

a *locus classicus*: "But Brian, chief justice, said that his opinion hath always been, and ever shall be, that if such tenant by custom paying his services be ejected by the lord, he shall have an action of trespass against him, H. 21 Ed. IV. And so was the opinion of Danby, chief justice, in 7 Ed. IV. For he saith that tenant by the custom is as well inheritor to have his land according to the custom, as he which hath a freehold at the common law." But it is significant that this passage does not appear either in an edition of Littleton, printed about the year of his death, or in the issues of Pynson, in 1516 and 1525. It occurs for the first time in the edition of Redmayne, in 1530. What this would seem to indicate is, that the point of law was even in 1530 not yet absolutely determined. We may fairly conjecture that the editor of that year shared in the general indignation which the evictions excited, and that he disinterred a couple of forgotten dicta half a century old, and gave them a place in what had become an established text-book. It does *not* follow from their appearing where they are, that during all that half century these dicta had been well-settled law. The very form of Brian's opinion—which, it will be noticed, is ascribed to as late a date as 1482, and concerns what we should regard as the most extreme display of arbitrary power, the ejectment of an actual tenant—marks it as personal and as consciously opposed to a general belief: "his opinion hath always been and ever shall be."¹

Some light may be thrown on these utterances of Yorkist judges by a consideration of the position of the Yorkist government. The Lancastrian rule had received the support of the landed gentry: the Yorkists were the party of the towns and of the lower classes. When we find that the precisely similar eviction of peasants which went on in many parts of Germany in the sixteenth century was

¹ In the law-French original; "Mes Brian chiefe justice dit, que son opinion ad tous foits este, et enquez serra, si tiel tenant per le custome, etc."—Co. Litt., 60 b.