

A Thirteenth-century Agreement on Water for Livestock in the Lindsey Marsh

By A. E. B. OWEN

MEDIEVAL disputes over water rights are common enough, but they usually concern such matters as millstreams, fishing, or navigation. Domestic water-supply figures much less frequently as a subject of dispute, and water for livestock almost not at all.¹ In a climate such as ours this may, perhaps, seem hardly surprising. Yet an abundance of water for man and beast cannot always be taken for granted. Paradoxically, it is in low-lying regions intersected with watercourses and subject to periodic flooding that the problem of securing a supply of drinkable water is sometimes most acute.² A supply from surface sources is readily contaminated,³ especially in time of flood or drought: in the latter event it may vanish altogether; and in the depths of winter it may be frozen.⁴ The sinking of deep wells, on the other hand, may not be practicable. Wheeler, writing of the Lincolnshire fens at

the end of the last century, pointed out that in silty soils the underground water level was affected to a considerable distance inland by the tides, so that wells or ponds sunk more than 12 to 15 feet deep were found to become brackish. But attempts to obtain water from deep wells met with only limited success owing to the great depth of the water-bearing strata in the fenland. A boring at Boston in 1828, for example, penetrated 572 feet without striking water and had to be abandoned.⁵ (The modern water supply of Boston and other fenland towns is, for this reason, drawn from borings or reservoirs outside the fen basin.) Some use could be made of rain water for domestic purposes, but the principal source of supply was either the fen rivers and drains, or shallow wells.

Skertchly, writing in the 1870's, has some pungent comments on these wells. "The question [he says] of water supply from wells

¹ F. W. Robins, *The Story of Water Supply*, 1946, p. 97, remarks that in medieval Europe such works of water supply as were carried out were largely monastic: "water was rarely used for drinking save by the poorer classes." He finds little to say about provision of water specifically for livestock apart from a chapter on dewponds.

² "Rotterdam. Grocers today sold fresh water at about 3d. a litre. The city supply is almost undrinkable, with a salt content ten times above normal. Rotterdam's water comes from the Maas, a tributary of the Rhine, and sea water has penetrated further upstream than usual because ice upstream is blocking the flow of Rhine water."—*The Times*, 25 Jan. 1963.

³ When the Haarlemmer Meer was drained and settled in 1852 there were deaths from cholera because of the lack of good drinking water: "the death rate was exceedingly high for some decades."—J. Van Veen, *Dredge, Drain, Reclaim*, The Hague, 4th edn, 1955, p. 59.

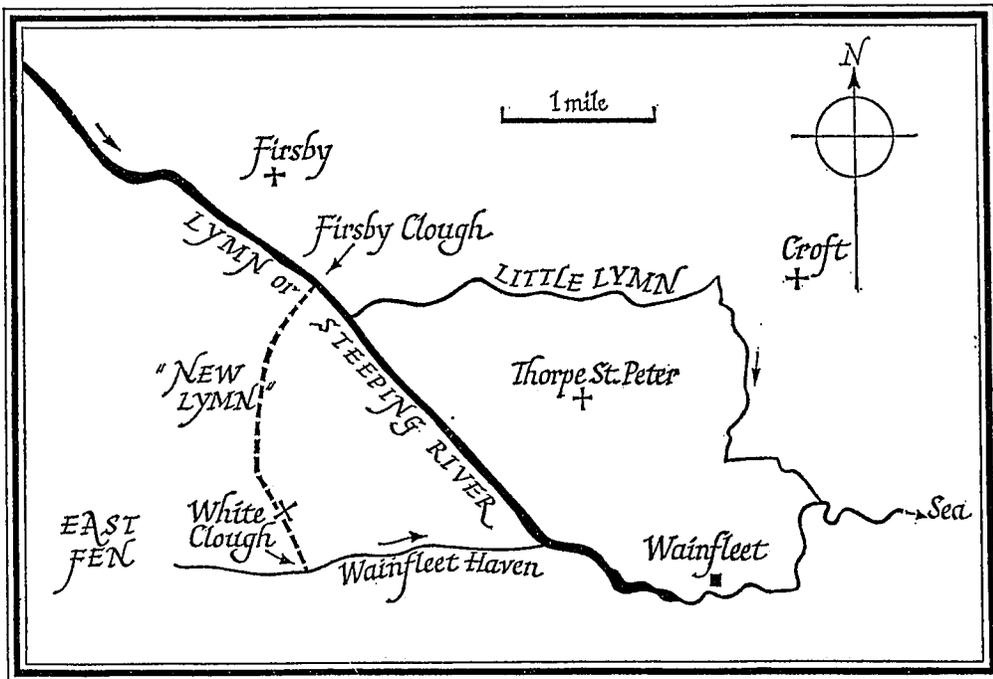
⁴ About 1375 the men of Gaywood refused to let the men of Lynn have water in a great winter frost. King's Lynn Chamberlains' Accounts, 48-49 Edw. III. (I am indebted to my wife for this reference.)

⁵ W. H. Wheeler, *History of the Fens of South Lincolnshire*, 2nd edn, 1894, p. 467. Van Veen (*op. cit.*, pp. 123-4) describes similar difficulties in the Netherlands, where seepages of sea water in the reclaimed polders were found to be poisoning the crops. "Horticulturists . . . proved that even in dilutions at which a brackish taste was hardly perceptible, the effect on fine horticultural crops was a diminishing yield." Deep wells sunk by farmers to obtain cold water from the subsoil for cooling their milk in summer also proved brackish.

in the fenland might almost be written like the celebrated chapter on 'Snakes in Ireland'. There are no snakes in Ireland, says the astute author. There is no good water supply, says the geologist." He had "no hesitation in condemning the whole of the shallow wells in the district as unfit for potable purposes." They were all more or less contaminated: "we should be glad to see all water from shallow wells prohibited, for it is rarely, if ever, fit for either man or beast." The analyses of such water chosen to accompany these remarks are suitably horrifying.¹ The supply from rivers was relatively (though not much) purer, at least when filtered. That from the fen drains might seem more questionable; but Wheeler² says: "The principal fen drains are replenished in summer by water admitted into them from the high land streams, which restores the loss by evaporation and absorption, and also affords a fresh supply for the cattle."³ The water thus introduced is termed 'living' water

to distinguish it from the stagnant water in the drains."

The document now printed serves partly to illustrate this paradox of water shortage in a seemingly well-watered region. But its interest lies also in its record of a medieval arrangement for the summer watering of stock—an arrangement which remained in force for more than five centuries, and which shows the practice of summer "refreshing" of the drains, described by Wheeler in the nineteenth century, already in use in the thirteenth. The East Lincolnshire manor of Croft to which this relates is not, indeed, in the fenland but just beyond its borders at the southern extremity of the Lindsey Marsh. There is, however, no marked difference in character here between the marsh and the adjacent parts of the East Fen. The latter, of course, lies lower, has a thin covering of peat, and was not reclaimed till much later; but the stranger may well fail to perceive these differences.



¹ S. H. Miller and S. B. J. Skerchly, *The Fenland Past and Present*, 1878, p. 429 et seq.

² Wheeler, *op. cit.*, p. 469.

³ That it was also used for human consumption may be assumed from the situation of many cottages on drain banks.

The drainage is physically linked, the subsoil is the same, and the problems of water supply are similar.

A brief account of local drainage history must first be given in order to understand what follows. The principal river, the Lymn or Steeping, rises in the wolds, enters the marsh at Steeping, and, after passing Firsby, follows what is now a nearly straight course across the marsh to Wainfleet: it then takes a more devious course to its outfall into the Wash at Gibraltar Point (see map). The channel from Firsby to Wainfleet, however, was cut only in 1818 in connection with the reclamation of the East Fen. Before that time the river took a quite different route between these two places: turning abruptly to the south at Firsby Clough, it followed the edge of the East Fen to the head of Wainfleet Haven at White Cross Clough where it received the fen water through converging streams, and then flowed down the haven to Wainfleet. This is the course shown on Dugdale's map of 1661.¹ But the two nearly right-angled turns at the two "cloughs" suggest an artificial origin for this course, which probably represents a medieval diversion intended to benefit the port of Wainfleet by bringing the river waters to help scour the haven—a task for which the sluggish fen waters unaided were quite inadequate. The importance to Wainfleet of the scour provided by the river is often mentioned in records: when for any reason the flow of river water was interrupted, the haven rapidly silted up so that shipping could not get into the port. Diversions of streams for a similar purpose are known elsewhere along the Lincolnshire coast.² The date of the Lymn diver-

sion has yet to be discovered, but it must have been completed by 1219 when a final concord mentions the "new Lymn" in Thorpe St Peter.³ The original course of the river can still be followed: beginning at Firsby Clough, it runs eastwards to Croft, then south almost to Wainfleet, then east again to rejoin the main river near its outfall. Though now only a local drain it still bears the name of the Lymn, or, for distinction, the Little Lymn (though the main river is now generally known as the Steeping).

The gain to Wainfleet by this diversion could only represent loss to the riparian villis of Croft and Thorpe St Peter on each side of the Little Lymn. The flow of "high land" water down the river was, in a different way, as essential to them as it now became to Wainfleet Haven. Only a few small streams and the field drainage entered the Little Lymn below Firsby Clough; the effect of diverting the main flow of the river at that point would thus be to leave the old channel with little more than a trickle of water in a dry summer. This would lower the level of water in every field dike, as well as lowering the water table generally. As a result the dike-side drinking-places for stock would shrink or dry up altogether, and the rich marsh pastures cease to be so rich.⁴ We cannot know whether any provision was made at the outset for an occasional intake of water from the main river to counteract this, or whether such effects had even been foreseen. But the preamble to the agreement of 1240 leaves no doubt that the "agricultural interest" represented by Philip de Kyme and his tenants was left dissatisfied with whatever arrangement had formerly been made with

¹ W. Dugdale, *History of Imbanking and Draining*, 1772 edn, p. 423: "A Map of the East and West Fens."

² The river Freshney was diverted into the haven of Grimsby for a similar purpose: the scheme was proposed in 1280 and again in 1328 (Dugdale, *op. cit.*, pp. 154, 156), but the date of its eventual execution is uncertain. The Withern Eau was diverted to Saltfleet Haven from its natural outfall (two miles further south) some time before 1347.—A. E. B. Owen, 'Early History of Saltfleet Haven', *Lincs. Archit. & Archaeol. Soc. Reports & Papers*, v, 1954, pp. 98–100.

³ *Novam Lim'*: P.R.O. C.P. 25(1)/128/14 no. 118. Calendared, with minor inaccuracies, in *Abstracts of Final Concords for Lincs.*, ed. W. K. Boyd, 1896, p. 151.

⁴ The Marsh is by nature well suited for grazing. Dr Joan Thirsk (*English Peasant Farming*, 1957, p. 69) has shown that in the sixteenth century it was a region "specializing in meat production. . . The economy was based upon the rearing and fattening of cattle and sheep." It is probable that livestock played an equally important rôle in the local economy of the thirteenth century.

the "commercial interest" of Wainfleet;¹ for the obstruction by the former of "a certain water in Thorpe" can only imply an attempt to block the new channel of the river and turn it back into its old course past Croft. The agreement therefore attempted a compromise which would give both parties a fair share of water at the season when both needed it most. The essence of this is simple. Between Michaelmas and Easter each year the river was to flow unobstructed along its new channel to Wainfleet. At Easter and for three weeks thereafter the river might be diverted back into its old channel "to refresh the ditches of the manor of Croft and to water the cattle". Then for the next three weeks the water was to flow to Wainfleet again, and so on for alternate periods of three weeks until Michaelmas when the arrangement ceased.

"This² is the agreement made between Hawise de Quincey Countess of Lincoln and Philip de Kyme at Lincoln in three weeks from Easter in the 24th year of the reign of king Henry son of king John [1240] concerning the dispute between them about a certain obstruction of a certain water caused by the said Philip in Thorpe to the damage of the port of the said Hawise in Wainfleet, viz. that since it was then clear that the land on each side of the said watercourse to the port of Wainfleet belongs to the said Philip, the lordship of that ditch where the water runs is to remain to the said Philip and his heirs in this manner, viz. that the course of the water to the port of Wainfleet ought to be open and without obstruction of any kind every year from Michaelmas to the following Easter, and from Easter day for the following three weeks the said Philip and his heirs every

year may and ought by this agreement to stop up the course of the water so as to refresh the ditches of his manor of Croft and to water his cattle. And immediately the three weeks have ended the said Philip and his heirs shall completely remove the obstruction of the water so that for the next three weeks the said Hawise and her heirs may have the course of the water completely open to her port of Wainfleet. And thus every year between Easter and Michaelmas the course of the said water is to be obstructed for three weeks and is to be open for the following three weeks. And immediately after Michaelmas every year the said Philip and his heirs are to open the said watercourse and it shall remain open every year until the following Easter as is written above. This agreement was enrolled in the rolls of Robert de Lexington, Jollan de Nevill, Robert de la Haye and Warner Engayne, justices of the lord king then itinerant at Lincoln. . ."

Later records underline the importance of the provision for watering stock: at the same time they point to some modification of the original terms. Thus a sewers jury of 1432 said the clough at the head of the Little Lymn was to be open only in the drought of summer (*cloca solum sit aperta in siccitate estatis*), when the lord of Croft ought to receive fresh water (*aguas recentes*) for his beasts and those of his tenants in Croft and Thorpe for the purpose of watering and refreshing (*ad aquandum et refrigerandum*).³ In 1501 the arrangement was said to be "only for great need, that is to say, for the refreshing of the lord of Croft and his tenants in great dry summers." An inquisition of 1525 said that the "gauge" (sluice gate) ought not to be drawn by anyone "but only for the lord of Croft and his tenants, and yet

¹ That Philip (or his predecessor as lord of Croft) had been a party to the original diversion is implicit in the agreement, which mentions that the new channel and the land on each side belonged to him, *i.e.* it had been cut across his land.

² For the Latin text see Appendix to this article.

³ For the text of the sewers presentments and inquisitions of 1432, 1501, 1525, and 1563 quoted here I have drawn upon a collection of copies of documents relating to the Little Lymn made in the late sixteenth century and found by my wife some years ago among documents deposited with the Lindsey County Council. I am indebted to Mrs E. H. Rudkin for the loan of a transcript of this made by Miss F. E. Thurlby.

not they but when they lack water for refreshing of their beasts and cattle in dry summers"; the water from the "high country" should rightfully issue into Wainfleet Haven "for keeping of a good channel in the said haven to the sea." In 1634 it was asserted that the Little Lymn was "formerly purchased by the lord of Croft for the serving his manor of Croft with water, and which he hath since that time conveyed to the freeholders and owners within . . . Croft for their benefit."¹ In 1774 John Grundy, the Spalding engineer, reported on the "present drowned state and condition" of the East Fen and adjacent grounds, with proposals for their drainage. In the course of this report he describes the state of the Lymn and Little Lymn, and says: "Firsby Clow, which is set across Steepings River, is 15 feet 3 inches wide, and has a draw door, which in dry seasons is every other three weeks shut down to throw the river waters into the [Little] Lymn, through a draw-gate sluice of 22 inches wide, for watering the low grounds in Firsby, Irby, Braytoft, Croft, and Thorpe."²

It will be seen from these quotations that while the agreement continued to be observed in principle for over five centuries, in one important particular it had already been modified by 1432. Whenever its provisions are invoked, the requirement that the sluice into the Little Lymn should be opened from Easter to Michaelmas *every year (et ita singulis annis)* is never mentioned. Instead we find phrases such as: "only in the drought of summer", "only for great need . . . in great dry sum-

mers", "only . . . when they lack water . . . in dry summers", "if need shall require in the time of drought." No such saving clause appears in the agreement of 1240. An understanding to this effect might, perhaps, have existed from the beginning; but this seems unlikely and is scarcely capable of proof.³ Two possible explanations suggest themselves for the relaxation of the original terms. The more probable one is that the "commercial interest" of Wainfleet had once more prevailed. Silting of the haven certainly increased in the course of time, and Wainfleet came to depend on the Lymn waters for its very survival as a port.⁴ The agreement, we may suppose, came then to be regarded as a remedy to which the lord of Croft and his tenants might have recourse in emergency but which was at other times ignored. This would have mattered the less when the river was frequently being diverted into its old channel, whether by wilful breaking or opening of the sluice or by the obstruction of its proper channel through silting or some other cause; there were times when the Little Lymn received in this way more water than it could contain. It is noteworthy that from 1432 onwards no sign has been found of any demand from Croft for the agreement to be enforced in its original rigour.

There may, however, be another explanation: a change in the climate. The twelfth and thirteenth centuries, especially from about 1150 to 1250, were a period of intense activity in the reclamation of marsh and fen in Lincolnshire and elsewhere.⁵ This seems to have

¹ Lincs. Archives Office, Alford and Spilsby Courts of Sewers minute book 1626-44, court held at Burgh, 7 June 1634.

² John Grundy, *Observations . . . made on the East Fen, the low Grounds and Fens adjoining thereto . . . with a Report of the Causes of their present drowned State and Condition: also Schemes for the Drainage thereof. . .*, 1774, p. 2.

³ An inquisition of 1563 said the sluice was to be "kept open three weeks and sparred three weeks yearly between Black Monday (*i.e.* Easter Monday) and Michaelmas *according to the old custom for Croft if need shall require* in the time of drought." The phrases I have italicized *may* imply such an understanding, but are probably no more than a chance form of words.

⁴ In the 1670's the Lymn was explicitly stated to be "the chiefest and often in summer time the only support of Wainfleet Haven one of His Majesty's ports"; this was because the Good Dike which brought the water from the East Fen to the head of the haven at White Cross Clough was "commonly dry" in summer. Lincs. Archives Office, M.M. VI/7/9/46 and 48.

⁵ H. E. Hallam, *The New Lands of Elloe*, University of Leicester, Dept. of English Local History, Occasional Papers no. 6, 1954 (reclamation in the wapentake of Elloe); Dorothy M. Owen, 'Some Revesby

been prompted by economic causes; but the rapid progress and undoubted success of this "forward movement" must surely have owed not a little to favourable climatic conditions. There is certainly evidence for a period of relatively dry and warm weather in the early thirteenth century,¹ and this might have made the annual "refreshing" of the Little Lymn seem a necessity when the agreement of 1240 was drawn up. If in the following centuries wetter conditions became prevalent, a tacit abandonment of this arrangement, to be renewed only "if need shall require", would seem a natural development. Unfortunately the evidence is insufficient to make possible any definite conclusions. Much of the later Middle Ages was, indeed, marked by storms and flooding around the North Sea,² and there is some evidence of relatively wet conditions in Britain about the middle of the fifteenth century. The number of commissions of sewers covering East Lincolnshire, issued in the fourteenth and fifteenth centuries,³ might be taken to suggest increasing drainage difficulties. Professor Darby, on the other hand, inclines to attribute any deterioration of drainage as much to bad administration as to any change in natural conditions.⁴

It may be worth quoting in this connection from an account of the condition of the East Fen in 1501.⁵ The sewers jury, in whose presentment it occurs, had no doubt that the state of things which they found was due to neglect; but how far this was so, or whether natural causes were partly responsible, remains uncertain. The jury presented that (as

was always happening) "certain ill disposed persons unknown" repeatedly broke the Little Lymn sluice and so allowed the river to re-enter its old channel; in consequence, Wainfleet Haven had so far silted up that "sheep and other cattle may go over the haven bottom in divers places." But this was not the worst. For (said the jury) when the banks were well maintained and the water "kept in channel", there were within seven miles of Wainfleet eight thousand and more acres of good pasture "that now is but marris and mire and neither pasture nor good fishing as may be understood by old records of divers lords and gentlemen; and not only so great ground and profit lost but great charges yearly to keep it as it is now and yet issues but little but is like to grow to more yearly charge and more and less profit. . . The king's streets and common ways are drowned in divers places that was wont to be sufficient high ways for horse and cart to pass by with all manner of carriages to milne and market," so that people "know not the way from the dykes nor the dykes from the way as appears in divers townships"; the jury instanced places all round the East Fen from Sibsey and Stickney to Wainfleet and Friskney. The whole tone of the account (too long to quote in full), and in particular the calling in evidence of "old records" with no reference to the recollections of oldest inhabitants, seems to suggest that the 8,000 acres may not have been good pasture within living memory. If so, this would put the deterioration of the drainage well back towards the beginning of the fifteenth century. Other

Charters of the Soke of Bolingbroke', *Medieval Miscellany for D. M. Stenton*, Pipe Roll Soc., 1962, p. 223 *et seq.* (late twelfth-century assarts around the West Fen); Van Veen, *op. cit.*, sect. 8 (reclamations of William I, count of Holland (d. 1222), at the mouth of the Rhine).

¹ I am very grateful to Prof. Gordon Manley for reading this paper in draft and giving me the benefit of his knowledge of historical climatology: he is not, of course, responsible for the conclusions here drawn. On British climate in the Middle Ages see C. E. Britton, *A Meteorological Chronology to A.D. 1450*, Meteorological Office Geophysical Memoirs no. 70, 1937. This is based almost entirely on the statements of medieval chroniclers and annalists: evidence from record sources, such as that drawn from the account rolls of the bishopric of Winchester by J. Titow (*Economic History Review*, 2nd ser., XII, 1960, p. 360), might give a different impression.

² C. T. Smith in J. M. Lambert *et al.*, *The Making of the Broads*, Royal Geographical Soc., 1960, pp. 99-102 (flooding in the Norfolk Broads in the late thirteenth and fourteenth centuries); Van Veen, *op. cit.*, pp. 27-30 (the flood of 1421 in the Netherlands).

³ Dugdale, *op. cit.*, recites many of these.

⁴ H. C. Darby, *The Medieval Fenland*, 1940.

⁵ See p. 43, note 3.

records confirm that local conditions had become so bad that early in 1500 a major overhaul of drainage administration had to be put in hand as a matter of urgency.¹ Against this background it is scarcely surprising that the agreement on the Little Lymn should not have been observed to the letter—remarkable, rather, that it was observed at all.

APPENDIX

Hec² est concordia facta inter Hawisam de Quyncy comitissam Linc' et Philippum de Kyma apud Linc' a die Pasce in tres septimanas anno regni regis Henrici filii regis Johannis xxiiij de contencione inter eos mota super quadam obstructione cuiusdam aque facta per predictum Philippum in Torp ad nocumentum portus predictae Hawis' in Weynflod videlicet quod quia tunc liquidum fuit quod terra utriusque partis illius cursus aque versus portum de Weynflod est predicti Philippi dominium illius fossati ubi aqua illa currit remanet predicto Philippo et heredibus suis in hunc modum videlicet quod cursus illius aque versus portum de Weynflod debet esse apertus et sine obstructione alicuius rei quolibet anno a festo sancti Michaelis usque ad Pasca proximum sequens Et a die Pasce per tres septimanas proximas subsequentes predictus Philippus et heredes sui quolibet anno bene possunt et debent per istam conventionem obstruere cursum illius aque ad

fossata manerii sui de Croft refrischeranda et ad averia sua adaquanda Et statim elapsis illis tribus septimanis predictus Philippus et heredes sui penitus amovebunt obstructionem illius aque Ita quod per alias tres septimanas proximas subsequentes predicta Hawis' et heredes sui possint habere cursum illius aque penitus apertum usque ad portum suum de Weynflod Et ita singulis annis inter Pasch' et festum sancti Michaelis proximum sequens per tres septimanas cursus dicte aque sit obstructus et per alias tres septimanas proximas subsequentes sit apertus Et statim post festum sancti Michaelis predictus Philippus et heredes sui singulis annis aperient predictum cursum aque et remanebit dictus cursus aque apertus singulis annis usque ad Pasca proximum sequens sicut prescriptum est. Ista convencio inrotulata fuit in rotulis Roberti de Lexsinton Jollani de Nevill Roberti de la Haye et Warneri Engayne iusticiariorum domini regis tunc itinerancium apud Linc'. In huius rei testimonium huic scripto in modum cyrograffi confecto predicti Hawis' et Philippus alternatim sigilla sua apposuerunt. Hiis testibus Normanno de Areyt Willelmo de Welle Wydone Wak Willelmo de Beningworthe Johanne Gubaud Johanne de Criteleston Waltero Bec Henrico Camerario Thoma de Turribus Willelmo de Bilesby Ketelberno de Keles Henrico de Tointon et aliis.

¹ A. E. B. Owen, 'The Levy Book of the Sea: the Organization of the Lindsey Sea Defences in 1500', *Lincs. Archit. & Archaeol. Soc. Reports & Papers*, ix, 1961, p. 35 *et seq.* The immediate cause was a serious flood in the neighbourhood of Boston in the winter of 1499-1500, but the commissioners of sewers who acted in the matter had been appointed in 1497 (*Cal. Patent Rolls 1494-1509*, p. 90), so it is possible that this merely speeded a reorganization already in prospect.

² P.R.O. D.L. 36/2 no. 83. The original has been damaged, and the text has therefore been checked against an early fifteenth-century copy in D.L. 42/2 (Great Coucher Book of the Duchy of Lancaster), f.288, no. xxi. The "Little Lymn book" (note 3, page 43) has a late sixteenth-century copy with some inaccuracies. A survey of Croft manor made in 1576 contains a copy with the heading "Copy of the fine whereby the fresh water was first brought into the town of Croft".—Lincs. Archives Office, Monson 8/8.