

ART. IV.—*Border Tenure*. By T. H. B. GRAHAM, M.A.

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AT the date of the battle of Hastings, 1066, Cumbria south of the Solway was inhabited by a mixed population, English, Cymric and Viking, and was ruled by Gospatric. For more than a century, the northern limit of his territory had formed the march between England and Scotland. The limit is there for all to see—the Kershope stream, from its source until it joins the Liddel; the Liddel, until it flows into the Esk; the Esk, until it meets the sea. It was not a line of demarcation between two races of mankind, for the people living on either side were homogeneous; but it was a conventional frontier, which persisted, in spite of invasion, cession and change of government.

The territory ruled by Gospatric was a distinct geographical unit. That axiom explains why the customs of the Western March are described as ancient. They originated at a date anterior to the introduction of Norman law. But the overlordship of that unit changed from time to time. Mr. Ragg has furnished (these *Transactions*, N.S. v, p. 82) an epitome of its changes. From 945 until 1032 the immediate dominion belonged to Scotland, but was subject to the *superior* dominion of the king of England. In 1032, Scotland surrendered the same unit in exchange for Lothian. The king of England thus became its immediate overlord and annexed it to Northumbria, then an English province, governed by an earl whose office and title were not hereditary. That arrangement was designed to keep the Scots at bay.

In 1067, Gospatric purchased the earldom of Northumbria from William the Conqueror and held sway over both

regions. He was deprived of his earldom in 1072, but there is not any reason for supposing that such degradation involved forfeiture of his Cumbrian dependency. On the contrary, his eldest son, Dolfin, seems to have succeeded him there as ruler.

There is abundant evidence to show that, in 1072, Malcolm had for some years past been in occupation of Cumbria south of the Solway (*Cal. Doc. Scot.*, vol. ii, p. 115; and Simeon, *Rolls edon.* vol. ii, p. 191). It is inconceivable that William the Conqueror allowed him to retain such adverse possession. In 1072, Malcolm did homage to William and became his man (*homo suus devenit*) in respect of certain unnamed territory (Simeon, vol. ii, p. 196). Later circumstances suggest that William entrusted Gospatric's territory to Malcolm as *regulus*, reserving his own right of suzerainty.

Meanwhile Gospatric acquired other lands, by gift of the king of Scotland, and issued a charter addressed to "all my servants and every man, free and dreng,\* that dwell in all those lands which were Cumbrian" and directing that Thorfyynn *mac* Thore and his men of Cardew and Cumdivock should have the fullest liberties in "all things that are mine in Allerdale," within the bounds of the rivers Shawk, Waver, Wampool, Troutbeck and the open country of Caldbeck, that no one should break the peace, which the grantor and Earl Siward had assured to the grantee, and that he and his men should, like the grantor, be free of geld. Mr. Ragg gives a facsimile and translation of the instructive document in these *Transactions*, n.s. xvii, pp. 206-9. Siward was earl of Northumbria from 1041 until his death in 1055 (*Vict. Hist. Cumb.*, ii, p. 232, *note*) and was probably, during that period, Gospatric's immediate overlord. Gospatric was of Scottish extraction, but, from Mr. Ragg's above-mentioned epitome of political changes,

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\* The drengs, according to Vinogradoff (*English Society*, p. 66) were of Scandinavian origin.

affecting his Cumbrian territory, and from the evidence of his charter, it is clear that he had been a subject of the king of England.

Gospatric's charter may have been penned in 1072. He does not describe himself as earl. He is now only ruler of Cumbria south of the Solway. He reminds his men that their territory was anciently liable to geld of cows. All his life that territory had formed a limb of the earldom of Northumbria, parcel of England, and payment was never demanded. Now it had become a separate dependency under Scottish overlordship, and the Norman king would certainly exact payment. It was his wish that they should continue quit of it, and that they should remain on friendly terms with the Northumbrians, and keep the peace, which, in the old days, Earl Siward and he had struggled to maintain. His prophecy came true. The Normans re-imposed the ancient tribute under the name of cornage.

Carlisle sank into utter obscurity after its destruction by the Danes in 876, but it must have been a centre of population in Gospatric's day, for when William Rufus came northward, in 1092, to assert his suzerainty, he found Dolfin, son of Gospatric, in possession of the place, and it gave a name to all the surrounding district—"the land of Carlisle."\*

If that was indeed the course of events, it is easy to account for the peculiar mode of land tenure which there prevailed. Perusal of the pipe rolls and Testa de Nevill suggests that the ancestors of Gospatric's free men had been liable not only to ordinary service as between tenant and landlord, but to a threefold duty towards their lord paramount, the king of England, namely:—

- i. To render a fixed annual tribute called in the English language "noutgeld," because it was paid in *nout*, that is to say horned cattle.

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\* The pipe roll of 1130 is headed Chaerleolium, that of 1158 Carleolium.

2. To march with the king's army, when he invaded Scotland, going in the vanguard and returning in the rearguard.\*

3. To do "endemot,"† another English term, which Canon Wilson interprets (*V.H.C.*, i, p. 324) attendance at the mote or assembly held at the end or frontier, for the peaceful settlement of disputes between the English "endemen" and their Scottish neighbours.

Norman lawyers termed all such duty towards the king "forinsec service." *Forinsecus* signifies extraneous. To translate it "foreign" is to beg the question, for the marchmen always insisted that it was their duty and privilege to defend the English border, and that they were consequently exempt from the general military service of the Norman knight. For example, Richard de Levington claimed, in 1224, that he was not obliged to be present at the siege of Bedford, because he held of the king by "cornage," not knight-service, and the claim was allowed (*Cal. Close Rolls*, 8 Henry III, p. 614).

Bracton, writing in Henry III's reign, gives a definition of the term forinsec service:—

There are services expressly named in the charter of feoffment, but nevertheless styled forinsec, because they belong to the king, and not to the chief lord. Such service is called "forinsec," because it is done and received outside or beyond (*foris vel extra*) that rendered to the chief lord. It is called "scutage," because it pertains to the shield assumed for military service, and "royal service," because, according to what was introduced at the Conquest, it belongs to the king and nobody else. It is performed by virtue of tenement, not person (*De Legibus*, Rolls edition, vol. i, p. 282).

It was usual for the chief lord to throw his liability to forinsec service upon the shoulders of his feoffee, and for

\* So, in Edward the Confessor's reign, the men of Archenfield, on the Welsh border, advanced by custom in the *avantwarde*, but retired in the *redrewarde* (*Domesday Book*, i, p. 179; *Vict. Hist. Hereford*, i, p. 311).

† Cf. Markmote (*mearc mot*) which appears to mean "a court held on the marches of adjacent counties or hundreds, or, perhaps, on the boundary dyke itself" (Pollock and Maitland, *Hist. Eng. Law*, vol. i, p. 19).

the latter to transfer the burden to those of his sub-feoffee, and so *ad infinitum*, because, as Bracton seems to hint, the land was answerable for the debt, no matter in whose hands it happened to be.

What was the origin of the abnormal tenure prevalent in the land of Carlisle? The Normans did not, at first, give it a specific name. They subsequently called the first and most important ingredient "cornage," because it had to do with horned cattle, and described the tenant as holding by cornage (*Sheriff's return*, 1212). They compared the second ingredient to their own tenure by grand serjeanty, and rarely took cognizance of the third. Was it a purely local tenure of English origin?

First, as to noutgeld. The tribute due from the land of Carlisle in Henry I's days amounted, in money value, to £85 8s. 8d. a year. From the beginning of Henry II's reign to the end of John's, it was £80 10s. 8d. a year. The pipe roll of 1130 shows that the collector, Richard the knight, still owed a balance of the "geld of animals" for a previous year, but accounted for the same by stating that it remained in the domain manors of the king. That, as Canon Wilson points out, signifies that it had been duly rendered in cattle by the tenants, and that those cattle had, for convenience, been impounded upon the king's neighbouring farms (*V.H. Cumb.*, i, pp. 311 and 314).

At the same period, Gamblesby and Glassonby, held in drengage, were in Henry I's hand. It is very unusual to find drengs holding land in Cumbria as tenants *in capite*. In this case, they may have become so by the disappearance of an intermediate free tenant, possibly Ranulf Meschin. At any rate, it is significant that the king made a new grant of the premises to Hildred de Carlisle, to hold "by rendering to me the *gavel of animals*, as other free men of Cumbria, who hold of me *in capite*, render" (*Abbrev. Placit.*, p. 67). In other words, by payment of noutgeld.

Henry I confirmed the gift of land made by Walter the priest to the canons of Carlisle, and directed that the same should be quit of the geld of cows and all other *customs* (Charter quoted *V.H.C.* ii, p. 10). A comparison of the pipe roll, 1130, with the sheriff's return, 1212, shows that the noutgeld remitted in that case amounted to 37s. 4d. a year.

A generation later, the tax was sometimes paid in kind, for William *le gros*, earl of Albemarle (d. 1179) gave, in his lifetime, to the monks of St. Bees, "in Coupland," six cows a year in perpetual alms, to be delivered "when my noutgeld falls due" (Wilson, *St. Bees*, p. 46).

Early in John's reign, Ada, daughter of William Engayne, gave Little Haresceugh to Lanercost priory, saving the king's service, namely eight pence of noutgeld to the same land belonging (*Register of Lanercost*, quoted *V.H.C.* i, p. 325), and Richard, son of Richard son of Truite, confirmed his father's gift of Newby beneath Carlisle to Reginald de Carlisle, "rendering to me and my heirs ten shillings a year, for all terrene service belonging to us, and further rendering sixteen pence for *cornage*, and doing other forinsec service, should it occur" (*Register of Holmcultram*, quoted *V.H.C.* i, p. 321). Here is one of the earliest instances of the use of the word *cornagium* to signify noutgeld. It occurs in the pipe roll of 1201, and, in the Sheriff's return, 1212, it quite supplants the English name. It had long been used in Normandy, to denote not a tax paid in cattle, but a tax levied upon cattle (*V.H.C.* i, p. 318).

Secondly, as to border warfare. In a case heard *coram rege*, in 1238-9, it was decided that:—

Wardship of land, in the county of Cumberland, late of Odard de Wigton, remains to the king, because Odard held of the king by serjeanty, namely, of going with him in the vanguard of the army against Scotland and, on his return, in the rearguard, which, according to what has been found by inquisition, is reputed to be

grand serjeanty: and over and above that (*preterea*) because he pays cornage, which in English is called "horngeld" (*Bracton's Notebook*, edit. Maitland, vol. iii, p. 279).

The concluding paragraph of the judgment shows that Odard's warfare was not grand serjeanty, but an element of border tenure. In 1247, Johanna de Morvill held 15 carucates at Burgh and Aikton, paying cornage for the same, *and*, if the king passed through Cumberland, going in the vanguard of his army and returning in the rear-guard (*Cal. Doc. Scot.*, i, p. 317). On such occasions, the route to and fro was regulated by strict custom, and lay between two fixed points, namely, the rerecross on Stainmore and the march of Solway, both limits of the "land of Carlisle." The tenants *in capite* and their men, resident in that district, were obliged to meet the king at the rerecross and cover the advance and retirement of the royal army only so long as it remained within their territorial bounds (*Cal. Doc. Scot.*, iii, p. 135). Their military service *by reason of tenure* seems to have extended no further. At Cargo, in 1274, Robert de Ros, who occupied the lowest rung of the feudal ladder, was in the habit of doing for Sapientia de Carlisle, of whom he held the land immediately, the forinsec service pertaining to the king, namely, 32 pence of cornage at the Carlisle exchequer (*Cal. inq. p.m.*, 2 Edward I, p. 49). Cornage remains a charge upon the land, but there is no reference to border warfare and endemot, for they had become matters of ancient history. Maitland observes:—

Service in the army *by reason of tenure* is fast becoming an archaism, for the time for distraint of knighthood and commissions of array is at hand (*Collected papers*, vol. ii, p. 105).

Thirdly, as to endemot. Gospatric, son of Orm, was constable of Appleby in 1174. He gave land at Flimby to Holmcultram abbey, and undertook to do, for the monks, all forinsec and terrene service belonging to the

king, namely, noutgeld, *endemot*, and anything else pertaining to his (the king's) service;\* and further to do all service belonging to his chief lord of Allerdale, namely, sewake, castelwerke, pleas, aids and other terrene exaction and custom (*Register of Holmcultram*, quoted *V.H.C.* i, p. 321, and Nicolson and Burn, ii, p. 530).

In 1201, John de Regny held two carucates at Newton by suit of the county court and *endemot*, "whereof scutage ought not to be given" (*Pipe roll*). But on turning to the sheriff's return, 1212, it appears that Henry I had given Newton to his predecessor, Turstan de Regny, to be holden by serjeanty of going with a hauberk, at the king's precept, in the army of Scotland (*Testa de Nevill*). Although there is no reference to noutgeld, allusion to border warfare and *endemot* suggests that Henry I had changed the ancient border tenure into grand serjeanty with appropriate services, which were not however invariable, because, in 1275, Newton is described as being held by service of a serjeant to attend the king, when he shall go to Wales, and of a steward doing suit at the county court and pleas of the forest (*Cal. Inq. p.m.*, 3 Edward I, p. 94).

The functions of the ancient *endemot* may be gleaned from a record of 1248. The king of Scotland complained that the laws of the march were not so well observed as formerly, and a borderer named Nicholas de Sules had suffered damage, by being impleaded before the king of England, in respect of an offence committed in England by his men dwelling in Scotland. Six knights were chosen from each country, to enquire into the matter, and reported that, *by march law*, no subject of either realm, though holding land in both, could be impleaded anywhere but at the march, for an offence committed in Scotland by

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\* A little later, King John excused the same monks from a number of obligations, namely, gelds, danegeld, seaward, castlework and cornage (*Dugdale, Mon.*, vol. v., p. 603).

his men dwelling in England, or for one committed in England by his men dwelling in Scotland (*Cal. Doc. Scot.*, i, pp. 323 and 559).\*

The above-cited evidence tends to show that the king of England never lost his grip upon Cumbria south of the Solway. Stephen ceded the district to David, king of Scots, in 1136, but it does not follow that he thereby relinquished his suzerainty, for, when Malcolm IV made a retrocession of the same territory, in 1157, to Henry II, everything appears to have glided smoothly into its old groove. The land remained, in the meantime, liable to noutgeld, although there is no express evidence that it was either demanded or collected, and when the pipe rolls begin afresh, in 1158, the tenants are still paying the tax without protest, because it is presumably *of the essence* of their tenure. It is submitted that, when William Rufus took forcible possession of Carlisle, he had ascertained that all the surrounding district was, in theory or in fact, a limb of Northumbria,† and that its native ruler held it subject to the obligation of rendering by his tenants to the king of England, as lord paramount, the threefold duty of noutgeld, border warfare and endemot.

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\* Newton was held "per sectam comitatus et de hendemot," which may be translated, "by suit of the county court and suit of the endemot." The local courts of the Saxons and the Angles must have resembled one another and it is possible that at the period of Anglian supremacy in Cumbria and Northumbria the "land of Carlisle" was regarded as a shire and its "wards" as hundreds, for the purpose of local government. Endemot may therefore be equivalent to *scir-gemôt* or *hundred-gemôt*. Maitland says (*Collected Papers*, vol. ii, p. 107) "What endemot may be I cannot guess, though it must be a moot of some kind. Is it simply the hundred-moot?" But the difficulty in accepting his suggestion is that the use of the term *endemot* is so purely local and so exceedingly rare. It occurs only at Flimby and Newton, both in the district known as the "marches of Scotland," so that one inclines to Canon Wilson's suggestion that it signifies *march-mote*. Unfortunately there is no evidence of any species of local court before the Norman occupation, and our great authorities are obliged to resort to theory.

† Florence of Worcester says "the king set out for Northumbria and rebuilt Cairleu" (*Eng. Hist. Socy.*, vol.ii, p. 30). The statement may imply that the town was originally within that province.

He did not attempt to change that mode of tenure. His successor, Henry I, created a few tenements at Newton Regny, Hutton, Raughton and Carlton by Penrith to be held by the Norman tenure of grand serjeanty. Henry II was the first to introduce tenure by knight-service. Gilsland is a notable instance. Gille, son of Bueth, and his predecessors in title, may have held by tenure of rendering the threefold duty, because, when Henry II gave the barony to Hubert de Vallibus, to be holden by knight-service, he and his successors on the throne, again and again, expressly directed that the land was to be quit of noutgeld (*V.H.C.* i, p. 320). There is, at any rate, reason for supposing that tenure by render of noutgeld, border warfare and endemot (otherwise called tenure by cornage) which was so prevalent in the land of Carlisle, was not introduced by the Normans, but was an indigenous institution adapted to the requirements of a new system of government.

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