Calendar

OF

PLEA AND MEMORANDA ROLLS

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PLEA AND MEMORANDA ROLLS

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a.d. 1364–1381

Edited by

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INTRODUCTION

THE CHARACTER OF THE ROLLS

THE Plea and Memoranda Rolls calendared in this volume cover the period 1364–81, each roll being the record of a year's mayoralty. Early in the 19th century, when the present numbering was adopted, the rolls for the two years 1377–8 and 1378–9 were missing. Subsequently fragments of a mutilated roll of the former year were discovered. A précis of its contents is printed below between A 22 and A 23 on pages 245–56. As the City records are now so fully known and listed, little hope remains that the other roll will come to light in Guildhall.

During our period the part played by the City in national affairs was recorded almost exclusively in the Letter Books, the rolls becoming for awhile purely legal in character. Nevertheless the disturbances which took place during the Peasants' Revolt of 1381 came within the cognisance of the judicial courts. Apparently those inhabitants of the City who were implicated were brought to justice by means of ward presentments, and in this connection the Aldermen also returned lists of suspected persons who fled to escape apprehension. The lists (pp. 288–91) reveal that much sympathy for the insurgents was found among the lower orders, servants, journeymen and labourers. A further list of persons admitted to mainprise (pp. 300–2) is evidence to the same effect. Apart from these memoranda the main interest of the rolls is civic, legal and economic. Actions which seemed noteworthy to the clerks as illustrating City custom or recording City privileges were set out fully, and in the process much detail was included, throwing light on the conditions of London life and trade, the administration of justice and the maintenance of public order.

OMISSIONS IN THE PRESENT CALENDAR

Side by side with such entries, there are a large number of brief notes of unimportant actions of debt for small amounts, appointments of attorneys, mainprise for appearance in court or for keeping the peace and plaints of nuisance and intrusion which were pleaded elsewhere. The editor has ventured to

omit such of these notes as seemed to be of no historical value, while preserving everything which in any way adds to our knowledge of the time. He feels the more free to do so, since a complete manuscript calendar is at the service of readers in the Guildhall Records Office.

INCORPORATION AND CITIZENSHIP

(a) London a corporation by prescription

It will be noticed, alike in this and in preceding calendars, that many of the pleas and memoranda are concerned, directly or indirectly, with the duties and privileges of citizenship. The court administers a law and custom peculiar to the citizens of London, restrains non-citizens from interfering with their profits or sharing in their rights, defines the methods of acquiring citizenship and expels from its benefits those who have misused it. At the same time there is the feeling that the citizens are not merely a group of co-owners of privileges but members of an organism greater than themselves. At a period when the legal definition of incorporation was still in its infancy[1], its practical implications and the distinction between the personality of the City and the several personalities of the citizens were continually present in the minds of City officials. The City is an *exemplar* to other cities; it has an honour which can be besmirched by the riotous or uncivil behaviour of the citizens[2]; and when the clerk wishes to signify that an association of journeymen is more than an injustice to their masters and their neighbours, he speaks of a *respublica* which is damaged[3]. Meanwhile the lawyers, when seeking to define a corporate body, found their best illustrations in the ancient and acknowledged position of London... *la comminalty de Londres qe est perpetuel et d'antiquity, qe est un gros*[4]....As the essential elements of corporate being were more clearly laid down, they were expressed with increasing detail in the charters granted to other towns and communities. But the corporateness of London has always been understood to have preceded formal incorporation, to be, in fact, so ancient as to preclude either grant or confirmation. The Act of Parliament

[1] C. Gross, *Gild Merchant*, I, p. 94 n.
[2] *Cal. of Plea and Memoranda Rolls* (I), pp. 15, 16, 107.
[3] Below, p. 291.
[4] C. Gross, *op. cit.*

which reversed the Quo Warranto judgment of 1683 merely declares that the citizens of London shall continue and be, and prescribe to be a body corporate and politick *in re*, *facto et nomine*[1].

(*b*) *Theories as to the incorporation of London*

On the other hand, while it is agreed that in the 14th century London had the main features of a corporation, some modern historians are inclined to think that there was no great degree of unity in the London of the 11th and 12th centuries. At the time of the Norman Conquest, says Dr Stubbs, "London under its port-reeve and bishop, the two officers who seem to give it a unity and identity of its own, is only a bundle of communities, townships, parishes and lordships, of which each has its own constitution[2]." Even after the charter of Henry I, "the municipal unity which they possess is of the same sort as that of the county and the hundred[3]." Dr J. H. Round accepted this view and added that if "the administrative development of London had proceeded on these lines," *i.e.*, as indicated in the above-mentioned charter, "it would no more have brought about a true municipal unity than the sheriff and the county court could evolve it in the shires[4]." These opinions seem to take little account of the fact that London had a material unity, in that it was a densely populated city[5] within a city wall, which the citizens had defended with remarkable unanimity and success during the Danish invasions. Contiguity and common danger tend to produce a corporate spirit, though its manifestations may not fulfil the legal requirements of later definitions[6]. To these unifying forces may be added the common interests of trade and manufacture, which, if they were not responsible for the original settlement of London, contributed largely to its permanence.

[1] 2 W. & M. c. 8. Declarations of City custom in the courts set forth that "the City of London now is and from time immemorial hath been an ancient City and the citizens and freemen thereof for the time aforesaid have been a body corporate." See Mayor, etc. v. Lightfoot, K.B. Mich. 9 Geo. II.

[2] W. Stubbs, *Const. Hist.* I, p. 460.

[3] *Ibid.* p. 461.

[4] J. H. Round, *Commune of London*, p. 222.

[5] B.M. Add. MS. 15,242, fo. 120 *b*, *et sunt pres ensemble herbergie et plus sunt pres et tost et tart ke ne sunt altres gens.*

[6] Pollock and Maitland, *History of English Law*, I, p. 488: "The core of the matter seems to be that for more or less numerous purposes some organised group of men is treated as a unit which has rights and duties other than the rights and duties of all or any of its members."

(c) Early evidences of organisation

It is in connection with trade that we have our first glimpse of London organisation. In the 7th century, the laws of Hlothære and Eadric mention a royal officer, a *wic-gerefa* or wic-reeve, who witnessed sales and vouched them at a court held in the King's hall[1]. By a principle, later to be known as "market overt," the purchase was good, though the seller could not afterwards be produced. The reeve is met again and possibly the origins of other institutions in the *Judicia Civitatis Lundonie*[2]—a body of rules drawn up between 930 and 940 for mutual protection and the apprehension and punishment of thieves. They show that a *frithgild*, composed of leading inhabitants of noble rank (*eorlisce*) and humbler persons (*ceorlisce*) was already in existence, for which the bishops and reeves belonging to London had ordained new regulations in accordance with Æthelstan's laws recently promulgated at Greatley, Exeter and Thundersfield. Similar rules relating to thieves are to be found in the London Gaol Delivery records of the 13th century. There is mention of mutual security-groups of ten men, of whom one is leader, under the supervision of *hyndenmen* or hundred-men, and of monthly meetings when report is made as to the fulfilment of the rules. In the 13th century such oversight was performed by the aldermen of the wards, which corresponded to territorial hundreds, where the view of frankpledge was taken[3]. As London apparently never possessed a gild-merchant, one is tempted to connect the monthly *byttfylling*, or convivial meetings of the *frithgegildas*, with the ancient Guildhall[4]. Possibly none of these resemblances will carry the weight of a definite connection. But apart from them, the *Judicia* are evidence that the inhabitants of London in the 10th century were organised for purposes of justice, possessed a law or folk-right by which guilt was determined, punished crime by

[1] Liebermann, *Gesetze der Angelsachsen*, I, p. 11, § 16. The presence of the portreeve at sales is also required by the laws of Eadweard (901–924), *ibid*. p. 139.

[2] *Ibid*. pp. 173–83.

[3] City's Iter Roll AA, m. 2.

[4] First mentioned c. 1135: *terra Gialle ii sol. et est latitudinis lii pedum longitudinis cxxxii pedum*. See J. E. Price, *Guildhall*, p. 18, and Round, *Geoffrey de Mandeville*, p. 436, for correction of the date. Giraldus Cambrensis (Rolls Series, 21) IV, p. 404, describes the Guildhall as *aula publica quae a potorum conventu nomen accepit*.

death, allowed no lordship or jurisdiction to protect a malefactor, though the lord's claim to a share of the felon's chattels was recognised, and made contributions for communal purposes. Shortly afterwards there is a reference to the ancient central court which still meets in Guildhall. Æthelgifu, wife of Earl Æthelwine of East Anglia (968–85), is recorded as giving to Ramsey Abbey two silver cups of 12 marks by the weight of the Husting of London[1].

In the century which followed the landing of William the Conqueror there is little information dealing with the constitution of the City. His charter to London is brief. He grants to the bishop and portreeve and the burgesses, French and English, that they shall retain the laws they had in the time of Eadward, that every child should be his father's heir after his father's day, and that he would suffer no man to do them wrong. The charter of Henry I, probably issued in 1132, though more detailed, is concerned almost exclusively with the ancient laws and customs of London, rather than with its constitution[2]. It must be admitted that such customs do not in themselves imply incorporation. In different counties, said Bracton, the customs are different, and in 1221 the Itinerant Justices noted carefully that Gloucestershire had its peculiar customs in the presentment of Englishry[3]. Nor again was corporate possession indicated by the confirmation of the ancient rights of hunting in Chiltern, Middlesex and Surrey. It is not the City which hunts, but the citizens. Nevertheless there is a distinct flavour of incorporation in the privilege of holding Middlesex to farm. Here the unity of London is tacitly recognised—and its independence of the county organisation.

(d) Growth of the corporate spirit

Though the nature of London's unity at this period is obscure, its practical manifestations are beyond question. We hear little of dissensions among the citizens, much of unanimous action. The chroniclers tell how they fought round the standard of Harold at Hastings[4], of the gemot attended by the

[1] *Chron. Abb. Ram.* (R.S. 83), p. 58; Kemble, *Codex Diplomaticus*, IV, p. 304.
[2] W. Page, *London, its Origin and Early Development*, pp. 275–6.
[3] F. W. Maitland, *Pleas of the Crown for the County of Gloucester*, pp. 1, 137.
[4] Freeman, *Norman Conquest*, III, p. 424.

citizens and ship-masters of London, which chose Eadgar Ætheling as king, of their elders being called into council when further resistance to the Normans seemed hopeless[1], and how all the best men of London represented the City when submission was made[2]. In the next reign, when Odo of Bayeux rebelled, twelve citizens of London were taken to the King in order that they might influence their fellows to remain faithful, as could be proved, says the writer, by witness of their barons[3]. It was, however, on the death of Henry I, that the action of the citizens was most significant. They espoused the cause of Stephen, claiming that the election of a king rested upon themselves[4]. Before doing so, they made a sworn agreement with him to preserve their liberties, which Dr Round compares with the similar practice of foreign towns enjoying the rights of a *communa*[5]. Later, when Stephen was taken prisoner, the Bishop of Winchester sent for representatives of London, "who were as noblemen (*optimates*) on account of the greatness of their City." A body of citizens appeared, declaring that they had been sent by the commune of London, and pleaded for the release of the King, and this all the barons who had been received into their commune also prayed[6]. And when the Empress Matilda entered London, it was in virtue of terms previously made with representatives of the City at St Albans[7].

Under the strong government of Henry II no occasion arose for political action. The City was peaceful. Trade flourished, and with it education and the arts of life. Fitzstephen, who describes at length the happy condition of London in his day, only touches briefly on its government, when he says that the citizens enjoyed the same laws and common institutes as those of Rome, that they had annual sheriffs as consuls, the senatorial dignity and lesser magistrates[8]. One further incident

[1] *Script. Rer. Gest.* (Caxt. Soc. 1845), p. 47.
[2] *Anglo-Saxon Chronicle* (R.S. 23), II, pp. 168–9.
[3] *Symeon of Durham* (R.S. 75), I, p. 189.
[4] *Chron. of the Reigns of Stephen, Henry II and Richard* (R.S. 82), III, pp. 5–6.
[5] Round, *Geoffrey de Mandeville*, pp. 247–9.
[6] *William of Malmesbury* (R.S. 90), II, pp. 576–7.
[7] *Florence of Worcester*, 1141.
[8] *Liber Custumarum*, I, p. 9, in *Munim. Gild. Lond.* (R.S. 12). Cf. charter of Hugh, Archbishop of Rouen, cited from Harl. MS. 1708, fo. 113.

may be mentioned. A contemporary writer tells of an angry meeting in the Husting, apparently before the granting of the Commune in 1191, when the citizens agreed to resist the claim made by the Abbot of St Edmunds to take toll from them, and how, when a compromise proved ineffective, by common counsel they boycotted the Fair of St Edmunds for two years[1]. If this and the above-mentioned instances throw no direct light on the government of London, they exhibit a unity of purpose, enforced by spirited and unanimous action, and a concern for the common weal, which are not the natural expression of a mere bundle of communities.

(*e*) *The granting of the Commune in* 1191

There is no need to discuss at length the granting of the Commune in 1191 and the appearance of a mayor in 1193. It is common ground that in these events the corporate unity of London was acknowledged[2]. The only question that arises is whether the Commune was a recognition of existing facts or a new development. "The Londoners," said F. W. Maitland, "from of old are a community, but they must not form a sworn Commune unless the king consents[3]." Dr J. H. Round, while recognising that the desire for a commune existed, seems to regard it, not as a natural growth, but as a legal event—"then London for the first time had a municipality of her own[4]." At the same time, and closely connected with this grant, the *firma* of the City was reduced to the old figure of £300 conceded by the charter of Henry I. It was a reduction "won at the crisis of 1191[5]." But Dr Tait has recently pointed out that the reduction took place a year before, and he agrees with Mr Page that the privilege would naturally carry with it the right of electing the sheriffs[6]. It may be true, as Dr Round asserts, that the citizens of London were fired by the example of towns abroad, and it is possible that the constitution of Rouen was known to them. But neither in its shape nor in its formal recognition by John can we find the

by Round, *Geoff. de Mand.* p. 116: *Senatoribus inclitis civibus honoratis et omnibus commune London' concordie gratiam salutem eternam.*

[1] *Chronica Jocelini de Brakelonda* (Camd. Soc. 1840), pp. 55–6.
[2] Round, *Commune*, p. 224; Stubbs, *Select Charters*, 1905, p. 265.
[3] Pollock and Maitland, *Hist. of Eng. Law*, I, p. 670.
[4] Round, *Commune*, p. 224.
[5] *Ibid.* p. 235.
[6] *E.H.R.* 42, pp. 357–9.

beginnings of corporate being. "Some again," said Maitland, "may feel inclined to say that a corporation must have its origin in a special act of the state, for example, in England a royal charter, but they will be in danger of begging a question about ancient history...[1]."

(f) The Common Council

A word may perhaps be said, without irrelevance, on Dr Round's theory of the Common Council. He notes that in 1193 the citizens, by a common oath, which bears a striking resemblance to the later freeman's oath, swore obedience to the Mayor, *skivini* and other *probi homines*[2]. Rouen possessed a Mayor's Council, annually elected, consisting of twelve *eschevini* and twelve counsellors. In 1205–6 there is record of an oath in London taken by the "XXIIII," which has common features with that of the 24 of Rouen[3]. He sees in these passages the germ of the Common Council and a direct affiliation with Rouen. Fitz Thedmar's statement, that in the year 1200–1 there were chosen twenty-five of the more discreet men of the City, who were sworn to take counsel for the City together with the Mayor, is dismissed as not being of first-rate authority, on what ground is not clear[4].

In the above-mentioned freeman's oath there is reference to other *probi homines*, and Fitz Thedmar says the twenty-five were chosen out of the *discretiores*, both of which were usual terms for the far larger Common Council of later days. The twenty-five have all the appearance of a committee *ad hoc*. If so, they had either ceased to act or failed in their purpose before 1206, when the King directed a writ to the barons of London, ordering them to choose twenty-four from the more lawful, wiser and discreeter citizens to find a remedy for abuses which certain *superiores* had allowed to occur[5]. The oath noted by Dr Round was clearly their oath. They were a selected and appointed body drawn from a larger number of *discretiores*; and it is arguable, since government by mass-meeting is impossible, that some such larger body led the

[1] Pollock and Maitland, *op. cit.* I, p. 487.
[2] Round, *Commune*, pp. 235–6; Add. MS. 14,252, fo. 112 *d*. Cf. 15th cent. oath, *Calendar of Letter Book D*, p. 195.
[3] *Ibid.* pp. 237–41.
[4] *Ibid.* p. 238; *Liber de Antiquis Legibus* (Camd. Soc. 1846), p. 2.
[5] *Rot. Litt. Claus.* (Rec. Comm.), p. 64 *a*.

citizens in those united expressions of the City's will, of which examples have been given. Doubtless the aldermen formed a part of this larger earlier council. Its origin, as the present writer has already suggested, is probably to be found in the Husting, the ancient general court of the City[1].

(g) *City sokes and corporate unity*

In the passage from Dr Stubbs quoted above, the existence of lordships among the other communities of London was regarded as a hindrance to municipal unity[2]. London, to some extent owing to its size, had within its bounds a larger number of manors and jurisdictions than other towns. In 1275 the jurors of a ward returned to the Itinerant Justices the names of eighteen such sokes[3]. But it has always been a peculiar feature of London organisation that the corporation included lesser communities. No sooner had the sokes begun to be absorbed than their place was taken by the organised misteries or companies of traders and craftsmen, each of which, in respect to the City as a whole, was a community within a community—*cominaltie deinz cominaltie*[4]. In fact it was impossible until 1835 for an individual to acquire the freedom of London and become an integral part of the corporation unless at the same time he became a freeman of one of the subsidiary corporations[5]. But except where a jurisdiction exercised the right of sanctuary, as in the case of St Martin le Grand, or attempted to try actions which more properly belonged to the civic courts, there was little difficulty in reconciling the claims of the soke-owners with the authority of

[1] See *History*, July 1924, pp. 97–8 and the "Government of the City" in *Times City of London Number*, Nov. 8 and 9, 1927. Since the present section was written an article by Dr Tait in *E.H.R.*, April, 1929, has dealt with the early history of the Common Council. While admitting (p. 181) that something may be said for the suggestion that the 24 were not a council at all, but a commission of inquiry and reform, Dr Tait considers that they were entrusted with the government of the City for the time being, though they were not permanent. Speaking of boroughs generally, *temp.* Henry II, he makes the significant remark, "Much more probable is the view that 'the town government, so far as the burgesses had any share in it, was still transacted by the *probi homines* of the undifferentiated borough court...'" and further (p. 199), "London did not copy any foreign model in the end. There are some signs of hesitation under John, though no proof of any such direct imitation of Rouen as Round maintained."

[2] *Const. Hist.* I, p. 460.

[3] *Rot. Hund.* (Rec. Comm.), p. 420.

[4] *Liber Assisarum*, 321, cited by Gross, *Gild*, p. 100, n. 1.

[5] A. Pulling, *Laws, Customs...of London*, p. 62.

the City government. Their courts, where they remained active, fell as naturally into their position under the Husting as the courts of the Wards, and in later times the courts of the Livery Companies.

The subordination of the sokes may be seen as early as the charter of Henry I[1]. Though the churches and barons and citizens of London may hold their sokes in peace together with all their customs, the provision that no citizen should plead without the walls ensured that tenants could not be drawn into suit in a distant manorial court[2], and it is clear that in all the courts the law of the City was pleaded. Nor was jurisdiction invariable in all sokes; several appear to have been no more than blocks of house-property from which the soke-owners collected rents[3]. Of those that survived in 1321 five or six made no claim to have held a court at any time and it was urged on the King's behalf that others had not exercised their rights[4]. Those rights were strictly defined. Between 1133 and 1154 a rule is stated that where a soke-owner has failed in doing justice, the sheriff may intervene[5]. Early in the next century a King's justice held that none of a foreign fee could hold a court or make judgment with less than twelve free men, a requirement not always easy to fulfil[6]. About the same time, a statement of London law, apparently compiled for the information of landlords, tells us that if the lord of a soke prevents his tenants from distraining undertenants, the sheriff may be called in, that no soke can protect a man guilty of assault or affray, where there is bloodshed or visible wounds, that no soke-court can hear pleas concerning foreigners—whose court is the Guildhall, that soke-owners themselves use the Husting to recover their rents, and that where land is bought or sold in a ward, even though it be soke-land, it is the alderman who receives a fee of a gold besant or two shillings, while the sokereeve is entitled only to lesser dues[7].

[1] Page, *London*, p. 275.
[2] Pollock and Maitland, I, p. 645.
[3] Page, *London*, pp. 221–2.
[4] *Plac. de Quo War.* (Rec. Comm.), pp. 452 *b*, 453 *a*, 454 *a*, 460 *a*.
[5] Liebermann, *Gesetze*, I, p. 674.
[6] *E.H.R.* 17, p. 709, article by Mary Bateson on Add. MS. 14,252. For an example of the failure of a soke-court, see *Cal. of Early Mayor's Court Rolls*, pp. 89–91.
[7] *E.H.R.* 17, pp. 492–5.

Much of the above was repeated by the citizens to the Itinerant Justices in 1220, with additional information[1]. It appears that the lords present their sokereeves in the Husting there to be admitted to the custody of the sokes. In a curious passage, which was copied in 3 Edward II from the rolls of this session[2], the Mayor and citizens are recorded as saying that all escheats of land, from whomsoever it was held, belonged to the King—in this matter the rights of mesne lords are obsolete. The citizens show no disposition to withdraw actions from the soke-courts. In fact the soke-courts are citizens' courts. They have the same rules of warranting essoins as the Husting. No lord should bring an action of gavelet in the latter so long as he can make a distress in his own fee. A bailiff can hold his court without the presence of his lord, because it is the lord's court which does justice and not the lord[3]. In all these statements an aspect of feudal justice is shown, which is sometimes forgotten. The court is common, not proprietary, and the tenants of a lord consider their rights as substantial as his own. In 1280 the men of Portsoken proceeded in the Husting against the Prior of Holy Trinity, their feudal lord, because he had held the court outside the soke, contrary to the custom existing "ever since London was built," by which custom he was bound as well as they[4]. This is but local government under another aspect.

The recorded instances of disputes between the city authorities and the soke-owners number no more than two or three. In 1228 the citizens made a "loving concord" with the Bishop of London and the Chapter of St Paul's as to the limits of their franchise, on which there had been difference of opinion[5]. Again in 1275 a ward jury reports to the Itinerant Justices that since the battle of Evesham the Abbot of Westminster had been claiming return of writs, *i.e.* the right to determine actions begun by writs, and that the citizens had a

[1] *Liber Albus* in *Munim. Gild. Lond.* (R.S. 12), I, pp. 62–71.
[2] *Plac. Abbr.* (Rec. Comm.), 310 (Lond.). See *cedula* sewn to m. 90 of Coram Rege Roll, No. 199, Hill, 3 Edw. II, in P.R.O.
[3] *Lib. Alb.* I, p. 66.
[4] Husting Rolls of Common Pleas, 6, m. 1 *b*.
[5] Lib. de Ant. Leg. fo. 42 *b*.

suit pending against him in King's Bench[1]. But though the citizens contested this claim, they do not appear to have welcomed the growing popularity of writs and the extra work it entailed upon the Husting. The ancient method of beginning an action had been by plaint, both in city and soke-court. A writ-action was triable only in the Husting or "king's court[2]," with the result that legal business drifted away from the soke-courts as soon as tenants gained the impression that a writ would give them speedier justice. It was a fashion more pleasing to litigants than to overworked City officers[3].

There is, in fact, little evidence that the attitude of the civic authorities towards the sokes was anything but friendly. In the Husting in 1273 the Mayor himself was sokereeve for the Prior of Holy Trinity, the Prioress of Holywell, the Prior of Bermondsey and the Abbot of Westminster, while other sokes were represented by aldermen, Guildhall officials, and attorneys practising in the court[4]. A case in 1302 shows the Mayor's court intervening to enforce a judgment in the Bishop's court, when the latter's reeve was at the end of his resources[5]. Every indication goes to prove that the disintegrating effects of the feudal jurisdictions in London have been exaggerated, and that these courts fell naturally into their place as organs of local justice and administration, which have always been more congenial to the English temper than centralised and bureaucratic control.

EARLY QUALIFICATIONS FOR CITIZENSHIP

In the foregoing remarks it has been suggested that London's corporate unity developed earlier than some writers were willing to allow. Some such unity is antecedent to any conception of citizenship, unless one uses the term purely in a

[1] *Rot. Hund.* I, pp. 403, 412. For a previous dispute concerning Middlesex, see Lib. de Ant. Leg. fos. 67 *a*, 67 *b*, 68 *a*, 86 *b*, 87 *a*.

[2] Pollock and Maitland, I, p. 645, "in the great towns the existence of a court enjoying royal franchises seems to have reduced the mesne tenures to political insignificance."

[3] Lib. de Ant. Leg. fo. 80 *b*, A.D. 1260.

[4] H.R.C.P. I, *passim*; 3, m. 2 and 3; 24, Interlocutoria d; H.R. Pleas of Land, 10.

[5] *Cal. of E.M.C. Rolls*, pp. 121–2.

geographical sense as denoting all the dwellers in a city. But though contemporary chroniclers may have confused *Londonienses* with *cives*, it is doubtful whether the citizens did so themselves[1]. From the beginning the citizens were probably but a portion of the whole inhabitants, a class with special rights and duties. If the frithgild of Æthelstan was an official organisation occupying the centre of civic life[2], its members were a body bound by an oath and consisting of persons with common tasks and privileges. The "burgesses" of the Conqueror's charter were those who enjoyed the laws of Eadward and had rights of inheritance, who benefited by the measures which, according to Orderic Vitalis[3], the king took for the advantage and dignity of the City. The *cives* of Henry I's charters had confirmation to them and their heirs of a number of important and lucrative rights, from which visiting aliens and the men of other towns were excluded. But so far, beyond the mention of heirs, there is no light on the qualifications for citizenship and the means of acquiring it.

The first sign of a qualification occurs in a statement of Arnold Fitz Thedmar[4]. He relates how his maternal grandfather, a man of Cologne, who came to England on pilgrimage to the shrine of St Thomas at Canterbury, decided, owing to family bereavement, to settle in London, where he and his wife had two children born to them, and accordingly, "buying a domicile in London they were made London citizens[5]." This would be between 1175 and 1180[6]. It is evidently the franchise by occupation of a burgage which is found at Cardiff and Tewkesbury between 1147 and 1183[7]. Meanwhile it appears that citizenship could be lost as well as

[1] Some at least would know of exclusive citizenship by patrimony and redemption, *Acts*, xxii, 28, and Christians were taught that they were members of a corporation, the Church, the Body of Christ.

[2] Gross, *Gild*, I, p. 179. "They (the Judicia) emanate from the public authorities the king's officers, and not from persons privately banded together."

[3] *Orderic Vitalis*, ed. A. le Prévost, Paris, 1838–55, II, p. 64.

[4] Lib. de Ant. Leg. fo. 157.

[5] *Sed ementes sibi domicilium in Civitate Londoniarum facti sunt Cives Londonienses.*

[6] St Thomas died in 1170. The son of Arnold of Cologne died as a crusader in Constantinople soon after its capture in 1204. His younger sister Juliana gave birth to a fifth son, the chronicler, in 1201.

[7] A. Ballard, *British Borough Charters*, p. 102.

gained. In certain customs, which Miss Bateson dates as showing the influence of Henry II's charter of 1155[1], it is said that a man of the City, who belongs to the freedom—a phrase which shows that there were inhabitants who were not citizens—shall not make trial by battle. An instance is given of a defendant who put himself out of the franchise in order to defend himself by battle, but the prosecutor refused to lose the freedom for him. Thus, though burgage tenure was a means to freedom, it was not the whole of it. The existence of unenfranchised persons is also indicated by the London Building Assize of 1212, in which it is enjoined that strange workmen coming to the City who do not obey the rules must be attached until they have their judgment before the Mayor and *probi homines*[2].

THE CITIZEN'S OATH

With the establishment of the Commune in 1191 was set up a condition of citizenship which was to become general in later days. The *communa* was a sworn *communa*; the citizens took an oath. If the resemblance between this oath and that which appears in Letter Book D in a 15th century hand[3] is more than mere coincidence, it would be a strong argument for continuous practice. But otherwise there is no evidence that every freeman henceforth was sworn. In 1249 and 1257 the citizens claimed that, except where it was a question of life or limb or where land was to be lost or gained, they were not bound to swear in an inquest, but that they ought only to be abjured by the oath which they had already taken to the King[4]. It is tempting to see in this a distinctive citizen's oath, but it is equally probable that it was the oath for the preservation of the peace established by the proclamation of Hubert Walter the Justiciar in 1195[5]. When apprenticeship and payment became recognised methods of acquiring the freedom, an oath was duly taken, but in the case of those who

[1] *E.H.R.* 17, p. 712.
[2] *Ibid.* p. 723.
[3] *Cal. of D.* p. 195.
[4] Lib. de Ant. Leg. fos. 68 *a*, 72 *b*.
[5] Stubbs, *S.C.* pp. 263–4. In London, it appears to have been sworn in the Wardmotes in connection with frankpledge, *Lib. Alb.* 1, p. 315; *Cal. of D.* p. 10.

became free by inheritance or patrimony it does not appear to have been made compulsory till 1387[1]. In an age when register-keeping was not a developed art, there was probably a good deal of uncertainty about the status of humbler members of the community. Fitz Thedmar complains of the rabble who thrust themselves into public affairs and claimed to be the Commune, "though they were sons of divers mothers, many of them born without the City and many of them of servile condition[2]." However, in 1299 a certain Gilbert le Barber was punished for acting as an unlicensed broker between foreigners contrary to his oath as a freeman[3], and in 1306 a number of poulterers were sworn to the freedom[4]. It was probably not difficult to ensure that the time-expired apprentice and the foreigner took their oaths. The inhabitant of London who was a reputed freeman was more elusive. How matters stood is shown by a rule of the early 14th century. A freeman by purchase, if his freedom were challenged, must produce his record. A freeman by birth put himself on a jury of the place where he was born[5].

THE BARONS AND CITIZENS

Two classes of early citizens remain to be considered: the "barons of London," and the villeins or serfs who had dwelt for a year and a day within the City. As regards the former, it is necessary to exclude from consideration the later meanings of the word. John Carpenter, the Common Clerk, writing about 1419, knew of men who held baronies, of barons who received a special summons to Parliament, of men who were barons by patent[6]. "The aldermen," he says, "in respect of name as well as of dignity, it is evident, were anciently called *barones*. For it is matter of experience that ever since 1350 at the sepulture of aldermen the ancient custom of interment with baronial honours was observed[7]." It has recently been suggested with more probability that the barons of London correspond to the pre-Conquest

[1] *Cal. of H.* p. 310.
[2] Lib. de Ant. Leg. fos. 75 *a*, 132 *b*.
[3] *Cal. of E.M.C. Rolls*, p. 30.
[4] *Ibid.* p. 246.
[5] *Lib. Alb.* I, p. 206.
[6] L. O. Pike, *Const. Hist. of the House of Lords*, p. 109.
[7] *Lib. Alb.* I, p. 33.

burhthegns, to whom Edward the Confessor addressed his charters, and that the burh-thegns "were the principal merchants and traders who, by reason of having fared thrice across the seas, or on account of their wealth and services, were considered thegn-rightworthy[1]." Elsewhere the same writer speaks of the barons being the "oligarchic" party and as constituting a "Great Council[2]." It is possible that the word "baron" may be a translation of burh-thegn, and that the barons of London were originally the great seafaring merchants, though the instances cited relate only to the thegns of the shires[3]. But usage in the 12th, 13th and 14th centuries had already adopted a wider meaning for the word.

Dr Round cites a charter of 1190 as to a verdict on property being given by the whole city of London and testified at the Tower by the "greater barons" of the City[4]. This need imply only the more important citizens. In 1214 John grants to the barons "that they may choose to themselves every year a mayor[5]"—a right which was exercised by the whole body of citizens[6]. In the many writs in the Close and Patent Rolls addressed to the Mayor and *probi homines*, the Mayor and *cives*, and the Mayor and *barones*, no distinction between these terms is apparent. A typical writ of 1212 gives permission to the Mayor and *barones* to go to the Fair of Winchester with their merchandise as usual[7]. In only one instance are the barons mentioned together with the citizens. It occurs in a mandate of 1266 to the sheriffs and barons and citizens to pay 200 marks, but there is nothing else in the document to suggest a discrimination between citizens and barons[8]. Another isolated instance is to be found in 1321 in a statement of procedure at a session of the Itinerant Justices, where the phrases *barones et universitas civium* and *barones et cives* are used[9]. Against its evidence may be set a contem-

[1] Page, *London*, pp. 218–20.
[2] *Ibid.* pp. 224, 227.
[3] Kemble, *Cod. Dip.* IV, Nos. 888, 902, 905.
[4] Round, *Commune*, pp. 252–3; *Cal. of Ancient Deeds*, A, 1477.
[5] W. de G. Birch, *Hist. Charters of London*, p. 19.
[6] Lib. de Ant. Leg. fos. 66 *a*, 87 *a*.
[7] *Rot. Litt. Claus.* I, p. 123 *b*.
[8] *Cal. Pat. Rolls*, 1258–66, p. 613.
[9] *Lib. Alb.* I, p. 51. This portion, of early 14th cent. date, probably belonged to "Recordatorium," of which other folios are to be found in Liber Custumarum and Cotton, Claudius D 2.

porary compilation of City law which embodies more ancient material[1]. We are told how the city is held of the King in free burgage without mesne lords and how the *barouns* and their wives may devise lands and tenements, and further that a married woman exercising a craft may take a female-apprentice who is bound to her husband and herself—*baroun et sa femme*. Meanwhile the ancient common seal, mentioned as early as 1228[2], bore the words *Sigillum Baronum Londoniarum*[3].

It is probable that free tenure and the *firma* were closely connected in the minds of early Londoners with their use of the term "barons." They were the King's men, they held direct from him, they were on a par with other tenants-in-chief. Moreover the wealthy citizen enriched by trade and owning many tenements might well vie with great nobles. In 1141, when Stephen was taken prisoner, the Bishop of Winchester summoned the Londoners "who were as aristocrats (*optimates*) on account of the greatness of their city," and expostulated that it ill became them, who were considered in England as nobles (*sicut proceres*), to favour those who deserted their lord in battle[4]. Nor were the Londoners slow to assert their own dignity. The compiler of London laws declared that the Londoners ought not to swear in an inquest—they never did it nor ought they to do it—for the men of London are the chief men of the realm[5]. Their attitude is illustrated in their dispute with the Abbot of Westminster in 1250. They ought not, they claimed, to receive any judgment "in the absence of their peers, the earls and barons of England[6]." In the matter of franchises and tenures they considered themselves on the same footing as the Abbot and other tenants-in-chief. It is evident in all the early City records that the citizens attached great importance to their direct relation to the crown.

[1] *Ricart's Kalendar* (Camd. Soc. 1872), pp. 97, 103.
[2] Lib. de Ant. Leg. fo. 43 *a*.
[3] *Rept. to Co. Co.* 6 Ap. 1911 on "Armorial Bearings of the City of London."
[4] *Will. of Malm.* (R.S. 90), II, pp. 576–7.
[5] *Sunt chief del regne, E.H.R.* 17, p. 720. Cf. *Matt. Par.* (R.S. 44), III, p. 322.
[6] Lib. de Ant. Leg. fo. 68 *a*, *in absencia parium suorum scilicet Comitum Baronum Anglie*.

VILLEINS AND CITIZENS

The statement that a villein or serf, who dwelt within a city or borough for a year and a day, thereby became free, is one which needs careful definition. None of the evidence proves clearly that mere residence conferred citizenship or burgess-right, though it undoubtedly rendered a villein immune from claim so long as he remained there[1]. In the few instances which seem to imply burgess-right the words "*sicut burgensis*" are used, which suggest comparison rather than inclusion[2]. In other cases it is stated either that the villein becomes a free man and cannot be claimed, or that he becomes a burgess on fulfilment of other conditions—such as participation in scot and lot and membership of the gild[3]. As regards London, residence for a year and a day was held to make a villein into a free man, but not a freeman. A statement of custom, which may be dated as early as 1135, runs—"if a lawful man from outside comes into the city and dwells there without challenge for a year and a day, he shall not answer to a claimant, but remain if he chooses in the liberty of the city[4]." A more precise rule appears in 1210 in certain articles ascribed to William the Conqueror—"if serfs remain without challenge for a year and a day in our cities and walled towns or our castles, they become free men and are free from the yoke of servitude for ever[5]." This was regarded and quoted as the authority for London custom and is illustrated by several cases in the courts[6]. In 1288 the Earl of Cornwall claimed nine fugitive villeins and prayed that they might not be admitted to citizenship, as they had belonged to him less than six months before[7]. In 1299 Richard le Rous of Hendon claimed William Gerard in the Husting, as being a fugitive

[1] Ballard, *British Borough Charters*, p. li.
[2] *Ibid.* p. 103; Ballard and Tait, p. 136.
[3] *Ibid.* pp. 103–5; Ballard and Tait, pp. 136–7; see also Gross, *Gild*, p. 30, nn. 2, 3; P. and M. I, p. 429; Stubbs, *S.C.* pp. 162, 166, 167, 309.
[4] Add. MS. 14,252, fo. 119 *b*. As to date, see Bateson, *Borough Customs*, II, p. 39; *E.H.R.* 17, pp. 711, 713–14. Liberty has two senses, geographical and political.
[5] Liebermann, *Gesetze*, I, p. 491; *Leges Anglie s. xiii in Londoniis collecte*, p. 32.
[6] *Cal. of K.* pp. 90–1.
[7] *Cal. of A.* p. 170.

villein, who had lived in the City for no more than six months[1]. But a villein who became a citizen must not continue to hold land in villeinage. In 1305 four butchers were found to be living outside the City and holding land in villeinage from the Bishop of London in Stepney. They were adjudged to lose the freedom of the City[2].

The prejudice against villeins noted by Dr Gross was a comparatively late development in London[3]. It was necessary to ensure that an aspirant for citizenship, either by apprenticeship or purchase, should be of free condition, but it is not till 1387 that villein origin was regarded as tainting the blood[4]. An interesting action in 1308 in the Court of Common Pleas shows that a villein could not only become a citizen but also rise to high position. Simon de Paris, a mercer, had lived many years in London before he became an alderman in 1299 and sheriff in 1302[5]. When visiting his native village of Necton in 1306, he was found in his "villein nest" by the lord's bailiff, who demanded that he serve as reeve, and on his refusal, arrested and imprisoned him till vespers. He brought an action of assault and false imprisonment. To the defence that he was a villein, his advocate replied that he was a free citizen of London. This pleading Justice Bereford brushed aside with a story of a man who was taken in a brothel and hanged, and if he had stayed at home no evil would have befallen him. The issue which went to the jury was whether the defendants were seised of Simon as their villein at the time of arrest. They found that on the day in question he was a free man and of free condition and assessed the damages at £100[6]. It is interesting to note that while the King's justice would not admit that citizenship made freedom, the City authorities in their turn either could not or would not admit that villeinage made unfreedom. In their courts they refused to accept a plea of villeinage in bar of action. In 1373 the Lords and Commons complained that villeins came to London and sued writs of debt and other contracts against their lords, in

[1] H.R.C.P. 25, m. 16.
[2] *Cal. of C.* pp. 148–9.
[3] Gross, *Gild*, I, p. 30, n. 3.
[4] Letter Book H, fo. 218.
[5] Already a freeman and mercer in 1288, H.R. Deeds and Wills, 18 (85), 19 (69).
[6] Seld. Soc. XVII (1903), *Year Books of Edward II*, I, pp. 11–13.

order to achieve their freedom by guile, which city had no cognisance of villeinage[1]. As no action could lie in the common law courts against a lord for debt to his villein, the practice of the City left the lord the alternative of losing the action by default, or creating a presumption of freedom to the villein by answering him[2]. Parliament came to the lords' assistance with an Act laying down that whereas villeins "feigned suits against their lords, to make them free by the answer of their lords, it is accorded and assented, that the lords nor other shall not be forebarred of their villeins because of their answer in the law[3]."

The first evidence of prejudice against villein blood is found in the Act of Common Council of 1387, whereby it was ordained that if it should happen, which God forbid, that any serf (*nativus*), at the time of whose birth his father was a serf, should be chosen to judicial status in the city, as Alderman, Sheriff or Mayor, he should pay a fine of £100 and lose the freedom, unless he had previously notified the Mayor and Aldermen of his servile condition[4]. The door is not indeed closed to advancement, but it is now only slightly ajar. But the City still threw its protection over the fugitive villein. In 1428, when a writ demanded that two men, claimed as villeins, should answer before the King's justices at Westminster, the Sheriffs returned that the writ could not be executed without prejudice to the City's rights and customs, because every liege subject of the King, who sought the protection of the City and lived there quiet for a year and a day and was not reclaimed, could remain there for the rest of his days if he wished, and the two men claimed had already lived for forty years in the City[5]. To a further writ demanding the tenor of the City custom, passages from the ancient City books were quoted, purporting to be the laws of Edward the Confessor and William the Conqueror, in support of the custom that such persons could remain in the city for life as in a hospice or King's Chamber[6].

[1] *Rot. Parl.* (Rec. Comm.), II, p. 319 *b*.
[2] P. and M. I, p. 416.
[3] 9 Ric. II, c. 2.
[4] H, fo. 218.
[5] K, fo. 56.
[6] *Ibid*. fo. 60 *b*.

CITIZENSHIP BY PATRIMONY, APPRENTICESHIP AND REDEMPTION

The period during which evidence is scanty and sometimes doubtful in meaning drew to a close at the end of the 13th century. An annalist, whom Dr Stubbs was inclined to identify with Andrew Horn, the City Chamberlain, notes under the year 1274–5:

> The same year a certain liberty was provided in London that the names of apprentices should be entered in the register (*in papirio*) of the Chamber of Guildhall and the names of those who voluntarily purchased the freedom of the City should be inserted in the same register. And this was done for a good reason, because many pretended they were free, who were not free. But it should be known that there are three methods by which a man acquires the freedom of the City:—first that he be a man born in the City lawfully from his father, secondly, that he be an apprentice with a freeman for seven years and not less, and thirdly that a man may compound with the Chamberlain for his freedom before the Mayor and other aldermen[1].

Whether this means that enrolment first began in 1274 or was then made compulsory is not clear. In any case there appears to be a reference to the enrolment of apprentices as early as 1230[2], and in 1375, in obedience to a writ, the Chamberlain searches the rolls and memoranda of the reign of Henry III to discover whether a certain Ralph Smith was admitted or sworn to the freedom[3]. Possibly new registers were then begun. There is evidence of an "old register" in 1275 and 1293, of a "second register" in 1299, of a "little red book" in 1305, and a "white book of redemptions and apprentices" in 1312[4]. Some or all of these may have survived until the disastrous fire in the Chamber in 1786, since certified copies of entries of the 14th century are still preserved by some of the Livery Companies[5].

[1] *Chron. of Edw. I and Edw. II* (R.S. 76), I, pp. xxii–xxiii 85–6.
[2] Liber Ordinacionum, fo. 173.
[3] Below, p. 190.
[4] *Cal. of D*, pp. 96–179.
[5] Court of Aldermen Papers, July 20, 1921.

PATRIMONY

Freedom by birth, commonly called "patrimony," is probably implied in the early charters of London, granting and confirming divers liberties to the citizens and their heirs. In 1298 "heirs" is replaced by "successors[1]," a term familiar to students of incorporation, which may in this connection be a recognition of the fact that patrimony was not the only means of acquiring citizenship. Though the earliest instances in other towns seem only to show that the son of a burgess, so long as he lived in his father's house, had the same rights as his father[2], there was a custom at Chesterfield in 1294 that sons and daughters were admitted to the freedom either by annual payment or by acquiring a burgage[3]. It will be noticed in the "liberty" of 1275 quoted above that there was no provision for the registration of patrimonies. Nor is there any list of such persons in the transcript from the registers of freemen in 1309–12, which occupies sixty-two folios of Letter Book D. As yet no necessity was felt for noting their names—possibly they were well known in their wards, where juries were empanelled and assessments levied. But the disadvantages of freedom by repute had become apparent in 1364, when the commons of the City presented to the Mayor and Aldermen a declaration of their wishes as to the franchise. As regards freemen by birth, they were of opinion that they ought not to pay fine or service for their freedom, being exempt by ancient custom, but when they became of age, they ought to take the same oath as other freemen, for many of them thought that they were not bound to maintain the franchise, because they had not been sworn[4]. According to the Letter Book, the Mayor and Aldermen agreed, but a somewhat different decision is recorded below (pp. 10–11), where it is said that many who were born within the freedom were prevented from enjoying it, unless they had been admitted to it in some other way, wherefore the Common Council ordained that anyone born free within the City or within the bounds of the franchise should enjoy the freedom

[1] W. de G. Birch, *Hist. Chart.* p. 43.
[2] Ballard, *British Borough Charters*, p. 101.
[3] Ballard and Tait, p. 133.
[4] *Cal. of G*, p. 179.

as fully as others who had been admitted by apprenticeship or redemption or in any other way, as had always been the custom, provided that, if his freedom were challenged and he claimed it by birth, he should take the oath like others. This somewhat unsatisfactory compromise was ended by an ordinance of 1387, which directed that "those claiming the freedom by birth, within the year next ensuing, or within the first year after they come of age, if they be at large within the realm and are not already sworn to the freedom, shall inform the Chamberlain of their birth, and make the same oath as other freemen..., when they shall be accepted as freemen of the City and for such acceptance and entrance they shall pay nothing[1]."

Unfortunately the absence of registers does not enable us to estimate the early numbers of such freemen. They are seldom mentioned. Occasionally, a youth would be enrolled by special favour, though the copy of his father's freedom had been lost, or his father's name could not be found in the books[2], or again a freedom would be refused because the father had left the City long ago and the applicant had been born in the country[3]. We learn that a citizen's son who had become an apprentice lost the right to claim the freedom by patrimony[4]. Other entries show that patrimony was interpreted to mean birth at a time subsequent to the father's admission. But it is not till 1551 that light is thrown upon their numbers by a surviving fragment of the Chamberlain's registers[5]. It reveals that the ranks of citizens were but little replenished from citizen families. In twenty-one months 1092 persons became free, of whom only 75 were free by patrimony. They were vouched by the City's books and in eleven cases by the testimony of neighbours. An equal number of citizens' sons were enfranchised by apprenticeship.

[1] H, fo. 218.
[2] Repertories of the Court of Aldermen, 2, fo. 118; 12 (2), fo. 275; 14, fo. 62.
[3] *Ibid.* 12 (1), fo. 57.
[4] *Ibid.* 11, fo. 139; 12 (1), fo. 82 *b*; 12 (2), fo. 302 *b*.
[5] Lond. and Mid. Arch. Soc., C. Welch, *Freemen of London*, 1908. As regards date see correction by Bower Marsh, *Genealogist*, N.S. XXXII, Ap. 1916. The two MSS. are B.M. Egerton 2408 and Guildhall Library MS. 512.

Thus less than one-seventh of the new citizens were then recruited from citizen stock. As will be seen, the contribution of citizen families to apprenticeship was equally small two and a half centuries earlier, and it is possible that those who acquired the freedom by patrimony were also then comparatively few.

APPRENTICESHIP

(*a*) *Its origin*

No great antiquity is generally allowed to the system of apprenticeship in England, doubtless owing to the lack of evidence[1]. Instruction of sons by fathers is admittedly ancient. But some kind of arrangement whereby a craftsman or trader, for a consideration, taught another man's son appears so natural that one would be disposed to consider it almost as ancient as the crafts and trades themselves. Not all craftsmen had sons of their own to teach. Moreover the early association of workers into guilds would tend to break down family exclusiveness. Hence it is not unreasonable to suppose that apprenticeship was common long before it is first recorded as a normal custom.

In certain statutes of the City, which the present writer has already given reasons for dating about 1230[2], occurs the first mention of apprentices.

> Because many persons of the City travelling throughout England claim to belong to the liberty of London, whereby disputes and tumults arise, in order that it may be known whom of the City to defend as freemen, it is provided that no foreigner nor any apprentice departing from his lord shall enjoy the liberties of the City, nor sell retail in the City, unless they are found to have been enrolled. And they shall give for their enrolment, their entrance (into the freedom) and the protection of the City, half-a-mark, and if they are men of substance, whatsoever is just.
>
> Because by the taking of apprentices many contentions and discords arise owing to the ambiguity of their covenants (*pactum*), and in order that such ambiguities may henceforth be removed, it is provided that no one receive an apprentice unless they cause

[1] Cunningham, *Growth of Eng. Industry and Commerce*, I, p. 349.

[2] Liber Ordinacionum, fo. 173. See *Cal. of E.M.C. Rolls*, p. xvii, n. 1. To the reasons there given, it may be added that the giving of judgment in the Husting by others than the Aldermen, which was forbidden at the Iter of 1243, is treated as a living issue.