

JOHN GELL AND THE MINERS: LEGAL STRUGGLES OVER TITHES OF LEAD ORE IN EARLY SEVENTEENTH CENTURY DERBYSHIRE

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Abstract: An account of the attempts made by John Gell of Hopton to enforce the rights to lead ore tithes in the Peak District which had been enjoyed by his father and grandfather.

THE GELLS

John Gell was born at Hopton, in Derbyshire, in 1593. He was the son of Thomas Gell of Hopton Hall, who died in the year after John's birth, leaving his wife, Millicent, pregnant. Thomas Gell's posthumous child was a second son, also called Thomas. Millicent Gell was remarried soon afterwards to John Curzon, of Kedleston Hall, and the two Gell brothers were brought up at Kedleston, where their mother gave birth to a third son, another John. The Gell brothers and the younger John Curzon remained close throughout their lives. John Gell, as his father's heir, was made a royal ward and the Gell property leased to Gilbert Earl of Shrewsbury during the boy's minority (D258/60/38a). John Gell, a highly precocious minor, was married at the age of fifteen, in 1609, to Elizabeth Willoughby. Gell went, or was sent by his step-father, to Oxford University, in 1610. He left after a year without taking a degree and his and Elizabeth's first child was born at Kedleston in 1611.

TITHES

Almost from Thomas Gell's death his son, or his guardian, found that his succession to much of the family's property was disputed. In addition to fighting off neighbours' attempts on his land and authority, launched during his minority, John Gell was embroiled in a much older struggle. This was with the lead miners of Bakewell and adjoining parishes, determined, as were miners elsewhere in the ore-fields, to avoid paying tithes on the ore they had mined. The tithe, or tenth part of the ore, had been paid to the pre-Reformation church and the miners had seen it then as a reasonable return for spiritual services rendered. Many of the tithes were held by religious houses and were sold by the Crown to laymen, along with church land and property, at the dissolution of the monasteries by Henry VIII. Many others had already been sold or leased by the church authorities. The transfer of tithes from religious to lay hands was never accepted by the miners and by the seventeenth century this rejection had been extended to include tithes still held by the church. A third of the tithes to lead ore mined in the parishes of Bakewell, Tideswell and Hope had been bought by John Gell's grandfather, Ralph, in 1549 from the Dean and Chapter of Lichfield Cathedral (D258/31/88za). John Gell was not alone in fighting many court cases to establish claim to tithes but in a succession of hearings which began during his minority it was agreed by the miners that they had paid tithes to his father. The break in continuity at Hopton caused by the family's move to Kedleston may have prompted a decision by the miners to avoid paying tithes to Thomas Gell's son.

THE MINERS

John Gell brought his case against the miners of Bakewell parish in the Court of Wards in 1613. He was still under twenty-one and the case was therefore made in the name of "Gilberte Earle of Shrewsburie Committee of the bodie & lands of the said ward during his minoritie", the word "comittee" being used in the sense of Shrewsbury's being committed to Gell's guardianship. The papers make it clear, however, that Gell himself took an active part in the campaign. He may have been underage but by 1613 he had been married four years and was a father. He showed the tenacity in defending his own interests that he continued to show for the rest of his life.

The charge was that four named miners had been paying tithe ore to the Earl of Shrewsbury but had discontinued their payments at about Midsummer Day, 1613, after they had acquired "all the orders, charters, evidence and writings wch doe plainelie manifest and sett forth the title of the said ward to the third pte of the said tithe leade oare or myne" (D258/59/13i). Since then they had denied that either Shrewsbury or Gell had any right to the tithes, had refused to pay them and had refused to hand over the relevant documents. In alleging that the miners had the documents which would establish his case, Gell was making a similar charge to one he was to make later against John Fearnie, one of his Hopton antagonists. In this Earlier case, however, he made a less sensational accusation than the one levelled at Fearnie. Rather than accusing his opponents of breaking into his agent's office and stealing the documents he merely said that they had come into the miners' hands "by some casual or other meanes".

Giving evidence on 23rd November, 1613, Ralph James, one of the four named miners, denied all the charges but made several submissions to be considered if the case should go forward (D258/59/13h). He pointed out that a similar case brought by Sir Francis Leake, who claimed the other two thirds of the tithes, was being heard in the ecclesiastical court and suggested that Gell's case should be moved there. While denying that any tithes were payable he claimed that if they were to be paid they were personal tithes, based on the miners' work, rather than "prediall" or those based on property. This was an important point as personal tithes were paid before the ore was dressed, leaving the expense of dressing to be borne by the tithe owner. In the case of the main duty paid by the miners to the owner of the mineral rights, the "lot", or each thirteenth dish of ore, the miners accepted that it was to be paid after they themselves had had it dressed. James also claimed that the tithe owners should recompense the miners for the hard work, danger and costs spent in mining - "leade oare is

gotten by and with the labor and industrie of this defendante and others ... and gotten at their great charges and costs ... and with greate danger of their lives insomuch that the same is many tymes digged for and gotten above fortie fathome depe in the earth".

The verdict of the court was uncompromising - "the answeres of the said defendts in all and every the points thereof materiall against his said informacon altogether untrue" (D258/59/13j). The miners were entitled only to a penny for dressing each dish of tithe ore - "never anie thinge hath bene or ought to bee allowed unto the defendts or any other of the myners wthin the said p[ar]ishe of Bakewell for the same save onely a penny for everie dishe wch was allowed for the dressinge or clensing of yt from the earth and rubbishe onely and for noe other thinge els". In June 1614 the court noted that the miners had admitted that they had paid tithe to John Gell's father Thomas and instructed James and his co-defendants to show cause why an injunction should not be issued granting Gell possession of the tithes (D258/47/17i). In the following month the court granted the injunction "for payment thereof in such manner as yt was yealded and paied unto the wards father".

Gell had won his case. What followed was typical of all his later attempts to get hold of his tithes, the miners proving obdurate and resourceful in thwarting him. Sir Francis Leake wrote to Gell on the 6th August, 1614, reporting that the miners "neither care for your injunction nor mine" (D258/47/19n). Leake recommended using Common Law and asked Gell to send his agent Francis Burton to Lichfield to collect documents which were essential for their cases. Gell went himself to Bakewell in September with Burton and summoned two of the four defendants, Thomas Wilson and Edward White to meet him there. In the presence of Gell and two other witnesses Wilson and White were shown the injunction instructing them to pay the tithe and Burton asked them whether they intended to do so. In his account of this meeting and of subsequent events, given in a statement which he made to the court in February 1615 (D258/59/13m), Wilson pleaded ignorance. He admitted that "one John Woodhouse shewed him . . . a wrytinge, but what the effect of the same wrytinge was hee . . . knoweth not for that hee did neither reade or heare the same, neither did hee . . . observe whether the same wrytinge were in p[ar]chment or in pap[er] nor whether there were anye seale fixed to the same". He claimed that, apart from the demand made at the meeting with Gell, no one had demanded tithe ore from him. He was unable to remember how much ore he and his fellows had mined since the previous September because he had not been asked for any at the mines where tithe had sometimes been paid in the past. He agreed that tithe had been paid to Thomas Gell, whom he had known.

Edward White was similarly obstructive. He remembered that he had said, at the meeting with John Gell, that he would pay the tithe if it were a legal requirement and that the injunction had been read to him. However, he was "unlearned" and had no idea what an injunction was. Like Wilson, he agreed that he had mined lead ore, though he did not remember how much, and that he had paid no tithe because no one had come to the mine to demand it and "hee doth not thinke that hee is bounde to carry ... tythes to anye other place".

Gell met with a more direct rebuff when, in June, 1615, he sent a Kedleston yeoman called Richard Warde to Bakewell to collect tithe from Wilson's and White's mine. Warde testified to the court (D258/47/17i) that when he arrived at the mine there was ore

"gotten and lying upon the banke". However, he was told by one of Wilson's workmen "that he would pay no tythe at all to the said John Gell", and that his master had said the same. Also present at this encounter was a partner of Wilson's called Hugh Whittaker. Whittaker put the miners' attitude beyond doubt - "hee would never pay any tithe of the said lead oare although hee was cast in the lawe to paye yt". On the 23rd June the court insisted that its injunction should be obeyed - "the defendants shall take at their p[e]rill that the tythe oare shalbee payd upon demand made unto their servants or workemen at the place where the said oare is gotten". During the Trinity or summer term of 1615 Gell's legal bills in the various cases he was pursuing came to £17-7-3d, of which £2-15-10d was spent on the effort to make Wilson, White and the rest of the Bakewell miners pay lead tithe (D258/50/2d). By the autumn of 1616 he had had no success. The miners had combined to build a fund expressly to fight tithe cases and their lawyers were using delaying tactics. Gell, by now fighting in his own name, brought his case back to the Court of Wards in November. The court noted that the defendants had submitted that one of their witnesses was now dead and another removed to London and remitted the case to the following term. In February 1617 it appeared that some of the witnesses were too old to travel to Derby, where previous hearings had been held. The court agreed to move to Ashbourne and ordered that if "the defts witnesses are not able to come to Ashbourne by reason of age, sickness or their lawfull ympediment" the parties should attend at the Attorney's chambers. If they could not agree a venue, one would be imposed.

Gell submitted a long paper to this new hearing (D258/59/13l). In the form of questions to the defendants, which was the usual procedure, it amounted to a comprehensive description of what was involved in the struggle. The miners were required to say whether they knew John Gell or his father, whether they agreed that the documents produced by Gell were true copies of relevant documents and whether tithe had been paid until recently "unles some have bene concealed". Concealment of ore to avoid paying duty was well known to be a regular ploy. The payments of tithe to Ralph Gell and his sons Anthony and Thomas were noted, as was the fact that John Gell was Thomas Gell's son and heir. The miners were asked rhetorically whether they had withheld tithe, if so why and for how long.

Gell repeated the earlier assertion that the miners had always been paid a penny for dressing the ore, and asked what more had ever been paid and by whom. He also pointed out that the dressing process had recently been made much simpler and more efficient by the introduction near the end of the sixteenth century of the sieve. The ore, broken into small pieces, was placed into a sieve which was then plunged into a trough of water. The lead-rich pieces, being heavier, formed the bottom layer of the resultant slurry, making its separation from the other, unwanted mineral easy. Gell maintained that in the days when the process was much more difficult the miners had dressed the tithe ore before paying it.

One of Gell's questions is worth quoting in full. It illustrates the enduring contempt of the gentleman for the lower orders and in particular Gell's own feelings about the miners on whose work his fortunes depended, since he was a mine owner and was later to be the owner of the mineral rights in the Wirksworth Wapentake. "Are not the laborers & mynrs for the most pte given over to unthriftines and to be lavish and idle in expence, doe they not often bargaine and sell awai the proffitt of their labors before they have gotten yt, to maintaine their idle expences to their greate

losse, and might not otherwise manie of them growe riche, and most of them live well, and maintaine themselves honestlie". In the next question Gell asked what weekly profit the miners did in fact make, clearly hoping to demonstrate that they could afford his tithe.

Gell repeated his earlier success in winning legal right to the tithe but still found himself unable to collect it and took further action at law. There are letters from Sir Francis Leake which show the two men helping each other in their common struggle. In July 1619 Leake wrote that he was proposing to petition the king and asked Gell to send him a copy of a petition that the miners themselves had presented (D258/41/31z). Leake wrote again, referring to an injunction which he was seeking in the Court of Chancery and asking Gell to produce the records showing the origins of the tithes (D258/41/31ea). A list of these (D258/31/88za) shows that they included the original twelfth century grant of the tithes to Lenton Priory by William Peverel, the sale of one third of them to Lichfield Cathedral in the fourteenth century, the purchase of Lichfield's third by Ralph Gell in 1549 and the sale of the two thirds to Sir Francis Leake after the dissolution of Lenton Priory. Among other documents were accounts of tithe ore collected at different periods, four of which, from the 1520s, included the "allowance given of 1d the dish for washing", though marginal notes to the list contain no mention of the great decline in the value of a penny which occurred during the sixteenth century.

One miner at least agreed to abide by the courts' verdicts. This was Ralph Staley, who agreed in 1624 (D258/31/91) to pay a third of the value of the tithe to Gell in return for a penny per dish for dressing the ore. This document mentions the fact that Gell had brought a lawsuit against miners who refused to pay tithe and had won it. Significantly, however, Staley promised not to pass his mines to anyone who intended to deny Gell his rights. Clearly legal entitlement was still not the same as possession, as far as tithe ore was concerned. A reference in the agreement with Staley to the "due course of law" probably refers to a decree which Gell had obtained in the Court of Chancery in 1624 (D258/31/64f). This, like his authority from the Court of Wards, was doggedly opposed and in 1626 he brought an action in Chancery against miners who were refusing to obey it (D258/42/14g), naming Ralph James, Robert Jepson and James Walklate. Walklate entered a bond of £40 with the Derbyshire High Sheriff, Henry Harpur, in May to appear in Chancery to answer a charge of contempt of court (D258/30/11h), yet by December the warden of the Fleet prison in London was issuing a warrant from the Court of Chancery for his and Jepson's arrest for contempt (D258/42/25). Two of the officers executing the warrant were Ralph Poyser, a servant of Gell's and later one of his deputy barmasters, and William Gell, a Hopton villager and presumably a relative. The collection for the miners' anti-Gell fund went on and the tithe gatherers continued to be obstructed.

THE BARMASTERS

One of the difficulties in collecting tithe ore from the miners was always that the mines were remote and scattered. The tithe gatherer needed the barmasters' cooperation if he was to be in the right place when the ore was measured. This cooperation was not always given. In his submission in 1617 therefore Gell outlined what he understood to be the barmasters' weekly measuring procedure, which he claimed included the duty of setting out the tenth dish, "dressed, clensed or washed". Both of these assertions

were disputed. Barmasters did not in fact agree that their duties included tithe gathering. They were employed by the holders of the mineral right, usually the "king's farmers", to measure the lot, or thirteenth dish, to which the king or his farmer were entitled. They were reluctant to take on the tithe as well. The point about the tenth dish being presented after washing was also disputed, as we have seen. Gell also claimed that any ore sold without being measured by the barmaster was forfeit. In this, as in the matter of measuring, Gell was assuming that the mining law which applied to the collection of lot applied also to tithe. He extended his attack on the barmasters in 1617 by accusing them of losing him money "by absence and negligence" when they should have been measuring and collecting the duty. Years later, when Gell himself, as holder of the mineral rights in Wirksworth, was chief barmaster there, it is apparent from his papers that his deputy barmasters were kept strictly to their tasks and carefully accounted for.

In an attempt to give his men the information they needed to be in place to collect tithe, Gell asked how many mines and how many miners there were in Bakewell parish and how many there were in Bakewell entitled to lot and where were the places at which it was paid. He also queried whether there were any others than himself and Leake claiming tithes in Bakewell and, if there were, what were their names and which them of had been paid and which refused payment.

Ten years later, in a further case, Gell directly accused the barmasters of taking part in the anti-tithe campaign. "Letters notes directions orders or pretended orders or coppies of orders" had been circulated, one of the chief letter writers being Henry Coupe, one of the miners' solicitors. These documents had been shown or read to miners, and the barmasters were accused of taking part in this persuading - "have you read or caused the same to be read in any church or chappell . . . in publique manner in or after divine service upon the Sabath day or some holiday" (D258/42/15). The Barmote Court at Ashford, which was in Bakewell parish, had actually instructed its barmaster to collect 3d per load from the miners to be spent on the legal costs of fighting tithe (Kirkham, 1968). Evidence was given by John Woodhouse, gent, that Henry Platts, deputy barmaster at Ashford, had demanded the 3d when he had bought twenty loads of ore "towards the maynteyning of the suite fr the tyth oare against Mr Gell & the lord Dencourte [formerly Sir Francis Leake, created Baron Deincourt in 1624] (D258/42/15)

THE COMBINATION

The accusation that the miners' resistance to the tithe gatherers was a conspiracy was made at some length in the 1617 submission. Gell alleged that they "combined or agreed together to withould denie or refuse the payment of the tithe". Furthermore they "made or gathered a purse, or a great some [sum] or anie some or somes of money for the mainteyning of suites against the sd John Gell". In what may not have been a rhetorical question, Gell asked "who are the abettors, mayntayners, or incuragers of them in these suites" and whether they, or some of them, had been making speeches denying Gell's right to the tithe and asking for contributions to "defrai the charges of their suites". He asked whether these agitators had threatened that if he continued to bring legal demands for tithes they would bankrupt him - "make him sell his lands". It is clear from this that the miners imagined that their fund was big enough to pay any likely legal expenses. Certainly Gell faced prolonged litigation and one of his questions includes a claim that the miners were

currently prosperous. He pointed out that mining profits rose and fell according to the price of lead and to the richness or otherwise of the veins in which the miners were working. At the present time, he said, there were "manie hundreds more" miners and workmen than at any time in the previous sixty years and profits were increasing daily. Such a boom is ample explanation for Gell's determination to get his hands on the duty his ancestors had enjoyed and for the miners' reluctance to pay it.

In the Court of Chancery in 1627 Gell aimed for the organisers. If he had not known who they were in 1617 he certainly knew ten years later. He brought an action for contempt of court against six men, accusing them of frustrating the 1624 decree by collecting money from the miners in Bakewell, Tideswell and Hope and threatening to remove their ore and bring legal action against them if they refused to pay (D258/31/64f). The leaders were local gentry, Robert Allsop, Esquire, the miners' solicitor, and William Wright, gent, who was the farmer of lot and cope in Ashford and presumably responsible for the decision of the Ashford Barmote Court to levy the 3d contribution to the anti-tithe campaign. Allsop was accused of going "from one place to another amongst the myners", promising them that if they paid their contributions they would never have to pay tithe again. Gell maintained that the miners would rather pay tithe than the money demanded by Allsop and said that some of the miners had paid their tithe secretly, to avoid the wrath of William Wright and others. Allsop was further accused of threatening legal action against the tithe gatherers and Wright of seizing tithe ore after it had been paid.

Evidence was given by one Tideswell miner of the treatment received by Ralph Poyser in March 1627, when he attempted to claim Gell's tithe ore from John Wrigget and Thomas Ashton (D258/42/15). Poyser produced a copy of the Chancery decree, sealed with the royal "great seal", as his authority. Wriggett thereupon "set him of on ther grond", which may mean that Poyser was sent on his way or, possibly, that he was knocked to the ground. Ashton threatened him and "called the kings brode seale a bobbi [trick] that hi brought to scare men with all". A warrant for the arrest of John Mitchell, one of the six named in the contempt proceedings, has an instruction to the constables to "command him to bringe the order of the Chancery which hee vyolently tooke from the forsaid Raphe Pyser" on July 3rd (D258/42/15)

There was evidence from two Tideswell yeomen, one of whom was eighty-six years old "or there abouts", who had been tithe gatherers, that the tithe had been paid "till now alate [of late] that this sute begun". A third yeoman testified that at a meeting in his (the witness's) house Allsop had contended that only the four miners named in the Court of Wards proceedings were obliged to pay tithes. In June the Court of Chancery noted that Allsop, Wright and their four co-defendants had failed to answer the charges against them and instructed them to appear within a month, bringing with them the letters circulated by Coupe. The court continued to take evidence throughout 1627 and its

commissioners called witnesses to a meeting at Brassington as late as 12th November "by nyne of the cloke in the morning" (D258/42/15). Among the witness summoned to Brassington were Jepson, Walklate, Woodhouse and Poyser. The court's verdict, given in January 1628, must have infuriated John Gell (D258/47/17h). It noted that an order issued in May 1627 had ruled invalid Allsop's contention that only the four miners named in the order of the Court of Wards were obliged to pay tithes, and that the order "should stand against all the miners". It ruled that Allsop "had comitted a contemp in stirring upp the myners against the performance of the said decree". However, in spite of this, Gell's case was dismissed because the decree referred to miners and since "the saide Alsoppe was noe myner the same did not extend unto him and the plt [plaintiff] failed to prove the rest to be myners". Allsop and the others were "discharged of their said supposed contemp" and were free to continue to thwart Gell's attempts to collect his tithe.

The contest was inconclusive. Gell certainly collected some tithe ore. A letter of 1632 from Henry Harpur (D258/60/78o) referred to a stock of tithe ore collected on behalf of both Gell and Deincourt and asked Gell whether he wished it to be sold or smelted. Presumably referring to the tithe gatherers' past problems, Harpur promised to "keepe the oar in safetie" and to "husband yt better then yt hath bene formerley". On the other hand Gell's servant Thomas Stopard confessed in 1643 that "wee are at your great charges to looke for yr tith oare and get verie litle" (D258/61/40b). There are lists of recalcitrant miners in the liberties of Tideswell, Hope, Ashford and Barlow and a request from a Gell tenant who owed six months rent to be allowed to earn it by collecting tithes in Bradwell. "Some menn doe soe abuse yr servants & denie the payinge of the tythe oare that hath paid none this year or tow". Ominously, Gell is asked to "send mee a muskett by these bearers".

ACKNOWLEDGEMENT

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SOURCES

Derbyshire Record Office. Chandos-Pole-Gell collection. D258 Kirkham, N. 1968 *Derbyshire lead mining*. Bradford Barton, Truro.

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