Dovecotes and Pigeons in English Law

by

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This paper arises from a general historical study of dovecotes begun by the author in 1989, of which the first part, 'An Historical Enquiry into the Design and Use of Dovecotes', was published in Volume 35 (1991) of these Transactions, *with an Addendum in Volume 36 (1992). It is continued in his book* The Dovecotes of Suffolk, *reviewed in this volume, and is still proceeding.*

It is difficult to understand the history of English dovecotes (or pigeon-houses, as often they were called earlier) without knowing who was entitled to build them at a particular period, and when that right was extended. A major influence in their expansion and decline was the changing state of the law. Unfortunately there has been much confusion about the relevant body of law, because misleading information has been copied from book to book since the early nineteenth century, and continues to be repeated. The information given here is taken from standard legal works.

In the modern literature about historic dovecotes the first author to look into the law concerning them was the Honourable Mildred Berkeley, in a publication of 1906 about the dovecotes of Worcestershire.[1] She quoted from two eighteenth-century legal works, but admitted that she could not understand them.[2] The dates she gave were erratic, and later writers who have drawn from her work have perpetuated her mistakes.[3] J.C. Loudon is usually taken to be a more reliable source, but surprisingly, it was his *Encyclopaedia of Agriculture* of 1825 which has misled otherwise well-informed modern authors. The passage is given below:

> Laws respecting pigeons
> By the 1st of James, c. xxvii, shooting, or destroying pigeons by other means, on the evidence of two witnesses, is punishable by a fine of 20s. for every bird killed or taken, and by the 2d of Geo. III. c. xxix, the same offence may be proved by one witness, and the fine is 20s. to the prosecutor. Any lord of the manor or freeholder, may build a pigeon house upon his own land, but a tenant cannot do it without the lord's licence. Shooting or killing within a certain distance of the pigeon house, renders the person liable to pay a forfeiture.[4]

The arrangement of his sentences is confusing. In 1969 Dr J.E.C. Peters wrote:

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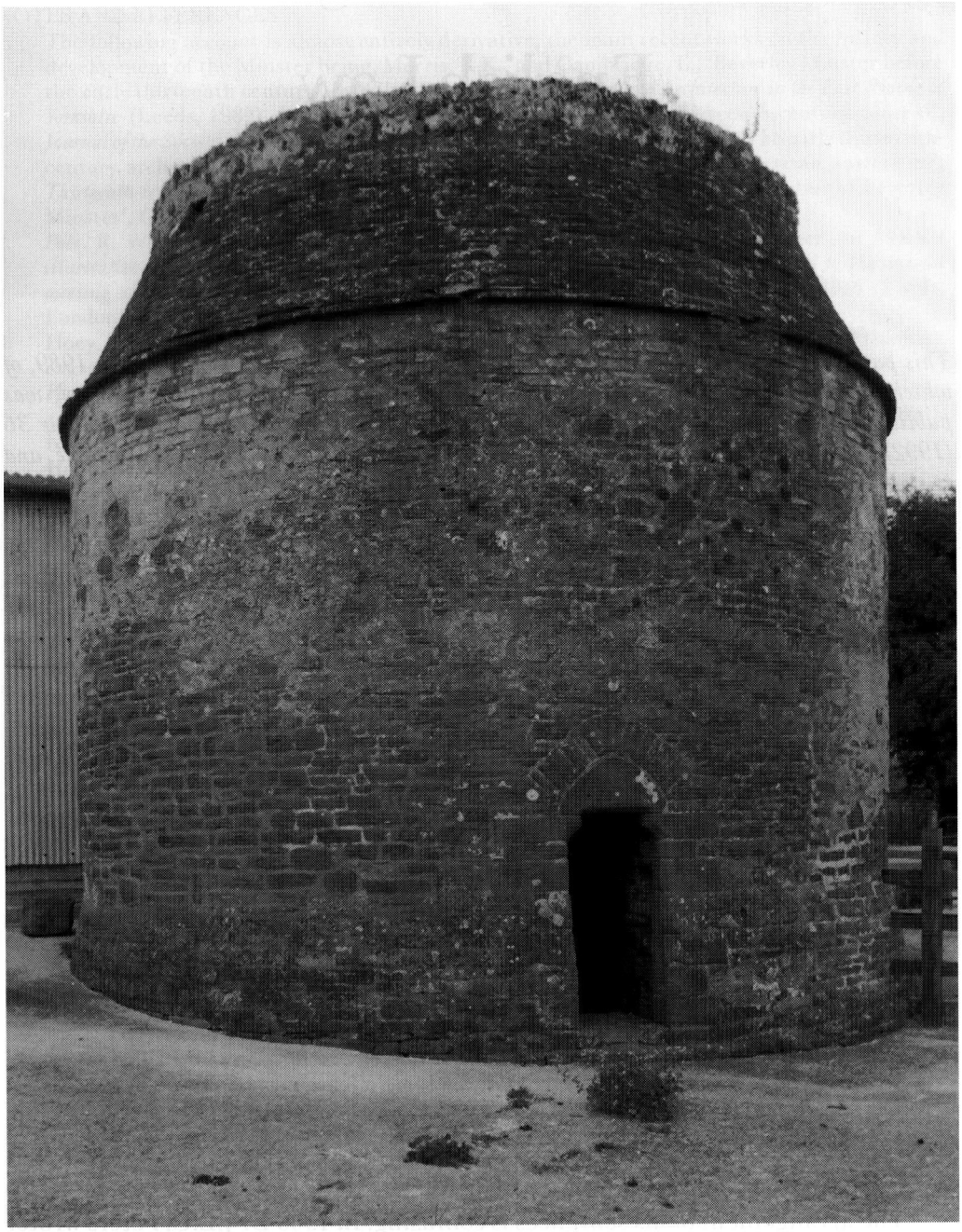

Fig. 1
The dovecote at Church Farm, Garway, Herefordshire, from the west
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'By an act of 1761/2 dovecotes could be built by any lord of the manor or freeholder on his own land, but a tenant could do so only with the landlord's permission', citing Loudon as his source. In 1982 Professor R.W. Brunskill repeated this statement in another form, and in 1989 Dr Jeremy Lake presented another version of it. I am embarrassed to find that I have contributed to this body of misinformation; in these *Transactions* in 1991, convinced by the unanimity among reputable authors, I wrote 'before the late eighteenth century, when pigeon-keeping ceased to be a manorial prerogative'.[5] To set the record straight, the Act of 1761/2 said nothing whatever about the right to build dovecotes; nor was that right ever defined by Act of Parliament. As will be shown, the exclusive prerogative of the lord of the manor was terminated a century and half earlier.

THE ORIGIN OF THE MANORIAL PREROGATIVE

The right to build a dovecote, or to keep pigeons, was always a matter of common law. We do not know when dovecotes were first built in England, but the earliest documentary records date from the middle of the twelfth century, and surviving buildings from substantially later.[6] At first the high initial cost of building and stocking a dovecote ensured that only the wealthiest lords could undertake the exercise. More were built in the thirteenth century, but the available evidence indicates that at that period they were still limited to the major estates, whether of great lords or of corporate institutions; and there they were present in only a few manors of each estate. For example, accounts of the Bishop of Hereford for 1289-90 record only two dovecotes in his twenty-one manors in Herefordshire.[7] Dr Rosemary Hoppitt, in a study of early court rolls in east Suffolk, has found references to nineteen dovecotes in the fourteenth century, but to only three in the thirteenth century.[8] The earliest surviving dovecote whose origin can be firmly established, at Garway, Herefordshire, is dated 1326 by inscription (Fig. 1).[9] From that period a dovecote came to be regarded as one of the prerogatives of the lord of the manor, comparable with the ownership of a mill.

From the later fourteenth century most lords found it economic to lease off their manors. This practice had begun earlier, but was greatly accelerated by the shortage of labour and the low prices for produce which followed the Black Death.[10] This made no difference to the common law. An existing dovecote would be leased with the land on which it stood; the tenant could manage it for his own profit, but the title remained with the lord. If a tenant wanted to have a dovecote where there was none before, only his landlord could build one.

EXTENSION OF THE MANORIAL PRIVILEGE TO PARISH PRIESTS

Some lords, when providing for the establishment of clergy in their estates, allowed the parish priest the right to keep pigeons, much as they allocated glebe land for his support; although it is unlikely that they would grant this privilege in parishes where a manorial dovecote was already established. The church tower was naturally attractive to pigeons because of its height, and some may have taken to nesting there even without encouragement; but there are medieval churches where nest-

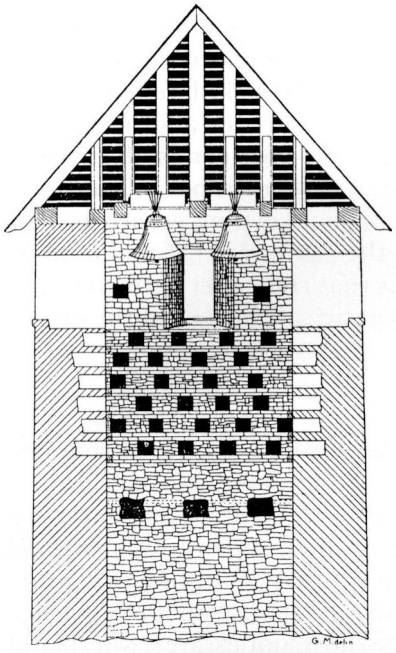

Fig. 2 *(left)*
Vertical section of the tower of Sarnesfield Church, Herefordshire, by George Marshall.
The timbers of the later bell-frame are inserted in the nest-holes, but for clarity this structure is omitted
From the *Transactions of the Woolhope Field Club,* (1904), 263

Fig. 3 *(below)*
The tower of Collingbourne Ducis Church, Wiltshire, showing the flight hole and ledge for the pigeons
Copyright John McCann

Fig. 4
A dovecote in the churchyard of Norton-sub-Hamdon, Somerset.
In this case it is not a priest's dovecote, but belonged to the manor, and was incorporated in the churchyard by a later boundary extension
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holes and flight-holes have been incorporated in the original fabric. For example, there are integral nest-holes in the thirteenth-century tower of Sarnesfield parish church, Herefordshire (Fig. 2), and in the fifteenth-century tower at Collingbourne Ducis, Wiltshire (Fig. 3).[11] Elsewhere, free-standing dovecotes were built near the parsonage, as at Gazeley, Suffolk, or on more distant glebe land, as at Hill Croome, Worcestershire (Fig. 5).[12] By the time of the Dissolution it was generally accepted that only lords of manors and parish priests were entitled to build dovecotes, although this was not defined in law until 1587, as will be reported.

THE EFFECTS OF THE DISSOLUTION

The confiscation of monastic and other religious property by the Crown, and its sale by the Court of Augmentations released enormous tracts of land into secular hands, which have been estimated at one-fifth of the area of England. By the death

Fig. 5
The cruck-framed dovecote at Glebe Farm, Hill Croome, Worcestershire
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of Henry VIII in 1547 two-thirds of this property had been sold off, and the sales continued through the reign of Edward VI.[13] Most of this former religious land was conveyed as intact manors. The new owners tended to exercise all the privileges of lordship, and therefore to assume the right to build a dovecote in any manor, irrespective of whether the religious owners had established one there earlier. Therefore many new dovecotes were built in the generation after the Dissolution as a direct consequence of this major transfer of manorial rights from conservative monastic and clerical institutions to upwardly mobile private owners. As before the Dissolution, dovecotes were still associated with the privileges of lordship. Indeed, that was a large part of their appeal, for many of the lawyers, officials and younger sons of landowning families who became prominent at that time were actively engaged in establishing their new social position.[14] One way of asserting their status as manorial lords was to build a conspicuous dovecote near the manor house.

We have contemporary comment from 1549 and 1577 on the increasing number of dovecotes. In 1549 the Kett rebels in Norfolk vented their wrath on a dovecote newly converted from a chantry chapel by a lawyer, and included in their petition to the King: 'We pray that no man under the degre of a knyghte or esquyer keep a dove house, except it hath byn of an ould aunchyent costume'.[15] As Julian Cornwall has shown, knights and esquires were much less common at that period than they were to become later. In the counties he examined only about half the landowners were of such rank.[16] Most religious houses had owned dovecotes, but certainly not in every manor of their extensive lands. Also, many of the smaller properties which formerly had belonged to chantries and gilds (which were dissolved in 1548) were not intact manors, and did not necessarily carry the rights of lordship.

In 1577 William Harrison's *Historical Description of the whole Islande of Britayne* was published with Holinshed's *Chronicles*. It was the first work in English which attempted to describe the economic condition of the whole country – although Harrison's first-hand knowledge was mainly of southern England. He wrote of pigeons that they were 'now a hurtful fowl by reason of their multitudes, and the number of houses daily erected for their increase, which the boors of the country call in scorn almshouses, and dens of thieves, and such like'.[17]

PIGEONS IN ENGLISH LAW

Pigeons were always a special case in English law. They were not like other domesticated creatures; in a way they were comparable with bees, for both species remained unconfined, while humans exploited their natural behaviour to their own advantage. This similarity must have been apparent in the Middle Ages, for in the illustrations of Books of Hours the dovecote and the beehives are often shown together.[18] In the law of inheritance pigeons were not included with other livestock, but descended with the land; the squabs went to the executor.[19]

When pigeons were at liberty to fly off and feed on other men's land, or to join another flock, to what extent were they the property of the owner of the dovecote from which they came? Pigeons were notoriously fickle birds. If they were seriously disturbed in the dovecote they might desert it *en masse*. Sometimes they left for no

apparent reason; some owners of dovecotes saw it happen several times.[20] In one sense they could be considered as being *ferae naturae*, creatures of a wild disposition, like deer, wildfowl and rabbits. Deer confined within a park were private property, and to kill a deer in a park was a felony; but deer not kept in a park belonged to no one. A landowner had a qualified property in creatures such as wild deer, game birds and rabbits so long as they remained on his land, but the property in them passed to his neighbour when they entered his neighbour's land.[21] Whether pigeons which were unconfined should be regarded as personal property has often been considered in the courts, and it has continued to be questioned until this century. A related question, whether a man could be held responsible for any damage which the pigeons from his dovecote might do, was to become crucially important in the seventeenth century; it was that issue which led to the end of the manorial prerogative.

THE STATUTES AND THE COMMON LAW

This survey covers all the Statutes which mention pigeons, the most significant judgements of the royal courts, and some independent commentaries, both legal and lay, to 1965. It is convenient to arrange the material in chronological order; the contentious issues described above will recur throughout the narrative.

THE STATUTE OF 1324

The earliest Statute which mentioned pigeons was that of 18 Edward II, 'For View of Frankpledge', which instructed the jury of a court leet on its duties. It set out general categories of subject matter which were to be enquired into, such as the alteration of boundaries and the use of fraudulent measures. One of those duties, more specific than most, was 'Of such as take Doves in Winter by Door-falls or other Engines'.[22] At that period Statutes did not usually make new law, but were more concerned to standardise national practice. What can we deduce from this Statute about the custom of the time? In particular, why does the text specify 'in winter'? Did existing custom permit cultivators to trap pigeons in summer, when they might be damaging growing crops, but not in winter, when they could do little harm? The passage remains obscure, but it may be significant that it is the last of over thirty duties listed, and perhaps was inserted as an afterthought.

THE EARLIEST JUDGEMENT, 1374

The earliest recorded judgement of the royal courts concerning pigeons was about a dovecote on a tenancy which had descended to two sisters in common, who both married. The husband of one broke the door open and killed two hundred young doves, valued at forty shillings. The husband of the other sued for trespass and waste, claiming that the defendant had effectively destroyed the flock. Parallels were drawn with two men who sowed a field together, one of whom reaped the whole crop, and with two men who owned an ox jointly, one of whom sold it and took the whole proceeds of sale. The complaint of trespass was upheld, but not the complaint of waste. The defendant had taken all the squabs, the whole usable

output of the dovecote, but as he had not taken any adult birds the flock would replenish itself eventually.[23] The amount of forty shillings is significant, for a case involving less would not have reached the royal courts.[24]

JUDGEMENTS OF 1476 AND 1478

In 1476 a writ came before the Court of Chancery concerning the killing of pigeons which were flying. The court determined that pigeons confined within a dovecote were personal property, because its owner could take them whenever he chose; if anyone else took them by force it was a felony. Pigeons which were free to fly were not personal property, because the owner of the dovecote could not take them at pleasure. Squabs lacked the power to fly, so they came within the former category, pigeons confined within the dovecote. In addition, as the pigeons which were flying carried no marks by which they could be identified the charge of felony was dismissed.[25]

This was followed by another query in 1478, about a case which had been determined seven years earlier. It concerned a man who had forcibly broken into a dovecote and taken twenty young pigeons. The court found that he had been rightly indicted: 'The property of the said pigeons was always in him to whom the dovecote belonged, inasmuch as they could not go out, but he might take them at any time at his pleasure; but it would have been otherwise had he been indicted for taking old pigeons, for the law adjudges them to belong to no person, and the property of them to be in no one; for they go out over all the country, so he could not take them at pleasure'.[26]

This was a clear and logical distinction, but it cannot have pleased lords of manors who held the valuable prerogative of a dovecote. Their pigeons ranged widely over the countryside in search of the seeds which constituted their natural food; they would feed on the seeds of wild plants if sufficiently available, but they might also feed on newly-sown seeds or on cultivated crops unless they were driven off. This judgement determined for all time that killing pigeons which were free to fly was not a felony, but whether it amounted to the lesser offence of larceny was to occupy the attention of legislators and lawyers at intervals for the next four and a half centuries.

While pigeons remained within the demesne anyone who killed them would be guilty of trespass, but what protection did they have while feeding on other parts of the manor? What measures medieval lords took to protect the pigeons from their dovecotes from that time remain obscure, but one assumes that they found less formal means to control the conduct of their tenants. They had no power outside the manor, and could only rely on a general understanding with lords of neighbouring manors to defend their mutual interests.

THE STATUTE OF 1533

Pigeons were not mentioned again in legislation until 1533, and then only incidentally. An Act to reduce the damage caused by rooks, crows and choughs instructed landowners and civil authorities to equip themselves with nets, and to

pay bounties to operators who destroyed these pests. The text added: 'None under the pretence of this Act shall kill pigeons upon the Pain limited by the Laws and Customs of the Realm'.[27]

THE STATUTE OF 1541

Gunpowder had been used in warfare since the fourteenth century, but the use and misuse of small guns first attracted legislation in 1541. The Statute established comprehensive controls on the size, ownership, and use of guns, and authorized severe penalties for using them in the course of poaching. It extended this protection to many kinds of game and wildfowl, but at that date pigeons were not included among the protected birds.[28]

A JUDGEMENT OF 1587

In 1587 the Court of Exchequer considered the case of one James Bond, who had erected a dovecote on land which he leased from the Crown at Thorpe, Surrey. It came before this court because the Exchequer was responsible for preserving the royal revenues and properties. The court sounded various opinions, including that of Lord Burley, the High Treasurer, and concluded unanimously that 'No one could erect a dove-house *de novo* but the lord of the manor, and the parson of the church, and by the ancient law this was inquirable at the leet, among other nuisances'.[29]

A JUDGEMENT OF 1598

In Boulston *v.* Hardy, which came before the Court of Common Pleas in 1598, the main issue was about rabbits from a new warren causing damage to adjacent land. The Court determined that because there was no property in wild creatures there was no redress against the person who allowed them on his land. This was certainly relevant to pigeons. In an associated complaint about a dovecote the principle was re-affirmed that 'None may new-erect a dovecote but the lord of a manor; and if any do it, he may be punished in the leet'. However, the Court determined that no particular person had any right of redress against the owner of the new dovecote; so the plaintiff received no satisfaction in either matter.[30]

THE STATUTE OF 1603

By the time James I acceded to the throne the landowners who made up most of the body of Parliament were concerned to protect their game against the depredations of an increasing population of landless and apparently idle men. In his first year an Act was passed to strengthen the game laws – a miscellaneous collection of Statutes which had been accumulating since the reign of Richard II. Penalties had been in the form of fines, but according to the preamble it was proving impossible to collect fines from 'the vulgar Sort, and Men of small Worth, making a Trade and a Living of the Spoiling and Destroying of the said Game', so more summary penalties were established. The title of the Act mentioned only pheasants, partridges and hares, but the text specified that it applied also to eight kinds of wildfowl, and to pigeons. It became an offence to 'shoot at, kill or destroy [these

creatures] with any gun, Cross-bow, Stone-bow or Long-bow with Setting-dogs and Nets, or with any Manner of Nets, Snares, Engines or Instruments whatsoever'. The offender was to be committed to prison for three months immediately upon conviction, and could obtain his release only by paying twenty shillings to the poor of the parish for every bird killed; or, after one month in prison, by providing sureties to the value of twenty pounds that he would not offend again. These were formidable sums at a time when a man was lucky to earn more than sixpence a day. This Statute effectively circumvented the Chancery decision of 1476 by establishing penalties for shooting at, killing or destroying pigeons, irrespective of whether in common law the birds were personal property.

The Act also gave some limited protection to the owners of dovecotes against the noise of firearms, when used inconsiderately. It authorized persons who kept hawks to be licenced to use shotguns to shoot certain birds for hawks' meat – provided that 'he or they shall not shoot in [*sic*] any Hand-gun or other Gun, within . . . one hundred Paces of any Pigeon-house'. To obtain a licence the person had to enter into recognizances to the sum of twenty pounds, which might be forfeited if a complaint were brought against him.[31]

This section of the Act has been much misreported in the modern literature on dovecotes. Mildred Berkeley wrote of an Act which she wrongly attributed to 1751 (the date of the book where she saw it), but her account can only refer to the Act of 1603. She said that it 'forbids any one to shoot within . . . 100 paces of a pigeon house'.[32] In fact the section mentioned only those who were licenced to use guns for taking hawks' meat. Later writers have repeated her statement without further examination. Pigeons are easily alarmed by sudden loud noise, and might be induced to desert their eggs or to leave the dovecote permanently if disturbed by gunshots, but Parliament has never extended the general protection against the noise of gunfire which Berkeley and her successors have claimed.

THE END OF THE MANORIAL PREROGATIVE: JUDGEMENTS OF 1613 AND 1619

The judgement in Bond's case of 1587 was cited again in 1613 in Prat *v.* Stearn; the issue was whether a dovecote newly erected on freehold land, and stored with pigeons, without the consent of the lord of the manor, was a common nuisance, and therefore within the powers of the court leet. For the first time this principle was questioned in court. The Justices disagreed on whether it was determinable in the court leet, but it was left undecided because the case failed through an important omission in the presentment.[33]

The manorial prerogative was finally brought to an end in 1619 by a judgement in the landmark case of Dewell *v.* Sanders. The court determined 'that the erecting of a dove-cote by a freeholder, who is not lord of the manor, nor owner of the rectory, and replenishing it with doves, is not any nuisance inquirable or punishable in a leet', thus reversing the earlier statement of the law.

What had changed since Bond's case in 1587 was a re-interpretation of the law of nuisance. A court leet had the power to punish a common nuisance, defined as a nuisance to all people, like emitting noxious smoke or obstructing a highway. It

was now held that a dovecote erected without the consent of the lord of the manor could not be a common nuisance, because if it were, every other dovecote would be a common nuisance too. Dovecotes had been built or licenced by the King, and it was pointed out that not even the King could authorize a common nuisance. The court accepted that a dovecote could be a particular nuisance, but only 'to those whose corn they eat, and not to all persons', and that was not a matter for the court leet. This effectively took the building of dovecotes out of the control of the lord of the manor, and left him with no more power in the matter than any other landowner. The court added that 'if those who have not any lands at all should erect dove-houses, and increase the multitude of pigeons to the grievance of the country, it may be enquired before the Justices of Assize'.[34] They may have retained the power to redress such a general grievance, but it is doubtful whether that power was ever employed. At this period there was a tendency to reduce the authority of the manorial courts and to augment that of the royal courts. This case may be seen as part of that transition.

In the course of this case Sir John Dodderidge said: 'If pigeons come upon my land I may kill them, and the owner hath not any remedy'. Despite one dissentient the court agreed, thereby confirming the judgements of 1476-8 that there is no property in pigeons which are free to fly. There was some discussion about how one could kill pigeons without infringing the comprehensive provisions of the Act of 1603, but this was merely academic. The more important issue was that the owner of the dovecote could not assert rights of personal property in the pigeons from it when they were on another man's land.

There are some indications that freeholders who were not lords of manors had begun to build dovecotes on their land some time earlier, particularly on former religious land bought from the Court of Augmentations. The manorial prerogative was re-affirmed in Bond's case in 1587, but there the issue came to court only because Crown land was involved. Where manorial authority was exercised less rigorously those who built dovecotes without an established right may have been left unchallenged. From 1619, when the case of Dewell *v.* Sanders made it clear that it was not a matter for the court leet, freeholders who were lawyers, or who had close links with lawyers, would have been the first to take advantage of the effective change in the common law.

RENEWAL OF THE ACT OF 1603

The Statute of 1603 expired early in the reign of Charles I, but was renewed with many others in 1627, and made perpetual in 1640.[35] It is not clear whether it was invoked during the Commonwealth, but from the accession of Charles II the law disregarded the Interregnum, and assumed that he had acceded to the throne from the death of his father in 1649.[36]

BACON IN 1630

Sir Francis Bacon's *Elements of the Common Laws of England* was published in 1630, four years after his death. In describing the powers of the Hundred Courts it says:

'They may punish those that do stop, straiten or annoy the high wayes [or commit various other offences] or build Pigeon houses; except he be Lord of the Mannor, or Parson of the Church'.[37] Bacon's professional career had ended in 1620 when he was convicted of corruption, and he devoted his later years mainly to writing historical and philosophical works.[38] We cannot know exactly when Bacon wrote this passage, but in view of the judgement in Dewell *v.* Sanders of 1619 it was already out of date by the time the work was published.

WORLIDGE IN 1669

In 1669 the agricultural author John Worlidge described pigeons as 'amongst the greatest Enemies the poor Husbandman meets withal; and the greater because he may not erect a Pigeon-house, whereby to have a share of his own spoils, none but the Rich being permitted so great a privilege'. He condemned the Act of 1603: 'So severe a Law being made to protect these winged Thieves, that a man cannot *suum defendo* encounter with them'. He advocated ways of evading the letter of the Act, for the offence was defined as to 'shoot at, kill or destroy' pigeons. He pointed out that it was not an offence to take other action against marauding pigeons, and advised cultivators to scare them off the land with loud noises, including gunfire if necessary. More ingeniously, he proposed that the husbandman could net them, cut their tail feathers short, and then release them. They would return to the dovecote alive, but because they could not ascend vertically they would then be unable to fly out of the louver.[39] There is no record that his advice was ever tested in court.

THE STATUTE OF 1692

An Act further strengthening the game laws included pigeons with wildfowl and game birds. It gave constables comprehensive powers of search, and if any of these birds was found it placed the onus of proof of honest purchase upon the person found in possession. It authorized forfeiture and a fine of five to twenty shillings per bird, to be divided between the prosecutor and the poor of the parish. The Act included powers of distraint, imprisonment for ten to thirty days, and whipping.[40]

A JUDGEMENT ON TITHES, 1694

It is remarkable that the question of whether pigeons were a tithable product of the land was not settled until 1694. In the case of Badgerley *v.* Wood it was then decided that young pigeons consumed in the household where they were reared were not tithable, but that tithes were due on young pigeons which were sold. Tithes had long been paid on dovecotes, but earlier records do not make clear whether they were assessed on domestic consumption or on the saleable output.[41]

A JUDGEMENT OF 1698

In the case of Arnold *v.* Jefferson of 1698 it was determined that a tenant could not build a dovecote without the consent of the lord of the manor. As determined in Dewell *v.* Sanders, it was not a common nuisance, and it was not punishable in the leet; 'but the nuisance being particular, the lord shall have an action on the case, or

an assise of nuisance, as he may for building a house to the nuisance of his mill'.[42] That is, the nuisance was not to the lord's crops, but to his manorial revenue. Effectively this was the last remnant of the ancient prerogative of the lord of the manor in the matter of dovecotes.

HAWKINS IN 1716

The law on felony and larceny in connection with pigeons was stated by William Hawkins in 1716: 'It seems clear, That a Man can not commit Felony by Taking Deer, Hares, or Conies, in a forest, Chase, or Warren, or old Pigeons being out of the House, &c. But it is agreed, That one may commit Larceny in taking such or any other Creatures *ferae naturae*, if they be fit for Food, and reduced to tameness, and known by him to be so; and it seems the most plausible Opinion, That it is Felony to steal wild Pigeons in a Dove-house shut up, or Hares or Deer in a House, or even in a Park, inclosed in such a manner that the Owner may take them whenever he pleases, without the least Danger of their escaping, in which Case they are as much in his Power as Fish in a Pond, or young Pigeons, or Hawks in a Net, &c. in taking of which, for the like reason, it seems to be agreed, that Felony may be committed . . . the Owner may justify taking another's Hawk which he shall find at his Dove-house, flying at his Pigeons'. It is significant that he was less specific about larceny than about felony, for the common law remained in some doubt about whether shooting pigeons amounted to larceny. He also reported on the issue of common nuisance, which duplicates what has been written above.[43] Hawkins is regarded as so reliable that he can be cited in court. This remained the state of the law until further legislation was enacted in 1761.

THE STATUTE OF 1761

The preamble of this Act stated that its purpose was to amend only that part of the Act of 1603 'as relates to the Preservation of House Doves or Pigeons'. It is the only Act on the Statute Book which is solely concerned with pigeons.

What had changed in the century and a half since the previous Act? First, the ownership of dovecotes had become much more widely dispersed, for by this time many freeholders who were not lords of manors had built dovecotes. Secondly, a new 'fancy' or hobby had developed in England; many gentlemen were keeping the specialized ornamental breeds and carrier pigeons for interest and pleasure. This continued in parallel with, but distinct from, the traditional practice of keeping common pigeons for meat. Exactly when the fancy was first introduced is unknown, but evidently it was well established on the Continent long before it came here. The first books on the subject in English were published in 1735; they described many breeds which had been fully developed elsewhere.[44] These valuable birds were kept in small numbers, usually in lofts erected on the roofs of their owners' houses. This was recognized in the Act, for the text specified that it applied to any 'Dove Cote, Pigeon House, Pigeon Chamber, or any other Place', whereas the Act of 1603 had referred only to Pigeon-houses. It came into force in June 1762, and provided penalties against 'any Person or Persons [who] shall shoot at, with an

Intent to kill, or shall, by any means whatever, kill or take with a wilful Intent to destroy, any House Dove or Pigeon'. The penalty was a fine of twenty shillings for each offence, to be paid to the person who undertook the prosecution; or in default of payment, up to three months' imprisonment with hard labour. Conviction was made easier by reducing the burden of proof: the Act of 1603 had required evidence from two witnesses, sworn before two or more JPs, but under this Act only one witness was required, giving sworn evidence before one JP. Effectively that could be a gamekeeper reporting to his own employer.[45]

BLACKSTONE IN 1762

The authoritative commentator Sir William Blackstone, examining the nature of personal property, wrote that, with other animals, 'doves in a dovehouse . . . are no longer the property of a man, than while they continue in his keeping or actual possession: but if at any time they regain their natural liberty, his property instantly ceases; unless they have *animum revertendi*, which is only to be known by their usual custom of returning . . . The law extends this possession farther than the mere manual occupation; for my tame hawk that is pursuing his quarry in my presence, though he is at liberty to go where he pleases, is nevertheless my property; for he hath *animum revertendi*. So are my pigeons, that are flying at a distance from their home (especially of the carrier kind): . . . [they] remain still in my possession, and I still preserve my qualified property in them. But if they stray without my knowledge, and do not return in the usual manner, it is then lawful for any stranger to take them'. He did not consider other issues concerned with pigeons or dovecotes.[46]

LATER WRITERS

In 1785 Daniel Girton published *The New and Complete Pigeon Fancier*; much of his text was copied from John Moore's *Columbarium* and from an anonymous work, *The Sportsman's Dictionary*, both published in 1735. He wrote: 'Any lord of the manor or freeholder, may build a pigeon-house, or dove-cote, but a tenant cannot do it without the lord's licence. When persons shoot at or kill pigeons within a certain distance of the pigeon-house they are liable to pay a forfeiture'.[47] Girton was a layman writing for other laymen. Although the second sentence is not strictly accurate in law it expressed the general understanding of pigeon-keepers that the Statute of 1603 had conferred some protection against the disturbance caused by gunfire near the dovecote. His text was re-published in undated editions in about 1790 and 1810.

The next publication to deal with the law on pigeons was Loudon's *Encyclopaedia of Agriculture* of 1825, which was quoted at the beginning of this paper. His first sentence accurately cited the Acts of 1603 and 1761. The remainder was copied with minor variations from Girton's less authoritative work of 1785.[48] Three more editions were issued up to Loudon's death in 1843, and another posthumously, but although new legislation on pigeons was enacted in 1827 the passage was repeated in the same form throughout.[49]

THE STATUTE OF 1827

In 1826 Sir Robert Peel introduced a major bill 'to consolidate . . . the whole of the statute law of England relating to all offences against property, connected with theft'; this became the Larceny Act of 1827. Section 33 states: 'If any Person shall unlawfully and wilfully kill, wound, or take any House Dove or Pigeon, under such Circumstances as shall not amount to larceny at Common Law, every such Offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the Value of the Bird, any sum not exceeding Two Pounds'.[50] Like the Act of 1603 this seems designed to circumvent the conclusion in common law that there was no property in pigeons which were free to fly; but by including the words 'unlawfully and wilfully' it allowed a defence to farmers who shot pigeons to protect their crops, rather than for the value of the birds.

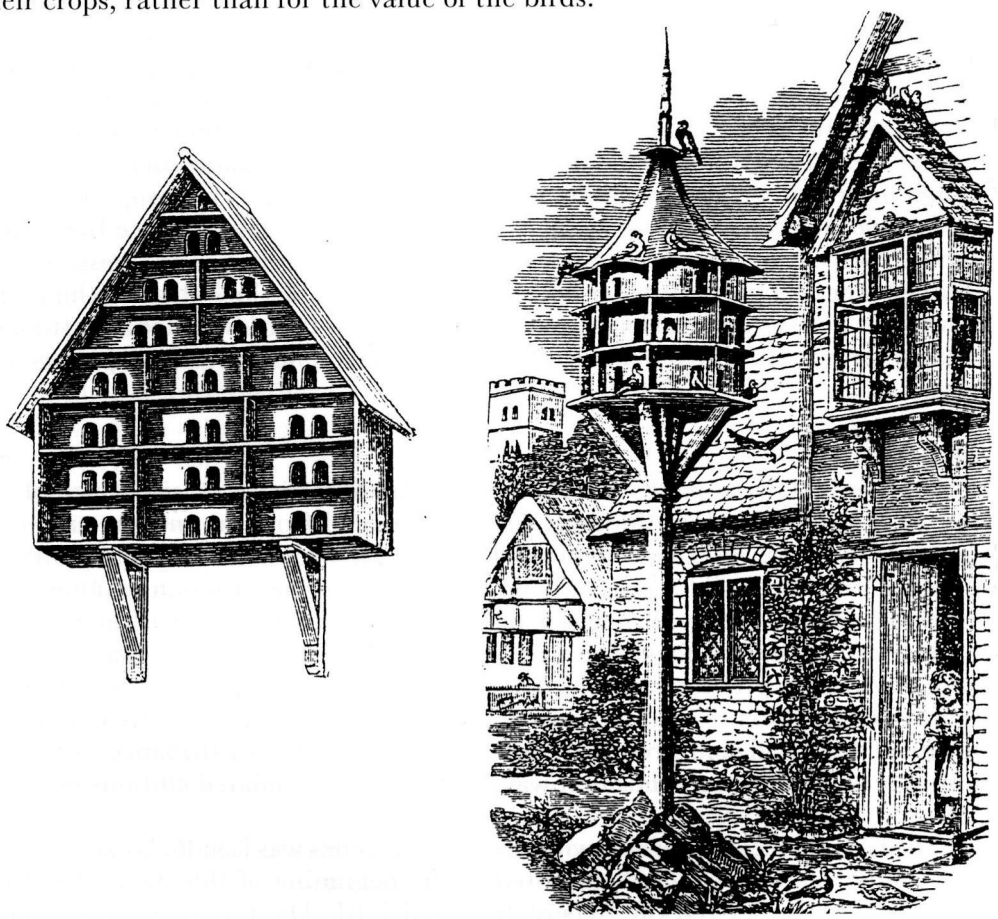

Fig. 6
Pigeon boxes of the kinds recommended by J.C. Loudon in 1825. The case of Rex *v.* Brooks in 1829 evidently concerned a box of the type illustrated at left
From *Cassell's Household Guide,* (1870), 41

ECONOMIC CHANGES FROM 1793

Since the Act of 1761 the attitude of many landowners and farmers towards pigeons had changed greatly. During the French revolutionary wars from 1793 the price of wheat rose to unprecedented levels. Progressive agriculturalists became convinced that pigeons consumed more value in corn than they produced in meat and manure, and they condemned them as uneconomic; in 1808 Charles Vancouver went so far as to describe pigeons as 'voracious and insatiate vermin'. Large-scale pigeon-keeping in the traditional manner declined sharply – but more in some regions than in others. In the great wheat-growing belt of southern England some dovecotes were demolished, and many others were closed to pigeons and converted to secondary uses.[51] Elsewhere in the country, where wheat was less important, pastoral farmers continued to keep pigeons much as before, but they could no longer do so without attracting criticism from other farmers whose crops might be damaged. A common adaptation was to insert a floor in an existing dovecote, retaining the upper part as a pigeon-loft while converting the lower part to a stable, gig-house or other use. Loudon and others described a modified form of pigeon-keeping in which small numbers of birds were kept in special boxes bracketed to walls, or in 'standard boxes' raised on poles (Fig. 6). They were fed in the yard like other poultry to discourage them from ranging over arable land.[52] The inclusion of the section on pigeons in the Act of 1827 recognized how the practice of agriculture had changed since 1761. The small penalty seems designed to discourage owners of shotguns from shooting any pigeon on sight, for some of them were valuable birds, but it stopped short of treating honest farmers as criminals.

A JUDGEMENT OF 1829

The case of Rex *v.* Brooks of 1829 concerned a man who was caught in the act of using a ladder at night to take pigeons from 'a box with holes in the front', mounted high on the wall of a house. His lawyer appealed against his conviction for larceny on the grounds that the pigeons were not confined, and therefore were not personal property. The appeal was dismissed, because 'these pigeons were so far tame that they came home every night to roost in these boxes'; therefore Brooks had been stealing personal property.[53]

THE STATUTE OF 1861, AND SOME LATER JUDGEMENTS

The section quoted from the Act of 1827 was repeated in similar words in another consolidating act, the Larceny Act of 1861.[54] It continued to be invoked (although sometimes unsuccessfully) until recent times. In Taylor *v.* Newman of 1863 it was held that a farmer who shot a pigeon from his neighbour's flock in order to protect his crops was not guilty of larceny. Sir John Dodderidge's statement of 1619 that 'there was no property in such pigeons' was cited as still good in law.[55]

In Horton *v.* Gwynne of 1921 the principle that a farmer was entitled to shoot a pigeon to protect his crops was re-affirmed, even though in this case it concerned a valuable homing pigeon. It was held to be irrelevant whether the farmer knew the difference between a tame bird and a wild one. He would have been guilty

under the Larceny Act of 1861 if he had shot it for any reason other than to protect his crops.[56]

In Farley *v.* Welch of 1929 it was clarified that the word 'take' in the Statute of 1861 was 'intended to apply to an act in the nature of poaching', and that it should not be invoked in other circumstances – as when a pigeon-breeder forcibly reclaimed a racing pigeon which he wrongly believed to be one of his own.[57]

The conclusion seems to be, that the Larceny Act of 1861 may be invoked against anyone who shoots a pigeon in order to convert it to his own use, but not if he shoots it to protect his crops.

HAMPS *v.* DARBY, 1948

One might have thought that at last the law was clear; but in 1948 it was all thrown back into the melting-pot. A farmer fired five shots at tame pigeons which were feeding on his field of peas, killing four and wounding another. This was not a prosecution for larceny, but a civil action. In the county court the owner of the pigeons was awarded damages of £200; the farmer appealed. The case ran for five days, and the law report runs to twenty pages. All the issues mentioned above were brought forward again. Are pigeons *ferae naturae?* Does the owner's right of property continue to operate when the pigeons are feeding on another's land? Is a farmer entitled to kill pigeons which are damaging his crop, or only to drive them off by other means? Blackstone was quoted at length. More significantly, Dewell *v.* Sanders of 1619 was re-considered, for there were two reports of it, a short one in English by Croke, and a longer one in 'law French' by Rolle. Croke's report, which had been considered sufficient until then, was held to be of doubtful authority. The case itself hardly concerns us, because the pigeons involved were bred for racing rather than for meat. However, from a layman's point of view it is instructive to see how insecure the law on pigeons remains after nearly five centuries of discussion.

It is worth quoting from the final paragraphs of the judgement: 'More than one such shot I cannot believe that a busy farmer can be expected to fire; he has, of course, his living to earn and plenty to do without chasing marauding pigeons, however valuable, from one end of his field to another, or paying for labour to scare tame pigeons which are not properly fed at home . . . Farmers cannot be called upon to stand and watch their stock or crops being destroyed while they endeavour to calculate the possibilities which may be put to them at a trial'. Despite this statement which appears to support the farmer, the appeal court found that the county court judge had decided correctly; the pigeon-breeder retained his £200 damages. As Blackstone had said, pigeons bred for their homing behaviour have *animum revertendi*, so they remain the property of the owner of the pigeon-loft wherever they are. One assumes that the organisations representing farmers and pigeon-breeders were content to bear the substantial costs of this case.[58]

MODERN LEGISLATION

The Public Health Act of 1961 authorizes local authorities 'to take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused

by the congregation in any built-up area of house doves or pigeons', and exempts them from the Larceny Act of 1861 while dealing with 'house doves or pigeons which in their belief have no owner'. The London Government Act 1963 clarifies its application in London.[59]

DISCUSSION

This examination of the legal background should change our perception of the historic privileges enjoyed by the owners of dovecotes. First, common law did not confer on the owner of a dovecote any clear proprietorial rights in the pigeons which emerged from it. Secondly, it has often been assumed that pigeons from the dovecote of the lord of the manor were permitted to feed on the crops of villeins and tenants. It now appears that cultivators have long enjoyed the right to protect their crops against marauding pigeons. Even when pigeons were included in the harsh game law of 1603 farmers were still entitled to drive them off cultivated land without killing them.

Many writers have assumed a false parallel with social conditions in France before 1789. R.S. Ferguson, the first antiquarian to draw public attention to the historic value of dovecotes, wrote: 'The swarms of hungry birds which issued from the *colombiers* of the great French nobles and precipitated themselves on the crops of the helpless peasants were one of the causes that promoted the French revolution'.[60] This has been repeated frequently in modern publications about English dovecotes, as if the same applied in England. Perhaps it should be stressed again that the constitutional history of England is quite different from that of France; English law has traditionally recognized that common people have rights which their equivalents in France have not possessed.

We can assume that a landowner (particularly if he was also lord of the manor) was always able to exert some control over what his tenants did on his land. He could ensure that the pigeons from his dovecote would remain unharmed while they fed within his estate. A neighbouring landowner would exert similar control within his estate. Since individual pigeons were not identifiable, each extended his protection to all pigeons seen on his land, even if some of them were likely to have come from the dovecote of a neighbour. While most landowners were practising pigeon-keeping on a major scale it was generally accepted that the birds would feed in various places on different days, but that the balance of loss and gain worked out more or less equally between adjacent landowners. That balance would be seriously upset only if one landowner kept many more pigeons than his land could support, thereby obliging them to feed disproportionately on the land of his neighbours.

Pigeons are naturally gregarious, and when there were many flocks about it was always possible that some pigeons from one dovecote – or even the whole flock – might join the flock from another. The only ways in which this tendency could be controlled were for the owner of each dovecote to provide the best possible conditions for his own birds, and to ensure that there was not enough spare capacity in his dovecote to accommodate a large influx from those of his neighbours. There was a

rough relationship between the number of nesting places provided in a dovecote and the area of land on which it was situated. In particular, modern observation suggests that there was a commonly accepted limit of one thousand nesting places, for many surviving dovecotes have just below that number, while the few which exceed it do so by a substantial margin. Was there a general understanding that the only dovecotes which might exceed that capacity were those which were anciently established, or those which belonged to the most powerful landowners?[61] No record of this limitation has been found in legal works, but the countryside has always had its unwritten laws and standards, and this may have been part of the rural culture.

When pigeon-keeping on the traditional scale declined during the French revolutionary wars, those farmers who continued to keep a limited flock had to reduce the number of nesting places in their dovecotes to prevent other pigeons from moving in. As already noted, one way of doing that was by inserting a floor.[62] Even where the situation of the dovecote made conversion to a secondary use impracticable, it is clear that pigeon-keepers deliberately reduced the number of nesting places at that time. The evidence of this change of practice can still be seen in those dovecotes which have not been converted to other use. For example, at the octagonal dovecote at Kirstead Hall, Norfolk, the brick nest-boxes have been removed from five walls, reducing the number from over 700 to 224. This is not due to decay or dilapidation, for the truncated ends of the tiers have been neatly closed off with later brickwork.[63] At Hedingham Castle, Essex, where the dovecote is situated on a steep slope distant from the house, it was unsuitable for any other use. In the early nineteenth century the nest-boxes were wholly rebuilt, replacing over 1,200 original nest-boxes by 462 new ones.[64] As there, some owners took the opportunity to improve the accommodation for the smaller number of birds which remained, rebuilding the nest-boxes in more sympathetic materials or to a larger size.[65]

The Act of 1827 seems to recognize this change of practice. It extended the protection of the criminal law to adult pigeons which were not confined, and which therefore might be claimed to be *ferae naturae*; but it offset this by allowing a defence to farmers who shot pigeons to protect their crops. By inference, it became the responsibility of each pigeon-keeper to restrict the number of birds, and to feed them sufficiently – particularly at times when growing crops were most vulnerable – so that they would not damage the crops of his neighbours.

The rapid decline in pigeon-keeping in most areas from that time was as much a response to changing law as to changing economic conditions. When one landowner withdrew his protection from pigeons feeding on his land, the pigeons from his neighbour's dovecote became vulnerable too. There must have been many landowners and farmers who rejected the 'progressive' advice that keeping pigeons was incompatible with good husbandry, or who for various reasons wanted to continue to keep them, but they could not do so when their birds were likely to be shot when they crossed the boundary on to a neighbour's land.

Pigeon-keeping could only continue on anything like the traditional scale in those districts where the major activity of farmers was raising livestock. We have

one report that as late as 1888 'Pigeons play a quite appreciable part in the economy of most Nottinghamshire farms . . . large quantities of birds are often kept'.[66] However, Nottinghamshire had long been exceptional in the number of pigeons kept. The Reverend Daniel wrote in 1801: 'The greatest quantity [of pigeons] kept in England is about Retford in Nottinghamshire'.[67] Even if the scale of pigeon-keeping there declined during the nineteenth century it would still have seemed large by comparison with other regions. Reports from other parts of the country indicate that most dovecotes had fallen into disuse by the 1840s, and that by the 1880s those which had not been converted to secondary uses were derelict. Many others had been demolished within living memory.[68]

In any general tendency there are exception. In 1846 the naturalist Charles Waterton built a new pigeon-tower in his park at Walton Hall, Yorkshire, but he was exceptional in other ways; he was an early conserver of wildlife, and he would not allow guns to be used in his park.[69] Some large dovecotes were built in East Anglia in the period 1825-40, but they were situated in the parks of large estates where the pigeons were not at risk from farmers' shotguns.[70] By the 1880s and 1890s, when antiquarians first began to take notice of dovecotes as buildings of historic interest, the practice of keeping pigeons for meat had ceased to be part of the common culture of the countryside. Sometimes their surviving features were misreported or misunderstood. For instance, Ferguson wrote that at Penrith a dovecote was demolished in 1887 to make a new road: 'So utterly had its use been forgotten, that when it was cut through, and the interior exposed, the neighbours took the *boulins* to be wine binns'. He could not explain the use of the platform he observed on the axis of a *potence* at Wreay Hall, Cumberland, nor the inclined ledges outside a dovecote at Corby Castle, which he wrongly assumed were too steep for pigeons to perch on.[71] When Arthur O. Cooke wrote a popular book about dovecotes in 1920 he repeated the confused explanations of late nineteenth-century antiquarians, although an examination of much earlier sources would have clarified the traditional practice of keeping pigeons for meat.[72]

In the main issue with which this paper began, we are now able to date the ending of the ancient manorial prerogative with some precision. It was asserted in court in 1587, 1598 and 1613 (although it was not the main issue in the last two cases). Freeholders first obtained the right to erect and stock dovecotes, even without the lord's licence, in 1619. The lord's right to control the building of dovecotes by his tenants was successfully asserted in 1698, but it finally withered away in the nineteenth century, owing more to changes in agricultural practice and tenure than to any change in the law. Tenants who wished to keep pigeons had to restrict the size of their flocks to the number they could feed at home, for their birds were likely to be shot if they fed on other land. The right to erect a dovecote had ceased to be a matter worth contesting in law; the shotgun was more effective than the diminishing powers of the court leet. In the early nineteenth century it became common to design a pigeon-loft in the gable of a new barn, granary or stable range, as at Hall Farm, Weatheroak, Wythall, Worcestershire (Fig. 7), or to insert a pigeon-loft in an existing building.[73] For the historian of farm buildings in England

Fig. 7
A pigeon-loft in the gable of a stable range at Hall Farm, Weatheroak, Wythall, Worcestershire. The stone plaque is inscribed 1829
Copyright John McCann

there is little to study after the middle of the nineteenth century except these lightly-built pigeon-lofts in other buildings.

It is instructive to explore the gradual progression by which the perception of dovecotes and pigeons has changed through the centuries. In the Middle Ages they were regarded as valuable perquisites of the manor, and they became strongly associated with high social status. In 1541 pigeons were omitted from legislation controlling the use of guns, but from 1603 they were protected with all the severity of the game laws. In 1761 they were given the protection of a special Act of Parliament. In the French revolutionary wars progressive farmers turned against the keeping of pigeons on the earlier large scale, but small-scale pigeon-keeping continued; in 1827 and 1861 pigeons were still sufficiently important to require special clauses in more general statutes. Dovecotes attracted the attention of antiquarians only from 1887 (Ferguson's first paper), and they were actively conserved as historic buildings only from 1905, when Mildred Berkeley pleaded the case in influential articles and lectures.[74] Some of the earlier ones have been

scheduled as Ancient Monuments.[75] They are rarely omitted from the schedules of Listed Buildings except when they have been altered too extensively. One of the criteria for Listing distinguishes sharply between buildings earlier or later than 1840; a few may fall just outside this cut-off point, or in the absence of firm information may be deemed to be too late in date.[76]

Twentieth-century legislation is concerned with pigeons only as a hazard to public health. The racing of homing pigeons has become a thriving sport, but today (despite the case in 1948) anyone who keeps pigeons can expect to lose some to farmers with shotguns. It would be almost impossible to keep pigeons for meat in England now, but the practice continues in other European countries where agricultural conditions are different.[77]

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64. McCann, J., 'The Dovecote at Hedingham Castle', *Essex Archaeology and History*, 28 (1997), 294-8.
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66. Cooke, F.I., 'Report on the Farm Prize Competition in Nottinghamshire and Lincolnshire', *Journal of the Royal Agricultural Society*, 24 (second series), (1888), 534.
67. Daniel, W.B., *Rural Sports*, (London, 1801), 2, 498. Robert Lowe made a similar observation in *General View of the Agriculture of the County of Nottingham*, (London, 1798), 132.
68. Ferguson, *op. cit.*, 413, 415-6, 422-32; Watkins, A., 'Herefordshire Pigeon Houses', *Transactions of the Woolhope Naturalists' Field Club*, (1890), 21-2; McCann, J., *The Dovecotes of Suffolk*, (Hitcham, 1998), 120.
69. Waterton, C., *Essays on Natural History*, Moore, N., ed., (London, 1871), 1-136.
70. Examples in Suffolk include one at Letheringham built in 1829, with over 500 nest-boxes, and one at Cockfield Hall, Yoxford, built about 1837, with over 600. They are described and illustrated in McCann, J., *The Dovecotes of Suffolk*, (Hitcham, 1998), 74-6, 81-4.
71. Ferguson, *op. cit.*, 424, 431, 434.
72. Cooke, A.O., *A Book of Dovecotes*, (London and Edinburgh, 1920). Some of his propositions were critically examined in McCann, (1991), *op. cit.*
73. Both types are described and illustrated in Peters, *op. cit.*, 204-6, and Figures 5, 7, 16, 30.
74. Berkeley, *op. cit.*, 349. Much of the content was repeated in *Home Counties Magazine*, 8 (1906), 235-40, which would have reached a wider readership. In addition she lectured widely, pleading the case for the conservation of historic dovecotes.
75. Examples in Suffolk include one in a private garden at Mildenhall, and the Abbey dovecote at Bury St. Edmunds, both medieval. McCann, J., *The Dovecotes of Suffolk*, (Hitcham, 1998) 85-90.

76. For example, a brick dovecote at Hitcham House, Hitcham, Suffolk, is unlisted, perhaps because on examination it was thought to be too late in date. More recent information indicates that it was designed by James Spiller, a pupil of Sir John Soane, in 1814. McCann, J., *The Dovecotes of Suffolk*, (Hitcham, 1998), 76-8.
77. In Spain many dovecotes have been built this century, of modern materials. Some of them are still in economic use.