he had made with so many others, who would otherwise consider themselves aggrieved.

Mr. Smith then lost his temper, and wrote letter No. 6,\* which naturally offended my son, who felt that nothing could justify one gentleman addressing another in such a manner.

About this time opposition to the enclosure had arisen from a class of persons, who, having no rights themselves, yet imagined that waste lands were, as a matter of course, public property. Lord Brownlow, on the other hand, believed that when he bought the Honor and Manor of Berkhamstead from the Crown, for the large sum of more than £43,000, he acquired all the privileges belonging to them.

All this time we were under the impression that Northchurch had no interest in the Common of the Manor of Berkhamstead. For upwards of eighty years they had been separately considered in their Common rights, and Northchurch exercised its own right over three or four small Commons apart from though adjoining the Common of Berkhamstead†. The curious thing is that the Steward of the Manor was unaware of the existence of the surveys of 1607 (Dodderidge's) and of 1616 (Norden's), of which copies existed among the papers made over to the firm of Nicoll and Co., Lord Brownlow's lawyers, by the Duchy on the extinction of its rights. These were overlooked until the lawsuit began, when they were printed, and made the ground for the judgment given against us. I think that our having furnished the weapons that defeated us is at least a proof of the honesty of our intentions, if not of the acumen of our legal advisers.

\* Appendix, page 34.

† See map No. 2.

In ignorance of these surveys, which certainly included lands in Northchurch within the boundaries of the Common of Berkhamstead, it was supposed that Lord Brownlow had only to leave sufficient unenclosed ground on the Common for all unascertained or disputed rights—and, in fact, much more than was needed to satisfy all the recognized claims had been so left; Northchurch being entirely omitted from our calculations.

At the meeting before alluded to, it was agreed that a fence should be drawn across the Common at two places (*vide* map, No. 1), enclosing the centre, and leaving the two ends open, as being more convenient, and adjacent to the Ashlyns and Haresfoot Estates. Gates were to be placed at the entrance of each of the green drives that were to be kept up for the convenience of those whose business or pleasure took them across the Commons. This was to serve the purpose of stopping, or at least checking the traffic over the Common in every direction. The spoliation on the enclosed part would cease, and the owner might plant groups of trees, and begin to beautify this tract, so as to make it worthy of the adjoining commons of Ivinghoe and Pitstone, which, having been enclosed long before, have been kept in their wild beauty, the public having always had full enjoyment of them.

In the Appendix, page 45, will be found a letter to the *Times*, written on the 14th of February, 1866, which will explain the views we held and acted upon.

Till now all had been, as it were, plain sailing. Lord Brownlow, and his guardians before him, had acted on the impression that they had *saved* the Common, by purchasing the manorial rights, and so preventing its being built over. To the owner of Ashridge its integrity was of more importance than to any other persons whatever.

The proposed enclosure was intended primarily, as I have said, to ascertain our rights. Lord William Compton had doubts as to the strict legality of this step; but Mr. Grover assured us that we were perfectly justified in taking it; and therefore the line as marked in the maps was decided upon, and a road was also agreed to be made for the accommodation of the public on the south side

of the Common along the valley, so as to give good and desirable access from Aldbury to Berkhamstead, and on to Hemel Hempstead (see Map No 2).

Lord Brownlow wrote from Mentone, desiring that a sufficient number of gates should be placed for the convenience of his neighbours. The new roads begun were rapidly being completed, and Lord Brownlow hoped that the traffic in every direction would be greatly facilitated. A glance at the Map No. 3 will at once show what an advantage this scheme, if completed, would have been to the neighbourhood.

A quantity of iron fencing which had served to enclose the experimental cricket ground, was on the spot, and this was assumed to be the most efficient fence that could be raised at the least expense, and it was erected by Lord Brownlow's agent. Unfortunately, there was some misunderstanding as to the fences being put up before the gates were delivered, and some delay therefore occurred in placing them. Mr. Grover received from Mr. Smith's lawyer a letter inquiring by whose authority the public had been excluded from a part of the Common? Mr. Grover wrote that he (Mr. Smith) would receive a communication in a few days answering his question. But Mr. Smith, impatient of postal delays, acting on his own account, and presumably on that of his brother, of Mr. Whateley, and a few other fellow-townsmen unknown, brought down a hundred navvies, on Monday, March 5th, 1866, soon after midnight. They were marched in procession to the Common, and before six a.m. they had torn up the railings; and when Mr. Paxton came on the scene at nine o'clock, the Common was enclosed no longer—to the great delight of some of those who had no Common rights to dispose of, and who believed that waste lands invariably belong to the public—to the great amusement of all who loved an event—and to the extreme annoyance of those who had made their individual bargains, and who believed they had gained, both individually and for the good of all, and who found themselves reduced to their old rights of pannage and herbage which they had willingly exchanged for what was to them infinitely more useful—land or money, and release of their copyholds and freeholds.

I find in a letter from Mentone (14th March, to Mr. Paxton), that I wrote, on hearing of Mr. Smith's action—"You will be glad to hear that Lord Brownlow's equanimity is not in the least disturbed by what has happened. He imagines Mr. Smith is entirely in the wrong, and that time will prove it."

It was advised that Mr. Smith should be proceeded against for trespass at the Hertford Quarter Sessions. But his advisers prevented this, by bringing the matter into the Court of Chancery before the day fixed at Hertford. Our being on the Continent, and all business transacted by letter, delayed our proceedings, and gave our opponents an advantage. Though no difficulties were thrown in the way, the suit lasted nearly four years, and was decided three years after Lord Brownlow's death, in January, 1870. The decision was against us, on the grounds that we had not left sufficient unenclosed land for the rights of the commoners of *Berkhamstead and Northchurch*, "nor had we attempted to prove that we had done so." (This appears to allow that the enclosure was not itself wrong, but only to the extent to which it was done.)

The Master of the Rolls allowed that the evidence was conflicting as to the union or the separateness of the two manors of Northchurch and Berkhamstead; but there was sufficient to enable him to give his decision in favour of their being considered as one. He allowed that, up to the year 1600, Northchurch, Berkhamstead, Swanbourne in Bucks, Blockley in Northamptonshire, and Aldbury in Bucks, were all treated as separate manors. But from 1607 to 1790, the business of Northchurch and Berkhamstead was kept in one book, though from 1790 to the present time, nearly ninety years, they have again been treated as separate manors, and two books kept.

Therefore, the Master of the Rolls felt he had a right of selection, and accordingly gave a judgment against us, which has not to this time been disputed. The judgment will be found entire in the Appendix,\* and it shows how little it is thought necessary to read over the facts of a carefully got up case.

\* Appendix, page 46.

before making it a precedent in the unwritten law of England. It would appear that one argument against us was that previous attempts to enclose had been successfully resisted. The Master of the Rolls further ruled that no one may go on the Common save when following cattle or pigs, or for cutting furze and herbage. No one has any right to go there for recreation or pleasure.\*

In fact, by the decision of the Court, Berkhamstead Common is reduced simply to a grazing ground. The public has no right to enjoy it, and the Lord of the Manor has no right to protect it.

I have, I hope, proved that my son injured no one, and that he was incapable of wishing to coerce or vex the people. He believed he was acting strictly within the letter of the law, not merely on selfish grounds, but for the public good, in accordance with the wishes of almost all concerned in the enclosure of Berkhamstead Common.

If I, as a guardian, and Lord Brownlow as owner, committed mistakes, they were unintentional, and were in accordance with the legal advice we received. But even lawyers cannot always be right, and in every dispute the judgment of the court places one side in the wrong.

It has given me infinite trouble to make this statement accurately, and to revive all the facts out of the shadow of years into which they had fallen; for I had destroyed every record I possessed of the painful misunderstandings of those sad days; but I have done it for the use of my remaining son, and as a protest in defence of the memory of his brother.

MARIAN ALFORD.

8th August, 1878.

\* Appendix, page 53.

## APPENDIX.

(PAGE 4).

### BERKHAMPSTEAD COMMON.

*Statement by AUGUSTUS SMITH, Esq., of Ashlyns Hall, in the parish of Great Berkhamstead.*

THE several accounts and commentaries that have appeared in various journals respecting the proceedings lately taken to prevent Lord Brownlow's meditated enclosure and appropriation of Berkhamstead Common without regard to the rights of others, give a somewhat erroneous impression as to their character, and the animus in which they have been conducted. The writer, therefore, feels it is due to himself that some explanation should be published, that his position in the matter may be fairly understood, and the merits of the case explained, at least so far as recent proceedings are concerned, but without any intention of entering on the more recondite points of right or wrong, which the case involves, and which can only be dealt with fully and completely in a court of law.

That my position in the matter may be first understood, it may be right to premise that I and my brother, Lieut.-Colonel Smith-Dorrien, are, after Lord Brownlow, the next principal landed proprietors in the two parishes of Great Berkhamstead and Northchurch, alias Berkhamstead St. Mary's, both having residences in the former parish. For many years my place, Ashlyns Hall, has however been in the occupation of tenants, through which I have been less alive than I might have been to various incidents and preparations taken in hand with a view of facilitating the ultimate appropriation of the Common by the owner of Ashridge. My brother and myself being thus the parties who have the largest interest as Commoners, in the rights which from time immemorial have been enjoyed by such, might have expected to receive some communication on the subject, at least as soon as others, instead of being the last to receive a notice of any kind, and then not one of invitation to co-operate in the measure

and concert what steps ought to be taken, but in the form of a simple offer or rather demand to purchase up our rights.

The Commoners are numerous as a body, and among these are several charitable properties, such as King Edward VI.'s Grammar School,\* Bourne's Blue Coat School, Sayer's Alms Houses, and others, all of whom have a claim to be consulted, and their concurrence obtained before any enclosure of the Common can be legally effected; and which concurrence ought necessarily from their very nature to be of a public and judicial character, and the authority of the Enclosure Commissioners the more essential to the transaction.

The Castle Estate with the Manor of Berkhamstead, has for centuries formed part of the Duchy of Cornwall, ever since the creation of that anomalous Institution by Edward III. in favour of his son, the Black Prince, and the future eldest-born sons of the Kings of England, and the property has generally been granted out for longer or shorter terms, which for the last fifty years have been held by the owners of Ashridge as lessees of the Duchy. About three years since the Duchy were induced to part with the Estate and Manor in fee to Lord Brownlow, to whom as an adjunct to Ashridge, it was most important; part of that Mansion and Park being within the Manor, and the Common a grand and imposing feature, the whole of one side of the Park abutting on this waste, to which its maintenance as such is almost essential.†

The purchase was hardly completed when the first overt act of aggression on Lord Brownlow's part was attempted,—evidently as a feeler to try it on as to how far he might go,—by the cutting of ditches across various green rides or tracks, which intersect and cross the Common in various directions, and from time immemorial have been used as highways.‡ On that occasion I called on and saw Mr. Nicholl, of the Firm of Messrs. Nicholl, Burnett and Newman, in Carey Street, Lord Brownlow's Solicitors, to remonstrate at this proceeding, and similar protests having been received from other quarters, the nuisance was abated.

\* The common rights appertaining to King Edward VI.'s Grammar School are agreed to be ceded to Earl Brownlow, under an exchange of lands in Berkhamstead and Northchurch, then before the Enclosure Commissioners, by which Lord Brownlow agreed to give 50 per cent. additional value for all common rights appurtenant or appendant to the Grammar School Estate.—EDITOR.

† Ashridge Mansion and the part of the Park in the parish of Berkhamstead are not in the manor of Berkhamstead, but are part of the manors of Little Gaddesden, with Lucles and Pritheden, having extensive rights over Berkhamstead Common.—EDITOR.

‡ The Broad Green ride and other tracks were made by Lady Bridgewater at her own expense, for the better enjoyment of the wild scenery.—EDITOR.

In this interview with Mr. Nicholl I took occasion to observe, that as the enclosure of the Common was evidently in contemplation, I trusted that whenever such was really intended, full notice would be given to all parties concerned, and that nothing would be attempted to effect it by any indirect steps, such as were then complained of. Mr. Nicholl promised to report what I said to Lord Brownlow's Trustees (he was not then of age), and further—that I should have some special communication on the subject. None such however was ever received, though I subsequently called to inquire when it might be expected.

It was not indeed till the Autumn of last year that a notice or communication of any kind was vouchsafed in reference to this matter, when the following letter was received from Messrs. Nicholl, Burnett, and Newman.\*

[ No. 1. ]

From Messrs. NICHOLL, BURNETT, and NEWMAN.

to Mr. AUGUSTUS SMITH.

18, Carey Street, London, W.C.  
October 25th, 1863.

SIR,

Lord Brownlow has requested us to write to you in reference to certain common rights which you have over Berkhamstead Common, recently purchased for him from the Duchy of Cornwall. We believe he would have written to you himself, but that the subject is somewhat technical, and his medical attendants urge that he should not undertake any exertion that can well be spared.

He has understood that you are not unwilling to treat for the relinquishment of your common rights, and on that understanding has begged us to write to you.

\* Previously to this a conversation had passed between Mr. Saunders and Mr. Woodroffe regarding Mr. A. Smith's claim; and on the 9th of September Mr. Saunders had written to Mr. Woodroffe the following letter proposing an extension and enfranchisement of Mr. Smith's common rights with Lord Brownlow. It was, therefore, an error on Mr. Smith's part to say that no communication had been sent to him before the 25th of October.

Winchester House, E.C.

25th September, 1863.

"DEAR SIR,

"BERKHAMSTEAD COMMON.

"Referring to our conversation, I beg to inform you that Mr. Paxton, on behalf of Earl Brownlow, is willing, in discharge of Mr. Augustus Smith's common rights, to give him in fee the two pieces of land waste of the manor known as Sand Pit Green and Long Green, containing together about 17a. 3r. 25p. Secondly, to give him in fee the waste land frontage to his estate next Beck Kiln Green and Long Lane, estimated at about 1 acre. Thirdly, to enfranchise all Mr. Smith's copyhold.

We trust, therefore, we shall be excused for doing so, and that you will receive the following proposal in the spirit in which he intends it to be made.

His Lordship is anxious to improve that part of his property, and with that view has acquired a considerable part of these common rights. And he has taken pains to ascertain, as far as he can, through competent persons, the extent and value of what he understands to be your rights.

A particular of the lands and tenements belonging to you within, and held of the manors of Berkhamstead and Northchurch, has been obtained from the steward of the manors, and is assumed to be correct. A copy of this particular is sent herewith.

The quantity of land belonging to you . . . has been assumed to be . . . In discharge of these . . . Lord Brownlow now begs to offer . . .

We have the honour to be, Sir,

Your most obedient, faithful servants,

NICHOLL, BURNETT, & NEWMAN.

lands in the manors of Berkhamstead and Northchurch, and thereby extinguish all Lord Brownlow's manorial rights in the minerals, timber, and in the freehold lands held of those manors. And lastly, should there be any balance due to Mr. Smith on this transaction, to give him land for the same contiguous to his old enclosures.

"Assuming for the present that Mr. Smith possesses 127a. Or. 15p. of copyhold land entitled to common of depasture on Berkhamstead Common, and that the productive quality and situation of these 127a. Or. 15p. are of an average with other lands having common right, then I think I may venture Mr. Smith's right of common would not be worth more than 337-500, viz., £16 17s. 6d. per annum.

"Lord Brownlow has directed that these matters should be liberally dealt with, and as all rights of common of pasture have now been discharged, with the exception of your client's and that of one other gentleman, I hope it is a proof that his Lordship's wishes have so far been carried out; at all events, if not, the blame must rest on me, and not on Lord Brownlow or on his agent. Mr. Grover, the steward of the manor, will send you the information promised relating to Mr. Smith's copyhold and freehold land held of the manor. You are probably aware that Mr. Smith also possesses about 233 acres of land in Northchurch parish, part copyhold and part freehold. The common rights to these lands are nominal, there being only 52 acres of waste or common in Northchurch, and a very large extent of old enclosures having common rights thereon. At the same time, I have duly considered this claim also, and perhaps I may not be far from the value of Mr. Smith's common rights in estimating them as worth together about £500 in fee.

"I shall be happy to call and give any additional information in my power.

"I remain, yours truly,

" J. SAUNDERS.

"To G. T. WOODROFFE, Esq., Lincoln's Inn."—EDITOR.

To this, the following answer was immediately returned.

[ No. 2. ]

From Mr. AUGUSTUS SMITH to Messrs. NICHOLL, &c.

Tresco Abbey, Scilly,

1st November, 1865.

GENTLEMEN,

I have to acknowledge the receipt of your letter written by order of Lord Brownlow, with reference to certain common rights which I have, as owner of property in the parishes of Great Berkhamstead and Northchurch.

I must beg, however, to correct in *limine* the impression his Lordship is stated to be under, that I am willing to treat for the extinguishment of those common rights.

As owner of Ashlyns, I should much regret the enclosure of the commons in the neighbourhood, but in these days such material improvements cannot well be contended against. I claim, however, if the enclosure of these commons is to be carried out, that the usual course in this, as in all similar transactions, should be strictly observed, as specially provided for by sundry Acts of Parliaments under the authority of the Enclosure Commissioners. I, as well as others, will then have an opportunity of establishing before the only persons competent to ascertain them, the extent of our respective rights, as well as those of the public at large, who are intimately concerned in the setting out of certain highways over so wide a range of country;—(on these serious encroachments have already been recently made)—and which can only be fairly dealt with by some such independent authority.

As respects the paper of particulars you have been obliging enough to enclose, affecting to give an account of my common rights, I cannot accept the limited character therein ascribed to them.

I beg to assure you I am quite ready to meet Lord Brownlow in the spirit expressed by you on his behalf as regards this important measure, and only regret to be obliged to express an opinion that certain preliminary proceedings in reference to this business are not such as I should have expected on the part of persons to whom the management of such a property as Ashridge is committed, still less on the part of Earl Brownlow himself, as from what little I know of his Lordship, I believe no owner in England of vast landed estates is more sensible of what such a position so specially requires, or is more desirous of acting in an open and straightforward manner by his neighbours and the public.

I am, therefore, the more concerned to learn that in his present state of health his medical attendants urge he should be spared undertaking any exertion on subjects which you describe as somewhat technical; but I think the course I have pointed out is the more called for in consequence, and would relieve his Lordship far more from all such difficulties than the resigning himself entirely, as the alternative, to those to whom he commits the management of his affairs.

I have the honour to be,

Gentlemen,

Your faithful servant,

AUGUSTUS SMITH.

Understanding that Lord Brownlow was on the point of leaving

England for the Continent, I immediately wrote to his Lordship, enclosing copies of his Solicitors' letter and my answer thereto.

[ No. 3. ]

Letter from Mr. AUGUSTUS SMITH to Lord BROWNLOW, enclosing Copies of Nos. 1 and 2.

Trisco Abbey, Isles of Scilly, Cornwall,  
1st November, 1865.

DEAR LORD BROWNLOW,

I have received a letter from your Agents, Messrs. Nicholl, Burnett, and Newman, of which I send you a copy, in case you should not have seen the letter itself, together with my answer. At the same time, I feel bound to open a communication with yourself on this occasion, though I trouble you very unwillingly, as whatever takes place in reference to this matter the responsibility must rest with yourself. Many rumours have from time to time reached me on this subject, which were very unsatisfactory, but I had determined neither to believe or take notice of such till they came before me in a definite shape.

I cannot understand why the enclosure of Berkhamstead Common is to be taken out of the usual category of such proceedings, which pass the Commissioners who have been expressly created by Act of Parliament to give them legal effect, as affording the best means of securing the rights of all parties concerned. The attempt to accomplish the object in any other way has both a suspicious and unfavourable aspect, and cannot work satisfactorily, while I am sure it will cause you in the end a far larger amount of that very trouble which your friends so deprecate on your behalf.

I cannot help further observing,—taking the privilege of my years and any experience I may have acquired thereby,—that in these days owners of great estates are especially interested in disarming the invidious character,—so apt and too often very unfairly,—to be ascribed to them, by taking care that all proceedings connected therewith shall bear a really liberal, just, and legal aspect, when brought in contact with the rights of others, as the best security for their own interests and position. My chief object, then, in writing is, that I may be assured that you are really cognizant of what is being done by your managers, for, whoever they may be, they are neither known to or tangible by me. The gentlemen of Carey Street seem not to be advisers, but merely to be acting under instructions either from yourself or those other impalpable parties to whom I have referred.

Believe me, dear Lord Brownlow, yours truly,

AUGUSTUS SMITH.

To this I received the following answer from Lord Brownlow himself.

[ No. 4. ]

Earl BROWNLOW to Mr. AUGUSTUS SMITH.

Bournemouth, November 10th.

DEAR SIR,

You must not expect me to concur in your opinion concerning the conduct of my advisers. I think a settlement of our mutual common rights, without

going before the Commissioners, would give the same results, and save much needless expense, and hope you may still be inclined to such an arrangement; but I shall be equally willing, if it suits you better, to bring the enclosure before the Enclosure Commissioners.

Yours truly,

BROWNLOW.

This answer completely set my mind at rest, as it never entered my head that it could bear other than one interpretation as an answer to my letter, enclosing as it did the correspondence with Messrs. Nicholl & Co. The concluding sentence, printed in italics, seemed so clear, I lost no time in communicating to Lieut-Col. Smith-Dorrien and other parties, that Lord Brownlow had promised to take the Enclosure before the Enclosure Commissioners. Having thus been the means of misleading them, I feel the publication of this correspondence to be the more necessary as showing that I had good grounds for such a statement. I have not kept a copy of my letter in return to Lord Brownlow—acknowledging and thanking his Lordship for having so readily acceded, as I supposed to my wishes,—but I wrote by return of post, and to the best of my recollection, in doing so, I re-expressed my opinion that such was the only course by which a measure, in which so many interests were concerned, could be satisfactorily carried out. It was, therefore, with no small astonishment I received, some weeks after, the following letter from Lord Brownlow.

[ No. 5. ]

Earl BROWNLOW to Mr. AUGUSTUS SMITH.

Hotel de la Paix, Mentone.

DEAR MR. SMITH,

As I fear you are labouring under a false impression with regard to the letter I wrote to you, in which I stated my readiness to go before the Enclosure Commissioners, I wish to explain more clearly my meaning. I am at the present moment settling a question of exchange of lands, and extinction of common rights, with the Governors of the Grammar School at Berkhamstead, with the assistance of the Enclosure Commissioners. My offer was to deal with your claims in the same way; and I shall be glad to hear, at your earliest convenience, if this method of proceeding will suit your views.

Allow me to refer you for particulars to Mr. Grover, of Hemel Hempstead, in whose hands the arrangements alluded to are placed.

Yours truly,

BROWNLOW.

Received at Scilly, 3rd January, 1866.

This communication, so totally at variance with his Lordship's first

letter, I must confess, made me feel not a little indignant, and my reply was in the following terms.

[ No. 6. ]

From Mr. AUGUSTUS SMITH to Earl BROWNLOW.

Tresco Abbey, Scilly,

4th January, 1866.

My LORD,

I beg to acknowledge by yesterday's post the receipt of your letter from Mentone, but undated, respecting the enclosure of Berkhamstead Common, which has caused me no less surprise than regret.

If your Lordship will refer to the letter I addressed to you on the subject, enclosing as it did a copy of my answer to your agents, Messrs. Nicholl and Co., of Carey Street,—the whole tenor of which was a protest against this measure being attempted, except in the regular way, under the supervision of the Enclosure Commissioners,—your Lordship's answer can admit of but one construction, when you state, "I shall be equally willing, if it suits you better, to bring the enclosure before the Enclosure Commissioners." I cannot, therefore, allow it to be now asserted that I labour under any false impression as to the plain meaning of what you then wrote, and I can consider your present explanation as merely announcing an intention of departing from that engagement. I have, therefore, but one course to pursue in this business, and have the honour to be,

Your Lordship's obedient Servant,

AUGUSTUS SMITH.

The Earl BROWNLOW.

Anyone who knows anything about Enclosures, must be aware that the extent of any one individual commoner's rights depends on the extent of those belonging to others, and without these being ascertained, it is impossible to measure what belongs to any one. It was, thus, impossible to settle the amount of mine without doing the same by all other claimants. Lord Brownlow's notion and aim, however, has been to make a bargain with each commoner in relation thereto, without going into this accurate investigation of each individual claim; but, when the Grammar School is mentioned, I cannot believe that either the Governors, the Charity Commissioners, or the Enclosure Commissioners, who must all be consulted, would agree to such extinction of rights without their extent and value being accurately ascertained, and for which the Enclosure Commissioners are the only competent tribunal.

I can now regard Lord Brownlow's previous communication as intended only to throw me off my guard, while he was preparing the scheme which he has so suddenly carried out, thereby enclosing somewhere about a third of the Common by strong iron fences, 5 feet high, with 7 continuous running bars, and strong iron standards but 2 feet apart. This

step, even according to the interpretation he is now pleased to give to his first letter, was equally a breach of good faith, as, till my rights were ascertained and settled, it is clear he was not justified in proceeding with the Enclosure.

For a clear understanding of what Lord Brownlow has attempted, some further explanation is called for, as well as a description of Berkhamstead Common, not only in reference to the Parish but the neighbouring country.

This extensive Common,—in former times always called the Fryth,—may be reckoned to embrace about 1200 acres.\* It is entirely within the bounds of the Parish of Berkhamstead, of which it occupies the whole northern portion, except a small part which is included in Ashridge Park. It stretches across the country for a reach of about four miles, being narrow in the centre, where it immediately abuts on this Park, while it expands to a considerable width at each extremity, almost entirely encircling the Castle Estate, except where that dips into the valley in which the town of Berkhamstead is situated, and through which run the London and Birmingham Railway, and the Grand Junction Canal. The portion of which Lord Brownlow took possession was the whole centre, thus connecting his own Park with the Castle Estate, and dividing the Common into three portions, between the outer two extremities of which all communication was cut off, so that any commoner putting his stock out on the waste, could not drive them from one extremity to the other without a road-journey of some miles. By stopping up this broad highway, a range of country for upwards of four miles,† from Great Berkhamstead by Little Gaddesden to Ringshall, was hermetically sealed, and the public, who from time immemorial had free passage by more ways than one across this open waste, —(near half a mile wide where narrowest),—would be forced to make a circuit in either case of three miles, by little Gaddesden on the north, or by Berkhamstead Town on the south. So outrageous an infringement of public rights of highway,—(which, irrespective of the Parish convenience, are important for all places within a circuit of ten miles at

\* The Common or Fryth is not entirely in the parish of Berkhamstead, but is partly in the parish of Northchurch. The freeholders and copyholders of each parish strictly confining themselves to the exercise of their rights of common on the waste in their respective parishes.—EDITOR.

† The "Broad Greenway," erroneously called by Mr. A. Smith the "Broad Highway," was made at the sole cost of Lady Bridgewater, previous to which any persons wishing to pass from one end of the Common to the other had to find their way as they best could through and over the furze or gorse, seldom following the same track.—EDITOR.

least),—I venture to say, has not been perpetrated by any Lord of a Manor in the present century, while the attempt to overbear and oust commoners from their rights by the mere local weight and influence of territorial possessions, I will also venture to say, has equally no parallel, coolly dispensing as it does with all those forms and notices which the law has provided for regulating and carrying out such transactions, while all those observances have been equally ignored which usually characterize the conduct of gentlemen in dealing with their neighbours. Earl Spencer in his inroad on Wimbledon Common made the attempt through an Act of Parliament, which gave parties notice of his intentions at least. Earl Brownlow, without notice of any kind, makes an inroad on Berkhamstead Fryth, appropriating to himself property in which many others have equal rights, whose consent and concurrence he was bound to obtain in the first instance. Doubtless, the rights of many of these it will be pretended have been bought up, but very many—and those whose rights in virtue thereof are very much the largest and most important—have refused thus to part with their interests, and were entitled to have an opportunity of establishing their claims before any actual enclosure was attempted. But, even if the Commoners' rights were disposed of, those of the public as to highway had to be settled. The deceptive letter of Messrs. Grover and Stocken, Lord Brownlow's country attorneys, pretend other highways were substituted for those closed by his Lordship's iron fences. This is simply not true, as no road whatever has\* been substituted by which the public could pass from the western to the eastern portion of the Common, or, take two points beyond that range, say, the town of Hemel Hempstead with the village of Albury, between which frequent communication has always been carried on across the Common, especially on market days.

The excuse of Lord Brownlow for attempting the enclosure without the intervention of the Commissioners, on the ground of saving much needless expense, will not hold good most certainly, as the legal proceedings which he is now obliged to institute in assertion of his right, must cost his Lordship much more than any proceedings before the tribunal created by the Legislature expressly for conducting enclosures, and though it is rather hard upon others to have forced on them the same unsatisfactory charges, there are occasions when acquiescence in wrong would be still more unsatisfactory, especially when all rules of

\* There never was any highway over the Common from the north to the south, as the oldest inhabitants were able to prove, previous to the Broad Greenway before alluded to, made by Lady Bridgewater. A road was to have been made from Albury down the valley to Berkhamstead, skirting the Common according to map.—EDITOR.

ordinary courtesy, good faith, and straightforward dealings have been so conspicuously made manifest by their total omission.\* A very imposing law term, "to approve," is further put forward and supplied by the same legal gentlemen at Hemel Hempstead, to whom Lord Brownlow makes reference, in support of his right to make the inclosure attempted. But "approvements" in these days under any circumstances are rather delicate matters to carry out, and in this case Lord Brownlow's managers are fully aware he has no right to approve one square yard. It is the knowledge of this fact, of which they cannot be ignorant—as the documents with the proof are in their possession—which has doubtless made them so anxious and diligent to effect a purchase of these rights, while they at the same time have taken great pains to make the Commoners believe these to be very trivial, and but of little value. This would probably have been discovered had the case gone before the Enclosure Commissioners, and may account for such a mode of settlement having been so studiously evaded.

The course which has been forced upon me in consequence of Lord Brownlow's proceedings, and still more by the manner and spirit in which they have from first to last been carried into execution, must now be apparent. I observe it is characterized as a bold experiment, as a high-handed step, as rather taking the law into one's own hands, leading therefore to an inference that my part had been rather hasty, unnecessarily aggressive, as well as discourteous and offensive;—as for courtesy that is a quality Lord Brownlow's managers clearly do not understand, even when they experienced it at my hands, as I submit from the very first was the case. Even before the fence was removed, notice was given—(and what notice of any sort was ever vouchsafed to me?)—that if by a certain day an undertaking was not received that the fence would be removed by those who put it up, steps must be taken to effect that purpose. No answer was received within the time named, but a letter which came to

\* A very shabby and unjustifiable practice has often been resorted to in reference to the claims of Lords of Manors and such like, and the rights of individuals or of the public when antagonistic to them. Law proceedings are threatened, which are sure to be very costly. These are used as an argument to induce a compromise, and persons are thus coerced into consenting to pay a certain sum for the future quiet enjoyment of their rights, as less costly than the attempt to defend them by law. The compromising a felony is a high crime and misdemeanour. The compromising civil rights should equally be so regarded, and ought never to be entertained for a moment by those who are able to defend them. The officials of the Woods and Forests and of the Duchy of Cornwall have been for many years great sinners and skilful adepts in this vicious practice. There is a promise, however, that the latter will now no longer figure as parties in such discreditable proceedings.

hand a day or two after, stated a communication on the subject of our notice would be made in the course of a few days. This evidently was intended only to gain time, and to draw on a diplomatising correspondence, which, with the sort of people we had to meet,—judging from their previous treatment of similar applications,—could lead to no good results. The best legal advice having been taken on the subject, it was clearly ascertained that the removal of the fence was absolutely necessary, as the only certain and effectual means by which the question could be brought to a legal issue. The removal then being imperative, that it should be done quickly and thoroughly was on every account desirable, and by such a force as would effectually prevent any interference, and thereby guard against any breach of the peace. Special directions were at the same time given, that the removal should be effected with as little injury as possible to the fence itself, though under the circumstances and provocation its being smashed to atoms would have been quite justifiable. Its present condition, as any one may ascertain by inspection, is quite as well as may be expected after such a delivery, and the fence for the greater part may be replaced where it was,—if the law gives permission,—or be transferred to be put up in some other locality.

Whether I have been justified in this assertion of what I believe to be my undoubted rights as a private individual, and of those to which I am equally entitled as one of the public, the law will now have to decide; but I trust, whether right or wrong in this, my conduct in the business has at least been such as ought to govern all adjoining owners of landed property in their transactions with one another, and with that courtesy and fair dealing which it is still more incumbent on all neighbours to cultivate.

As respects the main question, it may now be doubtful, after what has occurred, whether the Commoners should assent to the enclosure of their Common upon any terms, and it may be worth their consideration whether some measures might not be adopted as would secure the preservation of this noble waste in *secula seculorum* in all its integrity as it now exists. This preservation of so wide a tract of wild scenery as an adjunct to Ashridge, real good taste would regard as far more important than its appropriation by enclosure to form part of that estate, and the Lord of the Manor would do well to join in securing that result, as an ornament above price to a park of sylvan beauty, second to none in the kingdom, and as the most suitable apology that could be offered for his recent outrageous proceedings.

## APPENDIX TO PAGE 4.

From Mr. Froude's Third Series of "Short Studies on Great Subjects." Page 277.

" \* \* \* \* A very few words on Mr. Smith are all to which I shall ask you to listen.

"I will bespeak your good opinion of him by saying first that he was an advanced Radical. He was a believer in Bentham. 'The greatest happiness of the greatest number' was the rule of his life. Besides his property in Scilly he had an estate at Berkhamstead, in Hertfordshire. At Berkhamstead is an extensive common, one of the few great commons remaining in England, a free expanse of grass and forests, much valued by the country-side and by all the neighbourhood. Adjoining the common stretches the property of a great nobleman. And the common troubled his repose as Naboth's vineyard troubled King Ahab. As belonging to the people, it seemed to belong to nobody. It was the haunt of vagrants. It encouraged idleness. It gave poachers an opportunity of shooting his pheasants. On pure moral grounds he thought it would be to the public advantage if the occasion of so much disorder was enclosed within his own park palings. He doubted the result of an appeal to law, but a plea was found which he hoped might sustain him if once in possession. He fenced the common in, and he left the people of Berkhamstead to find their remedy.

"The smaller landowners, as he expected, did not like to quarrel with their powerful neighbour. The poor, who were the most injured, had the least means of protecting themselves, and Berkhamstead Common would have gone the way of a hundred others except for Mr. Augustus Smith. Mr. Smith heard what had been done. He perceived the advantage would be with the party which was actually in occupation.

"Instead of bringing an action against the noble lord, he brought a hundred and fifty navvies one dark night down from London. When morning came, fifteen hundred yards of iron railings were lying flat upon the ground. They were never set up again, and Berkhamstead Common still belongs to you and to me, and to any one who chooses to enjoy himself there."

## APPENDIX TO PAGE 9.

There is a copy of this proposal in the estate office of Ashridge which was prepared to forward to the Duchy Council. I believe it asserted that to the Duchy belonged one-third of the common rights, one-

third to Ashridge, and the other third would cover the rights of the other commoners. The Common was therefore to have been divided into three parts, and so appropriated. The whole was reckoned at 1,100 acres or thereabouts. The waste, with the Liberty of Frithsden, was excluded from this calculation as belonging exclusively to Lord Brownlow as well as the Frith.

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APPENDIX TO PAGE 11.

That as the roads over the Common leading to Frithsden, Nettleden, Hemel Hempstead, Little and Great Gaddesden, Markyate Street, Luton, &c., proposed to be made by the Right Hon. the Earl Brownlow, and, when made, to be dedicated to the use of the public in perpetuity, are advantageous to the inhabitants of Berkhamstead, It is resolved that this Vestry approve of the said roads, and when completed and made fit for use, this Vestry will support the application for stopping up the old roads marked in the plan now produced.

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APPENDIX TO PAGE 15.

Copy of letter from Lord Brownlow to Chairman of Meeting at Berkhamstead.

SIR,

In reference to the resolutions which you forwarded to me, and the receipt of which I have already acknowledged, I beg leave to make the following observations, which I shall be much obliged to you to communicate to the gentlemen who composed the Meeting by whom those resolutions were passed.

In the first place, allow me to say a few words on what has been reported to have taken place at the Meeting. I was there accused of want of courtesy, &c., in not having taken any notice of a memorial forwarded to me long before. I greatly regret that it should be supposed I intended any discourtesy, and beg to disclaim any such intention. At the same time allow me to point out that the memorial signed by yourself and others was not addressed to me by any individual gentleman as Chairman or President, but simply handed by Mr. Whately to Mr. Paxton, who sent it on to Lord William Compton, who gave it to me.

I did not think, under these circumstances, that any formal answer could be expected, and that all that was required of me was to take into consideration the views expressed, which I did

You are probably aware that I received likewise another memorial numerously signed, taking an opposite view of the question.

As my only wish was to do what would be most agreeable to the town of Berkhamstead, I recommended that a Meeting should be held at which the whole subject of the recreation ground might be discussed. The meeting took place, and the present site was all but unanimously agreed upon. Having stated my intention of abiding by the decision of the inhabitants of Berkhamstead, I had no alternative than to accept the site they had chosen, and I may add that I myself saw no objection to it.

I trust this explanation will also answer the first part of your first resolution.

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APPENDIX TO PAGE 15.

MANOR OF BERKHAMSTEAD.

Memorandum.

Presented to The Right Hon. Earl Brownlow.

The total number of the tenants of the Manor of Berkhamstead is forty-nine. Of these, thirty-four tenants have signed the memorial, and nine have signed a requisition in favour of a Recreation Ground on a site which does not belong to your Lordship, and which the owner (Colonel Dorrien) declines to concede.

Six have refused to sign any memorial.

At a Vestry duly convened by the rate-payers of the Parish of Berkhamstead, and at which the attendance was unusually large, it was with the exception of three votes, unanimously agreed that the land situate between the Railway and St. John's Brook, was the most eligible site that could be selected for a Recreation Ground for the Town of Berkhamstead, and the Committee was deputed to wait upon your Lordship to solicit your concurrence in the exchange of the same for common rights and for small customary manorial payments in the Manor.

This Committee know from the rector's statement at the Vestry that a requisition signed by about eighty persons, has been presented to your Lordship in favour of some other site for a Recreation Ground, and that that requisition was unanimously discarded by the Vestry.

Upon scrutiny only twenty-three of the signatures to the requisition are found to be by persons *bond fide* interested in the matter, of which six only are tenants of the Manor. Twenty of the signatures are by persons

residing out of the parish having no property therein or having already extinguished their claim on the Common; and six of the signatures are nullified by the parties having afterwards signed the memorial, and thirty of the signatures are by yearly tenants having no voice in the matter whatever; moreover, twenty-two of these yearly tenants are residing in premises belonging to persons who have signed the memorial.

This Committee therefore pray that your Lordship will comply with the views of the Vestry and of the tenants of the Manor generally, feeling confident that under the superintendence of proper Trustees, the proposed Recreation Ground will be a permanent source of health and enjoyment to the present and future inhabitants of the increasing town of Berkhamstead as well as a lasting memorial of your Lordship's desire to promote the morality, health, and prosperity of the town.

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APPENDIX TO PAGE 15.

GREAT BERKHAMPSTEAD.

Copy of resolutions of Vestry held June 26th, 1865.

Proposed by Joseph Robinson, Esq., seconded by Mr. Alfred Healey :

1st. That the land, or such portion thereof as Earl Brownlow may be willing to grant, from Castle Street and the west side of the railway to the Crooked Billet, will be suitable for Recreation Grounds for the Town.

Carried.

2nd. That a Committee be appointed to draw up a Memorial and to obtain the signatures of those possessing Common rights, as well as those of the Inhabitants generally, and to wait upon Lord Brownlow and present the same, together with the resolutions of the Vestry, and a plan of the land in question.

Carried by 4083.

Proposed by Mr. Compigne, seconded by Mr. Hazell:

That the following gentlemen be appointed a Committee to carry out the above resolutions, viz. :—The Rev. the Rector, Joseph Robinson, Esq., Messrs. Alfred Healy, John Edward Lane, William Hazell, Thomas Read, and William Cooper. The Rev. the Rector withdrew his name.

Carried unanimously.

JAMES HUTCHINSON, Chairman.

APPENDIX TO PAGE 15.

Berkhamstead, Herts.

To the Right Hon. the Earl Brownlow.

My Lord,

In compliance with the resolutions hereto annexed, passed at an adjourned meeting on the 26th of June, 1865, held to consider the letter of your Lordship's agent, Mr. Paxton, under date of the 26th April last, we the undersigned copyhold and freehold tenants of the Manor of Great Berkhamstead, and of the Inhabitants, thank your Lordship for the proposal therein contained to give land somewhere near the town for the purpose of Recreation, provided the same be on the west side of the railway, and generally acquiesced in as a just and liberal compensation in lieu of the existing outstanding claims on the Common, and to lay before your Lordship a plan of the land from Castle Street, including Cook's mill and adjoining premises, to the Crooked Billet, and to pray your Lordship's favourable consideration thereto. And if granted, we freely agree and undertake to accept the said land to be conveyed to the Inhabitants in lieu of their Common rights.

186 Signatures.

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APPENDIX TO PAGE 16.

Copy of Deed of Release, signed by 413 Persons and accepted by inhabitants of Great Berkhamstead.

Map.

" To all to whom these presents shall come, the several persons whose names and seals are hereunto set and subscribed,

Send Greeting :—

Whereas the Right Honorable John William Spencer Brownlow, Earl Brownlow, is the Lord of the Manor of Berkhamstead in the County of Hertford, late parcel of the Honor of Berkhamstead and of the Duchy of Cornwall, and the several persons whose names and seals are hereto set and subscribed are as tenants of the said Manor, or owners or occupiers of lands and tenements within the same, or otherwise entitled to or interested in commonable or other rights, liberties, and privileges, in, over, and upon the common called Berkhamstead Common and the other waste lands and grounds of or in the said Manor of Berkhamstead or some

part thereof. And whereas it has been proposed that the said Earl Brownlow shall dedicate and convey certain pieces of land in the Parishes of Berkhamstead St. Peter, and Northchurch in the County of Hertford, delineated in the plan drawn in the margin of these presents, and containing altogether forty-three acres, one rood, and twenty-four perches or thereabouts, for the purposes of a recreation ground for the inhabitants of Berkhamstead St. Peter aforesaid, pursuant to the "Recreation Ground Act, 1852." And for purposes connected therewith, and that the several persons whose names are hereunto set and subscribed shall release their said commonable and other rights, liberties, and privileges herein named. Now these presents witness that in pursuance of the said proposal and for giving effect thereto, and in consideration of the premises each of them the same persons whose names and seals are hereunto set and subscribed according to his or her estate, interest, right, or title in or to the lands and tenements held of or situate within the said Manor of Berkhamstead, doth hereby release the said common called Berkhamstead Common and all other the waste or common lands or grounds of or within the said Manor of Berkhamstead from all rights of common and other rights, liberties, and privileges whatsoever, exercisable or available, or which but for these presents would have been exercisable or available in, over, or upon the said common and waste lands and grounds or any part thereof. To the intent that so far as depends upon, and can be effected by the said persons whose names and seals are hereunto set and subscribed the said common and other, the waste lands and grounds of and in the said Manor of Berkhamstead may be wholly freed and discharged from all such rights of common, and other rights, liberties, and privileges whatsoever. And that the same rights of common, and other rights, liberties, and privileges may be extinguished in the freehold and inheritance of the said manor, or of the lands subject thereto. Provided always that the release hereinbefore contained shall not as to any person executing these presents, after the making, sealing, and delivery by the said Earl Brownlow, of such Deed of Conveyance, and the rights of common and other rights, liberties, and privileges, intended to be released by him or her respectively, take effect previously to the making, sealing, and delivery by the said Earl Brownlow of a Deed of Conveyance and Appropriation of the said land delineated in the plan drawn in the margin of these presents for the purposes of a Recreation Ground for the inhabitants of Berkhamstead St. Peter aforesaid, and for purposes connected therewith, but immediately upon the making, sealing, and delivery by the said Earl Brownlow of such Deed of Conveyance immediately upon the execution hereof by such persons these presents and the release hereinbefore contained shall operate and take effect as a release according to

the tenor hereof. In witness whereof the said parties and the presents have hereunto set their hands and seals the *Thirtieth* day of *December* in the year of Our Lord One thousand Eight hundred and Sixty-five.

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APPENDIX TO PAGE 23.

THE HERTFORDSHIRE COMMONS.

To the Editor of the *Times*.

SIR,

The letter inserted in the *Times* of Saturday last, signed "A Commoner," appears to require a reply from us as the Solicitors therein alluded to. It will be necessary, in order to make our reply the more intelligible, that we should state the following facts.

Earl Brownlow is the owner in fee of "Berkhamstead Common," subject to the common rights of the copyholders of the Manor of Berkhamstead over the same.

Over a portion of this Common there existed certain tracks or grass rides.

In June last we were instructed by Earl Brownlow to take the necessary steps to divert and stop up these tracks or grass rides, in lieu of which more commodious and stoned roads would be substituted. Accordingly the Vestry meeting alluded to in "A Commoner's" letter was convened, at which plans of the tracks and grass rides proposed to be diverted and stopped up, and also of the roads proposed to be substituted, were produced and explained. The meeting was largely attended, and was unanimous in resolving that leave be given to Earl Brownlow to divert and stop up the old tracks, and substitute the proposed new roads in lieu thereof according to the plans.

We attended this meeting, and, among other questions, we were asked to whom we considered the Common belonged. We replied that Earl Brownlow was the absolute owner, subject to certain existing common rights. We were also asked what would become of the old roads—would they be fenced off or be thrown into the Common? Our reply was "that the old road will be part of the Common when a new road has been substituted." This reply appeared to be satisfactory, and it was entered by the Chairman on the Minutes of the Vestry, in the words we have quoted.

We have no recollection of any further question being asked us in reference to fencing.

It may not be out of place for us to mention that since the Vestry

meeting the Commoners, with very few exceptions, have made arrangements with Earl Brownlow for releasing to him their common rights, in consideration of which Earl Brownlow conveys to trustees a valuable water corn mill, four cottages, and fifty acres of land contiguous to the town, to be appropriated as a recreation ground for the inhabitants of Berkhamstead, and garden allotments for the poor.

By this arrangement, therefore, his Lordship is now in a position to approve nearly the whole of the Common.

We have further to observe that "A Commoner" seems to have very erroneous views of the rights of the public over a common, for he complains of the railings which "debar access to a large part of the Common to wheeled carriages, to horses, and to foot passengers." We can only assure him that "wheeled carriages, horses, and foot passengers" have no more right to pass over the Common, out of the public highways, than a stranger has to pass through "A Commoner's" private garden; and that even a copyhold tenant of the Manor entitled to common rights can only go upon the Common in order to place his sheep there, and to look after them when there; and therefore (with that qualification) any person who drives or rides or walks across the Common out of a public highway is a trespasser.

We are, Sir,

Your obedient Servants,

GROVER AND STOCKEN.

Hemel Hempstead,

14th Feb., 1866.

APPENDIX TO PAGE 26.

IN CHANCERY.

ROLLS COURT, CHANCERY LANE,  
January 14th, 1870.

SMITH v. EARL BROWNLOW.

JUDGMENT.

The MASTER OF THE ROLLS: This suit is instituted by the Plaintiff on behalf of himself and all other the Freehold and Copyhold Tenants of the Manor of Berkhamstead, to obtain a declaration that they are entitled to the right of pasture and other commonable rights in respect of their tenancy over four unenclosed pieces of waste of the said Manor, a portion of which the late Earl Brownlow had attempted and begun to enclose.

In determining this question, an important point to be considered is the extent of the Manor of Berkhamstead. A map which purports to be a map of the extent of the Manor as alleged by the Plaintiff, is appended to the Bill. The Defendant contends that this plan comprises the whole or the greater portion of two manors, viz., the Manor of the Borough of Berkhamstead, and the Manor of the Halimote of Northchurch. The property originally, and previously to the year 1600, belonged to the Duke of Cornwall, and seems to have originated by a grant by Edward III. to Edward Prince of Wales of the Honor of Berkhamstead, which Honor included the Manor of Swanborne in Bucks, the Manor of Blacksley in Northamptonshire, and the Manor of Aldbury, and it also included, according to the old grant, the Borough of Berkhamstead and also the Manor of the Halimote of Northchurch, and that these were separate and distinct manors. The Plaintiff contends that these two, viz., the Borough of Berkhamstead and the Halimote of Northchurch, together constituted the Manor of Berkhamstead, and that the commonable rights of the tenants of both divisions extended indiscriminately over the whole waste, and that the waste was never separated or defined as belonging partly to one, and partly to the other district.

The evidence upon this subject is somewhat conflicting. On the part of the Plaintiff it is shown that there is only one book containing the Court Rolls for both manors. On the part of the defendant, in answer, it is proved that although there is only one book containing the Court Rolls, this book contains the Court Rolls belonging to the Honor of Berkhamstead, and that the book includes entries for the three other Manors besides those in question in this cause, namely, the Manors of Aldbury, Blacksley, and Swanborne. The result seems to be, on examination of the books, that from 1661 to 1790 one book contains the entries for all five manors, and, as I understand, previously to that time also, and that from 1790 to 1862 one book contains the entries for the Manor of Berkhamstead alone, and one book also contains the entries for the Halimote of Northchurch, but that neither book contains any entries for the other Manor. In 1862 the property was conveyed to Earl Brownlow by the description of the two Manors namely, the Manor of the Borough of Berkhamstead and the Manor of the Halimote of Northchurch. In 1845, when the Plaintiff was admitted, he was admitted as a tenant of Berkhamstead, and subsequently as a tenant of the Halimote of Northchurch, and from 1790 to 1792 separate books have been kept for all the five manors constituting the Honor of Berkhamstead. At the same time the evidence is very strong to show that the Manor of Berkhamstead comprised the whole of what is referred to as the Halimote of Northchurch.

In 1607, a survey was made by direction of the Crown of the

Court and Manor of Berkhamstead under the care and presidency of Mr. Serjeant Dodderidge, afterwards a Judge of the Court of King's Bench, and who is the reputed author of "Shepherd's Touchstone," and this survey (a copy of which is produced), lays down the boundaries of the manor very clearly and distinctly, and they include the whole of what is called the Halimote of Northchurch. It states that 3,437 acres were held by freehold tenants of the manor, and 650 acres held by copyhold tenants of the manor. The survey states the whole of the circumference, which is about eleven miles, and it distinctly points out the exact boundaries including the four pieces of waste which are in question in this cause, and the boundaries are accurately ascertained at this day. The accuracy of this survey and of this boundary of the manor does not seem ever to have been called in question. The admissibility of it in evidence is contested by the Defendant, and the commission on which it was founded is not produced or proved. Still, I am of opinion that it is strictly evidence, and I think also that the character of it is such that the Court is bound to attribute very great weight to it.

In October, 1616, another survey was made by the Duke of Cornwall. The Court of the Borough of Berkhamstead was held in the town itself. The Court for the Halimote of Northchurch was held in the Castle of Berkhamstead.

Now, if the accuracy of the Defendant's contention is admitted it involves this dilemma—that either the Court for the Manor of the Halimote of Northchurch was held in a place not within the Manor, or else that the Castle of Berkhamstead did not lie within the Manor of Berkhamstead. In either case a somewhat anomalous circumstance, which the fact of the five manors belonging to the Honor of Berkhamstead does not, in my opinion, remove, because they are not at all held in the same place. Not only are all the entries made in the same book of rolls, but the tenants of each division are continually cited to both Courts, and this appears by a series of entries in the books.

When I come to consider the rights of the tenants of the manor, whether united or severed, the evidence is very strong to show that the commonable rights of the tenants (and when I speak of the Manors, I speak of both divisions—the Manor and the Halimote) were never severed or considered as capable of being treated apart from each other.

On this subject constant discussions and disputes relating to the enclosing and approving by the lord of parts of the waste afford valuable and unquestionable evidence.

The first of them is of great importance. This occurred in the year 1618. This was an arrangement made between the Prince the Duke of Cornwall on one side, and the tenants of the manor on the other, to settle

what portion of the waste might be enclosed for the benefit of the lord, leaving sufficient for the tenants of the manor who had rights of common over the waste. In the discussion and settlement of this question no distinction was made between the tenants of the Borough of Berkhamstead, and the tenants of the Halimote of Northchurch. They are treated alike as having equal rights and claims as tenants of one manor, and, finally, it is settled between them that 300 acres may be approved by the lord, and that this will leave sufficient for the commonable rights of the tenants over the remainder of the waste, without any separation of the waste or any attribution of any particular part of it either to the Borough or to the Halimote.

I think it unnecessary to go through all the documents relating to this transaction, but throughout the tenants of Northchurch make common cause with the tenants of the Borough, and seem alike to be treated as tenants of the Manor of Berkhamstead.

In the year 1634, an attempt was made on the part of the Duke of Cornwall, which was continued, with more or less assiduity until April, 1642, to approve 400 acres more of the waste, not as the waste belonging to two Manors, but as one waste belonging to one Manor. This was resisted by the tenants of both districts without distinction. The resistance was successful, and the plan was ultimately abandoned, as I shall presently state somewhat a little more in detail. The same appears in the Parliamentary Surveys of 1650 and 1653, in which no distinct Manor of the Borough and of the Halimote of Northchurch is to be discovered.

In 1649 to 1654 the attempt was renewed to obtain these 400 additional acres, part of the waste from the Common, and this again was successfully resisted.

It is impossible to carefully examine the documents which relate to the circumstances connected with the arrangement by which the 300 acres were approved, and those which also portray the successful resistance to the approvement of 400 more acres. They are fully and minutely set forth in the documents proved in this case; and I have gone through the whole of them as carefully as I can.

The various Acts of Council from 19th of May, 1618, to 29th January, 1619, the Commission and Articles of 14th of August, 1618, and the Warrant of 20th February, 1619, clearly establish how complete and careful was the arrangement and compromise which was entered into when the first 300 acres were enclosed and taken from the waste. Here it might have been supposed that the attempts of the lord on the waste would have ceased; but, twenty years afterwards, the attempt is renewed, which, if successful, would have little or no waste for the tenants of the

Manor. The manner in which this attempt was conducted, and how it was attempted to be enforced, are described in the warrant of 13th November, 1638, to Mr. Wytherbed and others, and the summons in the same month to the Commoners to attend. This is followed by a copy of the Minutes of Proceedings in February, 1637, and May, 1639, by the Articles of Instruction of the 3rd of July, 1639, and the Report of the 22nd October, 1639, respecting the 400 acres, and the Return of the Commissioners concerning them, and is completed by a lease of these 400 acres granted to Jane Murray.

This, however, did not prevent or abate the strenuous efforts of the Commoners to prevent these 400 more acres being taken from them. How the contest continued down to April, 1654, how in April, 1653, the interest of the Duchy was sold to Messrs. Ellis and Thride; how on the 27th of April, 1654, this claim was dismissed, and the right of the Commoners permanently established, in spite of a series of proceedings in the House of Lords, is very minutely detailed in these documents, and with much interest shows the success of the tenants of the Manor in their resistance. In fact these identical 400 acres now in question, or very nearly the same, are those the enclosure of which was so strongly and so successfully resisted in the reign of Charles I. and during the subsequent Protectorate of Cromwell; and these are the acres which the late Earl attempted to enclose. I am not sure that they are identically the same, but they are very nearly the same. This was forcibly resisted by the present Plaintiff. Unquestionably in such a state of things, and seeing how carefully the matter has been investigated, and having regard to the circumstance that the rights of the lord and the rights of the tenants of the Manor have remained unaltered, it is manifest that the burthen of proof lies most expressly on the Defendant, the present Earl, who seeks to support this encroachment to show that the late Earl was entitled to make this improvement, and that he is entitled to support it.

Upon the whole, a full consideration of the documents convinces me that, although these two Manors were for some purposes distinct, that for the purpose of every commonable right so far as regards the waste, they together formed one manor of Berkhamstead, and that the rights of the tenants of the manor over the waste were common to the tenants of the Borough of Berkhamstead and to the tenants of the Halimote of Northchurch, and that no waste has ever been, or can now be, properly defined or set out as belonging separately to either manor, but that both enjoyed indiscriminately and in common the whole waste.

As to what these commonable rights were, the evidence to be drawn from the documents as to the nature and extent of them shows that they include almost every commonable right, except the right to estovers and

to recreation or pastime on the waste. As to these, no evidence is given that I am able to find in favour of the Plaintiff.

The *viva voce* evidence confirmatory of the documentary evidence is also all one way, and conclusive as to the manner in which these rights have been enjoyed during the memory of any one now alive, and also from the entries in the books for a very long period of years. It is unnecessary to advert to it in detail. In my opinion it is comprehensive, conclusive, and uncontradicted. Besides the matters above mentioned which are adduced by the Defendant, besides disputing the admissibility in evidence of the survey by Mr. Serjeant Dodderidge in 1607, he also brings forward several technical objections to the frame of the Plaintiff's Bill. He contends that the Plaintiff cannot properly sue on behalf of himself and the freeholders and copyholders of the manor, and that this constitutes a misjoinder. But I am of opinion that this objection fails, and that although the rights of common in the Plaintiff may not be exactly co-extensive, yet as the Plaintiff is proved, and indeed admitted, to be a copyholder as well as a freeholder of the manor, and of both divisions of it, he is entitled, in my opinion, to sue on behalf of all the freeholders and copyholders belonging to the manor. This also appears to me to be established both by authority and by the constant practice of this Court, shown in tithe cases, and also in cases where a right of fishing has come in question as, for instance, in the case of the Mayor of York *v.* Pilkinton, in the 1st Atkyns.

The evidence of user relates to twenty-nine different properties, and in eighteen of these cases it is admitted that the property constitutes either a freehold or copyhold tenement of the manor, assuming that I am right in coming to the conclusion that these tenants of either manor (if there be two manors) have indiscriminately commonable rights over the whole waste.

I think, therefore, that the frame of the suit is correct, and that as regards the common right of herbage, pannage, and the cutting of furze and gorse, the right is established.

It remains, then, for the lord to show that he is entitled to approve, and that sufficient is left for the commonable rights of the tenants. This he has entirely failed in doing; indeed, he has not attempted to do it; and, in fact, the attempt made by the late Earl to enclose a portion of the waste is only a renewal of similar attempts made in 1638 and 1642, and which did not end till 1654, to enclose exactly the same land, or nearly so, which were then resisted, and for which encroachment there appears to me to be as little justification now as there was in the seventeenth century. I consider the case of the Plaintiff to be proved, and that no sufficient ground for doubt is laid to induce me, as I was asked to

do, to send this case for further investigation, and as I considered myself bound to do in the case of the Hampstead common. In the case of the Hampstead common I considered myself bound to do it. This is a very different case.

I think, therefore, that the plaintiff is entitled to a decree in the terms of the first paragraph of the prayer of the bill, omitting the word "estovers," and omitting the right to use the common for recreation, and that a perpetual injunction must be granted in the terms of the second paragraph of the prayer of the Bill. I think, also, that the costs must follow the event. It is true that the present defendant did not erect the fence, nor did he seem to desire by any active steps of his own to support the encroachment; and if he had abandoned the case when he succeeded the late Earl, his estate (that is the late Earl's estate) would alone have been liable for costs, but the present defendant has thought proper to stand exactly in the place of the late Earl against whom the first proceedings were instituted. I do not think that it was necessary to proceed with the action at law. I think that the case was better fitted for a Court of Equity, and that the pendency of the action of trespass ought not to affect the question of costs.

Sir RICHARD BAGGALLAY: My Lord, I wish to be quite accurate with regard to your Lordship's declaration. Your Lordship excludes the right of estovers which is claimed, and that will extend to haybote and woodbote.

The MASTER OF THE ROLLS: I thought there was some evidence of haybote and woodbote.

Sir RICHARD BAGGALLAY: If your Lordship pleases.

The MASTER OF THE ROLLS: I thought, Mr. Williams, that there was some evidence of haybote and woodbote.

Mr. JOSHUA WILLIAMS: As far as furze is concerned.

Sir RICHARD BAGGALLAY: I thought that there was no evidence at all. His Lordship gives you the right to cut furze.

The MASTER OF THE ROLLS: The distinction between woodbote and cutting furze is the cutting of bushes, is it not?

Sir RICHARD BAGGALLAY: Woodbote would be cutting for firing and haybote for fencing. They are claimed separately by the Bill, "the right of estovers, haybote, and woodbote, and also to cut so much furze, gorse, fern, and underwood, upon the said common."

The MASTER OF THE ROLLS: I fancied that I had seen one or two

entries in the books. Of course, I did not read through the whole of the books.

Sir RICHARD BAGGALLAY: I endeavoured to direct your Lordship's attention to the fact that there was no evidence of estovers, or of haybote or woodbote.

The MASTER OF THE ROLLS: If you do not claim any, Mr. Williams, I will not put it in. You had better take a declaration which you can support.

Mr. JOSHUA WILLIAMS: If your Lordship pleases, I think it would be better to omit haybote and woodbote. I believe there is no wood.

The MASTER OF THE ROLLS: Then you do not want it. Herbage and pannage you are entitled to, and you may cut furze and gorse.

Sir RICHARD BAGGALLAY: Then your Lordship will omit "and a right to use the whole of the said common for walking, driving, and riding on horseback, and for the enjoyment of air and exercise, and for amusement and recreation, and other rights, privileges, and customs." Those words will be omitted.

The MASTER OF THE ROLLS: Yes. The words "rights, privileges, and customs" must be omitted. What I meant was that there was no evidence whatever of any pastime, as there was in the Hampstead case.

Sir RICHARD BAGGALLAY: Your Lordship stopped me upon that point.

The MASTER OF THE ROLLS: There was no evidence of playing cricket. There was evidence that in late years, once or twice, a fair had been held, but it is quite clear that was a modern transaction. It is quite clear that there was a right of egress and ingress for the purpose of common of pasture, and, therefore, that necessarily involved the fact that persons would ride and walk over the waste.

Sir RICHARD BAGGALLAY: That would be necessary for enjoying the right of common of pasture, or cutting furze and gorse, but not beyond that.

The MASTER OF THE ROLLS: Not beyond that. In fact, it necessarily carries that with it, but I do not think there is any evidence of the waste ever being used for the purpose of pastime.

Sir RICHARD BAGGALLAY: My Lord, there is one other rather more important question than that which I have mentioned. The claim is the right of common for all sorts of cattle, "levant and couchant as well commonable as others."

The MASTER OF THE ROLLS: Only for commonable cattle That is all I find.

Mr. WHATELY: Including pannage for pigs.

The MASTER OF THE ROLLS: Yes, pannage would include swine.

Mr. WHATELY: They are not "commonable cattle."

Sir RICHARD BAGGALLAY: For commonable cattle levant and couchant, and for swine.

The MASTER OF THE ROLLS: Pannage means the eating of mast and acorns. Of course it is cattle which do eat mast and acorns, that is principally swine.

Sir RICHARD BAGGALLAY: It will be for commonable cattle levant and couchant, and a right of pannage.

The MASTER OF THE ROLLS: Yes, that is to say all the animals who eat acorns and beech-mast.

Sir RICHARD BAGGALLAY: Yes, my Lord, I think I had better read it, in order that we may see that we agree as to the form of the declaration.

The MASTER OF THE ROLLS: It is very right that you should do that.

Sir RICHARD BAGGALLAY: Your Lordship declares that "the plaintiff and the other freehold and copyhold tenants of the Manor of Berkhamstead are entitled as to the right of pasture for commonable cattle as appendant, and as to all other rights of pasture, and all other commonable rights as appurtenant to their said freehold and copyhold tenements to the following common rights, viz., a right of common of pasture upon the said common, and so much of the said four pieces of waste as now remains unenclosed for commonable cattle levant and couchant, a right of pannage, and a right to cut so much furze, gorse, fern, and underwood upon the said common, and so much of the said four pieces of waste as now remains unenclosed as may be required for the purpose of fodder and litter for commonable cattle levant and couchant on the said tenements, and for fuel and other purposes of agriculture and husbandry necessary for the beneficial and profitable enjoyment and use of the said tenements." I should advise my learned friend to leave out those words, "for fuel and other purposes of agriculture and husbandry." It is difficult to understand how the right to cut furze can be for the purposes of agriculture.

Mr. JOSHUA WILLIAMS: We will keep them in.

Sir RICHARD BAGGALLAY: You may keep them in, if you please.

The MASTER OF THE ROLLS: It is a right to cut furze, gorse, fern, and underwood on the common. I think there is distinct evidence that

they have done that in a great many cases. You will understand that I make no order relating to the action.

Sir RICHARD BAGGALLAY: No, my Lord, no order on that.

The MASTER OF THE ROLLS: My order does not extend to that.

Sir RICHARD BAGGALLAY: Possibly your Lordship, in making the decree, will reserve liberty to apply?

The MASTER OF THE ROLLS: Certainly.

Mr. JOSHUA WILLIAMS: Then with regard to the injunction.

Sir RICHARD BAGGALLAY: Your Lordship grants a perpetual injunction in accordance with the declaration.

The MASTER OF THE ROLLS: Yes.

Mr. JOSHUA WILLIAMS: In accordance with the second paragraph of the prayer?

Sir RICHARD BAGGALLAY: Of course it will follow the declaration.

The MASTER OF THE ROLLS: You must not interfere with that which I have declared.

Sir RICHARD BAGGALLAY: There will be no general words, but it will be merely a perpetual injunction to restrain interference with those rights your Lordship has declared.

Mr. JOSHUA WILLIAMS: His Lordship said in accordance with the second paragraph of the Prayer.

The MASTER OF THE ROLLS: I meant that there should be an injunction to restrain interference with the rights I have specified. Of course an enclosure would interfere with those rights most seriously.

Mr. WHATELY: Of course, if we have to come to your Lordship upon a breach of the injunction we should not have to prove our common rights over again.

The MASTER OF THE ROLLS: I do not intend to predict anything on what I shall determine hereafter. It is quite clear that when I have declared the rights, I shall not require you to show that I have declared those rights, but I shall require you to prove that somebody has interfered with those rights. The burthen of that proof will be upon you.