THE ENGLISH HISTORICAL REVIEW

NO. XI.—JULY 1888

The Suitors of the County Court

WHO were the suitors at the county court? The generally accepted answer is, all the freeholders of the county. But as regards the thirteenth century there seems to be a great deal of evidence that this was not so. The opinion which our documents favour is much rather this: that suit to the county court was not an incident of freehold tenure, but had become a burden on specific lands; and that when the number of freeholders was increased by subinfeudation, the number of suitors was not thereby increased. This vill or this manor or this tract of land which belongs to A, owes suit to the county court; A enfeoffs B, C, and D with pieces of land; the whole vill, manor, or tract still owes the accustomed suit, but it owes no more; by whom this suit shall be done is a matter that A, B, C, and D settle among themselves by the terms of the feoffments. In this respect the burden of suit of court is very like the burden of scutage; the amount of scutage is not increased by the creation of new sub-tenancies, but the ultimate incidence of scutage can be settled by feoffor and feoffee.

The Hundred Rolls of 1279 supply a large stock of illustrations, a few of which shall be given. In Cambridgeshire the greater part of the vill of Bottisham is held of the earl of Gloucester by the priors of Anglesea and Tunbridge; but there are two tenants of the earl's there who do suit to the hundred and county courts for the whole township: *Dominus Simon de Mora tenet unam virgatam terre de eodem Comite et facit sectam ad comitatum et hundredum pro Comite et pro tota villata*; Martin son of Eustace holds two virgates on the same terms.¹ The abbot of Ramsey has a manor at Burwell in the same county; the jurors do not know that he does any

¹ *Rotuli Hundredorum*, ii. 488.

service for it except two suits to every county court; *facit duas sectas comitatus Cantebrie de comitatu in comitatu*. But these two suits are actually done for him by two tenants; J. A. holds a hide and does one suit to the county and to the hundred from month to month for the abbot; B. B. holds ninety acres and does one suit to the county and to the hundred for the abbot.² In Croxton in the same county there are two manors; the lord of one does two-thirds of one suit (*duas partes unius secte*) to the hundred and county; the remaining one-third is done by a freehold tenant of the other manor.³ The suit is thus split into fractions; at Yaxley a tenant owes a half-suit to the county court and an entire suit to the lord's court (*dimidiam sectam, sectam integram*).⁴ At Isleham again the suit has been partitioned; for half the year it is done by H. H., for the other half of the year by two tenants of his.⁵ Indeed in these rolls it is a quite common thing to find some one of the freehold tenants marked out as doing the suit for the manor or the vill; ⁶ this is the service or part of the service whereby he 'defends' his land against the lord (*defendit duas virgatas terræ faciendo sectam ad comitatum Huntingdonie et ad hundredum de Normancros pro dicto domino*).⁷ In Oxfordshire the jurors have a technical name for such a tenant; he is the *attornatus feoffatus*. At Shifford the abbot of Eynaham has a manor for which he must come twice a year to the hundred court, and he owes suit from three weeks to three weeks by (*per*) William Freeman his enfeoffed attorney and his only freehold tenant.⁸ The prior of Deerhurst owes one single suit (*debet unicam sectam*) to the county of Oxford for his manor of Taynton, and this is done for him by J. S. his attorney enfeoffed for this purpose in ancient times (*attornatum suum ad hoc antiquitus feoffatum*).⁹ Many of the Oxfordshire landowners owe suit to the county court but twice a year.

In the monastic cartularies we find the same thing. Thus, at Hemingford, according to the Ramsey Cartulary,¹⁰ Simon Geoffrey's son holds two virgates for which he 'defends' the township at the county and hundred, and when the justices in eyre come round he must appear as reeve (*erit loco prepositi*). At Ellington, John John's son holds a hide for which he does suit to every third county court; ¹¹ at Holywell, Aspelon of Holywell does the suit to the county and hundred,¹² at Broughton it has been done by Nicholas Freeman.¹³ We can trace John of Ellington from the cartulary to the hundred roll, and still find him doing his 'one-third part of one suit' to county and hundred.¹⁴ Turning to the Gloucester Cartulary, we find a charter of feoffment whereby the feoffee is

² R.H. ii. 499.³ R.H. ii. 508, 509.⁴ R.H. ii. 640.⁵ R.H. ii. 504.⁶ E.g. R.H. ii. 484, 559, 627-8-9.⁷ R.H. ii. 659.⁸ R.H. ii. 701.⁹ R.H. ii. 783, another case on p. 748.¹⁰ i. 382.¹¹ i. 491.¹² i. 296.¹³ i. 338.¹⁴ R.H. ii. 656.

bound to acquit the vill from suit to all courts of the hundred, or of the county or of justices in eyre, and all other suits which pertain to the said vill.¹⁵ At Clifford, R. E. and another freeholder pay no rent, but are bound to do the lord's suit to the county and hundred; and if by their default the lord be distrained, they must indemnify him.¹⁶ At Northleach is a freeholder who in respect of his land owes suit for the lord to the county court of Gloucestershire and to all the hundred courts of Cirencester, and must remain before the justices in eyre during the whole of their session.¹⁷ A particularly clear case occurs on the Ramsey manor of Cranfield in Bedfordshire: there are four virgates which pay no rent because they defend the whole township from suit to the hundred and county courts—they are virgates *quæ sequuntur comitatum et hundredum pro tota villata*; and this is an ancient arrangement, the result of some *vetus feoffamentum*.¹⁸

All this seems inconsistent with the notion that every freeholder as such owes suit to the county court. The quantum of suit due from the whole county is regarded as having been once for all fixed at some remote time. Very usually a vill is the unit which owes a full suit. In that case the lord of the vill, if the vill is owned by one lord, is primarily liable to do the suit or get the suit done: usually he has stipulated that it shall be done for him by one of his feoffees—the feoffee, let us say, of a particular virgate. Then as regards the feoffor that virgate is burdened with the suit, and the burden will lie on that virgate into whosoever hands it may come.

Really when one looks at the Hundred Rolls it is quite impossible to suppose that every freeholder did suit to the county. There are too many freeholders for that. On many manors, it is true, there were hardly any freeholders; this is true in particular of the manors belonging to the religious houses; such houses were as a rule very chary of creating freehold tenancies; they kept but two or three freeholders, one of whom had often been enfeoffed for the special purpose of doing the suit due from the whole manor or township. But on the estates of lay lords there were often many small freeholders. Thus at Bottisham the earl of Gloucester seems to have over forty freeholders. Are they bound to go to the county court month by month? No, two of them do the suit for the whole vill.¹⁹ The *plenus comitatus* was not a very large assembly.

As regards suit to the hundred court we have some yet clearer information. The view taken by the jurors from whose verdicts the Hundred Rolls were compiled, very distinctly was that suit was a burden upon particular tenements, and that the subdivision of those tenements by the process of subinfeudation ought not to increase the number of suitors. They complain that the earl of Surrey, who

¹⁵ i. 886.¹⁶ iii. 49.¹⁷ iii. 180.¹⁸ *Cart. Rams.* i. 438, 489.¹⁹ *R.H.* ii. 488.

owns the hundred court of Gallow, has not observed this rule. There was, for instance, a tenement in South Creak containing 100 acres; it owed a single suit; it has been divided into forty tenements, and forty suits are exacted. Many other examples are given.²⁰ A similar complaint goes up from the hundred of Humbleyard.²¹ So, again, when the tenement becomes divisible among coheiresses, the number of suitors should not be increased; the burden of the suit should lie on the share of the eldest sister. That this rule has been infringed is matter of complaint in the hundred of North Erpingham.²² So in the Bingham wapentake of Nottinghamshire there are but twelve tenements which owe suit; their holders have been enfeoffed for the purpose, and there ought to be no other suitors.²³ The wapentake of Rushcliffe in the same county has but six suitors, each owes suit in respect of a particular tract of land.²⁴

How could this somewhat capricious distribution of the burden, to which the Hundred Rolls bear witness, have been effected? By way of answer to this question we may suppose—this can be but an hypothesis, for evidence fails us—that when Henry I revived and enforced the duty of attending the local courts, that duty was conceived as being incumbent on all freeholders, or rather (and the exception is important) on all freeholders who or whose overlords had no chartered or prescriptive immunity; but that it was also conceived as being, like the taxes of the time, a burden on the land held by those freeholders, so that when the land held by one of them was split up by subinfeudation or partition among heiresses, the number of suits due was not increased. Some such supposition seems to be warranted by the ‘*Leges Henrici Primi*,’ which after Dr. Liebermann’s researches we may ascribe to Henry I’s reign. All the *terrarum domini* are bound to attend; but if any lord attends by himself or his steward, he thereby acquits his whole demesne.²⁵ This last passage may very well mean that if he bestows part of his demesne on a feoffee, a single suit will acquit them both. That during the thirteenth century the number of freeholders increased rapidly, there can be no doubt; but an increase in the number of freeholders did not mean an increase in the number of suits due to the county court.

Of course it may be that on special occasions, in particular to meet the justices in eyre, all the freeholders were bound to attend the county court. But it is possible to doubt even this. The words in the writ of summons directing all freeholders to come may well have been understood to mean all freeholders who owed suit. An examination of the amercements for non-attendance and the ‘*essoins* of the general summons’ found on the eyre rolls might throw some

²⁰ *R.H.* i. 455.²¹ *R.H.* i. 477.²² *R.H.* i. 498.²³ *R.H.* ii. 318.²⁴ *R.H.* ii. 28.²⁵ *Leg. Hen. Prim.* c. 7.

light upon this problem ; to a superficial glance they do not seem nearly adequate to support the received opinion. But at any rate it seems plain that the ordinary form of the county court, the *plenus comitatus* which heard cases and delivered judgments, was not an assembly of all freeholders, but an assembly of those persons who by means of proprietary arrangements between lords and tenants had become bound to do that fixed quantum of suit to which the county court was entitled. It was not an assembly of the king's tenants in chief, though probably the persons primarily liable were in many or most cases the tenants in chief. On the contrary, the person who does the suit, and who is bound by tenure to do the suit, is sometimes a small socager holding a single virgate. But though it was not an assembly of tenants in chief, it was not an assembly of all freeholders.

It is impossible to speak of this matter without perceiving that there is a big question as to 'the county franchise' in the near background. That question we need not now attack ; but before it is solved we ought to have a clear opinion as to who were the persons bound to do suit at the county court, and it is here humbly submitted that the received opinion as to this obligation does not harmonise with the evidence. Of course, it is conceivable by us that though all freeholders were not bound to attend the court, still all had a right to attend. But would such a right have been conceivable by a man of the thirteenth century ? If we asked him as to the existence of such a right, might he not reply by asking us whether those modern Englishmen who are not bound to pay income tax, enjoy the right of paying it if they please ? The right to do what nobody wants to do can hardly be said to exist. It would have been very dangerous for any one to attend the county court unless he was bound to go there, for he would have been creating evidence of a duty to attend ; *solebat facere sectam, sed modo subtrahit se*—this would have been the neighbours' opinion as to the conduct of an occasional attendant. We may some day have to confess that the original 'county franchise' (if we may use that term to describe what those who had it would have regarded as the very negation of a 'franchise'), so far from being settled by the simple rule that all freeholders have votes, was really distributed through an intricate network of private charters and prescriptive liabilities.

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