

THE EXCOMMUNICATION OF GEORGE FOX, 1678

The broad outlines of the dispute between George Fell, only son of Judge Thomas and Margaret Fell, and his mother have long been known. More than 125 years ago, Maria Webb used the collection of letters and other documents that became known as the Swarthmore Manuscripts for her book on the Fell family. She related details of the disagreement between Margaret Fell, one of the most important figures in the early period of the rise of the Children of Truth, and her son. As Webb told the story, the basis of the disagreement was Margaret Fell's active involvement in the affairs of the Quakers, the pejorative tag early attached to the Children of Truth, an involvement culminating in 1669 in the marriage of the widowed Margaret to George Fox, founding organizer of the sect. A letter Webb included in her book from Fell's son-in-law Thomas Lower suggested that her son George, a lawyer of no little wealth, prominence, and influence, may even have connived to have his mother re-committed to the county jail in Lancaster in 1670.¹ According to Norman Penney, who examined the evidence in the early 1930s, King Charles II granted George ownership of Swarthmoor Hall in 1665 after Margaret was imprisoned and her property confiscated.² The relationship between the two family members was hardly friendly, and the son failed even to mention his mother in his will, although he did bequeath forty shillings to each of his parents-in-law to buy a ring.³

When Isabel Ross, a descendant of the Fells, published a biography of her forebear Margaret in 1949, she added to this picture of disagreement in the family but charitably ventured that George may have been encouraged by his wife's father, Edward Cooke. Ross concluded that George wanted his mother to leave the family estate of Swarthmoor Hall voluntarily, apparently promising her an annuity if she would move, threatening her with prison if she did not.⁴ Ross mentioned a dispute over Thomas Fell's will, a dispute in which George claimed that he had a legal right to at least part of his late father's large estate, but she failed to develop the issues involved in it. She did point out that the hard feelings continued long after George's death when his widow Hannah

insisted on her rights and exacerbated relations by such minor irritants as closing a path from Swarthmoor to Ulverston.⁵ The latest study of Margaret Fell, still unpublished, by Bonnelyn Y. Kunze, asserts that George was correct about his father's will - that is, based on the common law of primogeniture, if his widow married again she automatically forfeited her claim to the estate.⁶ In 1965, Alfred W. Braithwaite examined the legal aspects of the situation, particularly regarding Judge Fell's will. Giving a more favourable interpretation to George Fell's motives than previous researchers, he read the will to mean that Fell granted his son the real property not specifically bequeathed his surviving wife, namely, his estate beyond Swarthmoor Hill, its gardens, and 50 acres.⁷

One fascinating new aspect of the dispute, however, has just come to light. Housed among the faded, weathered, and poorly written parchment and papers in the hefty volumes of court documents in the Public Record Office in Chancery Lane (London) is a copy of a decree of excommunication against George and Margaret Fox and the three unmarried Fell daughters still living at Swarthmoor.⁸ We have rendered it from its original Latin, and our translation appears below.

We know about the decree because it became a weapon in the legal struggle between members of the Fell family over land at Osmotherley Fells that had been part of the Fell holdings going back four score years, to 1598. The immediate dispute began on 20 August 1678 when John Rouse and his wife Margaret (Fell), Thomas Lower and his wife Mary (Fell), Isabel (Fell) Yeamans, Sarah, Hannah, and Rachel Fell, and George and Margaret Fell Fox filed a bill of complaint in the Chancery Court of the County Palatine of Lancaster against Hannah Fell (widow of George) and her young son Charles.⁹ Three weeks later, on 13 September, Hannah Fell and her son asked to be excused from responding to the complaint because the plaintiffs had been excommunicated, and they attached a copy of the decree to support their plea.¹⁰ It is possible that Hannah and Charles Fell's attorney was trying to argue that, as in civil courts where failure to answer a summons could result in issuance of a writ of outlawry and prevent use of the courts, failure to purge oneself of the evils leading to excommunication could have the same result.¹¹ On the same day, he filed a cross suit on their behalf from which we can learn the facts they considered relevant for their case.¹²

Simply put, the court case involved whether the lands were leasehold or freehold: if the former, they could be bequeathed at will; if the latter, they could be entailed and passed unencumbered to male heirs. On

behalf of her son, Hannah Fell claimed, but could produce no deed to prove, that the lands had been freehold, while the rest of the Fell family insisted, but likewise had no deed to show, that they were leasehold.

In addition Hannah Fell contended that her son had yet another basis for ownership of the disputed land, namely, that in March 1665 Margaret Fell agreed in writing to surrender her rights under her husband's will of 1658 to her son George, and he in return would pay her an annuity of £100 (to be raised on 8 March 1668, by £10).¹³ Hannah also alleged that her son's aunts, the sisters Fell, had pledged on 20 September 1672, that if this agreement was carried out Charles could enjoy Osmotherley 'free from the title or claims' of George and Margaret Fox.¹⁴ She averred further that George Fell received income from the land for several years after his father's death, which presumably indicated that he was considered the rightful owner. The petitioners demanded that the defendants bring into court any deeds, as their plea phrased it, 'contained in bag or box or shelf, locked or unlocked'.

On the other side the Fell family members charged that the executors of Thomas Fell's will, Richard Radcliffe and Thomas Coulton, had sided with George Fell - 'confederating and combining themselves together' were their words - and permitted George to take possession of Osmotherley.¹⁵ The two executors received a discharge and indemnity for £20,000 for all judgments and suits arising from her husband's will from Margaret Fell on 25 January 1662, because they had led her to believe that they had faithfully fulfilled the will's provisions. The Fells, of course, denied that the land in question was freehold but asserted that the other side, because of the executors' control of Thomas Fell's papers, had the original lease and other documents.¹⁶ They asked the court to order delivery of all relevant written materials, but no evidence of such documents survived. The final resolution of the case was apparently lost in some dark recess of the past.

We do not know what specifically occasioned the excommunication, which came about as a result of the annual visitation of a deputy of the Bishop of Chester, John Pearson,¹⁷ to Ulverston parish. Prior to such a visit, a bishop customarily presented a series of queries to the clergymen and churchwardens of the parish. Often a diverse list, these disciplinary questions aimed to ensure regular, acceptable, and well-attended services, the good repair and proper use of the building and its furnishings, the orthodoxy of members of the parish community, and the collection of tithes, among other matters. Fox, his wife, and her

unmarried daughters still living at home had, sometime prior to 5 September 1678, when this copy of the decree was dated, been adjudged guilty of some offence meriting excommunication and had suffered this extreme penalty, the heaviest sentence an ecclesiastical court could impose.¹⁸ We do not know what their offence was, but Quakers often found themselves faced with this punishment. Indeed, the very individual before whom they were supposed to appear at the visitation, Joseph Craddock, the commissary who represented Bishop Pearson in the archdeaconry of Richmond, had a dozen years earlier drawn Fox's wrath for wielding the excommunication weapon against members of the Society of Friends in the north.¹⁹

Of course as Quakers, neither Fox nor the other Fells had an interest or concern to attend to any such churchly affair, no matter how odious and final the penalty seemed to those who imposed it; they certainly saw no need to seek absolution for their alleged sins, an action that would have freed them of the ban. As for the matter involved in the earthly dispute, the Quaker family of Margaret Fell retained the land, so Charles and Hannah Fell got no immediate satisfaction: in 1691, after Fox's death, Margaret Fox's son-in-law, Daniel Abraham, paid Charles £3900 and extinguished all his claims to the estate; Abraham now controlled the Fell properties.²⁰ Hannah, a proud woman, left the area about this time, her shadow no longer falling across the pages of Quaker history.²¹

The copy of the excommunication document itself, dated 5 September 1678, is about one page in length. The Latin of the text is of a variety suggesting that the copyist did not know very much about the language he was using. The affixed signature of Richard Trotter, a notary public, rather than Bishop Pearson suggests that the present copy of the earlier decree was made especially for use in this case before the Chancery Court.

[We,] John, by divine providence bishop of Chester to the faithful in Christ, [greetings]. etc. Know ye that indeed George Fox and Margaret his wife, Sarah Fell, Susanna Fell and Rachel Fell, all of the parish of Ulverston, the Deanery of Furness, of the Archdeaconry of Richmond, and also Chester, our diocese, and in the county of Lancaster, were duly cried to appear before the right worshipful Joseph Craddock, knight, doctor of laws, the lawfully appointed commissary²² in and throughout the entire Archdeaconry of Richmond and diocese of Chester or his

lawfully designated substitute at a certain day, hour, and place, [which have] already passed, to answer to certain grave articles or interrogatories concerning the welfare of their souls and the reformation of their manners. And also they were permitted to have the charges and those things which we have discovered in our annual examination.²³ And because according to the intent of the citation aforesaid, they did not appear, they did not comply with the mandates of the church in this matter, we have excommunicated these same people, thusly, George Fox and Margaret, his wife, Sarah Fell, Susanna Fell, and Rachel Fell (for their contempts aforesaid). And you proclaim in the church in the parish of Ulverston aforesaid [these things which] we have taken great care and ordered to be denounced and declared. Indeed in which sentence of excommunication the aforesaid George Fox and Margaret, his wife, Sarah Fell, Susanna Fell, and Rachel Fell stood and still stand entangled and embroiled, having been questioned for their own sakes and having been proved [to seek] no absolution in the sentence aforesaid of excommunication. Yet they remain wickedly disdaining the keys²⁴ of the church. In witness to which matter [we], as the ones duly appointed so to act in the present case, [set] our seal which we use in these matters. On the fifth day of the month of September 1678.

Rich[ard]: Trotter
 Not[ary]: Pub[lic]:
H. Larry Ingle
Jaan Ingle

NOTES AND REFERENCES

The first named author is responsible for the background commentary, the second for the translation. They would like to express their appreciation to Stephen Schierling Associate Professor of Classics of Louisiana State University and Melanie Barber Deputy Librarian and Archivist of the Lambeth Palace Library for their advice and assistance.

¹See Maria Webb, *The Fells of Swarthmoor Hall*, London 1865, 256-63.

²Norman Penney, 'George Fell and the Story of Swarthmoor Hall', *Journal of the Friends' Historical Society* 30 (1933), 30. There is still a murky aspect here: Penney cited only a royal order for the attorney general to prepare a bill giving George ownership, not the grant of ownership itself.

³Fell's will is reprinted in Helen G. Crosfield, *Margaret Fox of Swarthmoor Hall*, London [1913], 262-65. Crosfield adds to the picture of animosity by noting that Hannah Fell, George's widow, continued to dispute with Margaret after her husband's death. *Ibid.*, 145.

⁴Isabel Ross, *Margaret Fell, Mother of Quakerism*, York, 1984, 221-22.

- ⁵*Ibid.*, 224-25, 227-28. The exact extent of the senior Fell's holdings is unclear, but it is evident that, as one of Lancashire's most influential men, he was probably the largest landholder on the Furness peninsula, with his estate stretching in a continuous band some seven miles from Morecambe Bay in the east to Duddon Sands in the west. For further details on Fell's career and life, see H. Larry Ingle, 'First among Friends: George Fox and the Quakers', chapter 8, forthcoming.
- ⁶Bonnelyn Y. Kunze. 'The Family, Social and Religious Life of Margaret Fell', PhD dissertation, Univ. of Rochester 1986, 69-70, 96n92. Thomas Fell's will itself so provided. It is conveniently reprinted in Ross, *op. cit.*, 398-400, and confirms that Swarthmoor was to be Margaret's only so long as she did not remarry, 'and no longer'. The residue of the estate, after payment of debts and obligations, was to go in its entirety to the seven daughters of the family. Alfred Braithwaite took this to mean that absent determined and positive language indicated that Fell wished to flout the strong seventeenth-century tradition of leaving real property to the eldest male heir; his son in fact received all the real property not designated for Margaret. (Alfred W. Braithwaite. 'The Mystery of Swarthmoor Hall', *Journal of the Friends' Historical Society* 51 [1965], 23). This interpretation certainly clears up why, after his father's demise, George received rents from the estate. The will specified that George Fell was to receive only his father's law books.
- ⁷Braithwaite, *op. cit.*, 23. One problem is that no one has determined the exact extent of Fell's large holdings.
- ⁸PL7/64, No. 12, 13 September 1678, Records of the Chancery Court of the Palatine County of Lancaster (all subsequent references to such documents from this collection), Public Record Office, London (hereinafter cited as PRO). Historians of Quakerism have not used these voluminous records, so it remained for a tireless genealogist, Angela Barlow of Surbiton, Surrey, to ferret out the decree. Barlow is preparing an 'Index to the Equity Proceedings up to 1700 of the Chancery of the Palatine of Lancaster preserved in the Public Record Office, primarily for the use of other genealogists. She and H. Larry Ingle met in April 1988 in the Library of the Society of Friends, London, where she kindly called his attention to these and other materials that he has been using in his developing biography of George Fox. He takes this occasion to express his deep appreciation for her continuing assistance and invaluable advice, particularly concerning seventeenth-century legal procedures.
- ⁹William Rawlinson to John Otway, 20 August 1678, PL6/32, No. 171. The fact that leading Friends of the stature of Fox and his wife Margaret believed that this case merited resorting to the courts speaks volumes about their willingness to use a system that they publicly considered evil, corrupt, and unjust. For striking examples of Fox's previous view of the legal system, see George Fox, *To the Parliament of the Comon-wealth of England*, London 1659, 3-7. For the broader picture, see Craig W. Horle, *The Quakers and the English Legal System, 1660-1688*, Philadelphia, 1988, 170-71. Of course, it is possible that their status as plaintiffs in a civil matter rather than defendants in a criminal case gave them a different view of the permissibility of using the court system.
- ¹⁰Thomas Stringer to Otway, 13 September 1678, PL7/64, No. 12. If the defendants had not included the copy to bolster their case, it is unlikely that this document would have come to light.
- ¹¹I am indebted to Angela Barlow for this suggestion.
- ¹²Stringer to Otway, 13 September 1678, PL6/33, No. 4.

- ¹³Braithwaite asserted that the annuity was £200 (Braithwaite, 'Mystery', 27), but he did not indicate where he found the larger figure.
- ¹⁴The fact that such specific dates were cited strongly suggests that the lawyer for Charles Fell was working here from documents; on the other hand, he (and Hannah Fell, his presumed source of other information) did not know the exact date of Thomas Fell's death.
- ¹⁵The document did not mention that on 17 January 1677/8, confirmed by a deed of 22 March 1678, they had conveyed to Charles Fell certain named properties in Osmotherley, but apparently they were ones additional to those in dispute in the present case. See Conveyance of John Rous, *et al.*, to Charles Fell, 22 March 1678, Thirnbeck Manuscript, 23, Library of the Society of Friends, London. Why either side filed a suit following this sale - the price was not mentioned - remains a mystery.
- ¹⁶The specificity with which Thomas Stringer, Charles Fell's lawyer, detailed the 1598 agreement - he gave a figure of 20 shillings, 11 pence annual rent, whereas the Fells' attorney said that the nominal rent was one peppercorn for 10,000 years - suggests that the executors did indeed have some relevant documents, if not the disputed lease. Also the fact that the case was decided against the Fells suggests that the court found the original 1598 arrangement was for a freehold, even though in Charles Fell's own pleading the reference was to rent. On three occasions, 28 December 1677, 27 July 1678, and 1 August 1678, Margaret Fell paid fees to her attorney, Richard Simpson, in payment for his handling of the suit over the Osmotherly lands. *Household Account of Book of Sarah Fell*, ed. Norman Penney, Cambridge 1920, 445, 505, 507.
- ¹⁷Pearson (1612-86) was bishop from 1673 until his death. S.L. Ollard, *et al.* (eds), *A Dictionary of English Church History*, London 1948, 463-64.
- ¹⁸Church of England, *The Ecclesiastical Courts, Principles of Reconstruction*. London, 1954, 19-20.
- ¹⁹In 1665, Fox personally confronted Craddock, who had, charged the First Friend, 'excommunicated abundans both in Yorksheer & Lancashire... Thou hast excommunicated us both olde & younge...' *Journal of George Fox*, ed. Norman Penney, Cambridge 1911, ii, 98-99. Fox had castigated Craddock in 1663. See Henry J. Cadbury, ed. *Swarthmore Documents in America*, London, 1940, 67-8.
- ²⁰Ross, *op. cit.*, 228-29. The delay in resolving this matter until after Fox's death does point to the possibility that he may have been a block in the way of a family effort to reconcile the Fells.
- ²¹Crosfield, *Fox*, 145.
- ²²The officer exercising jurisdiction as a bishop's representative.
- ²³Refers to the required annual visitation of the bishop's representative.
- ²⁴Requirements.