

A DODGY DEAL in 1722 ?

By Henny Shotter

St. Mary's House (now the offices of Thorneloes, the solicitors) blends beautifully into the street scene between the square, the church and church square. The building doesn't appear that old from the outside but a look in the loft reveals amazing beams dating back possibly to the 15th century. The house has undergone many changes and had various uses. We know that there was once a butcher, a tea room, a bank and now it is the Thorneloe & Co solicitor's office. The building is in a very prominent and historically important position. We were intrigued and started to investigate. A property transfer document (an indenture) gave us much to ponder!¹

On June 6th 1722, a Mary Elliott, widow of the miller, John Elliott gave her house² next to the Lychgate, to one of her sons, John. He, in return, had to make payments to some of his brothers: for example to Thomas the sum of £5, which their deceased father had owed him.



¹ Thank you to Harriett Thorneloe for showing us this document and thank you to Annette Tomarken for transcribing the document.

² Thank you to Kent Photo Archive (<https://kentphotoarchive.org.uk>) for allowing us to use this photo from Mike Cockett's collection

The indenture, the contract in which she transfers the property to her son, contains two noteworthy aspects. She writes that she took, together with the key, a 'clod of earth' to her son's house. By doing so, she follows a medieval practice. When people did not make a written contract, it was custom to go to the piece of land which was being sold. There and then, in the presence of witnesses, the sale was 'sealed' by a symbolic gesture: the vendor picked up a lump of soil and handed it over to the buyer. In 1722, however, Mary had the transfer of her house written up in a document and signed and sealed by witnesses.

Why then did she cling on to this ancient custom? Did Mary Elliott want to be absolutely certain that the transfer of the house was legal? Was it, indeed?

This leads us to the second aspect of this property transfer which is somewhat unusual. In the indenture, it says that the property will transfer into the ownership of her son one day before her death....whenever that should occur!

That seems highly unusual and perhaps should be seen in the context of the probate tax, which came into force in 1694 and applied to all estates valued over £20, for which a fixed rate of five shillings was set.

The conundrum doesn't end there. In November 1722, a few months after the transfer document for the house, Mary writes a will.³ Her son Thomas Elliott, the one who was in the position to give a loan to his father, received only £5 (was he well-to-do?). John Elliott, the son who was lucky enough to get the house, received £20, plus her 'copper' and her 'browning tubb', Son William gets most: £50, while Robert gets a pair of sheets and £20. Her daughter receives £10 and all her 'wearing apparell both Linnen and Wollen and my Chest of Drawers and all the rest of my Goods Chattels and personale Estate whatsoever'.

The conundrum is that her estate attracted probate tax, as it was worth more than £20. The flat rate of five shillings had to be paid in any case and the theory that the house transfer was a tax-avoiding scheme looks less likely.

Why, then, was Mary so keen not to include her own home in the will? Did she expect tax law to change? Did she come into money between June when she transferred the house and November 1722, when she made her will?

Or was there a codicil in the contract, which her husband John Elliott (miller) made with John Brockwell (churchwarden) when he bought the house in 1703.

This contract will be a major challenge to read. However, watch this space!

³ Probate PRC/17/86/13a Canterbury Probate Records(1396-1858)

If you have any thoughts on the peculiarities in this indenture, please let us know.