

## CHAPTER I

WARDSHIP AND LIVERY IN THE REIGNS OF  
HENRY VII AND HENRY VIII

THE process by which landholding became hereditary was gradual, and throughout medieval times there remained at the back of men's minds traces of the idea that, upon a tenant's death, land reverted to its lord. Perhaps notions of this kind provided the basis, and the theoretical justification if such were needed, of the peculiar conditions of succession to military fiefs. The heir to a tenant by knight service, even though he was of full age, only succeeded to his inheritance upon paying the lord a relief for it; if he was not of full age, the lord had the rents and profits of the land in the intervening period and the wardship of the heir's body—the right, that is, to bring him up in such a way that he would become a worthy tenant. There followed, too, the right of disposal of the ward's marriage—an obvious development, so far as the female ward was concerned, for marriage ended her wardship and it was important that the lord should not be forced to take an enemy as his tenant; with less clear justification for the male ward, but nevertheless an established custom at any rate by the time of Henry II.<sup>1</sup>

In the twelfth and thirteenth centuries, and even later, these rights no doubt formed an important part of the revenues of the *mesne* lord; but, for him, reliefs and wardships cut both ways, since through them he lost at least as much to the king as he gained from his tenant. For the king, however, they represented clear gain, because he alone, as Holdsworth put it, was always lord and never tenant.<sup>2</sup> Moreover, that gain was particularly great, as even the smallest military tenure in chief entitled the king to a relief assessed on the whole of his tenant's lands, of whomsoever they were held, and similarly, in minority, to wardship of them all. It was thus as royal rights that these feudal incidents became mainly important, and in their exercise the crown evolved a regular system of procedure. Upon the tenant's death, the king became immediately

<sup>1</sup> F. Pollock and F. W. Maitland, *History of English Law*, 2nd. edn., vol. 1, pp. 318-29; Holdsworth, vol. III, pp. 61-6.

<sup>2</sup> *Ibid.*, vol. III, p. 84.

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entitled to primer seisin, and a *diem clausit extremum* or other writ was issued out of the Chancery to an escheator for the taking of an inquisition post mortem.<sup>1</sup> If this found the heir to be of full age, he could then sue out his livery and obtain seisin; if a minor, his lands were taken into the king's hand until he should come of age.<sup>2</sup> Wards' lands were administered by the escheators, who accounted for their issues in the Exchequer.<sup>3</sup> Legal cases connected with the incidents of tenure in chief fell largely within the common law jurisdiction of the Chancery.<sup>4</sup>

Nevertheless, the scientific development of livery and wardship as a regular source of royal income dates from the Tudor period. Sir John Fortescue had already insisted, in *The Governance of England*, that the financial position of the monarchy must be improved, and after 1485 the demands of the nation state, both internal and external, made this essential. Moreover, Tudor financial policy was conditioned by a further fact: parliamentary taxation formed a relatively unimportant part of the king's revenues. The idea was current in the sixteenth century, and died hard in the succeeding age, that direct taxation was an emergency measure, granted by Parliament only in times of extraordinary expenditure such as foreign war or insurrection. The king was supposed, in the medieval phrase, to 'live of his own'; that is to say, for the ordinary day-to-day expenses of government he was very considerably dependent on income derived from the crown lands and from his feudal dues. Thus arose the paradox that the legal rights of livery and wardship continued, and were systematically extended, when the feudal structure, which had given them purpose and been their excuse, had ceased to exist. It is this fact which gives the history of the Court of Wards and Liveries its chief interest.

The statutory foundation of the Court dates only from the later years of Henry VIII's reign,<sup>5</sup> but the policy that it implied was begun by his predecessor. In his efforts to increase the yield of the feudal incidents Henry VII anticipated much of the practice, and something even of the machinery, of the Court itself.

The most characteristic feature of the new practice was the

<sup>1</sup> *Cal. of Inquisitions Post Mortem, Henry VII*, vol. I, Preface.

<sup>2</sup> In the case of males at twenty-one, of females at fourteen or upon marriage.

<sup>3</sup> E. R. Stevenson, 'The Escheator' in *The English Government at Work*, 1327-36, ed. W. A. Morris and J. R. Strayer, vol. II.

<sup>4</sup> Holdsworth, vol. I, p. 453.

<sup>5</sup> 32 Henry VIII c. 46; 33 Henry VIII c. 22.

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sustained effort made by the crown to reveal descents and minor successions of land held in chief. To this end Henry VII used the inquisition post mortem with so much energy that, in his reign, the Chancery issued a writ for the holding of an inquisition wherever there seemed the slightest possibility of a finding for the king; this is proved by the number of inquisitions where, in the upshot, only a *mesne* tenure appeared.<sup>1</sup> Moreover, from 1491 to the end of the reign information obtained in this way was supplemented by a long series of commissions to inquire concerning concealments. These were very various in scope and character. Sometimes they initiated inquiries in a single county only,<sup>2</sup> sometimes in a pair, or even a group of counties;<sup>3</sup> some of them related solely to wardships and marriages,<sup>4</sup> some included lands;<sup>5</sup> some omitted wardships from the commissioners' terms of reference,<sup>6</sup> but others were comprehensive.<sup>7</sup> Again, there is evidence of record searches made on the king's behalf for information about tenures,<sup>8</sup> and Professor Dietz has pointed out that the two feudal aids which Henry sought in 1504 were desired by him not only for their immediate cash yield but also for their wider effects in establishing an up-to-date record of those who held lands in chief.<sup>9</sup> In the whole of this policy Henry VII was foreshadowing what was to be, for the hundred years of its existence, the principal preoccupation of the Court of Wards and Liveries.

Apart from illegal concealments, in the later middle ages evasion of the feudal incidents had taken place on a considerable scale with the growing popularity of the feoffment to uses. Descent of property from owner to heir was the essential condition of livery and wardship, and it was just this descent that the use contrived to avoid. The person in whose interest the use was made, the *cestui que use* as he was termed, had all the advantages of ownership with none of its disadvantages; he was protected against the feoffees to uses in equity, but nevertheless the legal seisin lay in them and not in him, so that upon his death the property did not descend. 'By

<sup>1</sup> *Cal. of Inquisitions Post Mortem Henry VII*, vol. I, p. ix.

<sup>2</sup> *C.P.R. 1485-94*, p. 351; *C.P.R. 1494-1509*, pp. 66, 249, 263, 459, 592.

<sup>3</sup> *C.P.R. 1485-94*, pp. 415, 478; *C.P.R. 1494-1509*, pp. 66, 204, 437-8, 457, 592, 627.

<sup>4</sup> *C.P.R. 1485-94*, p. 351.

<sup>5</sup> *C.P.R. 1494-1509*, pp. 66, 249.

<sup>6</sup> *Ibid.* pp. 263, 459.

<sup>7</sup> *C.P.R. 1485-94*, p. 415; *C.P.R. 1494-1509*, pp. 204, 437-8, 457, 459, 592.

<sup>8</sup> F. C. Dietz, *English Government Finance 1485-1558*, p. 29.

<sup>9</sup> *Ibid.* p. 28.

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keeping up a wall of joint tenants, by feoffment and refoffment', Maitland puts it, 'he can keep out the lord and can reduce the chances of reliefs and so forth to nothing.'<sup>1</sup> This was especially disadvantageous to the king as supreme landlord, and Henry VII was clearly anxious to limit the extent of such evasion. The statute of 1488-9 'against fraudulent feoffments to deprive the king of his wards'<sup>2</sup> is interesting as a tentative move towards the position finally achieved by Henry VIII's statute of Uses: it provided that, if the *cestui que use* of lands held by knight service died intestate, his heir should be in ward if a minor, and pay relief if of full age. What it amounted to was that, in cases of intestacy, the use was, for certain specific purposes, turned into a legal estate, and the old division between legal and equitable ownership, so far as these same purposes were concerned, disappeared. Comparing the measure with the statute of Uses, it is of course much more limited in its application; but the similarity of purpose is striking.<sup>3</sup>

Besides its effort to combat concealment and evasion, Henry VII's policy had a more positive side. Professor Thorne has described a number of ways in which Henry's Chancery operated to increase the number of tenants in chief. Such an increase was, for instance, a result of the practice of granting licences to alienate a portion, but not the whole, of lands held in chief;<sup>4</sup> or again, the arrangement whereby widow's dower was so assigned as to include some lands held in chief had a similar effect,<sup>5</sup> and so, where there was descent to coparceners, had the insistence that each should take a portion of the *capite* lands.<sup>6</sup> The importance of usages of this sort was that they extended the field from which the crown might expect to draw valuable feudal incidents.

All this activity involved a growth of judicial business concerned with prerogative rights. Much routine litigation, later to be dealt with by the Court of Wards, was, in the later years of Henry VII, disposed of by the Council Learned in the Law. It was before this body that those who had wrongfully taken the profits of a ward's or idiot's lands were summoned to appear,<sup>7</sup> and there that a tenant in chief who had failed to sue livery might have to answer the

<sup>1</sup> *Equity*, edn. of 1920, p. 26.

<sup>2</sup> 4 Henry VII c. 17.

<sup>3</sup> For judicial interpretations of the statute see Constable, p. 20, note 48; Staunford, f. 9.

<sup>4</sup> Constable, Introduction, p. xiii.

<sup>5</sup> *Ibid.* p. xxix.

<sup>6</sup> *Ibid.* p. xxxiii.

<sup>7</sup> P.R.O. D.L. 5/2, ff. 23, 24.

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issue of his lands.<sup>1</sup> To the Council Learned were surrendered royal wards who had been retained without authority,<sup>2</sup> and those accused of embezzling them were brought before it.<sup>3</sup> On occasion, too, the Council Learned heard a complaint by a ward alleging wrongs committed against him.<sup>4</sup> Prerogative business also began to loom large elsewhere, and important cases in this connection were argued both in the common law courts<sup>5</sup> and the Exchequer Chamber.<sup>6</sup> A number of Inns of Court readings on the medieval *Prerogativa Regis* reflect the new recognition of the importance of the prerogative. It is significant that, while Professor Thorne mentions no less than eight such readings probably dating from Henry VII's reign, he has found none that can certainly be attributed to an earlier period.<sup>7</sup>

Lastly, and perhaps most interesting of all, Henry VII's reign saw the development of administrative machinery that was later to serve as a model for the Court of Wards and Liveries. Initially, it is true, sales of wardships were probably negotiated personally by the king or by Sir Reginald Bray acting on his behalf.<sup>8</sup> On the other hand, the administration of such wards' lands as were retained in the king's hand necessarily involved some delegation and the appointment of receivers. Thus in Henry's very first year a group of three receivers-general was appointed for the lands of royal wards in Yorkshire, Cumberland, Westmorland and Northumberland;<sup>9</sup> some ten years later the commissioners appointed to inquire concerning concealments in another group of counties were authorized to approve such revenues as resulted from their inquiries;<sup>10</sup> and in 1499 the king made the Bishop of Carlisle his receiver and surveyor of wards and marriages in Cumberland, Westmorland and Yorkshire.<sup>11</sup> By the close of the century, it is clear, the king's energy in

<sup>1</sup> P.R.O. D.L. 5/2, f. 29.

<sup>2</sup> *Ibid.* ff. 6, 11, 24, 42 for examples.

<sup>3</sup> P.R.O. D.L. 5/4, f. 153.

<sup>4</sup> P.R.O. D.L. 5/2, f. 12. On the Council Learned in general see R. Somerville, 'Henry VII's "Council Learned in the Law"', *E.H.R.*, vol. LIV.

<sup>5</sup> *English Reports*, vol. LXXII (Keilwey), pp. 210, 249, 352.

<sup>6</sup> *Select Cases in the Exchequer Chamber* (Selden Soc.), vol. II, p. 161.

<sup>7</sup> Constable, Introduction, pp. xlviii-li.

<sup>8</sup> Sums received for them appear in P.R.O. E.101/413/2/1, Sir Thomas Lovell's book of receipts, 2-5 Henry VII.

<sup>9</sup> *C.P.R. 1485-94*, p. 56.

<sup>10</sup> *C.P.R. 1494-1509*, p. 33; the counties were Lincoln, York, Leicester, Rutland, Stafford and Derby.

<sup>11</sup> P.R.O. E.101/415/3, *memoranda* 1 Oct. 15 Henry VII.

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these matters was bearing fruit, the Chamber accounts for 1499 containing much fuller details than previously.<sup>1</sup> They include, for instance, a list of some seventy-five wards—some with a note of value and offers by prospective purchasers, others with the marginal comment *vend'*. Again, an adjacent entry lists forty odd names of persons who had failed to sue out livery since their ancestors' decease, and amongst memoranda of the same date are many other items relating to livery, wardship, marriage and idiots. Miscellaneous though these last are, they present a picture of intense activity—the seizure of wards on the king's behalf and the subsequent competition to purchase them, offers sometimes being made through Bray, with whose wife a female ward was on occasion lodged: in that competition to buy wardships the queen herself sometimes joined.

This increased business made desirable a more formal organization than had at first sufficed. So long as Bray lived, the old personal methods continued in use, and wardship administration was not differentiated from other prerogative business. In 1503, however, Sir John Hussey was appointed to oversee, manage and sell royal wardships,<sup>2</sup> and he very soon succeeded in establishing an office to assist him in this work. A surviving declaration of receivers' accounts for the year 1502-3 includes wards' side by side with other accounts;<sup>3</sup> in 1503-4 they are separate,<sup>4</sup> and the two years following they are rendered by a single receiver-general, William Lychefelde.<sup>5</sup> This represents clearly enough the stages in the establishment of a wardship office. The functions of that office—with its master, receiver-general, auditor and particular receivers in each county—are described in a memorandum of Henry VIII's reign. According to this, it was the master's—that is Hussey's—duty to deliver to the auditor each term a list of the king's wards to enable the particular receivers to answer the profits of their lands.<sup>6</sup>

<sup>1</sup> P.R.O. E.101/415/3, *memoranda* 1 Oct. 15 Henry VII.

<sup>2</sup> *C.P.R. 1494-1509*, p. 334. W. C. Richardson, 'The Surveyor of the King's Prerogative', *E.H.R.*, vol. LVI, pp. 61-2, brings out the significance of Hussey's appointment, but curiously misses Lychefelde's accounts which are the proof of specialization.

<sup>3</sup> P.R.O. E.36/247, declarations of divers accounts, 18-19 Henry VII.

<sup>4</sup> *Ibid.* declarations of divers lands in the king's hand by reason of minor age, 19-20 Henry VII.

<sup>5</sup> P.R.O. E.36/212, declaration of account of William Lychefelde, 20-21 Henry VII; E.36/248, *do.*, 21-2 Henry VII.

<sup>6</sup> See below, Appendix 1.



Hussey also provided similar lists for the king,<sup>1</sup> which no doubt gave Henry some means of checking the declarations of accounts to which he repeatedly set his sign-manual. Moneys received by Lychefelde were paid into the King's Chamber.<sup>2</sup>

Yet despite this evidence for a high degree of organization, the extent to which specialization took place in the last decade of Henry VII's reign must not be exaggerated. Although Hussey had an over-all responsibility for sales of wardship, this side of his activities is not reflected in Lychefelde's accounts. The master may well have taken the initiative in arranging sales, but the only record of them is in the bonds for payment of the purchase price which are listed amongst other obligations delivered to the treasurer of the King's Chamber by various of Henry's ministers.<sup>3</sup> Fines for liveries are similarly recorded.<sup>4</sup> The conclusion thus seems clear that, in contrast with the income from wards retained by the crown, that from sales and from liveries continued to be collected in the older, less formal way. An incidental effect of this variation of practice is to make it impossible to calculate the value of livery and wardship to Henry VII in any given year of his reign, for we know, of course, only the face value of the bonds and not what they actually realized.<sup>5</sup>

Nevertheless, although certain figures are lacking, it need not be doubted that by these last years of Henry VII, the period of Empson and Dudley, livery and wardship had become very productive indeed. It is true that some of the more extravagant stories

<sup>1</sup> P.R.O. E.36/214, the kynges boke of paymentis, 21 Henry VII—1 Henry VIII, 635.

<sup>2</sup> P.R.O. E.36/212, pp. 65-72 and E.36/248, pp. 83-90.

<sup>3</sup> F. C. Dietz, *English Government Finance 1485-1558*, pp. 33-4, 38-40.

<sup>4</sup> *Ibid.*

<sup>5</sup> The figures (to nearest pound) available for 1504-5 and 1505-6 are—

1504-5 Issues of wards' lands 5,110 *l.*  
Arrears of wards' lands 2,143 *l.*  
(P.R.O. E.36/247, pp. 159 *seq.*)  
Bonds for sales of wards 1,867 *l.*  
Bonds for special liveries 2,025 *l.*  
(Dietz, *op. cit.* p. 39.)

1505-6 Issues of wards' lands 6,434 *l.*  
Arrears of wards' lands 2,094 *l.*  
(P.R.O. E.36/248, pp. 83-90.)  
Bonds for sales of wards 2,177 *l.*  
Bonds for special liveries 1,205 *l.*  
(Dietz, *op. cit.*, p. 40.)

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of the extortions of the two *fiscales judices* are exaggerated.<sup>1</sup> But writing a century later, and in the light of experience of Elizabeth's and James I's impositions, Bacon and Coke both stressed the sufferings of tenants in chief under Henry VII,<sup>2</sup> and the preamble to one of Henry VIII's earliest statutes is their justification for doing so.<sup>3</sup> Perhaps it may be said that Henry VII anticipated not only the practice of the Court of Wards and Liveries, but some of its unpopularity too.

It was thus under Henry VII that livery and wardship took on the new character that they were to retain until the abolition of the feudal tenures in 1660; Henry VII was the innovator, and his son did little more than formalize his father's system and set it on a statutory basis. Indeed, so far from being the inventor of the new policy, in the first years of his reign Henry VIII to some extent let it lapse. Shortly before his death Henry VII had been forced, by the unpopularity of Empson and Dudley, to issue a proclamation that persons should be admitted to traverse inquisitions by which they were wronged.<sup>4</sup> This was ratified by the new king, and passed through Parliament as an 'act concerning untrue inquisitions procured by Empson and Dudley': it provided that persons were to be admitted to traverses upon untrue inquisitions of the previous reign, notwithstanding the fact that they had been forced to sue out their liveries on the basis of those inquisitions.<sup>5</sup> Meanwhile, to prevent the recurrence of false inquisitions, action was taken to secure due publicity: escheators and commissioners were to sit in open places and take such evidence as was offered in public.<sup>6</sup> With the characteristic Tudor gesture of sacrificing an unpopular servant, Henry allowed proceedings to be taken against Empson and Dudley, and their execution followed. All this must have looked very like the abandonment of Henry VII's policy, and it is small wonder that in 1510 it was rumoured that Sir John Hussey was out of his office of master of the wards.<sup>7</sup>

In fact that rumour was not true. Hussey held his office and with it a yearly fee of 100 *l.*, which he continued to receive until

D. M. Brodie, 'Edmund Dudley: Minister of Henry VII', in *T.R.H.S.*, 4th Series, vol. xv.

<sup>2</sup> Bacon, vol. vi, p. 218; Coke, *Fourth Part of the Institutes*, edn. of 1669, pp. 196-7.

<sup>3</sup> 1 Henry VIII c. 8.

<sup>4</sup> Coke, *Fourth Part of the Institutes*, edn. of 1669, p. 196.

<sup>5</sup> 1 Henry VIII c. 12. <sup>6</sup> 1 Henry VIII c. 8. <sup>7</sup> *L. & P.*, vol. 1, no. 392.



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1513,<sup>1</sup> when he was succeeded as master by Sir Thomas Lovell.<sup>2</sup> Henry filled up other appointments too. In 1509 he made John Daunce receiver-general<sup>3</sup> and Thomas Robertes auditor.<sup>4</sup> Potentially most important of all, the terms of Lovell's grant of office in 1513 gave him the right to appoint feodaries,<sup>5</sup> and for many counties they are known to have been appointed.<sup>6</sup> These officers were later to prove absolutely basic to the efficient administration of livery and wardship, and in them the Court of Wards and Liveries put its whole trust.

Hussey's continuation in office, and these further appointments—especially of accounting and local officers—would at first sight suggest that the reaction from Henry VII's policy was short-lived indeed, and that Henry VIII very soon adopted, and even developed, his father's system. Yet it is improbable that that was the case. A memorandum on wardship, unfortunately without date but probably belonging to about 1520, after describing Henry VII's organization of a wardship office adds that 'ther hath no like ordre be takyn' since his time,<sup>7</sup> thus implying that the old king's machinery of account was discontinued, and that the new king's appointments of a receiver-general and auditor were not at first effective. This is also rendered likely by the fact that wards' accounts were originally brought within the scope of Henry VIII's general surveyors.<sup>8</sup> It is thus pretty clear that there was a reversion to the old, unspecialized administrative methods that had obtained prior to 1503. In one sense, of course, the point is academic. In 1514 John Daunce was appointed one of the two general surveyors,<sup>9</sup> and it is no doubt unimportant whether, during the next two years, he took wardship accounts as general surveyor or as receiver-general. But the transference of accounting for wards' lands from the general surveyors to the Exchequer, which took place two years later, was surely a retrograde step.<sup>10</sup> Moreover, the memorandum made a serious indictment of the policy pursued in these early years of Henry VIII: it regarded as a rash alienation of capital the practice that had grown up of selling wards' lands along with

<sup>1</sup> B.M. Add. MS. 21481, ff. 31, 44, 69.

<sup>2</sup> *L. & P.*, vol. I, no. 2055/104.

<sup>3</sup> *Ibid.* no. 257/22.

<sup>4</sup> *Ibid.* no. 190/43.

<sup>5</sup> *Ibid.* no. 2055/104.

<sup>6</sup> *Ibid.* no. 2222/12.

<sup>7</sup> See below, Appendix I.

<sup>8</sup> *L. & P.*, vol. I, no. 709/14; 3 Henry VIII c. 23.

<sup>9</sup> *L. & P.*, vol. I, no. 3499/49.

<sup>10</sup> 6 Henry VIII c. 24.

wardship of the body, and in general demanded a rigorous control of sales.<sup>1</sup>

The exact date at which Henry VIII, by tightening up the administration and returning to his father's methods, took his first step towards the foundation of the Court of Wards cannot be stated definitively. Sometime before New Year's Day 1518-19 Sir Richard Weston was joined with Lovell in the mastership of the wards,<sup>2</sup> and in 1518, too, Daunce got a new patent of the office of receiver-general, this time holding it jointly with Roger Wigston.<sup>3</sup> Again it may be significant that, in 1519, the Venetian ambassador, Giustinian, spoke of Henry's wealth as deriving in part from the *Court of Wards*.<sup>4</sup> On the whole, however, it seems more reasonable to connect the reform with the appointments of 1520. In that year, Lovell having given up the mastership on account of age and pressure of business, Sir Edward Belknap was set in his place at Weston's side.<sup>5</sup> Yet another receiver-general was also appointed in 1520, Thomas Magnus, the archdeacon of the East Riding of Yorkshire.<sup>6</sup> His account for the year 1523-4 survives, and is the earliest of the second series of receiver-general's accounts.<sup>7</sup> In 1521 there was a new grant of the auditor's office, to Thomas Robertes and John Peryent, both experienced men.<sup>8</sup> In other ways Weston's second period as master saw developments—for one thing, there is an interesting provision in the patent which he and Belknap obtained, authorizing them to convoke the Council Learned; for another, it seems likely (though the evidence is not easily interpreted) that Weston endeavoured to control indiscriminate sales of wardships and leases of wards' lands;<sup>9</sup> again, there was certainly an attempt at this time to get better service out of escheators.<sup>10</sup>

The final phase of wardship administration prior to the statutory foundation of the Court came with the mastership of William Paulet, for the first part of which he held office jointly with Thomas

<sup>1</sup> See below, Appendix I.

<sup>2</sup> *L. & P.*, vol. III, p. 1534.

<sup>3</sup> *L. & P.*, vol. II, no. 3914.

<sup>4</sup> *C.S.P. Ven.*, ii, 559.

<sup>5</sup> *L. & P.*, vol. III, no. 1121/10.

<sup>6</sup> *Ibid.* no. 1036/23.

<sup>7</sup> P.R.O. Wards 8/72.

<sup>8</sup> *Ibid.*

<sup>9</sup> P.R.O. Ind. 10217 (1), calendar of bargains: the wards' names listed for 13-17 Henry VIII, unlike other years, have no entries of committees' names or purchase prices. P.R.O. Wards 9/148, moreover, is an entry book of bargains for wards left unsold by Weston to his successors.

<sup>10</sup> *L. & P.*, vol. III, no. 3692.