

## Original Documents.

### EXTRACTS FROM ORIGINAL RECORDS RELATING TO THE BURNING OF LEPERS IN THE REIGN OF EDWARD II.

IN the latter part of last year Mr. Burt was so kind as to call my attention to a detached roll, found among other articles of various dates relating to the Channel Islands, and deposited among the records of the Court of Exchequer. The membrane has no date, but is apparently in handwriting used in the reign of the first or second Edward, and it purports to be a finding of the jurors of the parish of St. Brelard, in Jersey, of certain forfeitures, fines, and casual revenue of the Crown. One of the entries runs as follows :—

“Jurati dicunt [*illegible*] leprosus combustus fuit propter [*illegible*] et per confessionem suam. Et habebat dictus leprosus in bonis mobilibus ad valorem de xvi. lib. turon. unde Drogo de Sancto Heller[io] respondebit.

“Petrus Turgis leprosus combustus fuit similiter sed nulla bona habebat.”

The entries suggest the inquiry whether leprosy, *per se*, was treated as a capital crime in Jersey in the beginning of the fourteenth century, and under what law? How did this record find its way into the English Exchequer at a time when the superior courts of England had no more direct jurisdiction than they now have in matters of Crown law pertaining to those dismembered portions of the Duchy of Normandy?

A subsequent search among the early Placita rolls brought to light the explanation of this document.

It is matter of history that, in the reign of Edward II., complaints were made to the King in Parliament of the proceedings of his officers and others in those islands, and great dissatisfaction appears to have prevailed in them; and that the King thereupon commissioned English Justices Itinerant to visit them, armed with the usual powers of such justices as existing in the reigns of Henry III., Edward I., and Edward II. These proceedings are extant on record in the office of appropriate deposit for such records in case of like commissions executed within the realm, and they are referred to in the Parliament rolls of the same reign—1 Rot. Parl., pp. 378, 379, and 464. One of the bundles of proceedings of the Justices in Eyre in Jersey, dated 19th October, 17th Edward II. (A.D. 1323), contains, among the pleas of the crown, under the head of “Indictamenta et presentationes,” the following entries :—

“St. Broelard” . . Rob. Patier, leprosus, reatus de seditione facta

ad homines appoisonand' quod cogn[ovit]. Per quod combustus fuit, etc. catalla ejus xvi. lib. turon. unde Drogo de Sancto Elerio resp.

"Petrus Tourgis leprosus pro eod' combustus, etc. Nulla sunt catalla, etc."

It appears, therefore, that the execution of these lepers by burning was for an offence, equivalent to high treason, at that time generally imputed to them throughout France and its dependent Great Fiefs, and on which the contemporary annalists afford abundant information. The annalist of St. Evroul, anno 1321, tells us that—"Leprosi fuerunt combusti ferè per totum regnum Franciæ propter potiones quas composuerant pro interfectione universi populi, et plures ipsorum aterminati."<sup>1</sup> These annals are appended to the late edition of Ordericus Vitalis, *Historia*, vol. v. pp. 169, 170. Paris, 1855.

The official evidence is among the printed "*Ordonnances*" of the Kings of France, in the reigns of Philip V. and his successor, vol. i. p. 814 (anno 1321); vol. ii. p. 481 (eod' anno); and in Isambert's *Récueil des Anciennes Lois Franc.*, vol. iii. pp. 285, 287. The recital in these ordinances shows an earlier one of the date of 1320, which has not been printed, if indeed it be now extant.

Some of the annalists, as William de Nangis and the Chronicle of St. Denys, enter with some detail into the facts of this notable conspiracy. It was believed that the Mahometan powers in Spain, anxious to prevent an impending crusade, had concerted with their Jewish subjects a scheme for the general extermination of Christianity. The Jews, being well aware of their own social position and unpopular character, found it inexpedient to take any immediate or ostensible part in the execution of this plan, and were supposed to have engaged the lepers, then numerous in European states, to effect their object. Absurd reports are handed down to us of general councils, or deliberative assemblies, of lepers, attended by deputations from all the "*Ladgeries*" of Europe, except those of England. They were told (as it is said) that poisons might be compounded for wells, fountains, and streams, which would either destroy those who drank the waters, or would make leprosy universal, and thus relieve the existing sufferers from the invidious and exclusive disgrace of this malady. A certain seigneur of Parthenay (Epernay?) is said to have written to the King, to inform him that little satchels of mysterious mixtures had been found on accused persons, of which he described the contents and had tested the poisonous nature. It is not easy to recognise anything of a very poisonous description in the specified ingredients, which chiefly consisted of bits and scraps of the limbs of the smaller reptiles, of human hair, blood, and other excretions, forming a mixture of the same sort as the contents of the witches' cauldron in Macbeth.

As in the case of witch-prosecutions nearer home, the confessions of the criminals seem to have been not uncommon; but by what means those confessions were obtained, or by whom they were proved on the trials, or whether leprosy alone was confessed, we are not informed.

The above Ordinances of the French kings purport to authorise, or,

<sup>1</sup> The last word is queried by the French editor. The word is a forensic term implying an adjournment, or day to appear; *z.c.*, a prosecution.

*ex post facto*, to ratify, the prosecution of the alleged offence in the seigneurie, and other local courts of the kingdom, as for high treason (*læsa majestas*), and the punishment by fire is enjoined. It is true that no new laws promulgated by Philip of France could have had any legal operation, as such, in islands that had long ceased to be part of French Normandy; but the adoption of them in those islands would not be wholly at variance with the later usages of the local courts there.

Neither Jersey nor Guernsey has ever possessed any well-defined system, or even authoritative text-book, of crown law. The old Customal of Normandy relates almost entirely to the feudal customs and civil procedure of the courts, and even in such matters the copies in current use at this day are interspersed with the edicts or later ordinances, of kings who had ceased to rule in the Channel Islands.

Those who are curious to learn the present state of criminal jurisprudence in them, and the practice of the island judges of referring sometimes to English, and sometimes to French law, may gratify that curiosity by reading the evidence attached to the valuable Reports of Mr. Ellis and Mr. Bros, presented to the Queen in 1847 and 1848.

Whether the deliberate selection of our King John as their preferable sovereign was a proof of the sagacity or taste of the inhabitants, may be an open question; but at all events our worthy fellow-subjects of that little groupe of isles have never failed to assert, and to secure for themselves, a very unusual share of whimsical autonomy not altogether satisfactory, at least to their Anglican creditors.

In the case before us, it is probable that the contemporaneous law of French Normandy would pretty correctly represent the law in force before the separation; and the Justices, who were sent to administer justice in the King's name in Jersey and Guernsey by Edward II., might be justified in considering that, in burning lepers, they were executing the ancient laws and customs of the islanders in conformity with the terms of their commission. It is certain that, in the trials before them, the peculiar local customs as to process and punishment, such as the "*clameur de haro*," the parochial system of presentments, and the alternative offered to the prisoner, in cases of common assault, &c., of voluntary exile, were strictly adhered to. I do not know that punishment by burning in case of capital crimes has, even yet, been formally abrogated, though the "*Jurés Justiciers*" will hardly be advised, or disposed, to revive it.

The King's Justices returned to the officers of the crown the record of their proceedings, and the extracts, or *escheats*, of the fines and forfeitures accruing to the Crown. Hence the preservation of these documents among the ordinary records of the Crown in the English Exchequer.

The above extracts from the *Iter Rolls* are not the only entries in them that relate to leprosy.

The designation of "*leprosus*" appended to the names of parties, prosecutors, or prisoners, is not uncommon in the pleadings, even in ordinary cases where the disease had no connection with the subject of inquiry. Thus I find the following notices of indictments in the Guernsey *Rolls* of the same *Iter*. :—

"Symon de Monte indictatus est quia furaverat capam Ricardi Hoel, leprosi."

A more singular one is among the Placita Coronæ ("placita spadæ," as they are sometimes called), in Jersey, in 20 Edward I. :—

"Durandus del Auna, leprosus, indictatur per inquisitionem quod fregit hostium et fenestram domus Roberti Fanegot et in ipsum insultum fecit de nocte, et ipsum ad terram cabliavit: venit et hoc dedicere non potuit. et ipse in misericordia de qua satisfac[iat] vel insulam exeat.

"Idem Durandus extraxit culteltum suum super Radulphum Lemere, et fecit ipsum clam[are] har[o], et hoc dedicere non potuit. ideo ipse in misericordia. In for[is]factura] quā prius.

\* \* \* \* \*

"Robertus Fanegot et conjux ejus et filiast' eorum indictati per inquis[itionem] leprosorū, quod ipsi verberaverunt Durandum del Aune veniunt et hoc dedicere non potuerunt.

"Ideo ipsi in misericordia. Sed tamen quia idem Durandus communis malefactor est et contumeliosus perdonatur ei misericordia per Justic[iarios]."

In these entries of indictments and convictions we find "leprosus" used by way of mere "addition" (as the lawyers call it) to the name, in the same way in which a modern indictment styles the defendant "labourer," "yeoman," "shoemaker," &c., in order to identify the party named. But no clerk of indictments at this day would think of using an accidental or personal peculiarity for that purpose, such as "rogue," "heretic," or "cripple." This mode of designating a complainant or a defendant as a "leper" shows how the prevalence of this malady, and the various sanitary and civil regulations or usages in connection with the sufferers, had made them a sort of distinct class of society, having a social position similar (as Dr. Rock has reminded me) to that once occupied by the Lazari, or Lazaroni of South Italy, who are supposed to have originally derived their name from the same disorder.

The indictment of Fanegot and his family for the assault on Durandus, the leper, purports to have originated in an *inquest of lepers*. I can find nothing to explain this strange expression. It seems incredible that any inquest of sworn lepers can have existed as a regular process in Guernsey, and I am inclined to think that the language of the record imports only that an inquest had been sworn touching offences of, or upon, lepers. There is contemporaneous authority for the use of the word "leprosus" as applied to one who had the care or superintendence of lepers. (Ducange Gloss. voc. "Leprosi.") It is, however, possible that further examination of the Rolls might throw some light on the expression.

I am tempted to add a few remarks on the social and legal status of leprous patients at the date of the above record, but I will confine them within narrow limits.

Among the valuable publications now in progress under the direction of Lord Romilly, there is one lately issued, under the care of a very able and competent editor, called "Monumenta Franciscana." I cannot subscribe, without some qualification, to the general view, taken by the editor in his preface, of the state of those who were labouring under this malady at the period to which he refers. Mr. Brewer seems to think that leprosy had been made "penal" in itself; that the leper was "deprived

of all civil rights ;" that restoration to health was regarded as impossible, &c. ; and he refers to Mr. Hardy's excellent preface to the Close Rolls, and to the regulations of some English Lazar-houses.

This statement appears to me far too strong as regards either England or France. The language of some of our earliest text-books, such as Bracton, Briton, and the anonymous author of Fleta, may seem to lend some countenance to this estimate of the legal disabilities of those who were afflicted with leprosy ; but I think that a more careful examination of the actual practice, as recorded in the Placita Rolls of the thirteenth century, and of the Formularies of the same date which are extant in the Register of Writs and elsewhere, will tend to qualify the language of those venerable volumes, especially when we read them by the light of the contemporaneous early Customals of neighbouring continental states, and of the provisions of the Church and its teachings, which had so marked an influence in the middle ages.

We know that under the name of leprosy a large class of cutaneous disorders must have been included. The old commentator on the writ "*de Leproso amovendo*," says truly, "*mes sont divers maneres des lepres.*" The writ itself prescribes as much care and caution in the inquiries made under it as, in those days, could conveniently have been exercised. The powers under it were confined to cases where the disease was rendered visible and notorious by those external symptoms of ulceration and putrescence which were then regarded as decisive of its infectious character, and where the patient had refused to confine himself to his own house, and persisted in frequenting public places. The object was, I apprehend, to limit the writ to cases of real elephantiasis. Under such circumstances the inquisition was a matter of police as in other cases of public danger. The disabilities referred to by Bracton apply only to persons "*extra communionem gentium positi*," or (as the Customal of Normandy calls them), "*jugés et separés pour maladie de lepre*," and who were then regarded as so far secluded from the ordinary transactions and business of life, as the interests of third parties, as well as their own, rendered necessary or prudent. There was no forfeiture of property, but rather a sequestration of it. The Customal of Hainault<sup>3</sup> is, perhaps, one of the most stringent and remarkable to be found. A sort of funeral service was performed on the leper's seclusion ; a heriot, or "best beast" was paid to his lord, and he became dead in law, as a monk after profession, but subject to restoration to ordinary civil rights in the event of a cure. Customs of the same character are also to be found in the early history of Bretagne. The exclusion from personal appearance in the conduct or defence of suits looks like a privilege rather than a penalty, for our ancient common law obliged all suitors to appear in person, unless they obtained special leave of the Court to make an attorney ; and this is the construction which Lord Coke has put on some of the passages in the old text-books, which all seem to be copied from Bracton (Coke's 1 Institute, p. 8).

In the curious case cited from the Year Book of 30 Edward by Mr. Horwood, in his interesting volumes lately published, the Judge got over the objection (taken probably *ore tenus* before him), by sending an officer into the outer assize hall to take from an alleged leper his appointment of an attorney to look after his interests in court.

<sup>3</sup> See Merlin's Repertoire, &c. ; also Ducange, voc. "*Leprosi*."

Nor were the interests of this community or class overlooked in other respects. The statutes for taxes on moveables imposed by Parliament, have always expressly exempted (with some exceptions) the goods of lepers shut up in the *Ladreries* of the realm, as the Statute Rolls inform us. In short, whatever may be the probability, in all human experience, of the abuse of such regulations to the purposes of private or public wrong, and whatever may have been the prejudices which fear or disgust may have inspired against these sufferers, I see no ground for imputing to our ancestors any such conspiracy against their lives, liberty, or property, as some have imagined; and the magnificent establishments founded all over the country for the care, if not for the cure, of "measled" subjects, would rather point to a different conclusion. It is said that there were two thousand *Léproseries* in France alone in the reign of Louis VIII., and that the objects of these establishments, the "*les ladres, devinrent plus dignes d'envie que de pitié.*"—[*Dictionnaire Historique des Mœurs, Usages, et Coutumes des François.* Paris, 1767. Tit. *Léproserie.*] Perhaps the cupidity of the seigneurs may have co-operated with the prejudices of the people in producing the frightful excesses in France to which I have already adverted.

I have omitted to notice here the Welsh laws on leprosy, as contained in the *Venedotian*, *Dimetian*, and *Gwentian* codes, and, generally, in the *Leges Wallicæ* printed by the Record Commissioners in 1841. These odious provisions, if indeed they ever were in operation in that country, would justify any amount of reprobation. They are too barbarous and absurd to be worth notice, at least as fair specimens of contemporary legislation. I only mention them here as supplying an instance of the payment of a heriot by lepers, "*cum seculum dimittunt,*" *i. e.*, when they retired from the world, as in the *Hainault Custumal* already noticed. (See *Ancient Laws of Wales*, vol. i. pp. 85, 521, 749; vol. ii. p. 797.

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