

## *Notes and Documents*

### *The Law of Breteuil*

THE question how far foreign examples influenced English municipal law is one that has interested students for many years : in her well-known articles on the Laws of Breteuil in this Review <sup>1</sup> Miss Bateson has taken up the position that many of the smaller towns in England, Wales, and Ireland were very greatly influenced by the customs of the obscure Norman bourg of Breteuil : in concluding the essay on Foreign Parallels in my *British Borough Charters* I ventured an opinion that English municipal law was more advanced than that of the Continent. The two positions are not necessarily inconsistent, as it may have been that English municipalities adopted foreign customs and improved on them ; but the publication of Dr. Hemmeon's book on *Burgage Tenure in Medieval England*, with its criticism of some of the clauses in Miss Bateson's list of the customs of Breteuil, reopens the whole question, and calls for a re-examination of the evidence.

First, however, it should be noticed that the influence of one borough on another can be established in three ways : by a direct grant of the customs and privileges of the exemplar, or by the grant to one borough of a charter copied from that of another borough, or by the inclusion in the charter or custumal of one or more clauses that are found in an earlier charter. But with regard to the second method, it will often be found that the derived charter differs considerably from its exemplar : thus in 1200 the burgesses of Cambridge paid a fine of 250 marks that they might have a charter according to the tenor of the charter of Gloucester ; <sup>2</sup> but the charter which they obtained contained no mention of the liberties of Gloucester, and was a copy of the Gloucester charter of 1200, with one additional clause and with the omission of three clauses which were contained in the Gloucester charter, which, in its turn, was a modified copy of the London charter of 1155. Examination of the British municipal charters, especially those of the thirteenth century, emphasizes their patchwork character, of which a good example is the Hereford charter of 1215 ; of its eight clauses, two were

<sup>1</sup> Vols. xv, xvi.

<sup>2</sup> *Rot. de Oblatis*, 99.

taken from a Dunwich charter of the same year, one from the Oxford charter of 1156, a fourth is based on a similar clause in a Dunwich charter of 1200, and a fifth is repeated from a charter granted to Hereford itself in 1189.<sup>3</sup> In its turn, this Hereford charter became the foundation of the charters to fifteen or sixteen boroughs in North Wales and also of those to Berwick-on-Tweed and Drogheda.

We may proceed to consider the evidence relating to the laws of Breteuil, which is threefold: (A) the statements of Domesday Book, (B) the customs of those boroughs whose customs are professedly based on those of Breteuil, whether by direct grant or otherwise, (C) the customs of those boroughs whose charters or customals contain any clause that can be proved to be distinctively Bretollian.

(A) The statements of Domesday Book are very precise; of Rhuddlan it says:

Ipsis Burgensibus annuerunt leges et consuetudines quae sunt in Hereford et in Breuill, scilicet quod per totum annum de aliqua forisfactura non dabunt nisi xii denarios, preter homicidium et furtum et Heinfar precognitam.<sup>4</sup>

The Hereford record runs:

Rex vero habebat in suo dominio tres forisfacturas, hoc est pacem suam infractam, et heinfaram et forestellum. Quicunque horum unum fecisset, emendabat e solidis regi cuiuscunque homo fuisset.

Modo habet rex civitatem Hereford in dominio et anglici burgenses ibi manentes habent suas priores consuetudines. Francigene vero burgenses habent quietas per xii denarios omnes forisfacturas suas preter tres supradictas.<sup>5</sup>

Here, then, we have one indubitable Bretollian custom, the limitation of the amercement to 12*d.* for all offences, with certain specified exceptions. Where this is found, Bretollian influence can be regarded as proved; where it is wanting, other evidence must be sought. But the adoption of this criterion rules out the use of one of the authorities on which Miss Bateson most relies, the Verneuil charters, for these charters, instead of providing for one general amercement, with certain exceptions, as can be found at Soissons<sup>6</sup> and Orleans,<sup>7</sup> set forth a long schedule of offences with their appropriate penalties, which can be abstracted as follows:

§ 5. Discord and affray between burgesses: for first offence a fine of 12*d.*, but if there were bloodshed, a fine of 10*s.* 9*d.*; for second offence, a fine of 60 livres or loss of fist.

<sup>3</sup> *British Borough Charters*, ch. xiv.

<sup>4</sup> *Domesday Book*, i. 289 a 2.

<sup>5</sup> *Ibid.*, 179 a 1.

<sup>6</sup> *Ordonnances des Rois de la Troisième Race*, xi. 219.

<sup>7</sup> *Ibid.*, p. 227. The limits were 5 sous and 60 sous respectively.

§ 6. For discord and affray on days of pleas or markets, a fine of 60*d.* of Mantens.

§ 18. For assault on the pretor during pleas, a fine of 12*d.*

§ 19. Neglect to answer pretor's summons, a fine of 12*d.*

§ 20. Assault in the presence of the pretor during pleas, a fine of 60 livres or loss of fist.

§ 21. Assault on a man in his own house, a like penalty.

§ 22. Seizure of land or goods of another, fine 12*d.*

§ 23. Seizure of roads or boundaries, a fine of 60 sous.<sup>8</sup>

It is obvious that a nicely regulated scale of offences and penalties like the above is very different from the simple provision limiting the amercement to a definite sum in all cases, with a few exceptions, and that in this point the Verneuil charters differ from the law of Breteuil. Similarly we shall decline to find traces of the influence of Breteuil in charters providing the shilling amercement for specified offences only, and not as a general rule, as Manchester, Salford, and Stockport.<sup>9</sup>

(b) Miss Bateson gives a list of eighteen boroughs whose customs, whether by direct grant or otherwise, were based on the laws of Breteuil—Hereford, Rhuddlan, Shrewsbury, Netherweare, Bideford, Drogheda (Meath), Drogheda (Louth), Rathmore, Ludlow, Dungarvan, Chipping Sodbury, Lichfield, Ellesmere, Burford (Salop), Ruyton, Welshpool (with its derivative, Llanvyllin), and Preston. To these she adds eight suspected cases—Stratford-on-Avon, Trim, Kells (Meath), Duleek, Old Leighlin, Cashel, Kilmeaden, and Kilmaclenan—all of which I am prepared to accept.

(c) Prior to 1216 there were seven boroughs whose charters, although they contained no reference to Breteuil, were nevertheless influenced by the laws of that town, as is shown by their incorporation of a clause limiting the amercement to 12*d.* for all offences with certain exceptions—Pembroke, Swansea, Coventry, Okehampton, Haverfordwest, Frodsham, and Leek. At Bideford, where there was an express grant of the laws of Breteuil, the amercement was limited to 6*d.* for all offences, and the same limit is found at Bradninch and Lostwithiel, and therefore these two may be added to the former seven.

When we examine the charters and custumals contained in the last two classes, we find ourselves hampered by the possibility that these documents may be of a patchwork nature: in fact, the first four clauses of the Preston custumal are verbally the same as the corresponding clauses in the Hereford charter of 1215, and of them one clause is taken from the Oxford charter of 1156 and the others from the Dunwich charters.

In vol. xv of this Review, pp. 754–7, Miss Bateson printed

<sup>8</sup> *Ordonnances des Rois de la Troisième Race*, iv. 639–40.

<sup>9</sup> Tait, *Medieval Manchester*, pp. 79, 86, 89.

her reconstruction of the laws of Breteuil: let us print here a list of the short titles of each clause in her draft, adding to it the evidence that can be adduced for each clause, and differentiating this evidence into classes B and C (as above), and providing also further evidence showing where similar clauses are found in the charters of (D) the hundredal boroughs of Domesday, (E) other British boroughs, and (F) the towns of northern France.<sup>10</sup>

1. Rent of the burgage to be 12d.<sup>11</sup>

B.	C.	D.	E.	F.
Drogheda	Swansea		Cardiff	Verneuil (i. 3)
(Meath)	Okehampton		Tewkesbury	Beaumont-en-
Rathmore	Frodsham		Pontefract	Argonne (1)
Bideford	Leek		Swords	Beaumont-sur-
Stratford-			Burton-on-Trent	Oise (24)
on-Avon			Walsall	Charot (7)
			Wells	
			Ayr	
			Kilkenny	
			Kells (in Kilkenny)	
			Inistioge	

2. Area of burgages.<sup>12</sup>

B.	C.	D.	E.	F.
Preston	Swansea		Burton-on-Trent	
Stratford-on-Avon				
Drogheda (M.)				

3. Divided burgages.<sup>13</sup>

B.	C.	D.	E.	F.
			Cardiff	Verneuil (ii. 1)
			Tewkesbury	
			Pontefract	

4. Admission of burgesses at court.<sup>14</sup>

B.	C.	D.	E.	F.
Preston	Haverfordwest		Pontefract	Verneuil
Hereford				
Bideford				

<sup>10</sup> The evidence for the British examples of the clauses in the draft *custumal* are to be found either in Miss Bateson's articles, or in the pages of my *British Borough Charters*, cited in footnotes, and I have added a few references to her *Borough Customs* for evidence which is not found elsewhere. Except those which contain specific grants of the laws of Breteuil, I have quoted no charters or *customals* later than 1216: Miss Bateson refers to the charters to Carmarthen and Laugharne, which are both later than that date, and are copied from one of the Haverfordwest charters. The authorities for the French charters are given on pp. cvi and cvii of my book, and the figures in parentheses denote the particular clause that is quoted.

<sup>11</sup> *British Borough Charters*, 46-50.

<sup>12</sup> *Ibid.*, 51.

<sup>13</sup> *Ibid.*, 102.

<sup>14</sup> *Ibid.*, 111.

5. No external pleas.<sup>15</sup>

B.	C.	D.	E.	F.
Hereford	Haverford-	London	Newcastle-	Verneuil (i. 3)
	west	Cambridge	upon-Tyne	Amiens (1190, 34)
	Swansea	Leicester	Bury St. Ed-	Rouen (1150, 6)
	Pembroke	Oxford	munds	Lorris (1155, 8)
	Coventry	Bristol	Truro	Beauvais (1183, 16)
	Okehampton	Bedford	Cardiff	Roye (21, 29)
	Lostwithiel	Marlborough,	Egremont	Beaumont-en-
		&c.	Eynsham, &c.	Argonne (25), &c.

6. Military expedition to return the same day.<sup>16</sup>

B.	C.	D.	E.	F.
Preston	Haverfordwest			Lorris (1155, 3)
	Swansea			Sées (7)
	Pembroke			Beaumont-en-
				Argonne (54), &c. <sup>17</sup>

7. No arrest if bail can be found.<sup>18</sup>

B.	C.	D.	E.	F.
Preston	Haverfordwest		Kells (Kil-	Verneuil (ii. 9)
Welshpool	Swansea		kenny)	Lorris (1155, 16)
				Bourges (1181, 3)
				Poitiers (3), &c.

8. Possession for year and day.<sup>19</sup>

B.	C.	D.	E.	F.
Preston	Haverford-	London <sup>20</sup>	Newcastle-	St. Omer (1128, 24)
	west	Lincoln	upon-Tyne	Beauvais (1182, 17)
	Pembroke	Nottingham	Bury St.	Chaumont (1182, 10)
			Edmunds	Noyon (1181, 13)
			Pontefract	Rheims (5)
			Egremont	Pontoise (11)
				Beaumont-en-
				Argonne (24)

9. Freedom by year and day.<sup>21</sup>

B.	C.	D.	E.	F.
Preston	Pembroke	Lincoln	Newcastle-	Lorris (1155, 8)
Hereford <sup>22</sup>	Haverford-	Nottingham	upon-Tyne	Roye (1183, 3)
Ruyton	west	Dunwich	Egremont	Arras (39)
Welshpool				Braye (12)

<sup>15</sup> *British Borough Charters*, 115-21.<sup>16</sup> *Ibid.*, 89.<sup>17</sup> The Verneuil custom provides for the attendance of the burgesses when the king is actually serving, and it would seem that, so long as the king was present, there was no limit to the distance to which they were obliged to go: *British Borough Charters*, p. cxi.<sup>18</sup> *Ibid.*, 140.<sup>19</sup> *Ibid.*, 71.<sup>20</sup> *Borough Customs*, ii. 89.<sup>21</sup> *British Borough Charters*, 103.<sup>22</sup> The Hereford clause is taken from the Dunwich charter.

10. Building burgages.<sup>23</sup>

B.	C.	D.	E.	F.
Preston	Haverfordwest		Egremont	
Hereford				

11. Dues on sales.<sup>24</sup>

B.	C.	D.	E.	F.
Preston			Pontefract	Beaumont-en-
			Whitby	Argonne (10)
			Egremont	Beaumont-sur-
			Eynsham	Oise (25)
				Verneuil (ii. 34)

12. Liberty to sell burgages.<sup>25</sup>

B.	C.	D.	E.	F.
Bideford	Swansea	Leicester	Newcastle-	Étampes
Rhuddlan	Haverford-	Dunwich	upon-Tyne	(1179, 1)
Hereford <sup>26</sup>	west	Northamp-	Burford	Beaumont-en-
	Leek	ton <sup>27</sup>	(Oxon)	Argonne (2)
	Lostwithiel	Torksey <sup>27</sup>	Wells	
	Okehampton		Cardiff	
	Bradninch		Egremont	
			Eynsham, &c	

13. Kin's pre-emption allowed.<sup>28</sup>

B.	C.	D.	E.	F.
Preston		London <sup>29</sup>	Bury St. Edmunds	
		Northampton <sup>29</sup>	Cardiff	
		Lincoln <sup>29</sup>	Tewkesbury	

## 14. Shilling amercement for assault without bloodshed.

B.	C.	D.	E.	F.
Preston				Verneuil

## 15. Assault with bloodshed. Payment of leech fee.

B.	C.	D.	E.	F.
Preston				Verneuil
				Laon

16. (a) Purgation *sola manu*.

B.	C.	D.	E.	F.
Preston				Verneuil

Other French charters allow purgation *sola manu* if the accuser has no witnesses, e.g. Lorris (32), Amiens (30), Beaumont-en-Argonne (15).

<sup>23</sup> *British Borough Charters*, 50.<sup>24</sup> *Ibid.*, 64.<sup>25</sup> *Ibid.*, ii. 90-2.<sup>26</sup> *Borough Customs*, ii. 61-3.<sup>27</sup> *Ibid.*, 70.<sup>28</sup> *Borough Customs*, ii. 90.<sup>29</sup> *British Borough Charters*, 69.

(b) Purgation *tertia manu*.<sup>30</sup>

B.	C.	D.	E.	F.
Preston			Pontefract	Verneuil

17. (a) The amercement limited to 12*d.* for all offences, with specified exceptions.<sup>31</sup>

B.	C.	D.	E.	F.
Preston	Pembroke			
Hereford	Swansea			
Rhuddlan	Coventry			
Drogheda (L.)	Haverfordwest			
	Frodsham			
	Leek			
	Okehampton			

(b) A like limitation to 6*d.*

B.	C.	D.	E.	F.
Bideford	Lostwithiel			
	Bradninch			

18. Loss of fist for assault on reeve.

B.	C.	D.	E.	F.
Preston				Verneuil

The Hereford custumal says that this penalty was abolished in that city during the reign of William I; but the Montgomery copy gives the name of Edward II instead of William I.<sup>32</sup>

19. Delivery of debtor's house to creditor.

B.	C.	D.	E.	F.
				Verneuil

20. Demolition of house for arrears of rent or debt unpaid.

B.	C.	D.	E.	F.
Preston				

21. No summons on market day.

B.	C.	D.	E.	F.
Preston				Verneuil

At Nottingham, distraint,<sup>33</sup> and at Étampes, arrest, were forbidden on market day.

22. Burgess excused attendance on magistrate after sunset.

B.	C.	D.	E.	F.
Preston				Verneuil
				St. Quentin (16)

<sup>30</sup> *British Borough Charters*, 138.

<sup>32</sup> *Borough Customs*, ii. 25.

<sup>31</sup> *Ibid.*, 153.

<sup>33</sup> *British Borough Charters*, 164.

23. Wife and children to succeed to chattels of intestate.<sup>34</sup>

B.	C.	D.	E.	F.
Preston	Okehampton		Cardiff Eynsham	

The clause in the Haverfordwest charter of 19 Edw. I (quoted by Miss Bateson) first appears in English charters about 1257.

24. Liberty of marriage.<sup>35</sup>

B.	C.	D.	E.	F.
Preston	Okehampton Lostwithiel	Bristol Dunwich Marlborough	Tewkesbury Kilkenny	Laon (18) Bourges (8) Caen Poitiers

25. Limitation of lord's credit.<sup>36</sup>

## (a) Forty days.

B.	C.	D.	E.	F.
Preston	Bradninch		Egremont Kilkenny Kells (K.)	

## (b) One quarter.

B.	C.	D.	E.	F.
Trim <sup>37</sup>				Soissons, 1081 (1)

## (c) Till security is given.

B.	C.	D.	E.	F.
	Coventry			

26. Leave to take wood from forest.<sup>38</sup> This clause is so common that it is needless to give examples.

27. Freedom from toll in lordship.<sup>39</sup>

B.	C.	D.	E.	F.
Bideford	Haverfordwest			

This is one of the commonest clauses in all British charters granted by mesne lords.

28. A clause fixing multure.<sup>40</sup>

B.	C.	D.	E.	F.
Preston	Haverfordwest		Egremont Elvet	Beaumont-en-Argonne (6)

29. Liberty of ovens.<sup>41</sup>

B.	C.	D.	E.	F.
Bideford	Haverfordwest		Newcastle-upon-Tyne Cardiff Tewkesbury	Verneuil (i. 9)

<sup>34</sup> *Ibid.*, 74.<sup>35</sup> *Ibid.*, 87.<sup>36</sup> *Ibid.*, 82.<sup>40</sup> *Ibid.*, 96.<sup>38</sup> *Ibid.*, 76.<sup>37</sup> *Ibid.*, 235.<sup>39</sup> *Ibid.*, 191.<sup>41</sup> *Ibid.*, 96.

30. Liberty to take toll.<sup>42</sup>

B.	C.	D.	E.	F.
Preston				Verneuil

This liberty was implied in the grant of a market and must have been very common.

To Miss Bateson's thirty clauses there are two others that may be added with more evidence than many of those that she has included.

31. The relief on sale or succession to a burgage is limited to 12*d.*<sup>43</sup>

B.	C.	D.	E.	F.
Bideford	Okehampton		Kells	
Hereford	Lostwithiel			
	Bradninch			
	Haverfordwest			

32. From the *Abbreviatio Placitorum* <sup>44</sup> we learn that at Lichfield it was successfully pleaded that by the law of Breteuil the assize *mortis antecessoris* could not be held in the city.

The evidence for these thirty-two clauses will repay careful consideration : one (17) is proved to be Bretollian by the evidence of Domesday, and a second (32) by that of the *Abbreviatio Placitorum* ; a third (6) is found only in those boroughs whose customs are avowedly based on the laws of Breteuil or contain the twelve-penny or sixpenny amercement ; a fourth and a fifth (7, 31) would fall into the same class as the third but that they are also found at Kells (co. Kilkenny). Of the remainder, one (19) is found only at Verneuil, six and a half (14, 15, 16*a*, 18, 20, 21, 22) are found only at Preston or at Preston and Verneuil, leaving nineteen and a half which are common to two classes of boroughs ; on the one hand, those whose customs are either avowedly based on those of Breteuil or show indubitable signs of Bretollian influence, and, on the other hand, those whose charters do not contain the indubitable Bretollian clauses. It has been noticed that of these thirty-two clauses six and a half are found only at Preston or at Preston and Verneuil ; it is hard to discover any reason why Miss Bateson should select these six as Bretollian rather than any of the other clauses in the Preston customal which are not found elsewhere in England, e.g. clause 26, dealing with fires in kilns ; 41, penalties for coining ; 45, excusing the burgess from a duel with a hired champion ; and 48, the *captio per nasum*. No. 45 can be paralleled at Étampes 1179 (29), Rouen 1150 (6), and Amiens 1190 (17).

In dealing with the common clauses, that is, with those that

<sup>42</sup> *British Borough Charters*, 176.

<sup>43</sup> *Ibid.*, 76.

<sup>44</sup> p. 102, quoted *ante*, xv. 315.

are common to Bretollian and non-Bretollian documents, what we have learnt of the patchwork character of many charters and custumals will save us from making two unwarranted assumptions. On the one hand, we shall avoid the assumption that because these clauses appear in Bretollian documents they are indubitable signs of Bretollian influence; on the other hand, we shall be equally on our guard against the assumption that, because they are found in non-Bretollian documents, they are indubitable signs of non-Bretollian influence. And these warnings are the more necessary because Miss Bateson and her followers treat the shilling rent as indubitable evidence of Bretollian influence: certainly it is found in three of the nine charters granting the laws of Breteuil, in one of the suspected cases, and in four of the seven charters providing for the shilling amercement, and it is possible that the laws of Breteuil did provide for a shilling rent; in passing it may be noted that at Bradninch and Lostwithiel the rent was sixpence, the same as the amercement. But we have eleven other charters, prior to 1216, providing for the shilling rent: at Newport (Isle of Wight) the rent was 12*d.*, but the amercement was limited to 30*d.*; at Kilkenny and Kells the amercement for minor offences, such as offences against the assize of bread, was reduced to one shilling, because a moiety of the nominal penalty was pardoned to offenders; similarly at Inistioge the nominal shilling was reduced to 6*d.* At Pontefract the amercement was fixed by a jury of twelve lawful men, and the other charters contain no evidence as to the amount of the amercements; all the French examples of the shilling rent are coupled with long lists of fines, such as we have seen at Verneuill. So that the shilling rent is found in places where the general amercement is not fixed at 12*d.*, and therefore it cannot be indubitable evidence of Bretollian influence, even at places where there may be specific offences for which the fine is a shilling.

But although the evidence of the documents forbids any expression of an opinion as to the origin of the common clauses, there is one question which demands an answer, whether there is any reason why, when the various lords granted these common clauses, or any of them, to their boroughs in Class E, they should be considered to be acting under the influence of Breteuil, although, as it were by common consent, they omitted from their grant the three indubitable clauses. To put the question in a concrete form, our eighth clause, providing for the acquisition of a title to burgages by possession for a year and a day, is found in the London *Libertas* of Stephen's reign: <sup>45</sup> when it is found in any custumal, why should it be attributed to the influence of Breteuil rather than to that of London? And this question

<sup>45</sup> Liebermann, *Gesetze*, i. 674.

opens a far wider matter : what evidence is there of continental influence, other than the very slightest, on English municipal charters and customs ?

I dealt very slightly with this question in the last supplemental essay to my *British Borough Charters*, and there said that a comparison of contemporary charters from England and northern France 'showed many resemblances and as many differences';<sup>46</sup> but in this I was wrong. The differences far outnumber the resemblances, and it is surprising that the points of contact are so few. Most of the French charters contain many clauses detailing the punishments and fines for various offences ; let us omit such clauses from consideration and compile a short table showing the number of parallel clauses in a few important charters.

<i>Charter.</i>	<i>Total number of clauses.</i>	<i>Number which can be paralleled in English charters.</i>
Amiens 1190 . . .	52	5
Tournai 1189 . . .	30	1
Rouen 1151-2 . . .	25	5
" 1174-5 . . .	6	2
Roye 1183 . . .	55	4
Soissons 1081 . . .	20	1
Mantes 1150 . . .	10	1
St. Omer 1122 . . .	21	1
Lorris 1155 . . .	35	9

The English charters are much shorter than those of France, but a similar table for some English charters shows almost the same results.

<i>Charter.</i>	<i>Total clauses.</i>	<i>Parallel clauses.</i>
London 1131 . . .	15	2
Egremont c. 1202 . . .	30	11
Lostwithiel 1190-1200 . . .	12	5
Newport (I. of W.) 1177-84 . . .	7	3
Okehampton 1194-1243 . . .	17	6
Pembroke 1154-89 . . .	18	6
Winchester 1155-8 . . .	5	1
Lincoln 1157 . . .	5	2
Oxford 1156 . . .	6	1

Evidently there were a few points of law which were common to the municipalities of England and northern France, and the most important of these are included in the common clauses enumerated above, but the peculiarities in both countries were

<sup>46</sup> pp. cv, cvi.

very noticeable. Among the French peculiarities were the sworn commune, the private warfare of communes against the enemies of the communes, the allowance of the *lex talionis*, the destruction of an offender's house, and the generality of trial by battle; peculiar to England were freedom from toll throughout the king's dominions, the power to make reprisals for toll illegally taken, the power to secure the attendance of non-burgesses at the borough court by distraining on their goods or on those of their neighbours, and the prohibition of trial by battle. Occasionally a French peculiarity appears in England: the punishment of an offender by the destruction of his house is found in the Cinque Ports and a few other places; and on the other hand, Henry II granted to his burgesses of Rouen freedom from toll throughout all his dominions on both sides of the sea; but such exceptions are very few. As much emphasis must be laid on the differences as on the resemblances; and if it be contended that the common clauses were borrowed by one country from the other, we are entitled to ask why the borrowing country was not equally affected by the peculiar customs of its exemplar.

To this question there is one obvious answer: each nation worked out its own municipal ideas in its own way; and the special circumstances of each country account for the peculiarities. It has been argued elsewhere that the limited authority of the kings of France accounts for the fact that in the twelfth century none of them ever granted the privilege of freedom from toll throughout France to the burgesses of any town.<sup>47</sup> I have also argued that the existence of a strong borough court in England at which all the burgesses were justiciable prevented the adoption in this country of the sworn commune of France.<sup>48</sup> And similarly, the lack of a strong central authority in France will account for the grant to certain communes of the right to make war on their enemies,<sup>49</sup> while, in England, those who infringed the charter of a borough were liable to be sued in the king's court for a penalty of £10.<sup>50</sup> And if comparison be made of the French and English peculiarities, it will be seen that the French charters allow the burgesses to avenge themselves in many cases where the English charters insist that the injured person shall appeal to the law courts: in this respect I would suggest that the English charters are more advanced than those of France.

What, then, were the attractions of the law of Breteuil? For it is noteworthy that seven charters—Drogheda (Meath), Rathmore, Kells (Meath), Trim, Duleek, Drogheda (Louth), and Shrewsbury—speak of the law of Breteuil in the singular. Let us

<sup>47</sup> *British Borough Charters*, p. cxv.

<sup>48</sup> *The English Borough in the Twelfth Century*, p. 57.

<sup>49</sup> *British Borough Charters*, p. cxiv.

<sup>50</sup> *Ibid.*, p. xxiii.

look at the clauses relating to the Limitation of Fines on pp. 153-9 of my *British Borough Charters*; the London amercement was limited to a man's *were*, 100s.; at Bristol and Dublin it was limited to 40s., at Newcastle-upon-Tyne and Wearmouth to six ounces of silver, and at Eynsham to 10s.: surely, then, settlers would be attracted to towns where the amercement for all offences, with a few exceptions, was limited to 12d.

ADOLPHUS BALLARD.\*

### *Tenred of Dover*

IN John of Salisbury's *Metalogicon* i. 14 we read, according to the printed texts, the following statement: *Teuredus tamen noster, grammaticus scientia quam opinione potentior, etiam in sonis elementariis ampliore numerum (than five) convincebat. Si enim attendantur uocum (ut ait) differentiae, septem sunt.* The only hypothesis that I have ever come across as to the identity of this *Teuredus* is that of Valentin Rose, who suggested<sup>1</sup> that the person intended might be a certain Theodoridus of Brindisi, described as *peritissimus litterarum* in the preface prefixed by the Sicilian scholar Henricus or Euericus Aristippus (with whom Rose wished to identify John of Salisbury's *Graecus interpres*<sup>2</sup>) to his translation of Plato's *Phaedo*.

The oldest manuscripts of the *Metalogicon* give in i. 14 not *Teuredus* but *Tenredus*, and the only known medieval author with a name which could be identified with this is, as Mr. W. H. Stevenson first pointed out to me, Theinredus of Dover, a writer on music, whose date is usually given<sup>3</sup> as 1371. This date, however, rests solely on the authority of Pits,<sup>4</sup> who, to judge from his own pages, knew no more of Theinred (or *Thiuredus*, as he spells him) than he found in Boston of Bury, in whose account the date of its subject is missing. Boston's words, as given by Bale,<sup>5</sup> are as follows:

Thinredus monachus Doverie, in Cantia, composuit,  
De legitimis ordinibus musicę, li. i.  
Pentacordorum et tetracordorum, li. iii. 'Quoniam musicorum'.  
Atque alia plura. Claruit A.D. [the year is not supplied.]

Only one manuscript of Theinred's work is known to exist, which

\* It is with great regret that we hear of Mr. Ballard's death on the 12th of last month.—ED. E.H.R.

<sup>1</sup> *Hermes* I. 380.

<sup>2</sup> *Metal.* i. 5, iii. 5, iv. 2.

<sup>3</sup> e.g. in the *Dictionary of National Biography*.

<sup>4</sup> *De Script.* p. 310.

<sup>5</sup> *Index Brit. Script.* ed. Poole and M. Bateson, p. 429.