

15 Sep 1667 to Isaac Basire

[Note: The document is undated, but from internal and external evidence dates from 1667 and concerns the case which Isaac Basire, rector of Stanhope, brought in the Exchequer court against Humphrey Wharton, moormaster, about his right to full tithes from the leadmines in Weardale. The date is not given, but it appears to refer to depositions in both sides of the case and these were taken in Stanhope on 22nd April. It appears to be briefing notes for the trial directed to be held following Exchequer hearings on 17th June (see transcript of TNA E 126/9). That trial was held on 24th October. A date of mid-September is therefore used here. The author was presumably one of Basire's legal advisers, but whose name is unknown. Basire won his case.]

Isaack Basire Dr. in divinity plaintiff against Humphrey Wharton Esqr. defendt.

The two Issues which by the Barons are directed out of the Excheqr. to be tried are

1 Issue: Si sit et a tempore cujus contrary memoria hominis non Existit fuit consuetudo infra parochia de Stanhop ad solvend < Riori > Eccl[es]ia parochialis ibm deninas in specie x plumbagine An[gl]i[c]e lead ure acquisit infra vel ex o[mn]ibus vel aliquibus Min[er]is plumbi infra parochia p[re]d[icta] ab q[ui]dem sex min[er]is vocat GroveRake, ThorneGrove, Peakeside, Ewtree, Nicholsons Grove, Harnashaw

Si sit et a tempore p[re]dicto] fuit consuetudo infra parochiam p[re]dictam] ad solvend Riori ibm deninas in specie x plumbagine acquisit infra, vel Ex o[mn]ibus vel aliquib[us] Min[er]is plumbi infra parochia p[re]d[icta] ab qui[dem] p[re]dictis] Min[er]is voc[at] Grove Rake etc mundificat et lavat absq[ue] deduccone o[mn]iadar Expensar Except laboribus prop[r]i[e]tar[i]i] aliquar h[ujus]mo[d]i Min[er]is sive Min[er]ar pro fossione acquisitone et adepone I[llorum] plumbaginis.

[Suggested translation:

If it is not from a time beyond the memory of man the custom within the parish of Stanhope to pay the [parson] of the same parish church tithes in the form of lead ore got within or from all or any lead mines within the aforesaid parish from certain mines called GroveRake, ThorneGrove, Peakeside, Ewtree, Nicholsons Grove, Harnashaw

If it is not the case that there was a custom from the aforesaid time within the said parish to pay the same [parson] of the aforesaid Parish Church tithes in the form of lead ore got within or from all or any lead mines within the aforesaid parish from certain mines called GroveRake etc cleaned and washed without any reduction or expense except lead ores dug, got and worked from lands of freeholders.]

Ex parte Querentis ad primis Exitu

[ie. 'On the part of the Plaintiff in regard to the first Issue':]

To prove the first Issue vizt. a Custome for all the Lead Mines wthin the parish of Stanhop (Except in Frehold Lands) to pay Tyth Ure in kind to the parson vizt. a Tenth part In cleane well washed ure, and not rude & unwashed

To prove the same an old demise made by Thomas Langley Bpp of Duresme, <by> <him> Exemplifi<ed> Anno Dm 1418 wch is 249 yrs. ago. also another Tack or demise, made by George Hall then deputy Moore Master of a Myne called Broadmay 65 years ago

[On right hand side of page besides these two paragraphs are the following names, probably referring to the court record of depositions taken in Stanhope on 22 Apr 1667, giving a folio reference to the witness and an 'I' to indicate the interrogatory number (question) in which the required evidence is given. All subsequent lists of names in this document are similarly shown to the right of the paragraph which they follow in this transcript:]

Rich:Richardson fo20.I.3.4, patner & paid

Tho:Greensword fo.3.I.3.4 a workeman for 30 yeares & heard his Father 108 yeares old affirme it throughout the parish

Ro:Hall fo.41.I.3.4 throughout the p[ari]sh Except freholds

Tho Morgan fo.46.I.3.4. a carrier of ure

Lanc Chapman fo.65 I.3.4. parson Moorecrofts servant & a partner & workeman

Cuth:Morgan fo.60 I.3.4. a partner

Wm. Maddeson fo.36.I.3.4. a Carrier

Mr. Wm. Smith clerke fo.53 I.3

Tho:Robson fo.77 I.3. parson Moorcroft servant

Geo:Harrison fo.74. I.4 in <H>eanewell washed oare

Ra:Harreson fo169 I.5. paid so 40 years ago, witness doth noe mynes but pay tythes

To prove out of what Lead Mynes particularly & by name Tyth ure hath beene actually paid to the parson his deputy or Agents and besides the six Above named vizt.

Allorclough

Wm. Maddeson a carrier <I>n Ao. 1659 fo 36. I.3

Geo:Harrison a carrier fo 14. I.4. fo 191 f <x>

Tho:Morgan tht it was wrought 30. yrs. since fo.46 I.3

Ra:Fetherston fo120. to parson Moorcroft

And note that the witnesses say the Custome Extends throughout the whole parish (Except Freholds)

Barkerburne. The same witnesses & Ra:Harrison fo169.I.3 &tht witnes

Greenefeild <Did>

Midgepitts <Did>

White Rake <Did> & Ra:Harrison fo 169. I.3. the dt. Witness
Bollyhop Groves: Cuth:Morgan a workeman 30. yrs. ago. fo60.I.3
Brade Ra:Harreson fo 169.I.3 the Dt. Witness
Brackenside Geo: Harreson a carrier fo.74 I.4.fo.191. I.2
Tho:Morgan wrought 30 yrs Since fo 46. I.3
Ra:Harrison fo 169 I.3 the Dts. Witness
Burnhop Grove Geo: Harrison a Carrier fo.74. I.4
Baile Hill Ra:Harrison fo.169. I.3 the Dts Witnes
Berrywell Tho:Morgan wrought 30 yrs Since fo.46.I.3
Burnegrove
Co<w>force Ra:Harrison fo 169 I.3 the Dts. Witnes
Grove <Rake> Tho:Morgan 30 yrs since fo46. I.3
Housike Tho:Emerson fo 146. I.3. Dts witness
Iresopburne Tho:Morgan 30 yrs. since fo.46 I.3
Langteyhead <Did> & Geo :Harreson fo.191. I.<3> the Dts witness
Ra:Harrison fo 169. I. 3
Newmeadowhead<Did> & <Geo> Harrison fo.191 I.2.
Piklaw Nich: Richardson fo.20. I.3 30 yrs. ago
Red Groves Ra:Harrison fo. 169.I.3. the Dts witnes
Rispeymires Nich:Richardson fo 20. I.3. 30. yrs ago
Salley Graine: Tho:Morgan 30. yrs. since fo. 46.I.3.
Geo: Harreson fo 191. I.2
Sedling Grove Ra:Harreson. Fo. 169.I.3 the dts. witnes
Todstone <xxxx>

That Tyth Oare as aforesd was paid, sometimes when it was ready, and demanded by the parson & Sometimes at the quarterly meetings

ch:Richardson fo20.I.12
Tho:Greenswood fo30.I.3.
Ro:Hall fo.41.I.4
Tho:Morgan fo46.I.4
Cuth:Morgan fo.60.I.4

That 30. yeares since the Grovrs. covenanted wth. the Bpp<s> Lessee in their Tacks and Leases from him, that if they neglected to pay their Lot oare to the Bpp, or Tyth Oare to the parson their Leases Should be voyd

Nich:Richardson fo20.I.3. and Mr Wm.Halls Lease from the Bpp ready to be produced

That Parson Bewicke by his Indenture of Lease<x> did demise to one Mr. Geo. Bacon, All the Tyth Lead Oare, Tythable within the sd parish - <xxx> Wm.Smyth clerk fo53.I.3

That the defendt. himselfe doth in all his Tacks or Leases made to the Grovers or Tackers binds them to pay to him and his Successors Moormasters, the Tyth & Lott of the Lead Oare in cleane well washed and dressed Oare.

Mr. Wm.Smyth Clerke fo 53 f ii

Tho white fo.8.I.11.

That the Tyth is paid accordingly to the Defendt. without any Deductions

Cuth:Morgan fo 60.I.4

Lanc. Chapman fo 65. I10

To prove a Custome to pay the sd. tythe to the parson without deduction subtraction or allowance of any charges

Nich:Richardson fo.20 I.5. a partnr. & were at great charges 20.yeaes ago.

Tho:Greensword fo 30.I.5.a workeman 30 yeaes Since

Wm.Maddison fo 36.I.5.a Carrier Ao. 1639 <et> 1640 beene at the meetings

Ro:Hall fo: 41.I.5. often at accompts & nevr. any demand of allowance

Geo:Harreson fo.74. I.5 a carrier fo 191.f2

Tho:Robson fo.77 I.5 parson Moorecrofts Servant

Tho:Morgan fo.46.I.5.

Lanc Chapman fo65 I.5.10 a partner & workeman

Arthur Morgan fo.83. I.3.4.5.s<xxxx> <to> Ewtree

Cuth.Morgan fo60.I.5.onely <to> Ewtree

Jo:Westwood fo 153 I.3. Dts. witnes he drove a Levell and had noe deductions

To prove when the defendt. Leased the Tyth oare of the p[ari]sh he the Sd defendt. refused to give allowance to the Grovrs or their ptners for any charges

Cuthbt Morgan fo 60 I.5

Tho:White fo86.I.7

Lanc. Chapman fo.65 f<n>.5 for Wolfclough

<Exp[er]te Defendts ad primis Exitu>

The Defendt. will prove that wthin the parish of Stanhop there are & have beene Sevrall Mynes wrought and noe Tyth payd And also noe tyth <pd> of the Mynes wthin the Deane & Chapter grounds/

Answer/ The Custome Extends not to Freehold Lands, but Millerbury is freehold and the deane and Chaptr. <are> <seized> Jur<e> Entia

Ra:Fethersonhalgh fo 12<0> I.3

Cuth:peart fo 159 I.3.

Jo:Westgarth fo ii4 I.5:

Millerbury, Crowbank, Newlandside

'NB'

Newlandside payeth noe tyth for that the defendt. hath bound the Mynrs. there to pay the tyth to him and the Mooremastrs. his Successors contrary to the <xxx> of the Tackes made by former Mooremasters, and binds himselfe to his Lessees to defend them agt. all suites in all Courts S<p[irit]u>all and temporall and to pay all debts and Judgements. wch. may arise to them, touching the Tyth ure Soo it be payd to him as Mooremaistr. wch. bargaine of his is the onely occasion of this <suite>, the Miners confessing they would pay their Tyth as formerly, as de<faits> Laur. Chapman doth, haveing refused to be bound as abovesd with the rest of the Lessees Tithe is & hath been for 5 yrs last past paid at Wolfclough to Mr Wharton without deduction

To prove that the defendt. maketh his Tacks to this purpose.
Tho. White Wm. Smyth Isaack Basire

Nota tht the defendt. did give bond of 500.£ to Dr. Basire to surrendr. [crossed out: 'peacably'] at the Expiration of the last Lease from Dr Basire, the Tyth <xxxx> peaceably and quietly, & made the aforesd Tacks contrary to his covenant./

Crowbank is not wthin the Defendts. Patent or bounds but wthin Mr. Halls Lease from the Bpp who is in that Lease bound to pay the Tyth to the parson as well as that to the Bpp

That the defendt. Wharton farmed the Tyth Ure of Dr. Basire Esqr. since Dr. Basire returned from beyond the Seas, wch. was Ao. Dm 1661 at 200£ 210£ & 260£ p[er] Ann<o> & mr. Wm. Blacket now Lessee doth covenant to pay 300£ p[er] Ann<o> - wch would be twice the value of the tithes if deductions <were>

The defendt. will prove that there are & have beene Mynes wrought & noe tyth pd because the charges did Surmount the profit./

Ra: Fetherstonhalgh fo120 I.3.

Stowpheade, Wolfclough, new Intacke.

Jo:Loansdaile fo 137 I.5.

Stowpheade & wolfeclugh.

Tho:Emerson fo.146.I.3.

Jo:Westwood fo 1<5>3 I.5.

Brakensike, wolfeclugh

60 yrs. since

Ra:Harrison fo.169.I.5

Answer./ As to Allerclugh & Wolfclough not payeing Tyth to the dt. While he was the <Bpps> Lessee this proves not tht the same was not Tithable, but the adventurer he willingly forbore to demand it, & in truth he contracted wth. the Grovrs. to have their

Ure at such a low Rate, as that he might well spare both Lott & Tyth to the Grovrs. & be a sufficient <gainer> besides vizt. a fourth part <xx> forty Shillings, & Allerclugh, is proved to hve payd Tyth Supra & so is Wolfeclough - Jo. <Brookes> ready to depose

The defendt. will also prove tht Tything Ure ure that is gotten out of the Deads or old heapes afr. they have beene once wrought & washed wthin. the sd p[ar]ish never paid.

Ra:Fetherstonehalgh fo.120.I.4

Jo:Lonesdaile fo.137.I.4.

Jo:Westwood fo.153.I.4

Cuth:peart fo.159.I.4

Ra:Harrison fo.169.I.4

Tho:Emerson fo.146.I.4.

Answer./ This may be for tht the thing it selfe is so inconsiderable tht the Parson might forbear to demand it. And it not being accounted for at any meeting, probably the Parson was nevr. acquainted there<wth.> or knew thereof, yet this doth not prove tht it was not therefor tythable, & p[er]adventure it might be & was remitted out of curtisey, but when Tything ure was considerable, Tith thereof was paid

Jo:Grey, who has not yet beene sworne but is redy to depose the same.

The defendt. will prove tht. Tyths are paid wth. & after deductions first made for all manr. Of charges (Except the ownrs. owne charges)

Ra:Fetherstonhalghe fo.120.I.3 an ownr. & partnr. & saith the ownrs deducted charges

Jo:Westwood fo153.I.3.

Jo: Loansdaile fo 137.I.3

Tho:Emerson fo.146.I.3. a partnr. & worker & he & ptners deducted all materiall charges

Cuth: peart fo.159.I.3.10. workeman & owner & he & his partnrs. deducted charges and <xxxxxxxxrizeh> them.

Ra: Harreson fo 169.I.3.for 60 yrs tht the ownrs & ptnrs. did first deduct charges, & mentons them

Answ: these witnes differ in their evidence & contradict one anothr. for one saith that the abovesd deductions were allowed by the Bpps & parsons Agents at the Reckonings

Ra:Fetherston fo 120.I.3

Jo:Loansdaile fo:137.I.3.

Anothr Saith that the deductions were taken out by the ptnrs. & owners themselves not at the quarterly meetings

Tho:Emerson fo.146.I.3.

NB – That he had noe charges allowed him for driveing a Levell at a Myne called New Meadowes

Jo:Westwood fo153I.3

That the overmen & the ptrs. at the Myne called whiterake substracted the charges themselves out of the whole & gave an accompt & pd Tythes of what remained

Cuth:peart 159.I.3

Ra:Harrison 169.I.3

Besides it is proved by many of the <pl[ain]t[iff]s> witnesses that noe deductions were allowed at [~~crossed out: 'Aller'~~] some of these Mynes at wch. the dts. Witnesses Swear deductions were allowed – as Allerclough

Tho:Greensword fo30f2

Wm.Maddison fo36.f23.

Ro:Hall fo.41.I.2.3.

The defendt. will also prove that sevrall of the Parsons Agents and deputies have given and made allowance of charges to the Minrs.

1 Vizt.

(1) Mr Geo: Hall Curate of Stanhop & Agent for the parson 60. yeares ago allowed of deductions of charges

Ra:Fetherstonhalgh fo 120.I.3:/

Answ./ That Ro: Hall Son of the Sd Geo. one of the pl[ain]t[iff]s witnesses fo 41 f 5 Swears he was often at accompts and never any demand was made or desired of allowance or deductions, The Sd Ro: Hall will also swear that he heard his Sd Father Geo: Hall say, that it was the custome wthin the Sd p[ari]sh to pay without deductions out of all Groves (Excepting Freeholds)

(2) Tho: Emerson 32 yeares ago was the Parsons Agent for receiveing accompts for tyth Oare & did declare he had known tht custome of deducting of charges wthin the Forest above 60 yrs before that, And the Sd Tho: Emerson was 76. yrs old when he told the <depon. Soe>

Ra:Fetherstonhalgh fo 120.I.3

Answ./ The pl[ain]t[iff]s witnesses were a<t> giveing & receiveing accompts in the Sd Tho: Emersons time & depose that wthin the Forest as well as otherwise noe deductions were allowed or mentoned

[struck out: 'Wm. Maddison fo36 I.5']

Ro:Hall fo.41. I.5

Tho:Morgan fo.46 I.5

Cuth:Morgan will depose the same.

(3). Mr. Dracot Curate of St. Johns Chappell in Weredaile was the psons Agent & did always allow of Such deductions at Allerclough

R: Fetherstonhalghe

Answ: The contrary is proved by

Tho: Greensword fo 30 I.2<5>

Wm. Maddison fo:36 I.2.3.

Ro: Hall fo.41.I.2.5.

(4) Mr. Tho: Aisley the parsons Agent had halfe the worke at Allerclugh and did allow of such deductions

Ra: Fetherstonhalge fo.120 I.3.

Answer/ It may be had would do So because being a partnr. his gaine would be greatr. to him, but it is deposed above tht by Wm. Maddison a carrier for the Sd Mr. Aisley that at Allerclough & at divrs. other Groves a full Tyth or Tenth <pt> of ure was paid in cleane and well washed ure without deductions

Wm.Maddison fo36.I.2.3-5

NB

(1) That the Grovrs. or Overmen & Miners themselves made & gave in their owne Accompts for Lott and Tyth at the meetings upon accompts dayes, wch. accompts the Bpps Agents and the parson or his deputy did take according to their owne <giveing> in without Exceptions

Tho: Morgan fo 46.I.4

Lanc Chapman fo 65.I.13

Jo: Loansdaile fo.137.I.3.

I. 142. Dts. witnes./

Soe that herein they were there owne <Cxxxx> & neither Bpps nor parson did Enquire or know, much Less allow the Justness of their accompts

(2.) That the defendts. owne witness Cuth: peart who was both a workman and an owner, confessed that they the Grovrs. had an overman ovr. the Groves and that they did agree amongst themselves & did deduct charges out of the whole

Tho: Morgan fo46.I.5

(3). The defendts. witnesses themselves doe sweare that it is the ownrs. and partnrs. themselves that doe deduct their charges and then after such deductions they give Accompt for. the tyth. that is deliverd to the parson or his Agent

Tho: Emerson fo146.I.3

Ra: Harrison fo.169.I.3

Cuth:peart fo.159.I.3.

Soe that the charges nev'r. Came to the parsons Knowledge or Information or is he made acquainted therewith but that is privatly done among themselves and according to & in respect of such there charges they <pro>bably give unto the Bpp and Parson in their Accompts less oare than is due to them & therefore a <fasto ad Juo non valet consequentia.>

Ra: Fetherstonehalgh fo.134. swears tht. New Intack Mine pd noe Tythes because the charges surmounted the profitt & tht fo 134. he Saith that new Intacke pays Tythes with deductions <Except>agt. these witnesses if produced for the defendt.

Ra: Fetherstonhalge – To prove he hath an Interest in Allerclugh Grove wthin the p[ar]ish and a<l> <xxx> hath 10£ p[er] Ann<o> allowed by the Defendt. concerning the Said Allerclough

Walter Branwell ready to depose

[struck out: 'Jo. pilkington fo81 I.ult']

Tho:White can speake to it

Ra:Maddison fo98.I.ult

Jo:Westgarth – To prove that he hath interest in Westgate hight wthin the p[ar]ish

Mr. Isaack Basire

Tho:White

Ra: Harrison – a partner & hath Interest in a Tacke of a Mine wthin the parish

Mr. Isaack Basire

Tho:White fo.86.I.ult

Mr. Wm. Smyth fo.53 I.13

In Case they <p[ro]duce> James <xxx>, he hath a tack of a mine within the sd p[ar]ish

Tho.White fo 86 I.ult

Wm. Smith f.50-53 <xxxx>

Jo: Loansdaile did falsly depose before Baron Ranifforth Ao. 1665

<xxxone><xxx> & Ra: Fetherston ready to be produced

<If> Ra: Fethersonhalgh or Tho:Emerson be <pro>duced & admitted witnesses <for> defendt. Interrogate or aske them & othrs. the defendts. witnesses that speake to deductions when were the deductions of charges made and taken out

1 Whethr. among the Grovrs. Mynrs. or overmen among themselves privatly, before they came to give in their accompts at the Chappell or no

2. Was the Bpps Mooremr. or Agent made acquainted wth. or privy unto such deductions and did he or they allow thereof.

3. Who was the Bpp Moremr. or Agent when such deductions were made or allowances given

The same Question for the Parson and Agents.

4. Was the accompts of the charges of Every Grove & Myne distinctly made up & <pre>ented at the Chappell as well as the accompts of Oare, and was the accompt of the charges as well <xxxx>ed p[er]used and stated as the accompts of the oare, if soe then by whom and was there a reall demand to have these charges allowed

5. Was the accompt of the charges and the accompt of the Oare presented at two sevrall times and were they entred into one paper or Booke, or into severall papers or Bookes and who entred them.

6. Did the sd. defendt. while he farmed the Tythes or his Agents <receive> them in Kind if soe then how did he then <receive> them.

7. Did he make any allowance of any charges unto the Grovrs. or Mynrs. or he refused So to do

8. Doth this defendt. bind the Grovrs. in their Tacks to pay the Lott & tyth to him and his Successors Mooremrs. in well washed and dressed Oare & is that the forme of his Tacke

9. Whether are you a Customary Tennant, or the ownr. or Farmr. of any Customary Lands or Tenemts. within the parish of Stanhop, and have you any Interest in right thereof Upon the Moores or waists of the Sd p[ar]ish? Have you any Moores or <sit>uate pastures belonging to yor. Customary Tenements, & what is their names./

10. Whethr. may the ownr. of their owne customary Lands, worke for Lead ure wthin their owne Lands, and whether can the Mooremaistr. hindr. them that are owners to have Tacks for workeing and to worke and gett Ure out within there owne Lands or the Moores or Stinted pastures, wch. belong to their Severall to their Customary Lands./

11. Whether doe you know any pt of the Moores or wasts with in the Sd parish to have been made inclosed or Sevrall grounds, & what doe you call Such grounds, and have any Mines beene digged in the Same before or Since they were inclosed & what are the names of Such Groves and in whose possession are they./

12./ Whether at the quarterly meetings it was declared what Groves were tythable, and what not, and the names of Such/.

13. Whether was the Lot paid after the Same manner with or without Deductions & at the Same times as the tithes were, if there was any difference in the Paymt. how & wt is Such difference?

<Expte querentis ad primis Exitu>

Nota Bene,

That Ralph Fetherstonhalgh Senr. & Ralph Harrison, two of the Defts. witnesses were Examined as witnesses in the Chauncery of Durham, on the plaintiff's behalfe, Anno 1665 & there they swore tht the Custome within the parke & forest of Stanhop in Weredale, in the parish of Stanhop was, That all the Leasers & Accustomary Tenants & Owners of any mynes of Lead-Oare, wrought forth, or out of any Lead-Mynes, within the sd. parke & forest, payd Lot to the Bp, & Tithes or the 10th part to the parson, Some charges for working thereof being first deducted.

John Loandsdaile, another of the Defts. Witnesses, swore, tht the Custome of paymt. of Tythe in the Grounds aforesaid, <xxxxx> the Deduction of some by Charges for working thereof - <Note> the by Charges, are the Lessees Charges, as Ropes, Candles, & such <like> only they also all of them Swore <tht> they knew parson Moorecroft, parson G<ower>, & parson Berwick received Tythes of the Lead-Oare, wrought or gotten in any Grove or mine belonging to any Leasers or Accustomary Tnants within the sd parish

And Ralph Fetherston <Senior> & John Loanesdayle Swore, the one for 50 yeares, the othe for 60 That they knew Tythe was payd to the parson by all the Leasers & Accustomary Tenants Myners & <Grovers> within the sd parish & <never><Such> any owners of any grove within the sd. parish refuse to pay Tythe in <kind>./

They also Swore tht. they knew Gorbutmay, Allerclough, White Rake, Bar<ker>burne, Langty-head, and <Houside>, for 40 y. together, & upwards pay Tythe to the parson That Newintacke Allerclough, whereof Ra Fetherston was owner, constantly payd full Tythe, Saving the Deduction of Some Charges, as aforesd to the parson.

Tht Langteyhead, whereof Ralph Harrison was ptner, for 10. yeares together, Constantly payd Tythe to the parson, & <xxxxx> nothing of Deductions.

John Loandsdaile Sweares tht his Father was one of the ptners of Allerclough & he wrought the same for him, & his father Constantly paid the Tythe, after the deduction of by charges, as aforesaid vid. their severall Depositions, ready to be produced.