

Chapter Seventeen : Debt and Deceit

Squeezed credit

Thomas Horde had enjoyed Sheldon's hospitality for nearly ten years before departing abruptly sometime in 1599. Whether he decided he had been quite sufficiently patient and pressed harder for payment or whether Sheldon, perhaps alarmed by the fact that Horde, as a convicted if concealed recusant, was more of a liability than an asset is unknown. Clearly, however, there was a quarrel. Horde does not seem to have expected immediate payment of a debt which had reached around £20,000, and, holding eight mortgages, had no need to do so. Sheldon however was forced to turn to other lenders as the downward spiral continued. He sought cash elsewhere, as Horde himself later observed and records confirm.¹

By the end of October 1599 Sir Horatio Palavicino, one of the most commanding foreign merchants resident in London, was writing to his man of business, John Hobart, that he was 'content to contynewe an other six months or longer the parcel due by Mr Sheldon and thereby due by the other gentlemen...I desire you soe careful for renovacon of the bonds.'² Sheldon's credit remained good. He could later turn to the merchant Thomas Sutton, possibly London's most powerful lender; in 1603 Sheldon father and son jointly acknowledged a bond, this time for £2000.³ They made similar arrangements, for much higher totals, for the benefit of the Markham family.⁴

Attempted settlement

Between 1604 and 1605, when circumstances, personal and political, greatly changed on both sides, three attempts to resolve Sheldon's problems were made. All were initiated by the recognizance holders, whether from genuine sympathy for Sheldon or from concern for their own interests because Horde was now a convicted recusant in two places; refusing, or avoiding, paying his fines, he made himself liable at any moment to suffer forfeiture of his lands and goods for non-payment.⁵ In March 1605 two of the recognizance holders, Sir John Dormer of Dorton and Walter Gifford, proposed that Sheldon should repay his debt by twelve consecutive instalments of £1,000 to be paid every 13 November in London at the house of a

¹ After court action a debt of £200 was paid to William Brasyer, citizen and haberdasher of London on 9 November 38 Eliz in the parish of St Mary Arches, TNA KB 27/1350, available on AALT

² Bodl., Ms Tanner 283, f.7.

³ TNA LC 4/195 f.206, 19 May 1603, cancelled 2 November 1608; Shipley, 'Thomas Sutton: Tudor Moneylender', pp. 456-476.

⁴ See Chapter Sixteen.

⁵ TNA E 126/1 f.50v-51; Details in OHC E 241/43/D/1, Calthrop, *Recusant Roll no. 1 Mich 1592-1593*, CRS 18, 254; Bowler, *Recusant Roll 2*, pp. 123,125 and Bowler, (ed) *London Sessions Records*, CRS 34 (1934), 23, 24.

lawyer acceptable to both sides, Robert Atkinson.⁶ In addition, Sheldon was to make over to Horde or to another person chosen by him lands to the clear annual value of £600. In case of future difficulties, one Richard Godfrey was appointed as a mediator ‘indifferently chosen’. Their efforts failed.

Threat of legal action from his wife Lady Tasburgh, on the grounds that Sheldon had disregarded the terms of the marriage settlement, may lie behind a second attempt to resolve the difficulties; its details were recorded on 10 May 1605.⁷ This agreement was made between Sheldon and his son on one side and on the other two men with whom Horde was already acquainted, Sir William Roper of Eltham, Kent, Sir Henry James of St John



Horde's neighbourhood in Holborn, from the map attributed to Ralph Agas, c.1561-70.
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Street, Clerkenwell (Middlesex) and Valentyne Saunders of Chancery Lane, formerly one of the clerks of the Petty Bag, working alongside Edmund Standen married to Ralph's fifth daughter.⁸ Its terms were that Sheldon should assure to third parties, amongst them Roper, trustee of Sheldon's marriage settlement, lands to a clear annual value of £600, for a term of seven years. For a limited period Sheldon chose to offer named lands in Blockley and Studley, Worcestershire and elsewhere together with a third part of the manor of Chelmscote in Brailes to Roper and James, additions to the lands on which there already were rent charges. It was further stipulated that the lands should never have been monastic property, presumably to avoid the complications of any rights the Crown might have. Appearances are

⁶ BAH MS 3061/1/497 (former 167897), 26 March 3 James (1605); Davidson, 'Robert Atkinson,' wrote as though Atkinson was Ralph's usual lawyer.

⁷ BAH MS 3061/1/755 (former 168155). The document opens with a reference to another previous agreement, also of March 1605, between Horde and Sheldon subscribed also by two of the recognizance holders, Sir John Dormer and Philip Scudamore; its details were not recited.

⁸ Roper, the trustee for Sheldon's marriage settlement, was the brother in law of Sir Robert Dormer, [for Dormer see *ODNB*; Dormer and Roper had married sisters, the daughters of Anthony Browne first Viscount Montagu. Dom Aden Hamilton, *The Chronicle of the English Augustinian Canonesses Regular*, (Edinburgh, 1904) presents a different descent.], and also a recognizance holder. James has no known connection to either party. Both were then resident in the parish of St Andrew Holborn, London and presented there for recusancy. La Rocca, *Recusant Rolls for Middlesex*, Roper, pp. 1, 5, 22, 81; James pp. 2, 7, 43; Dom Hugh Bowler, 'Sir Henry James of Smarden, Kent ...' pp. 289-313, esp. pp. 294-302. Valentine Saunders, *CPR 1593-94*, L&I, vol. 309, no. 248, grant surrendered in 1598.

deceptive; taken out of context, the document appears to be a sale; in fact it was intended to create a trust to ensure Horde received payment, of the interest at least, without his name appearing. The terms still catch the unwary.⁹

Clearly the intention of at least some of the recognizance holders, Horde's associates, was that Sheldon should keep his lands. That, however, was unlikely to have met with Horde's approval; though at some point he and Sheldon had agreed that the debt totalled £23,569 13s, Horde's goal, as it had been with other debtors, was more likely to have been enjoyment, and even eventual possession, of Sheldon's lands.¹⁰

Action and Reaction

Horde repudiated the efforts towards resolution almost immediately. Angered, Sheldon, perhaps still hoping to pre-empt distraint proceedings, laid a charge against Horde in Chancery early in Trinity term 1605.¹¹ https://www.ralphsheldon1537-1613.info/pdf-pages/Sheldon-v-Horde-C-2_JasI-S22_51.pdf Sheldon claimed that repayment had been offered and spurned because Horde 'purposed to waste and wear out his [Sheldon's] estate, intending his utter ruin' - implying Sheldon was at least attempting repayment. Horde's answer, listing the rent charges and their holders, all of them his contacts and many his relatives, observed that he had never pressed Sheldon into acceptance of any monies. Sheldon's replication introduced a new suggestion, that the securities had been devised to avoid the lawful statute against usury 'cloaked and coloured under the name and pretence of purchasing rent charges and annuities'. Taken together, recognizance and rent charge together carried an interest rate of 18%, apparently contravening the statute of 1571 which had set a maximum interest rate of 9%; any higher sum was usurious.¹² Had he won his point Sheldon would have been freed from repayment. Horde, he added, had lodged in his houses and lived on his hospitality for ten years for which no allowance had been made in the proposed settlement. Moreover, Horde had never paid over more than £5,600, of which, said Sheldon, 'he cannot be ignorant in as much as he is known to be a strict dealer in his accounts and reckonings and provident therein'. Horde's rejoinder brushed off Sheldon's estimate of the value of his hospitality, claiming that it had been of the meanest, not worth more than £500 each year, a calculated slur on Sheldon's dignity. Horde claimed that the rent charges had been by way of purchase not usury; that Sheldon's estate, which he valued at an annual £15,000, had benefited from his monies and would otherwise have failed; and that he had had no intention 'of overthrowing the estate'. He observed that Sheldon was borrowing elsewhere, as indeed he was.

⁹ Iceley, *Blockley...*, pp.42-3; Tennant, 'The Bishop Family and Rectory Farm', p. 45 n.20.

¹⁰ TNA E 126/1, ff. 95-97v, esp. f.96v.

¹¹ TNA C 2/JasI/S22/51.

¹² *Statutes of the Realm*, IV (i), 13 Eliz cap 8. However, it had long been accepted that one or more penal bonds made to guarantee performance of an agreement could, together, transgress the limit because such documents served a different purpose and were not loans, Simpson, *A History of the Common Law of Contract*, pp.112-117.

A Report was sought from one of the Chancery Masters, a means for a deadlocked case to be assessed by an impartial eye.¹³ Written on 30 October 1605, it concluded that the argument was a falling out of friends over money and suggested full disclosure of all transactions. Back in court Horde pointed out that he had already presented all the details – which he had. But meanwhile the Gunpowder Plot had been discovered.¹⁴ Ralph himself was not involved, but he had an Achilles heel - his second wife- who, on the very day of the plot's discovery rushed to tell Chief Justice Popham of a letter which, though addressed to someone else, she had opened 'by mistake, and thought might be suspicious'; two weeks later she was questioned by Sir Edward Coke, now attorney-general, formerly involved in some of the examinations of the plotters of 1594.¹⁵ The record of their meeting concentrates entirely on the contents of the letter, but she clearly had an axe to grind and, panicked, was more than probably in a state of mind to say more than was prudent. It seems possible that it was information obtained from Lady Tasburgh which brought her husband's dealings with Horde to Coke's notice.



Sir Edward Coke, Attorney-General and later Lord Chief Justice, Trinity College, University of Cambridge. Courtesy artuk.org and Wikimedia Commons

The interview took place at almost exactly the time when questioning of the rent charge holders, as witnesses, was still being conducted by Chancery officials, a fact of which Coke was perhaps not unaware. Much delayed by frivolous objections from some of the more recalcitrant, the case was only finally ready to be resumed in Chancery early in May 1606. The first hearing began on 15 May 1606; Sir Edward Coke had laid an Information on behalf of the king in the Exchequer Court, summoning all the parties, Horde, Sheldon and those named in the recognizances, to appear.¹⁶ Proceedings concerning the recognizance Roper had brought into suit relating to Sheldon's marriage were suspended.¹⁷ The case opened two days after parliament passed further stringent anti-Catholic legislation, indicative of the country's feeling against Catholics.

Coke's opening speech described Thomas Horde as 'being a man of great wealth and substance in money and being convicted of recusancy' over a long period; he should long

¹³ TNA C 33/110, f.103, 30 Oct 1605; C 38/6 (alphabetical order of plaintiffs)

¹⁴ Fraser, *The Gunpowder Plot*, London, 1997.

¹⁵ Anstruther, *Vaux of Harrowden*, pp. 290-93.

¹⁶ TNA E 124/3, p.120; E 126/1 Easter 4 James, Thursday 15 May [1606] f. 41(ink number) f.44 (stamped) ; for the sequence see

http://yourarchives.nationalarchives.gov.uk/index.php?title=Sheldon#Ralph_Sheldon_.281537-1613.29_and_Thomas_Horde_.281533-1607.29

¹⁷ TNA C 231, m.5, m.8.

since have had his lands impounded. Instead, in order ‘to defraud their Majesties of the said forfeitures and so to rayse and keep unto himself a good yearly income by way of loans and interest and to keep his estate unknown and private [he] hath lent to Ralph Sheldon great sums of money’. For repayment including interest Ralph Sheldon ‘did make and pass to the said Thomas Horde or unto some friends of his divers and sundry grants of annuities or rent charges issuing out of divers and sundry lands tenements hereditaments of the said Ralph Sheldon with several conditions for redemption at certain days and tymes upon repayment of the principall sum and for the consideration that should grow due for the forbearance thereof’.

Coke thus neatly outlined what had been happening over the past thirty years. Sheldon had helped Horde conceal his revenues until Horde had demanded return of his capital and payment of the interest. But somehow Coke had uncovered what the Chancery case and the Report had concealed; the recognizances were already forfeit for non-payment.¹⁸ Therein lay his opportunity.

Because unpaid recognizances were forfeit to the lender, because Horde was a convicted recusant liable to recusancy fines, Coke seized on the unpaid and thus forfeit recognizances; he used them as an excuse to extend the interpretation of the 1586/87 penal legislation against recusants and, in passing, to close a loophole in the statute of 1571 which forbade creation of trusts to conceal lands.¹⁹ He aimed to define recognizances as goods, so that they would be included amongst the moveable goods which could already by law be taken from a recusant by the Crown.²⁰ If Coke could win approval for his point that recognizances could be treated in law as goods, then it followed that, because those under discussion were for the benefit of the already convicted Thomas Horde, as all the parties had agreed albeit the paperwork was not in his name, they must be forfeit to the Crown. The transactions between Horde and Sheldon could then be treated as a debt to the sovereign, the reason for bringing the case to the Exchequer court. The sums payable would be due to the Crown, not to Horde.²¹

Coke’s arguments – or his influence - carried the day. He sought the counsel of senior judges in other royal courts, presenting them and Horde’s attorney, apparently in camera, with reasons why the recognizances should be deemed to be goods and thus forfeit to Crown. Coke summarized those reasons and the precedents he cited in his Reports, disguised from future historians because when the notebooks went into print Horde’s name was transcribed as Fforde.²²

The arguments strike a strained, even specious, note, but their outcome was a foregone conclusion. The debate, which never detailed the recognizances but took their existence as

¹⁸ TNA E 126/1, f 50, dated 2 June 1606 is the earliest unequivocal mention of their forfeiture.

¹⁹ *Statutes*, IV (i), 13 Eliz cap 5, An Act against Fraudulent Deeds, Alienations etc.

²⁰ *Statutes*, IV (i), 23 Eliz Cap. I; Bryson (ed), *Cases concerning Equity*, pp. 345-46.

²¹ TNA E 126/1, f 50.

²² Sheppard *Selected Writings of Sir Edward Coke*, vol 1, pp. 419-23.

understood, centred on legal principles, not on the ‘justice’ or otherwise of the transactions. No attention was paid to the recognizances as they had been rehearsed, none to Sheldon’s claim that he had never received the full sum of money those recognizances represented.

Judgement

Judgement fell on all the parties concerned.²³ The total of the forfeit recognizances was to be paid by Ralph Sheldon not to Horde or to his heirs but to the Crown. Those who had held the rent charges were to bring their documents to Chancery to be cancelled – the only concession to Sheldon’s predicament, but a significant one because the agreements were still valid in law.²⁴ It brought major complications because by the time the case came to hearing six of the thirteen holders had died; John Brooke (1598), Roger Gifford, (1597), Francis Biddulph (1598), Alan Horde (1603) and, at unknown dates, Robert Chamberlain and Edward Brook. It was the issue which troubled Ralph most; he still harped on the matter in his will, written in November 1612.²⁵ He had a lot to fear, and even more to lose, if claims were pursued against him as, legally, they could have been. He was already facing a debt recorded, not entirely correctly, as £24,000. <https://www.ralphsheldon1537-1613.info/pdf-pages/Recognizance-Holders.pdf>

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²³ The major references cited above, TNA E 126/1, ff.44, 49, 50, 57v, 82, 95-97; E 124/2, f.108, 109v; E 124/3, f.120, 273v; 124/5, f.254, were not found by Burke or La Rocca. Burke, ‘The Economic consequences of recusancy..’; Burke, p.74, touching on the story told in Sheldon’s will correctly surmised that factors other than his religion were connected to Sheldon’s debts. Rocca, ‘James I and his Catholic Subjects, 1606-12....’, pp. 251-262, n. 35 interpreted the forfeiture to the Crown as an instance of one recusant, Sheldon, paying the debts of another, Horde.

²⁴ TNA E 126/1, f.51; E 124/5, f.254; TNA C 54/1939, nos. 23, 24.

²⁵ TNA PROB 11/121/345.