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The Public of the Locality.

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TENANTS OF THE LORD, AND INHABITANTS – 1331 TO 1590.

1. The Manor Court Rolls of Methley (West Riding of York) [translated and transcribed within pages 131-243 of 'The History of Methley' by Hubert Stanley Darbyshire and George Denison Lumb (Leeds 1937)] record the proceedings of the Court between the years 1331 and 1590. Methley was a typical lowland manor (whose boundary coincided with that of the parish) situated within the triangle formed by the confluence of the rivers Aire and Calder.
2. The Court Rolls record the constant failure of the Tenants to fulfill their customary obligations to the Lord and to their fellow inhabitants.
3. These records are similar to countless other Court Rolls for manors throughout the country, both as to their content and as to the scope of the jurisdiction of the manor court. See also 'The Story of the King's Highway' (1 963 Ed.) at page 7.
4. The entries in the Court Rolls refer countless times to "the tenants". These tenants were sometimes referred to specifically as "The Tenants of Methey" (38 Edw.3 28 May 1364) or as "The Tenants of the Lord" (8 Henry 8 30 June 1516). With few exceptions every householder and occupier of land within the Manor of Methley was a Tenant of the Lord. The priest being a notable exception.
5. The entry for 16 Henry 7 August 1500 recites "Penalty that all the tenants shall make the highways within the Lordship by carrying gravel with their wagons at the summons of the Bailiff. Penalty on each for his wagon xijd and that each labourer shall be there on the same day under penalty for each absent ivd".
6. Thus long before "The Statute for the mending of High-ways" was passed in 1555 (2/3 Philip and Mary chapter 8) the Manor of Methley repaired its own highways by the same method of assembling together all the men and vehicles in the township under the supervision of an official of the community.
7. The early rolls seem to refer only to "tenants" whilst the later rolls refer to both "tenants" and "inhabitants" and the final rolls seem to refer only to "inhabitants".

8. An example of the use of both terms to describe the people of Methley as a collective body is contained in the Roll of 8 Henry 8 (1516). On the 24 April it records – "It was enjoined on all the inhabitants to come and make the metes, stocks and common ways when the Bailiff shall give sufficient warning to them". On the 30 June it further records "It was enjoined on Robert Warde the priest that he shall permit the Tenants of the Lord to have their right of way in Hawsinge to the Town Mires under a penalty of iijs ivd and that he shall make the way sufficiently as they used to have it under the same penalty" (my emphasis).

9. In the early days of the Manor Rolls virtually everyone occupying land or houses within the parish and manor was the Lord's tenant. Thus there was little actual difference between the usage and meaning of the word "tenant" and the word "inhabitant". They both embraced the same collective group of persons.

10. However, as centuries went by, for various reasons, the absolute control of the Lord over the land and over the people diminished, and others began to exercise the power derived from the ownership of land within the parish. Thus not everyone who then qualified as an "inhabitant" or a "parishioner" was also a 'tenant".

11. The entries within the Rolls demonstrate that the Manor Court was obliged to ensure that not only the custom of the manor was upheld but also that the general Laws of the Realm were adhered to. In other words, the Manor Court was far more than just a parochial inquisition, it was one of the lesser courts of the land which deal with public matters such as the repair of highways (as above) and the presentment and indictment of those who offended the laws passed by Parliament.

12. For example the entry for 26 Elizabeth 8 October 1584 reads "Also they present the inhabitants for wearing felt hats – Fine iijs ivd (The transcription notes – 8 Eliz c.11, 13 Eliz c.19(1571), 39 Eliz c.18 s.45 : "all persons above 7 years of age to wear on Sabbath Day and Holy Days (unless travelling) a cap of wool knit, thicked and dressed in England and made by one of the trade of cappers, penalty for each offence 3s 4d").

13. The entry of 29 Eliz 9 February 1587 further recites the imposition of both the customary law of the Manor and the general law of the land. "Penalty on the

inhabitants that no one shall break any hedge or fence – Penalty vjd" and "Penalty on the inhabitants that no one shall make two fires in one house – Penalty xs".

14. By the year 1590, when the Manor Rolls of Methley appear to end, the word "inhabitant" seems to have been used to describe the citizens of Methley as a collective body. These same persons could also be collectively described as "parishioners", even though there were certain legal distinctions between the two, distinctions which still exist today.

THE INHABITANTS and THE PUBLIC OF THE LOCALITY – 1601 To 1959

15. The Oxford English Dictionary based on Historical Principles (3rd Ed. 1983) states that the word "public" can mean "pertaining to the people of a country or locality". Thus the Inhabitants of a hamlet, village, township or parish were (and are) "the public" of the locality at any given time. As such they constitute, for the purposes of Highway Law, the public per se. See articles in the RWLR (6.3 page 55) and BBT 1997 8/53.

16. The courts have considered the question of "Who are the 'Public'?" on many occasions. Probably the most compelling words on this subject remain those of Lord Coleridge C J in the matter of R v The Inhabitants of Southampton (1887) 19 QBD 590 at 598 where he stated re user of a bridge "the word 'public' in this connection must not be taken in its widest sense; it cannot mean that it is user by all the subjects of the Queen, for it is common knowledge that in many cases it is only the residents in the neighbourhood who ever use a particular road or bridge. In the present case, however, there is no doubt abundant proof of the user of the bridge by, and of utility to, the public, confining the meaning of that word to that portion of the public which used it" (my emphasis).

17. In 1936 the Court of Appeal considered the meaning of the phrase "the public" in the matter of Jennings v Stephens 1Ch 469. The Master of the Rolls Lord Wright said " 'The public' is a term of uncertain import; it must be limited in every case by the context in which it is used. It does not generally mean the inhabitants of the world or even the inhabitants of this country. In any specific context it may mean for practical purposes only the <u>inhabitants of a village</u> …

Thus it is clear that by 'public' is meant in the words of Bowen L.J. 'a portion of the public'" (my emphasis).

18. In 2002 the Court of Appeal once more passed an opinion about the meaning of the words 'the public' in the matter of Massey and Drew v Boulden and Boulden EWCA Civ 1634. Simon Brown L.J. said "Has the public access to the track? Assuming, as I do, that the inhabitants of Bonnington who are entitled to use the Pinn as their village green are sufficient to constitute 'the public', the answer to this question is clearly yes in the sense that the public can and probably do walk over the track during their use of the green" (my emphasis).

19. Other cases which considered the question of 'the public1 are Grand Surrey Canal v Hall (1840) 1 Man & G 392; Trafford v St Faiths RDC (1910) 74 JP 297; Weir v Fermanagh (1913) 1 Ir R 63 CA; Wyld v Silver (1 963) 1 Ch 243. See also Seymour on Dunlop (BBT 1999) paras 18 and 60.

20. The above cases confirm that the Inhabitants of a place constitute a portion of the public. The place in question may even be as small as the locality for the use and enjoyment of a village green. The inhabitants may be as few as those who reside within the locality of that green. Thus, to quote from page 35 of 'Local Council Administration' (5th Ed. 1997) - "the words ("in relation to highways and admission to meetings of public bodies") "the public" or "the general public" probably mean 'everyone'".

21. Thus there is no doubt that the Inhabitants of a place in past times were the public of the locality. But just who were "The Inhabitants" of a parish or township? Were they everyone who lived there? Or were some residents excluded from that class of persons?

22. In 1601 43 Eliz. c.2 section 1 required the overseers of the poor to raise the money necessary for the relief of the poor "by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines or saleable underwoods in the parish" (my emphasis).

23. Thus the tax fell upon all and every of the 'owners and occupiers' within the parish. I will return later to the significance of this class of persons and its relevance to a consideration of the intentions of Inclosure Commissioners when

they awarded roads for the use of the "owners and occupiers of lands" within the manor, township or parish.

24. In 1747 in the matter of AG v Parker 3 A & K 576 at 577, Lord Hardwicke L.C. said "Parishioner is a very large word, takes in, not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties, tho' they are not resiant, nor do contribute to the ornaments of the church. Inhabitants is still a larger word, takes in housekeepers, tho' not rated to the poor, takes in also persons who are not housekeepers; as for instance those who have gained a settlement and by that means become inhabitants".

25. In 1803 a 'Law Dictionary" by Thomas Potts defined "Inhabitant" as "a dweller or householder in any place; as inhabitants in a vill, or the householders in the vill (2 Inst. 702). But the word 'inhabitant' does not extend to lodgers, servants or the like, but to householders only (2 Inst. 702)".

26. In 1835 the word "Inhabitant" was defined by statute (Highway Act 1835 section 5): 'Inhabitant' to include any person rated to the highway rate. The 19th Ed. (1952) of "Pratt & Mackenzies' Law of Highways" at page 142 note (c) states that the word "include" means that the word 'inhabitant' shall have the following meaning in addition to the popular meaning.

27. In 1837 in R v Mashiter 6 Ad & El 153 at 165, Littledale J. said "It is difficult to assign a meaning to the word 'inhabitants'. Under the Statute of Bridges (22 Henry 8 (1530) c.5 - s.3 repealed) it means persons holding lands in the County. In the grant of a way over a field to a church it would extend to all persons in the parish" (my emphasis).

28. In 1854 'The Imperial Dictionary' defined 'Inhabitant' as "A dweller; one who dwells or resides permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger or visitor" … "In English Law, the term inhabitant is used in various technical senses. Thus a person having lands or tenements in his own possession, is an inhabitant for the purpose of the repair of bridges, wherever he may reside" … "For the purpose of the Poor Rate, the word means a person residing permanently, and sleeping in the Parish".

29. The above regarding inhabitants and the repair of bridges explains an entry in the Methley Court Rolls. The entry recites "13 Henry 7 August 1497 – Penalty that each tenant within the Lordship having any wagons shall be at the Bridge

with their wagons … and that each labourer shall be there on the same day". (Note – in 1752 the West Riding Quarter Session Bridge Book listed Methley Bridge as a Riding Bridge repairable at the general expense of the County).

30. In 1856, Erle C.J. in the matter of R v Kershaw 20 JP 741 said "Since the time of Henry the Eighth, the word 'inhabitant' when used in statutes relating to rates, has always been considered to mean 'rateable occupier'".

31. In 1862 Leonard Shelford in The Law of Highways' considered at length the extent of the property to be rated under Section 27 of the Highway Act 1835 i.e. 'Rate to be assessed on Property liable to the Poor Rate'. At page 81, regarding the word 'inhabitant' he stated "Inhabitant or other, in the Act 43 Eliz. c.2 means resident within the parish – R v Nicholson(1810) 12 East 330. He stated also that "The occupier is rateable by whatever tenure he holds – Bate v Grindall 1TR 343.

32. Section 27 Highway Act 1835 was partially repealed by the Rating and Valuation Act 1925 section 69, and section 2 of the same Act enacted that Highway Rates be levied as part of the general rate (source Pratt & Mackenzie 1gth Ed. (1952) page 155 note (a)). Thus the specific obligations of the 'owners and occupiers' of lands within the parish to contribute towards the upkeep of the parish highways ended.

33. And so ended also the most important obligation in the history of Highway Law, one stretching back for over 600 years, the responsibility and liability of the parish to maintain its own roads.

34. In 1959 Section 38(1) of the Highways Act abolished the liability of the 'inhabitants at large' altogether as far as the repair of highways was concerned.

35. The 5 Ed (1997) of Local Council Administration considers at pages 35-36 the words 'public' – 'inhabitant' – 'residents' – 'parishioners'. It concludes that "the exact meaning of these words has to be established in each case by reference to the facts and law at the time and place to which they relate".

36. In relation to highways the book states that the phrase 'the public' "probably means everyone". But this definition does not take this particular debate much further.

37. The book further states that "The words 'inhabitant' and 'resident' are generally held to mean the same thing. It is not necessary for a person to reside for any particular period in a parish to become an inhabitant nor need the residence be exclusive. The residence ought, however, to be of such a kind that the person in question may fairly be described as having some root or stake in the parish. The court would take into account not only whether he habitually or occasionally sleeps in the parish, but whether his family come there, whether he occupies property or is employed there and any other relevant matters".
38. Regarding 'parishioners', the book states "The word 'parishioners' in England is of wider import than the word 'inhabitants', and includes people who merely own property in the parish".

THE INHABITANTS and the OWNERS AND OCCUPIERS OF LANDS – c.1555-1925

39. Many Inclosure Commissioners, during the period 1750 to 1850, used the phrase 'for the use of the owners and occupiers of lands within the parish" (or a variation of these words) when setting out who could use and enjoy the various public and private roads which they awarded. Those who oppose public rights often claim that such phrases mean that the roads at issue, when awarded, were strictly private and not public to user. All too often these pleas are accepted as a valid interpretation of the law and are accepted by Inspectors at public inquiry.
40. Such are the many variations of the words actually used, that it is necessary to carefully read and examine each individual Inclosure Act, along with its Award and Map, in order to determine the status of the way at issue. General principles may sometimes be applied, but on other occasions they may be overridden by the particular terminology of the Award in question.
41. Some Awards leave no room for doubt as to who may use a private road. The Bishop Burton (East Riding of York) Inclosure Award of 1772 states "Which said private ways hereinbefore set out and appointed we do hereby award direct and declare are so set out and appointed for the use and passage of all and every the Inhabitants Owners and Occupiers of lands and tenements lying within the said parish of South Burton otherwise Bishop Burton for the time being for ever and of his her or their tenants servants workmen and assigns travelling upon or

using the same respectively on foot or with wagons wains horses cattle carts and carriages' (my emphasis).

42. It cannot be disputed that this clause in the Bishop Burton Award is confirming that the private roads were intended to be used by the public of the locality. For the avoidance of doubt it names both 'the Inhabitants' and the 'Owners and Occupiers of lands and tenements". The clause contains no words of exemption.

43. However, not all Awards appear so definite and clear cut. The Skeffling Inclosure Award (ER York) of 1765 appears to set out an exclusive way but then defines that way as a highway repairable by Owners and Occupiers in the same manner as the law required all other highways in the parish to be kept in repair. The Award states :-

44. "We also award set out and appoint a private way or road to be used only by the owners and proprietors of lands and tenements in the Parish of Skeffling aforesaid their respective heirs successors tenants lessees and assigns for themselves their servants horses cattle carts and carriages as and where the same is now staked out forty feet of assize wide beginning at the south end of the Church Road and leading from there westward into and over the several allotments in the West Field … to the Lordship of Weeton and a Bridle Road from thence southward along Warbank Lane to the River Humber".

45. Note – in 1765 the law held that all such private roads which were thoroughfares, and led from town to town, were highways ("A New Law Dictionary" (5 Ed) Jacob 1744). The Humber, being a navigable and tidal river and estuary was (and is) a highway under common law. Thus the awarded road was both a thoroughfare and a highway and led from one township to another along a series of ancient ways. Thus the above restriction to user is confusing.

46. However, after setting out various other ways, the Award then states :- 'And also we do order determine and award that all the Highways both public and private hereinbefore awarded within the Parish of Skeffling and Bridges and Stocks cross the same or any of them shall from time to time be repaired and kept in repair by the Owners and Occupiers of lands and grounds in Skeffling aforesaid their tenants lessees heirs successors and assigns in such manner and by such ways and means as the Public Highways are directed to be repaired and kept in repair by the Laws and Statutes of this Realm" (my emphasis).

47. Here the Commissioners confirm that the seemingly exclusive way was a highway and was required to be repaired as such by the owners and occupiers within the parish as both common law and statute law directed.

48. The common law required each parish to keep in repair all highways situated within the parish or which passed through it. The Act of 213 Philip and Mary (1555 chapter 8) as re-enacted by 5 Eliz c. 13 (1563) confirmed the common law and placed the responsibility for the repair of the parish ways leading to market towns firmly upon "the parishioners" as a collective body.

49. It seems that the parish roads which were not thoroughfares, and which led, (often as cul de sacs) to the common fields, ancient inclosures, or individual tenements, fell outside the scope of the Act. It could well be that at this point in the evolution of Highway Law, the "private way" and the "private highway" emerged as being different from the "public highway" or the "King's Highway". For only thoroughfares which eventually led to a market town fell within the statute.

50. The 16th Ed of 'The Justice of the Peace and Parish Officer' Richard and John Burn (1788) Vol. ii page 482 examined the question of whether or not only ways leading from one market town to another were highways, or whether it was sufficient for a highway simply to lead from one town to another. They concluded – "It seemeth that any one of the said ways, which is common to all the King's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. 1 Hawk 201".

51. Section 1 of the 1555 Act required the Constables and Church Wardens to annually assemble the Parishioners in order to elect two Surveyors, for one year, who were empowered to ensure that all ways in the parish leading to market towns were kept in repair.

52. Section 2 of the Act required the Constables and Churchwardens to appoint and name four days for the amending of the said ways. The burden of repair was placed upon – 'every occupier of plow land in tillage or pasture' – 'every owner of a draught or plow" – 'every householder' – 'every cottager and labourer except servants hired by the year'. It can therefore, safely be said, that the

burden of mending the highways fell squarely upon all and every one of the 'owners and occupiers' of lands and tenements within the parish.

53. Thus the Act of 1555 placed the burden of repair upon "the parishioners". These were the in effect the very same persons within the parish as were later named in 43 Elizabeth (1601) as being taxable for the relief of the poor i.e. "every inhabitant" and "every occupier of lands and houses".

54. The Highway Act 1835 (sections 5 and 27) continued this same imposition upon the very same categories of person: Section 5 "inhabitant to include any person rated to the highway rate" : Section 27 "rate to be assessed on property liable to the Poor Rate" (i.e. every inhabitant and every occupier of lands and houses).

55. The Acts of 1555, 1601 and 1835 were all Public and General Acts which concerned the public of the nation as a whole. But the legislature delegated the responsibility for carrying out that legislation, and placed the liability upon the individual parishes. In other words, Parliament delegated the powers, duties and obligations of the public as a whole to that portion of the general public who were known as parishioners or inhabitants. This class of persons however, still remained 'the public', albeit that portion of the public who constituted the public of the locality.

56. It defeats logic and commonsense for it to be pleaded 200 years later that these two classes of persons, who constituted the public for Poor Law and Highway purposes, did not in fact constitute 'the public' when, within the same statutory time scale, roads were awarded for the use of the Inhabitants.

57. It is therefore a fact that for 370 years (1 555 to 1925) the 'owners and occupiers' of lands and houses within a parish were responsible for the repair and upkeep of the parish highways.

58. The persons who were classed as "owners and occupiers" of lands and tenements within a parish were in effect indistinguishable in the main from those persons classed as 'inhabitants' or 'parishioners'. Therefore, when Inclosure Commissioners either placed the burden of repair upon such owners or occupiers, or granted (without any exemptive or restrictive clause) the use and enjoyment of a way to such persons, it is reasonable to infer that the burden or grant, was, in effect, applicable to the parishioners as a whole and to the Inhabitants at Large.

59. This proposition is supported by the state of the law at the time which held that those who were responsible for the repair of a way had the right to also use that way. If a way was repaired by the Inhabitants as a carriage road that way could be used by those Inhabitants for the carriage of materials. Common sense dictates that this must have been the case as it is unquestionably a fair and reasonable exchange. Thus public repair and public user walked hand in hand. (See Seymour on Dunlop page 6).

60. In R v Leake (1833) 5 B & Ad. 469 at 482 Parke J commented that by repairing parish roads the inhabitants were bearing their share of the general burden and in return received "an equivalent not in the use of that road in particular, but in the use of all the public roads in the realm".

61. In the same case at 484 Littledale J said "if the parish have repaired it, it furnishes a strong inference that it is a public highway, or else they would not have been at that expense".

62. Wills J said in Eyre v New Forest Highway Board (1892) 56 JP 517 at 519 - There is no such thing as a right of passage not involving a right to repair before 1835 … "In my opinion, the duty to repair an ancient highway was always co-extensive with the right of passage by the public" (my emphasis)

CONCLUSION

63. The public of the locality emerged as a class of persons some 700 years ago. They were firstly collectively known as Tenants or Tenants of the Lord. They then became known as Parishioners or Inhabitants. And later as Inhabitants at Large andlor Parishioners. Today they are collectively referred to as Ratepayers, or Parishioners, or Electors.

64. Throughout this period of time, this class of persons were, for all practical administrative purposes, the owners and occupiers of lands and houses within any particular parish or place. Thus the term 'Owners and Occupiers' equates firmly with the words 'Inhabitants' or 'Parishioners', and particularly for the period 1555 to 1925.

65. Inclosure Commissioners were men of their time. It must be assumed that they were familiar with not only the law and practice of inclosure, but, as educated

persons, with the general Laws of the Realm. In particular it must be assumed that they were familiar with both the common law and statute law in relation to highways.

66. It thus follows that it is highly unlikely that the Commissioners would knowingly give directions within their awards which were at variance with that which the law allowed. Commissioners had a discretion but that discretion was fettered by what positive law prescribed – very much in the same way as local authorities are required to act today (Fewings v Somerset County Council). Therefore, it must be presumed today that what the Inclosure Commissioners did at that time was done correctly.

67. Thus if the Commissioners awarded a private way to be used and enjoyed by the Inhabitants it is to be presumed that those very same Inhabitants were also responsible for the repair of that way. By the same token, if a private road and thoroughfare was directed to be repaired by the Inhabitants it is to be presumed that those same Inhabitants had the use and enjoyment of that road to the full extent of that repair liability.

68. Note, it was held in R v Cottingham (Inhabitants) (1794) 6 T.R. 20, and R v East Mark (1848) 11 QB 877, that the Inhabitants could be directed to repair private inclosure roads if they as a body received some benefit from the award such as a public gravel pit or public watering place or allotment for the poor. Cottingham is too often misunderstood, Christine Willmore got it wrong in RWLR 9.3 page 76 (see Seymour on Dunlop page 5 para 15b).

69. If Commissioners awarded a private way for the use of the Inhabitants, or Parishioners, they were in fact directing that it could be used by the public, albeit a portion of the public of the nation. The Commissioners were well aware that in rural areas it was the public of the locality that were most likely to use any such parish roads, not all the King's people.

70. Commissioners were also aware that it was the Owners and Occupiers of lands and houses who were responsible for the repair of the roads and the upkeep of the poor. They were further aware that such persons were, almost without exception, the very same persons who formed the collective body known as the Inhabitants and also formed the collective body known as the Parishioners. Thus the terms became inter-changeable for general administrative purposes. It

was only within a strictly legal context that each category of persons needed to be specifically identified.

71. Finally, the terms, 'Tenants or Tenants of the Lord', 'Inhabitants or Inhabitants at Large', 'Parishioners', and 'Owners and Occupiers of lands and houses' (without any added restriction) – when used within an Inclosure Award may generally be taken to be referring to a portion of the public, or, the public of the locality. As such for the purposes of Highway Law, they may be taken at that time and forever thereafter as "the public".